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BEFORE THE SURFACE TRANSPORTATION BOARD

Finance Docket No. 36500

CANADIAN PACIFIC RAILWAY LIMITED, ET AL.

– –CONTROL– –

KANSAS CITY SOUTHERN, ET AL.

APPLICANTS' MOTION TO COMPEL
DISCOVERY FROM CANADIAN NATIONAL RAILWAY COMPANY

Applicants[1] hereby move to compel discovery from Canadian National Railway Company ("CN") in response to Request Nos. 4, 9, 10, 11, 12, and 15 of Applicants' Second Set of Discovery Requests (the "Requests").

I. Introduction

CN's Responsive Application and Comment in this proceeding include, among other things, a request that the Board order the divestiture of KCS' Springfield Line to CN as a condition of the CP-KCS merger. Because the Springfield Line is something CN tried, and failed, to acquire in connection with the former CN-KCS transaction ("CN-KCS"),[2] Applicants' Requests—the purpose of which is to gather relevant information so that Applicants can give the Board a comprehensive response to the issues raised by CN and others—naturally encompass documents relating to CN-KCS. CN does not dispute that documents concerning CN-KCS may bear directly on arguments that CN and others have raised in responsive applications and comments. Yet, rather than agreeing to review such documents and assess whether they should be produced based on legitimate

[1] Applicants are Canadian Pacific Railway Limited, Canadian Pacific Railway Company, and their U.S. rail carrier subsidiaries Soo Line Railroad Company, Central Maine & Quebec Railway US Inc., Dakota, Minnesota & Eastern Railroad Corporation, and Delaware and Hudson Railway Company, Inc. (collectively, "CP") and Kansas City Southern, the Kansas City Southern Railway Company, Gateway Eastern Railway Company, and The Texas Mexican Railway Company (collectively, "KCS").

[2] CN-KCS refers to the transaction proposed in the Agreement and Plan of Merger that CN and KCS entered on May 21, 2021 and that KCS terminated on September 15, 2021.

considerations such as relevancy to this proceeding, responsiveness to Applicants' Requests, or attorney-client privilege, CN categorically refuses to produce *any* CN-KCS specific documents, claiming that Applicants are somehow "estopped" from seeking CN-KCS documents because of objections Applicants made in their own discovery responses.[3]

CN's warped logic is based on an obviously false equivalency: when Applicants objected to discovery requests concerning the CN-KCS proceeding, those discovery requests were supposedly aimed at responding to *Applicants'* Control Application, which did not implicate any aspect of the failed CN-KCS proposal. But now that CN is attempting to use its Responsive Application in this proceeding to resuscitate certain aspects of CN-KCS (for example, CN's renewed bid to acquire KCS' Springfield Line), and the task at hand includes the Board's adjudication of that request, documents in CN's possession relating to its own prior attempt to acquire the Springfield Line in connection with CN-KCS will undoubtedly be relevant *to that task*.[4]

CN also ignores fundamental principles of discovery. The Board's discovery rules at 49 C.F.R. Part 1114 permit "discovery…regarding any matter, not privileged, which is relevant to the subject matter involved in a proceeding…." 49 C.F.R. § 1114.21(a)(1). All of Applicants' Requests fall comfortably within the scope of relevant discovery permitted under the Board's rules, and should be readily available to be reviewed and produced by CN without significant burden. CN does not argue otherwise. As such, the Motion to Compel should be granted.

II. Background

On February 23, 2022, Applicants filed their First and Second Sets of Discovery Requests to CN. Ex A (Applicants Second Sets of Discovery Requests). CN filed its responses and

[3] CN's Responses and Objections to Applicants' Second Set of Discovery Requests to CN, Req. 4, 9, 10, 11, 12 and 15.

[4] CN has made a host of claims about the Springfield Line, including claims related to the viability of the line; competition; infrastructure; investment; and commercial opportunities.

objections to the First Set of Requests on March 9, 2022 and to the Second Set of Requests on March 15, 2022. CN's response to the Second Set of Requests is the subject of the present motion to compel. Ex. B (CN's R&Os to Applicants' Second Discovery Request).

In its Responses and Objections ("R&Os"), CN objected to six requests on the grounds that they seek documents "related to the former CN-KCS transaction, which is not at issue in the above-captioned proceeding." *See, e.g.*, Ex. B (CN R&Os at 6, Request No. 4). With respect to five of these requests, CN further claimed that "Applicants previously objected to discovery of their own documents related to the former CN-KCS transaction, and they are estopped from switching positions now." *Id.*

In the spirit of cooperation and in an effort to reach a swift resolution of outstanding issues related to the Second Set, Applicants contacted CN to schedule a meet and confer on March 17, 2022. During the meet and confer, which took place on March 24, 2022, several of Applicants' Requests and CN's R&Os were discussed and the parties reached a mutual agreement on everything except on one point: whereas Applicants were of the view that CN-KCS documents in CN's possession should be searched and produced if they are relevant to the issues raised in this proceeding, CN was of the view that CN-KCS specific documents should be excluded *categorically* because Applicants are "estopped" from asking for them as a result of Applicants' previous objections to CN discovery requests (which sought Applicants' documents, including CP documents, related to CN-KCS). During the meet and confer, Applicants conveyed to CN that they did not see any merit to CN's objection, and therefore would be moving to compel unless CN agreed to clarify its position in regard to those Requests. CN agreed to clarify in writing the circumstances under which they would agree to provide Applicants with documents responsive to one or more of the Requests that relate to CN-KCS, and, conversely, when they would intend to deny such access.

CN did not provide any clarification regarding their position until late in the day on March 28, 2022, after Applicants sent follow-up emails to CN on March 26, 2022 and March 28, 2022. Ex. C ([EXTERNAL] RE: FD 36500 CN's Responses and Objections to Applicants' Second Set of Discovery Requests).

Once again, CN refused to produce relevant discovery and raised the same argument predicated solely on Applicants' previous responses to different discovery, stating that CN is "unable to identify any instance where applicants agreed to produce any documents related to the former CN-KCS transaction." *Id.* CN further stated in its March 28th email that it will not "withhold documents that relate to the former CN-KCS transaction *if those documents are otherwise responsive to a different request*," indicating (confusingly, and contrary to Applicants' understanding from the parties' meet-and-confer call) that CN may not search at all for documents that are responsive to the specific Requests directed at CN-KCS documents. *Id.* (emphasis added). While CN claims that "a nonprivileged and responsive communication that related both to the CP-KCS transaction and to the former CN-KCS transaction would not be withheld," this caveat is essentially meaningless. The Requests at issue ask specifically for CN-KCS documents, so CN cannot possibly satisfy those Requests if it categorically excludes responsive documents because CN has decided that they relate "only" to CN-KCS. It makes no sense for CN to produce documents that relate to both transactions, while categorically excluding documents related to CN-KCS, when the underlying subject matter of the documents (and their relevance) remains the same. CN ended its March 28, 2022 email by inviting Applicants to file a motion to compel to resolve this issue, stating that Applicants "are free to do so." *Id.*

Given the foregoing, Applicants file this motion to compel in an effort to reach a fair and swift resolution of the dispute regarding Applicants' Requests that relate specifically to CN-KCS (*see* Request Nos. 4, 9, 10, 11, 12, and 15).

III. Discussion

Applicants are entitled to discover relevant information provided the discovery request is not unduly burdensome. 49 C.F.R. § 1114.21(a)(1), (c). If documents are relevant to the issues raised in this proceeding, the fact that they relate to CN-KCS does not make them undiscoverable, even if Applicants previously objected to requests that related to the same transaction. The requested documents are within CN's possession and are not unduly burdensome to obtain.

A. The Applicable Relevance Standard Is Broad.

Pursuant to 49 C.F.R. § 1114.21, "[p]arties may obtain discovery . . . regarding any matter, not privileged, which is relevant to the subject matter involved in a proceeding . . . ." 49 C.F.R. § 1114.21(a)(1). Specifically, the Board has consistently recognized that "[t]he requirement of relevance means that the information might be able to affect the outcome of a proceeding." *Waterloo Rwy. Co.*–control–*Can. Nat'l Rwy.*, 2003 WL 21009327, at *2 (S.T.B. May 6, 2003); *see also Town of North Judson,* 2015 WL 4620569, at *2 (S.T.B. Aug. 3, 2015)*; Tongue River Railroad Co.,* 2014 WL 4457251, at *3 (S.T.B. Sept. 9, 2014); *Ballard Term. Railroad Co.,* 2013 WL 4498193, at *2 (S.T.B. Aug. 22, 2013); *Reasonableness of BNSF Rwy. Co.,* 2012 WL 2378133, at *3 (S.T.B. Jun. 21, 2012)*; Oregon Int'l Port,* 2008 WL 4153211, at *2 (STB Sept. 10, 2008); *CF Inds. Inc.* v. *Kaneb Pipe Line Partners*, 2004 WL 2669795, at *1 (STB Nov. 23, 2004).

B. Applicants' Requests Are Relevant.

1. Request No. 4

An important argument in CN's Responsive Application is that CN's proposal for a so-called "Kansas City Speedway" would provide enormous public interest benefits. *See* Ex. D (CN Responsive Application at 12-13) ("[S]uch a Speedway would provide enormous public interest benefits, preserving and renewing the route and doing more to benefit customers—creating a more attractive option for moving freight between Kansas City and Chicago and beyond to Michigan and Ontario."). Accordingly, Applicants' Request No. 4 asks CN to "Produce all Documents studying,

analyzing, or discussing CN's proposed creation of the so-called 'Kansas City Speedway' in connection with its proposal to acquire KCS." Ex. A (Applicants' Second Set of Discovery Requests at 4). CN objected to this Request on the grounds that documents "related to the former CN-KCS transaction" are "not at issue in the above-captioned proceeding" and claims that Applicants are "estopped" from making this request because Applicants "previously objected to discovery of their own documents related to the former CN-KCS transaction." Ex. B (CN R&Os at 6, Request No. 4). This argument ignores the crucial fact that documents specifically related to CN-KCS, when put at issue by CN's own Responsive Application and Comment through reference, are relevant and subject to discovery.

2. Request No. 9

A primary focus of CN's Responsive Application is CN's request for divestiture of the Springfield Line, which CN recently attempted to acquire in connection with the failed CN-KCS proposal.[5] To address CN's divestiture proposal, Applicants' Request No. 9 asks CN to "Produce all Documents concerning the possibility of CN acquiring the KCS Springfield Line or any ownership interest or other rights (including trackage rights) in Kansas City Terminal Railway Company, KCS's International Freight Gateway terminal, KCS's Pittsburg Subdivision, or KCS's interest in the Gateway Eastern Railway Company, including any documents related to the Proposed CN-KCS Transaction." Ex. A (Applicants' Second Set of Requests at 5). CN objected again on the same estoppel grounds, despite the fact that these documents pertain to the core issue that CN decided to bring into this proceeding. Ex. B (CN R&Os at 9, Request No. 9). Just as CN had a full and fair chance to review Applicants' supporting documents relating to the issues Applicants raised, so too it

[5] *See* Ex. D (CN Responsive Application at 2) ("[CN] ask[s] the Board to order CP and KCS to divest the parallel Springfield Line to Applicants as a condition of any approval of the proposed CP-KCS merger.").

is imperative that Applicants have access to documents concerning CN's arguments such that Applicants can fully understand and comprehensively address CN's Responsive Application.

3. Request No. 10

CN also argues that competition will be harmed by the transaction because the combined CP-KCS merger is not a "pure" end-to-end merger that raises horizontal competition concerns, citing the Springfield Line as a direct competitive route. *See* Ex. D (CN Responsive Application at 9-10). To properly address this argument, Applicants need to consult the documents that prove or disprove CN's allegation. Applicants are therefore entitled to documents studying, analyzing, or discussing the impact of Applicants' proposed acquisition of KCS on CN. Applicants did so in Request No. 10, which asks CN to "Produce all Documents studying, analyzing or discussing the impact on CN of a potential acquisition of all or part of KCS by CP or any other railroad." Ex. A (Applicants' Second Set of Requests at 5). This information is highly relevant because the impact of the CPKC transaction is at the core of CN's request for divestiture of the Springfield Line.

4. Request No. 11

Request No. 11 asks CN to "Produce all Documents prepared in connection with CN's proposed acquisition of KCS that concern the KCS Springfield Line, or the Kansas City Terminal Railway Company, KCS's International Freight Gateway terminal, KCS's interest in the Gateway Eastern Railway Company, or KCS's Pittsburg Subdivision." Ex. A (Applicants' Second Set of Requests at 5). The reason Applicants are seeking these documents is that they concern CN's proposed acquisition of portions of the KCS network, which CN now seeks to do through its Responsive Application after failing to do so in connection with CN-KCS. *See generally* Ex. D. Because CN foresees serious adverse consequences in the event that the Board accepts CP's Application to control KCS, Applicants are entitled to assess whether CN envisioned facing the same, or different consequences had it been successful in its bid to acquire KCS. As explained above, the

fact that Applicants—in a completely different context—previously opposed one or more of CN's discovery requests has no bearing on the question whether the documents Applicants are seeking from CN are relevant for purposes of addressing issues that CN has now raised in this proceeding. There are simply no legal principles that support CN's assertion that Applicants are "estopped" from requesting relevant documents.

5. Request No. 12

The same arguments apply with equal force to Request No. 12, which asks CN to "Produce all documents reflecting correspondence with third parties, including, without limitation, the STB's Office of Environmental Analysis, concerning CN's proposed acquisition of the Springfield Line." Ex. A (Applicants' Second Set of Requests at 6). In consideration of the fact that CN is requesting divestiture of the Springfield Line in its Responsive Application, correspondence related to this proposed acquisition is abundantly relevant; Applicants are justified in requesting such correspondence.

6. Request No. 15

Finally, Request 15 asks CN to "Produce all documents that CN has provided third parties, including but not limited to shippers, smaller railroads, public officials, ports, and rail industry suppliers, regarding the Proposed CP-KCS Transaction or Proposed CN-KCS Transaction." Ex. A (Applicants' Second Set of Requests at 6). In its R&Os, CN agreed to "conduct a reasonable search and produce non-privileged documents relating to the CP-KCS transaction," but objected to do so with respect to documents relating the CN-KCS transaction responsive to this request. Ex. B (CN R&Os at 12, Request No. 15). In an effort to engage cooperatively with CN, Applicants offered during the meet and confer to limit the scope of this request to only those documents relating to the Springfield Line, which are relevant to this proceeding for all the same reasons explained above. CN

agreed to come up with a compromise with respect to this request at the meet and confer, but since the meet and confer has not done so.

IV. Conclusion

Applicants respectfully request that this Court grant Applicants' motion to compel and require CN to provide discovery relating to CN-KCS in response to Applicants' Requests.

Respectfully submitted,

Dated: March 30, 2022

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CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing Motion to Compel Production from CN to be served electronically or by first-class mail, postage pre-paid, on all parties of record in these proceedings.

/s/ Stefan Mitrovic

March 30, 2022

Exhibit A

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET No. 36500

CANADIAN PACIFIC RAILWAY LIMITED; CANADIAN PACIFIC RAILWAY COMPANY; SOO LINE RAILROAD COMPANY; CENTRAIL MAINE & QUEBEC RAILWAY US INC.; DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION; AND DELAWARE & HUDSON RAILWAY COMPANY, INC.CANADIAN PACIFIC RAILWAY LIMITED, ET AL.

– CONTROL –

KANSAS CITY SOUTHERN; THE KANSAS CITY SOUTHERN RAILWAY COMPANY; GATEWAY EASTERN RAILWAY COMPANY; AND THE TEXAS MEXICAN RAILWAY COMPANY

APPLICANTS' SECOND SET OF DISCOVERY REQUESTS TO CANADIAN NATIONAL RAILWAY COMPANY

Pursuant to 49 C.F.R. Part 1114, Canadian Pacific Railway Limited, Canadian Pacific Railway Company, Soo Line Railroad Company, Central Maine & Quebec Railway US Inc., Dakota, Minnesota & Eastern Railroad Corporation, and Delaware and Hudson Railway Company, Inc. (collectively, "Canadian Pacific" or "CP") and Kansas City Southern, The Kansas City Southern Railway Company, Gateway Eastern Railway Company, and The Texas Mexican Railway Company (collectively, "KCS"; together with CP, the "Applicants") request that CN respond to the following discovery requests as soon as possible, and no later than 15 days from the date of service hereof.

DEFINITIONS

1. "CN" means Canadian National Railway Company; its parent companies; subsidiaries; controlled, affiliated, and predecessor firms; divisions; subdivisions; components; units; instrumentalities; partnerships; and joint ventures.

2. "Communication" shall mean any oral or written representation, promise, conversation, statement, message, or transmission of information, electronic or otherwise, and should be construed in the broadest sense possible. Requests to produce or identify Communications encompass text messages, emails, instant messages on any platform, agendas, meeting notes, talking points, and presentation slides, and include information that was displayed or shown to another party without being transmitted to that party.

3. "Concerning" means relating to, referring to, describing, evidencing, or constituting.

4. "Document" means any writing or other compilation of information, whether printed, typed, handwritten, recorded, or produced or reproduced by any other process, including but not limited to intra-company communications, correspondence, presentations, telegrams, memoranda, contracts, instruments, studies, projections, forecasts, summaries or records of conversations or interviews, minutes or records of conferences or meetings, records or reports of negotiations, diaries, calendars, photographs, maps, tape recordings, computer tapes, computer disks, other computer storage devices, computer programs, computer printouts, models, statistical statements, graphs, charts, diagrams, plans, drawings, brochures, pamphlets, advertisements, circulars, trade letters, press releases, invoices, receipts, financial statements, accounting records, worksheets, drafts, revisions of drafts, and original or preliminary notes. Further, the term "Document" includes

(a) both basic records and summaries of such records (including computer runs);

(b) both original versions and copies that differ in any respect from original versions; and

(c) both documents in the possession, custody or control of CN and documents in the possession, custody or control of consultants or others who have assisted CN in the creation of said documents.

5. "Proposed CN-KCS Transaction" means the transaction proposed in the Agreement and Plan of Merger that CN and KCS entered on May 21, 2021 and that KCS terminated on September 15, 2021.

6. "Including" means "including, but not limited to."

7. "Kansas City Speedway" means the proposed "Kansas City Speedway" as discussed in CN's Description of Anticipated Responsive Application. CN, Description of Anticipated Responsive Application, FD 36500, at 6 (Jan. 12, 2022).

8. "KCS Springfield Line" or the "Springfield Line" means the "Springfield Line" as defined in CN's Description of Anticipated Responsive Application. CN, Description of Anticipated Responsive Application, FD 36500, at 1 (Jan. 12, 2022).

9. "Proposed CP-KCS Transaction" means the proposed combination of CP and KCS for which Applicants are seeking STB approval in Finance Docket No. 36500.

10. "You" and "Your" mean CN.

INSTRUCTIONS

1. Discovery responses should be supplemented when a supplemental response is required pursuant to 49 C.F.R. § 1114.29.

2. References to railroads, shippers, consultants or companies include affiliates, subsidiaries, predecessors, successors, officers, directors, employees, attorneys, agents and representatives thereof.

3. All uses of the conjunctive include the disjunctive and vice versa. Words in the singular include the plural and vice versa.

4. Unless otherwise specified, the time period for these requests is from January 1, 2018, through the date of the response.

5. To the extent materials called for herein are confidential, Applicants will protect them from disclosure to third parties in accord with the Protective Order entered in this proceeding and will solely use those materials for the purpose of this proceeding, and not for any other business, commercial, or other competitive purpose. Applicants will cooperate with counsel for CN to identify information that would warrant a confidential or highly confidential designation.

6. CN is requested to contact Adam Paris of Sullivan & Cromwell ((310) 712-6663, or parisa@sullcrom.com) or Marc-André O. Cyr of Sullivan & Cromwell ((212) 558-3123, or cyrm@sullcrom.com) to discuss any questions regarding these requests.

REQUESTS

1. Produce complete Train Event data (in a computer-readable format to the extent available and including all events and intermediate stations) for all trains handled by CN from 2018, through the present that operated, in whole or in part, in Illinois, Wisconsin, or Michigan.

2. Produce all interchange records since 1998 reflecting traffic interchanged between CN and KCS at or near Springfield, IL.

3. Produce all capacity analyses for CN's lines connecting Springfield with Chicago, Detroit, and Toronto, ON.

4. Produce all Documents studying, analyzing, or discussing CN's proposed creation of the so-called "Kansas City Speedway" in connection with its proposal to acquire KCS.

5. Produce all interchange, divisional, or interline agreements between CN and any railroad company that serves Kansas City.

6. Produce all documents studying, analyzing, or discussing the interchange of rail traffic between CN and KCS at Springfield.

7. Produce all documents since 1998 studying, analyzing, or discussing any efforts to increase traffic interchanged with KCS at or near Springfield, IL, including as part of the CN/IC-KCS Alliance Agreement (sometimes referred to as the CN Marketing Agreement) entered into in connection with the merger between CN and Illinois Central.

8. Produce all documents evaluating the success or failure of the CN/IC-KCS Alliance Agreement.

9. Produce all Documents concerning the possibility of CN acquiring the KCS Springfield Line or any ownership interest or other rights (including trackage rights) in Kansas City Terminal Railway Company, KCS's International Freight Gateway terminal, KCS's Pittsburg Subdivision, or KCS's interest in the Gateway Eastern Railway Company, including any documents related to the Proposed CN-KCS Transaction.

10. Produce all Documents studying, analyzing or discussing the impact on CN of a potential acquisition of all or part of KCS by CP or any other railroad.

11. Produce all Documents prepared in connection with CN's proposed acquisition of KCS that concern the KCS Springfield Line, or the Kansas City Terminal Railway Company, KCS's International Freight Gateway terminal, KCS's interest in the Gateway Eastern Railway Company, or KCS's Pittsburg Subdivision.

12. Produce all Documents reflecting correspondence with third parties, including, without limitation, the STB's Office of Environmental Analysis, concerning CN's proposed acquisition of the Springfield Line.

13. Produce all Documents concerning the "at least $250 million" in investments CN would commit to make if its Responsive Application is approved. CN, Description of Anticipated Responsive Application, FD 36500, at 7 (Jan. 12, 2022).

14. Produce all documents concerning the Proposed CP-KCS Transaction, including its impact on competition or CN or other rail companies.

15. Produce all documents that CN has provided third parties, including but not limited to shippers, smaller railroads, public officials, ports, and rail industry suppliers, regarding the Proposed CP-KCS Transaction or Proposed CN-KCS Transaction.

16. Produce all documents concerning the condition and operation of CN lines connecting Springfield, IL with CN's network at Gilman, IL (the "CN Lines") including

(a) Current track charts and timetables for all divisions that the CN Lines traverse;

(b) Current train plans related to all train operations involving any portion of the CN Lines;

(c) Traffic density reports covering all segments of the CN Lines for the past five years;

(d) Maintenance and capital spending by ICC account covering all segments of the CN Lines for the past five years;

(e) Current gross book investment and accumulated depreciation amounts by ICC account for all assets located on the CN Lines;

(f) Maintenance and capital spending projections covering all segments of the CN Lines for the next five years;

(g) Details on maintenance-of-way activities including the dates of most recent track resurfacing, rail grinding, and tie replacement programs covering all segments of the CN Lines;

(h) Volume and revenue forecasts and projections for all traffic traversing any portion of the CN Lines;

(i) Capacity and utilization reports covering all segments the CN Lines for the past five years;

(j) Train and car event data for all traffic traversing any portion of the CN Lines for the past five years;

(k) All studies, analyses, or reports conducted by or for CN related to potential rehabilitation or capacity expansion activities for any segment of the CN Lines.

17. Produce all Documents since January 1, 1994, analyzing the effect of past rail mergers on any aspect of competition in the market for transportation services.

18. Produce copies of all expert statements submitted by CN in merger proceedings before the Interstate Commerce Commission or the STB in which CN or its predecessors were applicants.

19. Produce all employee witness statements submitted by CN in merger proceedings before the Interstate Commerce Commission or the STB in which CN or its predecessors were applicants.

Dated: February 23, 2022

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CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing Applicants' Second Set of Requests for Production to CN to be served electronically or by first-class mail, postage pre-paid, on all parties of record in these proceedings.

/s/ Sonia Gupta

February 23, 2022

Exhibit B

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36500

CANADIAN PACIFIC RAILWAY LIMITED, ET AL.
—CONTROL—
KANSAS CITY SOUTHERN, ET AL.

CANADIAN NATIONAL RAILWAY COMPANY'S RESPONSES AND OBJECTIONS TO APPLICANTS' SECOND SET OF DISCOVERY REQUESTS

Pursuant to 49 C.F.R. Part 1114, Subpart B, Canadian National Railway Company ("CN") hereby responds and objects as follows to Applicants' Second Set of Discovery Requests ("Applicants' Second Requests" or "Requests," and each a "Request") served on February 23, 2022, in connection with the above-captioned proceeding. CN reserves the right to supplement or amend these Responses and Objections as circumstances may require.

GENERAL OBJECTIONS

CN makes the following General Objections to the Requests and incorporates them, as well as the Objections to Definitions below, into its responses to each and every Request (including subparts), whether or not specifically stated in the individual response. An assertion of the same, similar, or additional objections in response to a specific Request does not waive any of these General Objections as to that or any Request. CN's failure to object to a specific Request on a particular ground shall not be construed as a waiver of its right to object on any ground.

1. CN objects to the Second Discovery Requests as untimely and prematurely filed. Applicants' decision to serve these discovery requests on February 23—just five days before the deadline for all parties to file comments on the responsive application–violated both Applicants' prior commitments and the STB's discovery rules. Applicants' petition for procedural schedule proposed that discovery related to filings "will begin immediately upon their filing"—not in advance of a party's filing. *See* CP-3/KCS-3 at 7. And the Board's discovery rules generally forbid parties from serving discovery requests less than 20 days before another party's opening filing. *See, e.g.*, 49 C.F.R. §§ 1114.26(c), 1114.27(c). The Board's rules were specifically designed to bar practices like intentionally attempting to distract other parties by serving discovery requests a few days in advance of their opening filings.

2. CN objects to the Requests, including the Definitions and Instructions, to the extent they impose burdens, obligations, or requirements which are greater than the requirements or permissible scope of discovery under 49 C.F.R. Part 1114, Subpart B, or under other Surface Transportation Board ("Board") rules or precedents.

3. CN objects to the Requests to the extent they seek identification of "all" documents or a category of information where the production of a subset of documents would be sufficient to respond to the Request on the basis that such Requests are unduly burdensome.

4. CN objects to the Requests, including the Definitions and Instructions, to the extent they seek information that is cumulative or duplicative, already in the Applicants' possession, custody, or control, or that is obtainable from publicly available sources, or from another source that is more convenient, less burdensome, or less expensive, including, without limitation, by other means of discovery.

5. CN objects to the Requests to the extent the Requests seek information that is protected by the attorney-client privilege, the attorney work product doctrine, and/or any other applicable privilege, exemption, or protection from discovery or disclosure. In the event CN inadvertently produces or provides any such information, and such information is the proper subject of the attorney-client privilege, the attorney work product doctrine, and/or any other applicable privilege, exemption, or protection, such disclosure is not to be construed as a waiver of any of these privileges, exemptions, or protections. CN reserves the right to demand that such inadvertently produced privileged information be returned to it and that all copies in Applicants' possession, and that of its counsel, consultants, subsidiaries, or other agents, be destroyed.

6. CN objects to the Requests, Instructions, and Definitions, to the extent they seek information or documents that contains confidential, proprietary, or commercially sensitive information. CN will only produce such information subject to the Board's Protective Order issued in the above-captioned action on April 2, 2021.

7. CN reserves all rights to supplement, amend, revise, correct, or clarify these objections and/or responses, and CN reserves its rights to assert any applicable objection, privilege, or other protection in connection with such supplement or amendment.

8. CN does not concede the relevance, materiality, competency, or admissibility as evidence of documents or information requested in the Requests or the Responses or productions thereto provided by CN. CN reserves its right to object on any ground to the use of the Responses herein, or its related productions, in this proceeding or in any subsequent appeal, proceeding, action, or trial.

SPECIFIC OBJECTIONS AND RESPONSES

In addition to its General Objections (which apply in full to each and every Request, without further enumeration), CN sets forth below Specific Objections and Responses to each Request. CN preserves all of its General Objections set forth above, and none of the following Specific Objections shall waive its General Objections. Nor shall any of CN's Specific Objections limit the scope, breadth, generality, or applicability of those General Objections.

REQUEST NO. 1

Produce complete Train Event data (in a computer-readable format to the extent available and including all events and intermediate stations) for all trains handled by CN from 2018, through the present that operated, in whole or in part, in Illinois, Wisconsin, or Michigan.

Response

CN objects to this Request on the basis that it is overly broad and unduly burdensome. Applicants selected 2019 as the base year for this transaction, and

they have no basis for requesting production of voluminous train event data for years other than the base year. Subject to and without waiving this objection or the General Objections, CN is producing non-privileged train event data for 2019 that will cover the specified states.

REQUEST NO. 2

Produce all interchange records since 1998 reflecting traffic interchanged between CN and KCS at or near Springfield, IL.

Response

CN objects to this Request on the basis that it is overly broad, unduly burdensome, and not proportional to the needs of the proceeding in that it seeks "all interchange records" for a 24-year period. Applicants selected 2019 as the base year for this transaction, and they have no basis for requesting production of interchange records for years other than the base year. Subject to and without waiving these objections or the General Objections, CN will conduct a reasonable search and produce non-privileged documents that are responsive to this Request.

REQUEST NO. 3

Produce all capacity analyses for CN's lines connecting Springfield with Chicago, Detroit, and Toronto, ON.

Response

CN objects to the Request as vague and ambiguous because it fails to define "capacity analyses." CN interprets that undefined term to mean Rail Traffic Controller or similar studies assessing the capacity needs of rail lines. Subject to and without waiving these objections or the General Objections, CN will conduct a

reasonable search and produce non-privileged documents that are responsive to this Request.

REQUEST NO. 4

Produce all Documents studying, analyzing, or discussing CN's proposed creation of the so-called "Kansas City Speedway" in connection with its proposal to acquire KCS.

Response

CN objects to this Request on the grounds that it seeks documents related to the former CN-KCS transaction, which is not at issue in the above-captioned proceeding. Applicants previously objected to discovery of their own documents related to the former CN-KCS transaction, and they are estopped from switching positions now. CN further objects to this Request to the extent that it seeks documents protected from discovery by the attorney-client privilege or attorney work product doctrine. CN further objects to this Request to the extent that it seeks information that is publicly available. Subject to and without waiving these objections or the General Objections, CN will conduct a reasonable search and produce non-privileged documents that are responsive to this Request.

REQUEST NO. 5

Produce all interchange, divisional, or interline agreements between CN and any railroad company that serves Kansas City.

Response

CN objects to this Request on the basis that it is overly broad, unduly burdensome, and not proportional to the needs of the proceeding in that it seeks "all interchange, divisional, or interline agreements" with "any railroad company that

serves Kansas City" and is not limited to agreements governing interchange, division, or interlining in the Kansas City terminal area. As written, the request calls for production of every single interchange, divisional, or interline agreement that CN has with CP, KCS, NS, UP, and BNSF—regardless of geographic scope or potential relevance to any issue in this proceeding. Subject to and without waiving these objections or the General Objections, CN is willing to meet and confer with Applicants to identify any particular agreements that Applicants believe are relevant to this proceeding.

REQUEST NO. 6

Produce all documents studying, analyzing, or discussing the interchange of rail traffic between CN and KCS at Springfield.

Response

CN objects to this Request on the grounds that it is overly broad, unduly burdensome, and not proportional to the needs of the case. CN further objects to this Request to the extent that it seeks documents protected from discovery by the attorney-client privilege or attorney work product doctrine. Subject to and without waiving these objections or the General Objections, CN will conduct a reasonable search and produce non-privileged documents that are responsive to this Request.

REQUEST NO. 7

Produce all documents since 1998 studying, analyzing, or discussing any efforts to increase traffic interchanged with KCS at or near Springfield, IL, including as part of the CN/IC-KCS Alliance Agreement (sometimes referred to as the CN Marketing Agreement) entered into in connection with the merger between CN and Illinois Central.

Response

CN objects to this Request on the basis that it is overly broad, unduly burdensome, and not proportional to the needs of the proceeding in that it seeks "all documents" for a 24-year period. It is neither reasonable nor feasible for CN to search for, locate, and produce "all" documents responsive to this Request. CN further objects to this Request to the extent that it seeks documents protected from discovery by the attorney-client privilege or attorney work product doctrine. Subject to and without waiving these objections or the General Objections, CN will conduct a reasonable search and produce non-privileged documents that are responsive to this Request.

REQUEST NO. 8

Produce all documents evaluating the success or failure of the CN/IC-KCS Alliance Agreement.

Response

CN objects to this Request on the basis that it is overly broad, unduly burdensome, and not proportional to the needs of the proceeding in that it seeks "all documents" related to the Alliance Agreement. It is neither reasonable nor feasible for CN to search for, locate, and produce "all" documents responsive to this Request. CN further objects to this Request to the extent that it seeks documents protected from discovery by the attorney-client privilege or attorney work product doctrine. CN further objects to this Request to the extent that it seeks information about a former agreement that has no apparent relevance to any issue in this proceeding. Subject to and without waiving these objections or the General Objections, CN will

conduct a reasonable search and produce non-privileged documents that are responsive to this Request.

REQUEST NO. 9

Produce all Documents concerning the possibility of CN acquiring the KCS Springfield Line or any ownership interest or other rights (including trackage rights) in Kansas City Terminal Railway Company, KCS's International Freight Gateway terminal, KCS's Pittsburg Subdivision, or KCS's interest in the Gateway Eastern Railway Company, including any documents related to the Proposed CN-KCS Transaction.

Response

CN objects to this Request on the grounds that it seeks documents related to the former CN-KCS transaction, which is not at issue in the above-captioned proceeding. Applicants previously objected to discovery of their own documents related to the former CN-KCS transaction, and they are estopped from switching positions now. CN further objects to this Request to the extent that it seeks documents protected from discovery by the attorney-client privilege or attorney work product doctrine. Subject to and without waiving these objections or the General Objections, CN will conduct a reasonable search and produce non-privileged documents that are responsive to this Request.

REQUEST NO. 10

Produce all Documents studying, analyzing or discussing the impact on CN of a potential acquisition of all or part of KCS by CP or any other railroad.

Response

CN objects to this Request on the grounds that it is overly broad, unduly burdensome, and not proportional to the needs of the case. CN objects to this Request to the extent that "all Documents" include documents that are not relevant

to the issues raised in this proceeding. CN further objects to this Request to the extent that it seeks documents protected from discovery by the attorney-client privilege or attorney work product doctrine. CN further objects to this Request to the extent the "potential acquisition . . . of KCS by . . . any other railroad" encompasses CN, by seeking information and/or documents related to the former CN-KCS transaction, which is not at issue in the above-captioned proceeding. Subject to and without waiving these objections or the General Objections, CN will conduct a reasonable search and produce non-privileged documents that are responsive to this Request.

REQUEST NO. 11

Produce all Documents prepared in connection with CN's proposed acquisition of KCS that concern the KCS Springfield Line, or the Kansas City Terminal Railway Company, KCS's International Freight Gateway terminal, KCS's interest in the Gateway Eastern Railway Company, or KCS's Pittsburg Subdivision.

Response

CN further objects to this Request on the grounds that it explicitly and exclusively seeks documents related to the former CN-KCS transaction. Applicants previously objected to discovery of their own documents related to the former CN-KCS transaction, and they are estopped from switching positions now. CN further objects to this Request to the extent that it seeks documents protected from discovery by the attorney-client privilege or attorney work product doctrine.

REQUEST NO. 12

Produce all Documents reflecting correspondence with third parties, including, without limitation, the STB's Office of Environmental Analysis, concerning CN's proposed acquisition of the Springfield Line.

Response

CN objects to the overbroad and unduly burdensome request for "all" documents related to correspondence with third parties. CN further objects to this Request to the extent that it seeks documents related to the former CN-KCS transaction, which is not at issue in the above-captioned proceeding. Applicants previously objected to discovery of their own documents related to the former CN-KCS transaction, and they are estopped from switching positions now. Subject to and without waiving these objections or the General Objections, CN will conduct a reasonable search and produce non-privileged documents related to CN's Responsive Application that are responsive to this Request.

REQUEST NO. 13

Produce all Documents concerning the "at least $250 million" in investments CN would commit to make if its Responsive Application is approved. CN, Description of Anticipated Responsive Application, FD 36500, at 7 (Jan. 12, 2022).

Response

CN objects to the overbroad and unduly burdensome request for "all" documents related to CN's investment commitments in its Responsive Application. Subject to and without waiving this objection or the General Objections, CN refers Applicants to the workpapers for its Responsive Application.

REQUEST NO. 14

Produce all documents concerning the Proposed CP-KCS Transaction, including its impact on competition or CN or other rail companies.

Response

CN objects to the overbroad and unduly burdensome request for "all" documents related to the proposed CP-KCS transaction. CN further objects to this

Request to the extent that it seeks documents protected from discovery by the attorney-client privilege or attorney work product doctrine. Subject to and without waiving these objections or the General Objections, CN will conduct a reasonable search and produce non-privileged documents that are responsive to this Request.

REQUEST NO. 15

Produce all documents that CN has provided third parties, including but not limited to shippers, smaller railroads, public officials, ports, and rail industry suppliers, regarding the Proposed CP-KCS Transaction or Proposed CN-KCS Transaction.

Response

CN objects to this Request on the grounds that it seeks documents related to the former CN-KCS transaction, which is not at issue in the above-captioned proceeding. Applicants previously objected to discovery of their own documents related to the former CN-KCS transaction, and they are estopped from switching positions now. CN further objects to this Request to the extent that it seeks documents protected from discovery by the attorney-client privilege, attorney work product doctrine, or common interest privilege. Subject to and without waiving this objection or the General Objections, CN will conduct a reasonable search and produce non-privileged documents relating to the CP-KCS transaction that are responsive to this Request.

REQUEST NO. 16

Produce all documents concerning the condition and operation of CN lines connecting Springfield, IL with CN's network at Gilman, IL (the "CN Lines") including

a. Current track charts and timetables for all divisions that the CN Lines traverse;

b. Current train plans related to all train operations involving any portion of the CN Lines;

c. Traffic density reports covering all segments of the CN Lines for the past five years;

d. Maintenance and capital spending by ICC account covering all segments of the CN Lines for the past five years;

e. Current gross book investment and accumulated depreciation amounts by ICC account for all assets located on the CN Lines;

f. Maintenance and capital spending projections covering all segments of the CN Lines for the next five years;

g. Details on maintenance-of-way activities including the dates of most recent track resurfacing, rail grinding, and tie replacement programs covering all segments of the CN Lines;

h. Volume and revenue forecasts and projections for all traffic traversing any portion of the CN Lines;

i. Capacity and utilization reports covering all segments the CN Lines for the past five years;

j. Train and car event data for all traffic traversing any portion of the CN Lines for the past five years;

k. All studies, analyses, or reports conducted by or for CN related to potential rehabilitation or capacity expansion activities for any segment of the CN Lines.

Response

CN objects to this Request as overbroad and unduly burdensome, to the extent that it demands substantially more information about the CN Gilman Subdivision that connects to KCS's Springfield Line than Applicants provided about the Springfield Line (or indeed, any line segment on CP or KCS). Subject to and without waiving this objection or the General Objections, CN responds that it will conduct a reasonable search and produce non-privileged documents that are

responsive to subparts (a), (b), (d), (e), (f), (g), and (k). CN objects to Request 16(c) as unduly burdensome and disproportionate to the extent it seeks reports for each of the "past five years." CN refers Applicants to CN's Responsive Application, which includes traffic density data for 2019, 2020, and 2021. CN objects to Request 16(h) as unduly broad and disproportionate, and refers Applicants to CN's Responsive Application and supporting workpapers. CN objects to 16(i) as unduly burdensome and disproportionate to the extent it seeks reports for each of the "past five years." CN will search for responsive documents for the base year of 2019. CN objects to 16(j) as unduly burdensome and disproportionate, as it seeks five years of train and car event data—vastly more data than Applicants themselves produced. CN refers Applicants to the 2019 train event data being produced in response to Request 1.

REQUEST NO. 17

Produce all Documents since January 1, 1994, analyzing the effect of past rail mergers on any aspect of competition in the market for transportation services.

Response

CN objects to this Request on the basis that it is overly broad, unduly burdensome, and not proportional to the needs of the proceeding in that it seeks "all Documents" for more than a 28-year period. CN further objects to this Request to the extent that it seeks documents protected from discovery by the attorney-client privilege or attorney work product doctrine. Subject to and without waiving these objections or the General Objections, CN states that it is not aware of non-privileged documents responsive to this Request created in the past five years.

REQUEST NO. 18

Produce copies of all expert statements submitted by CN in merger proceedings before the Interstate Commerce Commission or the STB in which CN or its predecessors were applicants.

Response

CN objects to this Request because it seeks information that is readily available and could be obtained through other sources. Subject to and without waiving this objection or the General Objections, CN states that it has not been an applicant in an STB merger proceeding since January 1, 2018.

REQUEST NO. 19

Produce all employee witness statements submitted by CN in merger proceedings before the Interstate Commerce Commission or the STB in which CN or its predecessors were applicants.

Response

CN objects to this Request because it seeks information that is readily available and could be obtained through other sources. Subject to and without waiving this objection or the General Objections, CN states that it has not been an applicant in an STB merger proceeding since January 1, 2018.

Respectfully submitted,

/s/ Raymond A. Atkins
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Dated: March 15, 2022

CERTIFICATE OF SERVICE

I hereby certify that, on this 15th day of March, 2022, a copy of the foregoing "Canadian National Railway Company's Responses and Objections to Applicants' Second Set of Discovery Requests" was served by email or first class mail on the service list for Finance Docket No. 36500.

/s/ Matthew J. Warren
Matthew J. Warren

Exhibit C

From: Warren, Matthew J. <mjwarren@sidley.com>
Sent: Monday, March 28, 2022 11:15 PM
To: Cyr, Marc-André O.; Atkins, Raymond; Coniglio, Joseph V.; Pal, Rajib
Cc: 'wmullins@bakerandmiller.com'; 'eglavich@bakerandmiller.com'; 'AMcDonald@bakerandmiller.com'; Hynes, Samantha F.; Cover, Alexa M.; 'David Meyer'; Paris, Adam S.; Taratuta-Titus, Rachel G.
Subject: [EXTERNAL] RE: FD 36500 CN's Responses and Objections to Applicants' Second Set of Discovery Requests

Marc,

I am not sure why applicants claim that "the schedule" requires them to demand compliance with artificial deadlines at a time when the Board has suspended the procedural schedule, but I'm happy to respond. Having again reviewed applicants' responses to CN's discovery requests, I am unable to identify any instance where applicants agreed to produce any documents related to the former CN-KCS transaction or qualified their across-the-board objection that "information relating to the Former CN-KCS Transaction" is "irrelevant to the above-captioned proceeding."

To be clear, CN will not withhold documents that relate to the former CN-KCS transaction if those documents are otherwise responsive to a different request. For example, a nonprivileged and responsive communication that related both to the CP-KCS transaction and to the former CN-KCS transaction would not be withheld.

If applicants truly plan to file a motion to compel that argues that CN is not entitled to assert the exact same objection that applicants asserted, they are free to do so.

Matt

MATT WARREN

SIDLEY AUSTIN LLP
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mjwarren@sidley.com

From: Cyr, Marc-André O. <cyrm@sullcrom.com>
Sent: Monday, March 28, 2022 4:28 PM
To: Warren, Matthew J. <mjwarren@sidley.com>; Atkins, Raymond <ratkins@sidley.com>; Coniglio, Joseph V. <jconiglio@sidley.com>; Pal, Rajib <rpal@sidley.com>
Cc: 'wmullins@bakerandmiller.com' <wmullins@bakerandmiller.com>; 'eglavich@bakerandmiller.com' <eglavich@bakerandmiller.com>; 'AMcDonald@bakerandmiller.com' <AMcDonald@bakerandmiller.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Cover, Alexa M. <covera@sullcrom.com>; 'David Meyer' <david@meyerlawdc.com>; Paris, Adam S. <Parisa@sullcrom.com>; Taratuta-Titus, Rachel G.

<taratutar@sullcrom.com>
Subject: RE: FD 36500 CN's Responses and Objections to Applicants' Second Set of Discovery Requests

Matt,

We are optimistic that you have a reasonable position to offer regarding the production of documents responsive to one or more of Applicants' Requests that relate to the former CN-KCS transaction, but the schedule does not allow us to wait for it any longer. If we have not heard from you by noon tomorrow, we will assume that CN objects to producing any document that relate to the CN-KCS transaction and file a motion to compel.

Regards,

Marc-André Cyr
Sullivan & Cromwell LLP
T: (857) 209- 1986 | cyrm@sullcrom.com

From: Cyr, Marc-André O.
Sent: Saturday, March 26, 2022 2:04 PM
To: 'Warren, Matthew J.' <mjwarren@sidley.com>; 'Atkins, Raymond' <ratkins@sidley.com>; 'Coniglio, Joseph V.' <jconiglio@sidley.com>; 'Pal, Rajib' <rpal@sidley.com>
Cc: 'wmullins@bakerandmiller.com' <wmullins@bakerandmiller.com>; 'eglavich@bakerandmiller.com' <eglavich@bakerandmiller.com>; 'AMcDonald@bakerandmiller.com' <AMcDonald@bakerandmiller.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Cover, Alexa M. <covera@sullcrom.com>; 'David Meyer' <david@meyerlawdc.com>; Paris, Adam S. <Parisa@sullcrom.com>; Taratuta-Titus, Rachel G. <taratutar@sullcrom.com>
Subject: RE: FD 36500 CN's Responses and Objections to Applicants' Second Set of Discovery Requests

Hi Matt and team,

When you have a chance, can you confirm that you will be able to follow up with your responses on the below by Monday?

Many thanks and have a great weekend.

Marc-André Cyr
Sullivan & Cromwell LLP
T: (857) 209- 1986 | cyrm@sullcrom.com

From: Cyr, Marc-André O.
Sent: Thursday, March 24, 2022 8:22 PM
To: 'Warren, Matthew J.' <mjwarren@sidley.com>; 'Atkins, Raymond' <ratkins@sidley.com>; 'Coniglio, Joseph V.' <jconiglio@sidley.com>; 'Pal, Rajib' <rpal@sidley.com>
Cc: 'wmullins@bakerandmiller.com' <wmullins@bakerandmiller.com>; 'eglavich@bakerandmiller.com' <eglavich@bakerandmiller.com>; 'AMcDonald@bakerandmiller.com' <AMcDonald@bakerandmiller.com>; Hynes, Samantha F. <hyness@sullcrom.com>; Cover, Alexa M. <covera@sullcrom.com>; 'David Meyer' <david@meyerlawdc.com>; Paris, Adam S. <Parisa@sullcrom.com>; Taratuta-Titus, Rachel G. <taratutar@sullcrom.com>
Subject: RE: FD 36500 CN's Responses and Objections to Applicants' Second Set of Discovery Requests

Matt and team,

Thanks for speaking with us this morning. As discussed, we are providing you with a reworded version of Request #5 that clearly identifies the scope of the Request:

5. Produce all interchange, divisional, or interline agreements between CN and other Class 1 railroads RELATING TO RAIL TRAFFIC INTERCHANGED IN OR MOVED VIA KANSAS CITY. [Emphasis Added]

Please let us know if you still have any questions about this.

On your end, you agreed to:

1. Identify the specific workpaper(s) that you are referring to in your Response to Request #16(h); and
2. Explain in detail under what circumstances you will agree to provide Applicants with documents responsive to one or more of their Requests that relate to the former CN-KCS transaction and, conversely, when do you intend to deny such access. Please provide specific examples.

Considering that we may need to ask the ALJ to rule on point #2 above (which would result in additional delays), it would be greatly appreciated if you could provide your responses by tomorrow, at the latest.

Best,

Marc-André Cyr
Sullivan & Cromwell LLP
T: (857) 209- 1986 | cyrm@sullcrom.com

-----Original Appointment-----
From: Cyr, Marc-André O.
Sent: Thursday, March 24, 2022 10:35 AM
To: Cyr, Marc-André O.; Taratuta-Titus, Rachel G.; 'Warren, Matthew J.'; 'Atkins, Raymond'; 'Coniglio, Joseph V.'; 'Pal, Rajib'; 'wmullins@bakerandmiller.com'; 'David Meyer'; Paris, Adam S.; Hynes, Samantha F.; Cover, Alexa M.; 'eglavich@bakerandmiller.com'; 'AMcDonald@bakerandmiller.com'
Subject: FD 36500 CN's Responses and Objections to Applicants' Second Set of Discovery Requests
When: Thursday, March 24, 2022 11:30 AM-12:30 PM (UTC-05:00) Eastern Time (US & Canada).
Where: 1-888-453-4408 // 705559

All,

There was an issue on my end with the first invite and I wasn't able to cancel it (and remove from your calendars) – apologies for the inconvenience. We'll chat at 11:30 am. Thanks.

****

Dial In Numbers:
Local - USA (Int'l Toll): 1-719-867-4928
Toll free - USA: 1-888-453-4408

Participant Passcode: 705559

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****

****This is an external message from: prvs=20871af846=mjwarren@sidley.com ****

Exhibit D

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 36500 (SUB-NO. 1)

ILLINOIS CENTRAL RAILROAD COMPANY – ACQUISITION OF A LINE OF RAILROAD BETWEEN KANSAS CITY, MO, AND SPRINGFIELD AND EAST ST. LOUIS, IL – KANSAS CITY SOUTHERN RAILWAY COMPANY

STB FINANCE DOCKET NO. 36500 (SUB-NO. 2)

ILLINOIS CENTRAL RAILROAD COMPANY – TRACKAGE RIGHTS BETWEEN AIRLINE JUNCTION, MO, AND GRANDVIEW, MO – KANSAS CITY SOUTHERN RAILWAY COMPANY

STB FINANCE DOCKET NO. 36500 (SUB-NO. 3)

CANADIAN NATIONAL RAILWAY COMPANY AND ILLINOIS CENTRAL RAILROAD COMPANY – CONTROL – GATEWAY EASTERN RAILWAY COMPANY

STB FINANCE DOCKET NO. 36500 (SUB-NO. 4)

ILLINOIS CENTRAL RAILROAD COMPANY – ASSIGNMENT OF KCS TRACKAGE RIGHTS BETWEEN ROCK CREEK JUNCTION, MO, AND AIRLINE JUNCTION, MO – UNION PACIFIC RAILROAD COMPANY

APPLICATION AND EXHIBITS

PUBLIC VERSION

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Counsel for Canadian National Railway Company and Illinois Central Railroad Company

Dated: February 28, 2022

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EXECUTIVE SUMMARY 2

SPECIFIC INFORMATION REQUIRED BY THE REGULATIONS 5

1180.6(a)(1)(i)	A brief summary of the proposed transaction, the name of the applicants, their business address, telephone number, and the name of the counsel to whom questions regarding the transaction can be addressed.	6
1180.6(a)(1)(ii)	The proposed time schedule for consummation of the proposed transaction.	8
1180.6(a)(1)(iii)	The purpose sought to be accomplished by the proposed transaction, e.g., operating economies, eliminating excess facilities, improving service, or improving the financial viability of the applicants.	9
1180.6(a)(1)(iv)	The nature and amount of any new securities or other financial arrangements.	13
1180.6(a)(2)	A detailed discussion of the public interest justifications in support of the application, indicating how the proposed transaction is consistent with the public interest, with particular regard to the relevant statutory criteria, including:	14
1180.6(a)(2)(i)	The effect of the transaction on inter- and intramodal competition, including a description of the relevant market (see § 1180.7). Include a discussion of whether, as a result of the transaction, there is likely to be any lessening of competition, creation of a monopoly, or restraint of trade in freight surface transportation in any region of the United States.	14
1180.6(a)(2)(ii)	The financial consideration involved in the proposed transaction, and any economies, to be effected in operations, and any increase in traffic, revenues, earnings available for fixed charges, and net earnings, expected to result from the consummation of the proposed transaction.	15
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	continuation of essential transportation services by applicants and other carriers.	16
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1180.6(a)(3)	Any other supporting or descriptive statements applicants deem material.	20
1180.6(a)(4)	An opinion of applicants' counsel that the transaction meets the requirements of the law and will be legally authorized and valid, if approved by the Board. This should include specific references to any pertinent provisions of applicants' bylaws or charter or articles of incorporation.	20
1180.6(a)(5)	A list of the State(s) in which any part of the property of each applicant carrier is situated.	21
1180.6(a)(6)	Map (exhibit 1). Submit a general or key map indicating clearly, in separate colors or otherwise, the line(s) of applicant carriers in their true relations to each other, short line connections, other rail lines in the territory, and the principal geographic points in the region traversed. If a geographically limited transaction is proposed, a map detailing the transaction should also be included. In addition to the map accompanying each application, 20 unbound copies of the map shall be filed with the Board.	22
1180.6(a)(7)(i)	Describe the nature of the transaction (e.g., merger, control, purchase, trackage rights), the significant terms and conditions, and the consideration to be paid (monetary or otherwise).	22
1180.6(a)(7)(ii)	Agreement (exhibit 2). Submit a copy of any contract or other written instrument entered into, or proposed to be entered into, pertaining to the proposed transaction. In addition, parties to exempt trackage rights agreements and renewal of agreements described at § 1180.2(d)(7) must submit one copy of the executed agreement or renewal agreement with the notice of exemption, or within 10 days of the date that the agreement is executed, whichever is later.	23

1180.6(a)(7)(iii)	If a consolidation or merger is proposed indicate: (A) The name of the company resulting from the consolidation or merger; (B) the State or territory under the laws of which the consolidated company is to be formed or the merged company is to file its certificate of amendment; (C) the capitalization proposed for the resulting company; and (D) the amount and character of the capital stock and other securities to be issued.	24
1180.6(a)(7)(iv)	Court Order (exhibit 3). If a trustee, receiver, assignee, or personal representative of the real party in interest is an applicant, submit a certified copy of the order, if any, of the court having jurisdiction, authorizing the contemplated action.	24
1180.6(a)(7)(vi)	Briefly describe the principal routes and termini of the lines involved, the principal points of interchange on the routes, and the amount of main-line mileage and branch line mileage involved.	25
1180.6(a)(7)(vii)	State whether any governmental financial assistance is involved in the proposed transaction and, if so, the form, amount, source, and application of such financial assistance.	26
1180.6(a)(8)	Environmental data (exhibit 4). Submit information and data with respect to environmental matters prepared in accordance with 49 CFR part 1105. In major and significant transactions, applicants shall, as soon as possible, and no later than the filing of a notice of intent, consult with the Board's Office of Environmental Analysis for the proper format of the environmental report.	27
1180.6(b)(3)	Change in control (exhibit 8). If an applicant carrier submits an annual report Form R-1, indicate any change in ownership or control of that applicant carrier not indicated in its most recent Form R-1, and provide a list of the principal six officers of that applicant carrier and of any related applicant, and also of their majority-owned rail carrier subsidiaries. If any applicant carrier does not submit an annual report Form R-1, list all officers of that applicant carrier, and identify the person(s) or entity/entities in control of that applicant carrier and all owners of 10% or more of the equity of that applicant carrier.	27
1180.6(b)(5)	Issues (exhibit 10). Submit a discussion of any other issues relevant to the transaction.	28

1180.6(b)(6)	Corporate chart (exhibit 11). Submit a corporate chart indicating all relationships between applicant carriers and all affiliates and subsidiaries and also companies controlling applicant carriers directly, indirectly or through another entity (with each chart indicating the percentage ownership of every company on the chart by any other company on the chart). For each company: include a statement indicating whether that company is a noncarrier or a carrier; and identify every officer and/or director of that company who is also an officer and/or director of any other company that is part of a different corporate family that includes a rail carrier. Such information may be referenced through notes to the chart.	28
1180.6(b)(7)	If applicant is not a carrier, indicate (i) the type of business in which it is engaged, (ii) the length of time so engaged, and (iii) its present and prospective activities which have or may have a relation to transportation subject to 49 U.S.C. Subtitle IV.	28
1180.6(b)(8)	Intercorporate or financial relationships. Indicate whether there are any direct or indirect intercorporate or financial relationships at the time the application is filed, not disclosed elsewhere in the application, through holding companies, ownership of securities, or otherwise, in which applicants or their affiliates own or control more than 5% of the stock of a non-affiliated carrier, including those relationships in which a group affiliated with applicants owns more than 5% of the stock of such a carrier. Indicate the nature and extent of any such relationships, and, if an applicant owns securities of a carrier subject to 49 U.S.C. Subtitle IV, provide the carrier's name, a description of securities, the par value of each class of securities held, and the applicant's percentage of total ownership. For purposes of this paragraph, “affiliates” has the same meaning as “affiliated companies” in Definition 5 of the Uniform System of Accounts (49 CFR part 1201, subpart A).	29
1180.7	For … significant transactions, applicants shall submit impact analyses (exhibit 12) describing the impacts of the proposed transaction – both adverse and beneficial – on inter- and intramodal competition with respect to freight surface transportation in the regions affected and on the provision of essential services by applicants and other carriers. …	29

1180.8(b) For major and significant transactions: Operating plan (exhibit 13). Submit a summary of the proposed operating plan changes, based on the impact analyses, that will result from the transaction, and their anticipated timing, allowing for any time required to complete rehabilitation, upgrading, yard construction, or other major operational changes following consumption of the proposed transaction. The plan should make clear the gains in service, operating efficiencies, and other benefits anticipated from the merger. 30

CONCLUSION..... 38

EXHIBITS

Exhibit 1: Maps

Exhibit 1A: Map of the Springfield Line (Sub-No. 1)
Exhibit 1B: Map of the Trackage Rights Between Airline Junction, MO and Grandview, MO (Sub-No. 2)
Exhibit 1C: Map of the Gateway Eastern Railway Company (Sub-No. 3)
Exhibit 1D: Map of the Trackage Rights Between Airline Junction, MO and Rock Creek Junction, MO (Sub-No. 4)

Exhibit 2: Proposed Agreements

Exhibit 2A: Asset Purchase Agreement
Exhibit 2B: Trackage Rights Agreement
Exhibit 2C: Haulage Services Agreement
Exhibit 2D: Assignment and Assumption Agreement

Exhibit 4: Environmental Data

Exhibit 8: Change in Ownership or Control

Exhibit 11: Corporate Chart

Exhibit 12: Market Analyses

Exhibit 12A: Verified Statement of David Hunt
Exhibit 12B: Verified Statement of Keith Reardon
Exhibit 12C: Verified Statement of Daniel R. Bresolin
Exhibit 12D: Verified Statement of Sarah Slazinski
Exhibit 12E: Verified Statement of David Przednowek

Exhibit 13: Operating Plan

Exhibit 14: Density Charts

APPENDICES

Appendix A: Opinion of Counsel

Appendix B: Customer Support Statements

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 36500 (SUB-NO. 1)

ILLINOIS CENTRAL RAILROAD COMPANY – ACQUISITION OF A LINE OF RAILROAD BETWEEN KANSAS CITY, MO, AND SPRINGFIELD AND EAST ST. LOUIS, IL – KANSAS CITY SOUTHERN RAILWAY COMPANY

STB FINANCE DOCKET NO. 36500 (SUB-NO. 2)

ILLINOIS CENTRAL RAILROAD COMPANY – TRACKAGE RIGHTS BETWEEN AIRLINE JUNCTION, MO, AND GRANDVIEW, MO – KANSAS CITY SOUTHERN RAILWAY COMPANY

STB FINANCE DOCKET NO. 36500 (SUB-NO. 3)

CANADIAN NATIONAL RAILWAY COMPANY AND ILLINOIS CENTRAL RAILROAD COMPANY – CONTROL – GATEWAY EASTERN RAILWAY COMPANY

STB FINANCE DOCKET NO. 36500 (SUB-NO. 4)

ILLINOIS CENTRAL RAILROAD COMPANY – ASSIGNMENT OF KCS TRACKAGE RIGHTS BETWEEN ROCK CREEK JUNCTION, MO, AND AIRLINE JUNCTION, MO – UNION PACIFIC RAILROAD COMPANY

RESPONSIVE APPLICATION OF ILLINOIS CENTRAL RAILROAD COMPANY

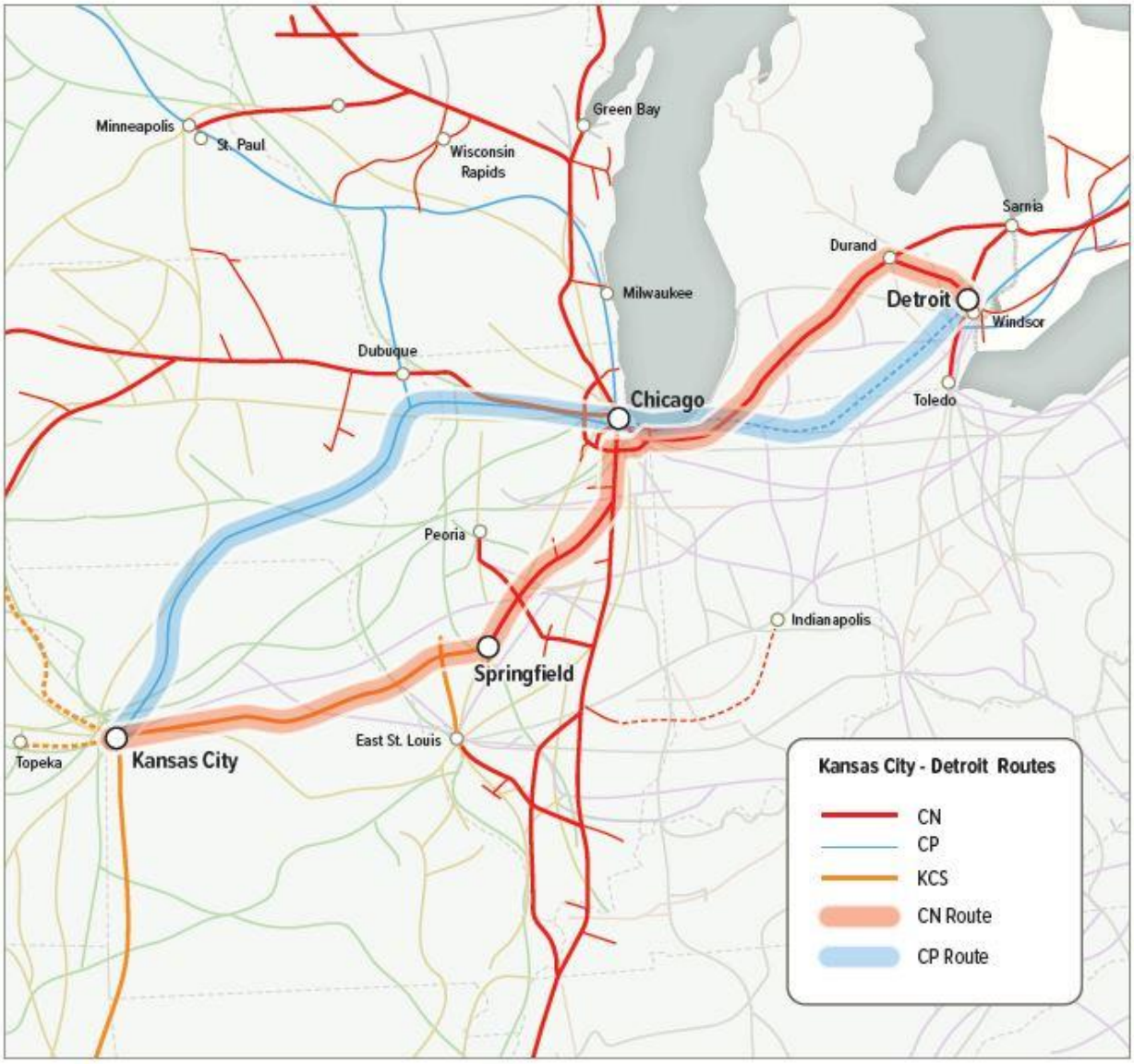
Pursuant to 49 U.S.C. §§ 11324(c) and 49 C.F.R. Part 1180, Canadian National Railway Company ("CN") and Illinois Central Railroad Company ("ICRR") (referred to hereinafter as "Applicants") submit this responsive application (the

"Responsive Application") for approval by the Surface Transportation Board ("Board") of ICRR's acquisition of Kansas City Southern Railway Company's ("KCS's") lines between Kansas City, Missouri and Springfield, Illinois and East St. Louis, Illinois (the "Springfield Line") pursuant to the Board's statutory authority to order the divestiture of parallel tracks as a condition of the proposed merger of KCS with Canadian Pacific ("CP") in STB Finance Docket No. 36500.

EXECUTIVE SUMMARY

Canadian National Railway Company ("CNR") and its United States rail carrier affiliate, ICRR, (collectively "CN") ask the Board to order CP and KCS to divest the parallel Springfield Line to Applicants as a condition of any approval of the proposed CP-KCS merger. Allowing CP to consolidate control over two routes between Kansas City, on the one hand, and Chicago, Detroit, and Eastern Canada, on the other hand, would diminish competitive alternatives for rail customers—particularly because the CP-KCS Application makes clear that CP will favor its existing Chicago-Kansas City route over potential routings involving the parallel Springfield Line.

CP's Line and the Springfield Line Are Plainly Parallel



CN is committed to making substantial investments not merely to preserve the Springfield Line as a competitive routing option for the Kansas City-Chicago-Detroit-Eastern Canada corridor, but to upgrade it into a faster, more efficient route with enhanced intermodal and automotive traffic capacity. Applicants project that the proposed divestiture transaction will enable ICRR to take more than 80,000 long-haul trucks off the road annually—in fact more trucks than would be diverted

by the entire CP-KCS combination. By approving the divestiture, the Board will assure that a viable alternative route will not fall into disuse and disrepair, foster competition on a key corridor, and generate significant public benefits.

This Responsive Application is properly classified as a "minor" transaction, because the proposed divestiture transaction "clearly will not have any anticompetitive effects."[1] To the contrary, the transaction will be unambiguously pro-competitive. No customer on the Springfield Line will have reduced transportation options—to the contrary, ICRR will give CP-KCS haulage access to all current and future customers on the Line. Indeed, many customers would gain additional transportation options, as local customers on the Springfield Line who currently have access to only KCS would have access to CN's network as well. As no customer on the line will lose a competitive option, and the acquisition will foster competition on a key corridor, the proposed divestiture transaction clearly satisfies the statutory criteria for a minor transaction. While CN believes this Responsive Application should be classified as a minor transaction, Applicants nonetheless provide all the information that would be required for a "significant" transaction. Applicants have provided thorough market analyses as Exhibit 12, including a traffic diversion analysis and complementary statements from CN marketing personnel discussing the positive impact that the Responsive Application would have on transportation choices for intermodal, automotive, and grain customers. And in Exhibit 13 (Operating Plan), CN has provided a thorough and detailed

[1] 49 C.F.R. § 1180.2(b)(1), (c).

operating plan that meets all the required elements of a "significant" operating plan, including density charts attached as Exhibit 14. This Responsive Application also contains other "significant" exhibits such as Exhibit 8 (Change in Ownership or Control) and Exhibit 11 (Corporate Chart).

This Responsive Application encompasses four separate sub-dockets. In Docket No. FD 36500 (Sub-No. 1), Applicant ICRR seeks approval for a line sale of the Springfield Line to ICRR, as a condition on any merger approval. In Docket No. FD 36500 (Sub-No. 2), Applicant ICRR seeks overhead trackage rights on KCS's Pittsburg Subdivision to reach the International Freight Gateway Terminal (in which ICRR would acquire a 50% ownership interest as part of the transaction in Docket No. FD 36500 (Sub-No.1)). In Docket No. FD 36500 (Sub-No. 3), CNR and ICRR seek authority to control by acquiring KCS's equity interest in the Gateway Eastern Railway Company ("GWER"), a KCS subsidiary which owns segments of the Springfield Line located in the East St. Louis terminal area. In Docket No. FD 36500 (Sub-No. 4), Applicant ICRR seeks acquisition by assignment of KCS's trackage rights over UP between Rock Creek Junction and Airline Junction, Missouri, which enable KCS (and would enable ICRR) to reach the joint agency at Knoche Yard and the IFG Terminal from the Springfield Line.

SPECIFIC INFORMATION REQUIRED BY THE REGULATIONS

49 C.F.R. § 1180.6 specifies information that must be included in applications filed under 49 U.S.C. § 11324(c). The requested information is provided below, preceded by the sub-section of the regulations to which it responds. Each regulatory requirement is set forth verbatim in bold. While Applicants believe that this

Responsive Application should be classified as "minor," they include the information required for a significant application in the event the Board decides to evaluate the proposed divestiture condition as a significant transaction.

1. **General Information Supporting the Transaction**

1180.6(a)(1)(i) ***A brief summary of the proposed transaction, the name of the applicants, their business address, telephone number, and the name of the counsel to whom questions regarding the transaction can be addressed.***

The proposed transaction in Docket No. FD 36500 (Sub-No. 1) is the acquisition of control by ICRR of KCS's rail lines between Springfield, Illinois and East St. Louis, Illinois, on the one hand, and Kansas City, on the other hand (collectively, the "Springfield Line"), as a condition of CP's acquisition of KCS. The Springfield Line consists of the following KCS lines:

- The line from milepost ("MP") 192.4 at Cockrell (Springfield), IL through MP 482.0 at Rock Creek Jct. (Kansas City), MO (milepost equation at Murrayville, IL where MP 221.7=MP 226.7).
- The line from MP 68.2 at Roodhouse, IL (MP 237.2 on the first segment) through MP 287.2 at Church (East St. Louis), IL, including KCS's interest in the UP/KCS Joint Facility between Godfrey, IL and Church, IL (milepost equation at Godfrey, IL where MP 28.0=MP 252.1).
- The Jacksonville Branch from MP 226.7 at Murrayville, IL to MP 216.3 at Jacksonville, IL.
- KCS's interest as lessor in the Fulton Branch from MP 0.0 to MP 3.0 at Mexico, MO, leased to Ozark Valley Railroad, Inc.

In connection with the proposed divestiture in Docket No. FD 36500 (Sub-No. 1), the Responsive Application also seeks:

- Acquisition of an 8.33% ownership share of Kansas City Terminal Railway Company ("KCT"), which will enable ICRR to operate over KCT-controlled trackage in Kansas City.

- Assignment of KCS's overhead trackage rights over a 1.4-mile Union Pacific Railroad Company ("UP") line segment between Rock Creek Junction, Missouri, and Airline Junction, Missouri, in Kansas City. Specifically, Applicant ICRR is requesting assignment of KCS's existing overhead trackage rights, pursuant to the August 5, 1997 agreement or any amended or successor agreement, over UP's KC Metro Subdivision between MP 276.8+/- at Rock Creek Junction and MP 278.2+/- in the vicinity of Air Line Junction[2] in Kansas City, Missouri, a distance of approximately 1.4 miles.

- A 50% ownership interest in KCS's International Freight Gateway terminal (the "IFG Terminal") south of Kansas City.

In Docket No. FD 36500 (Sub-No. 2), Applicant ICRR requests overhead trackage rights on KCS's Pittsburg Subdivision to reach the IFG Terminal, extending from MP 5.6+/- at Airline Junction in Kansas City, MO, to MP 29.5+/- near Grandview, MO, including the tracks within, and providing entrance to and egress from, the IFG Terminal.

In Docket No. FD 36500 (Sub-No. 3), CNR and ICRR request Board approval for control to acquire KCS's interest in the GWER, a KCS wholly-owned subsidiary that owns trackage in the East St. Louis terminal area. (Upon approval of the applications in Sub-Nos. 1 and 3, ICRR will file a notice of intra-corporate family transaction pursuant to which ICRR will acquire trackage rights over GWER between (i) GWER's Milepost 238.7 at or near Q Tower and GWER's Milepost 236.8 at or near Willows in East St. Louis, IL, (ii) between GWER's Milepost 2.3 at or

[2] The Milepost known as Airline Junction is sometimes referred to as Southwest Junction.

near Wann in East Alton, IL and at GWER's Milepost 0.91 at or near Olin Brass in East Alton, IL, and (iii) from GWER's Milepost 265.01 at or near Roxana in Wood River, IL, to the change in ownership in the track with Shell Oil Company. This Responsive Application anticipates 100% common ownership of ICRR and GWER; accordingly, these trackage rights can be obtained by ICRR pursuant to the Board's regulations exempting transactions within a corporate family at 49 C.F.R. § 1180.2(d)(3).

In Docket No. FD 36500 (Sub-No. 4), Applicant ICRR requests acquisition by assignment of KCS's existing trackage rights over UP between Rock Creek Junction and Airline Junction, Missouri. To the extent those trackage rights are not assignable, ICRR requests that the Board override the assignment provision.[3]

The business address and telephone number for Applicant ICRR is 17655 Ashland Avenue, Homewood, IL 60430; 708-332-4360. The business address and telephone number for Applicant CNR is 935 de La Gauchetière Street West, Montreal, QC H3B 2M9 Canada; 888-888-5909.

Questions can be addressed to Applicants' counsel, Raymond A. Atkins, Sidley Austin LLP, 1501 K Street, N.W., Washington, DC 20005, (202) 736-8889.

1180.6(a)(1)(ii) The proposed time schedule for consummation of the proposed transaction.

Applicants expect to consummate the proposed divestiture as soon as possible following a Board decision conditioning approval of a CP-KCS merger on divestiture

[3] *See* 49 U.S.C. § 11321; *see, e.g., Union Pacific Corp., et al.—Control and Merger—Southern Pacific Rail Corp., et al.*, 1 S.T.B. 233, 450 n.217 (1996).

of the Springfield Line and completion of negotiations with CPKC regarding the terms of agreements governing the proposed transactions. Exhibit 2 to this Responsive Application includes proposed forms of each of the required agreements. Applicants ask the Board to order the parties to negotiate the purchase price and other transaction terms within 90 days from the effective date of the Board's decision. If the parties cannot complete such negotiations prior to the expiration of that 90-day period, Applicants ask the Board to require the parties to submit any remaining disputed issues to the Board for determination.[4]

1180.6(a)(1)(iii) ***The purpose sought to be accomplished by the proposed transaction, e.g., operating economies, eliminating excess facilities, improving service, or improving the financial viability of the applicants.***

As Canadian National Railway Company, Grand Trunk Corporation, and its US operating subsidiaries explain in more detail in its Comments on Application & Request for Conditions submitted in Docket No. FD 36500 ("Comments"), divestiture of the Springfield Line to ICRR is necessary to address significant horizontal competition concerns raised by the CP-KCS merger. Contrary to CP and KCS's unsupported rhetoric, their merger is not truly a "pure" end-to-end transaction. As shown below, the Springfield Line is part of a direct competitive

[4] The Board has both experience using multiple methodologies it can use to determine an appropriate and fair purchase price for rail lines in the event the parties cannot agree. *See Nat'l R.R. Passenger Corp.-Conv. of Bos. & Maine Corp. Ints. in Connecticut River Line in Vt. & N.H.*, 4 I.C.C.2d 761, 781 (I.C.C. Aug. 4, 1988) ("The [Board] has consistently used [Net Liquidation Value] and/or [Going Concern Value] as standards for determining what would be a fair market value of rail lines that are being conveyed, not in the market, but by [Board] order.").

alternative to CP's route between Kansas City and Chicago, and beyond to Detroit and Ontario.[5]

The Parallel CP and KCS Routes



The Springfield Line route can be used to move freight in competition with CP's parallel line. Indeed, KCS and its predecessors had access to Chicago pursuant to agreements with several carriers (including CP predecessors and UP) over different routes to reach Chicago, including the Springfield Line.[6] Shippers have moved freight between Kansas City and Chicago over the Springfield Line,

[5] *See* Description of Anticipated Responsive Application, *Canadian Pacific Railway Limited, et al.—Control—Kansas City Southern, et al.*, STB Docket No. FD 36500 (filed Jan. 12, 2022).

[6] See, e.g., Decision, *Kansas City Southern Industries Inc. et al.—Control—Gateway Western Railway Company and Gateway Eastern Railway Company*, STB Docket No. FD 33311 (STB served May 1, 1997), slip op. at 3 ("GWWR also has haulage rights over UP between Springfield and Chicago, IL.").

and the Springfield Line has been competitive in that corridor for rail customers for more than 100 years.[7] Prior to agreeing to a merger with CP, KCS expressed interest in, and touted the benefits of, investing to increase track speeds on this line to create a "Kansas City Speedway."[8]

As the Department of Justice has explained in this proceeding[9] and elsewhere,[10] a combined CP-KCS will have an incentive to resist efficient interchanges with rival railroads that could divert traffic from CP's network. The CP-KCS Application confirms that concern, as it indicates that CPKC have no intention to invest in the KCS Springfield Line but, instead, intend to favor CP's

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[7] *See, e.g.*, Decision No. 37, *Canadian National Railway Company, et al.—Control—Illinois Central Corporation, et al.*, STB Docket No. FD 33556, 4 S.T.B. 122, 175 (1999) (recognizing that KCS and Illinois Central (CN) were interchanging "three trains per week" via the Springfield interchange point at Cockrell); *see* Verified Statement of Keith Reardon, at 5.

[8] *See, e.g.*, Kan. City S., *Combination of CN & Kansas City Southern: Creating the Premier Railway of the 21st Century,* at 8–9 (July 2021), *available at* https://www.sec.gov/Archives/edgar/data/0000054480/000005448021000202/kcsinvestorpresentation .htm (stating that the "Kansas City Speedway" would be a "new competitive route between KC, Detroit & Chicago").

[9] *See* Comment of the U.S. Dep't of Justice, *Canadian Pacific Railway Limited, et al.—Control—Kansas City Southern Railway Company, et al.*, STB Docket No. FD 36500, at 4 (filed Apr. 12, 2021) (observing that the pending merger would cause "KCS [to] make decisions regarding new track construction and old track closure with an eye toward interchanging KCS traffic with CP in the future. Such decisions may be at the expense of interchanges with other railroads, even though these other interchanges may be better for KCS's customers and KCS itself").

[10] *See* Comment of the U.S. Dep't of Justice, *CSX Corporation and CSX Transportation, Inc., et al.—Control and Merger—Pam Am Systems, Inc., et al.*, STB Docket No. FD 36472, at 3 (filed Aug. 26, 2021) (noting that if CSX were to acquire a stake in a line parallel to its own it could "undermine [its rivals] notwithstanding the joint venture by sabotaging this service and expecting to recapture traffic on its independent line").

parallel route.[11] This not only limits its use as a competitive option for overhead traffic that relies on the viability of the line, but also harms local customers on the line who will see no incremental investment and likely deteriorating rail service.

To be sure, the traffic volumes that currently move between Kansas City and Chicago over the Springfield Line are below the levels that are currently moved by CP over its parallel line.[12] But that does not mean that shippers today are not able to use the Springfield Line as a competitive threat when negotiating with CP, as CP's expert previously acknowledged.[13]

Even if there were *no* traffic being moved between Kansas City and Chicago today over the Springfield Line, there would still be a significant competitive concern. As noted, KCS previously touted the potential for this line to be upgraded to create a Kansas City Speedway. As described in greater detail below and in CN's Comments, such a Speedway would provide enormous public interest benefits, preserving and renewing the route and doing more to benefit customers—creating a more attractive option for moving freight between Kansas City and Chicago and

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[11] *See* Description of Anticipated Responsive Application, *Canadian Pacific Railway Limited, et al.—Control—Kansas City Southern, et al.*, STB Docket No. FD 36500, at 3–4 (filed Jan. 12, 2022) (citing Railroad Control Application, *Canadian Pacific Railway Limited, et al.,—Control—Kansas City Southern, et al.*, STB Docket No. FD 36500 (filed Oct. 29, 2021) ("Application"),Vol. 1 at 41 (showing no planned capital investment on Springfield Line).

[12] *See* Application, Vol. 2, Verified Statement of W. Robert Majure, ¶ 70.

[13] Canadian Pacific's Reply to CN and KCS Joint Motion for Approval of Voting Trust, *Canadian National Railway Company, et al.—Control—Kansas City Southern, et al.*, STB Docket No. FD 36514 (filed June 28, 2021), Verified Statement of W. Robert Majure, ¶¶ 18–19, 38 (describing how shippers have diminished ability to negotiate lower rates from merger that eliminates rail alternative).

beyond to Michigan and Ontario. It has the potential to provide a superior alternative to CP's more circuitous route and would be particularly valuable in connecting auto manufacturers in Michigan and Ontario with the key Kansas City Gateway and greater Missouri market.

It is well recognized that significant competitive concerns arise where an acquiring company will have reduced incentive to deploy acquired assets efficiently because doing so threatens to cannibalize the acquiring company's existing sales.[14] That is the case here because the public interest benefits of the Kansas City Speedway would be private interest harms to CP. Prior to the merger, KCS had incentive to work with CN to create a Kansas City Speedway, but the merger fundamentally alters that incentive because creation of that Speedway would pose a threat to CP's alternative line.

1180.6(a)(1)(iv) ***The nature and amount of any new securities or other financial arrangements.***

There will be no new securities or other financial arrangements as a result of the proposed transaction.

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[14] *See* U.S. DEP'T OF JUST., ANTITRUST DIV., MERGER REMEDIES MANUAL 6–9 (Sept. 2020); Press Release, U.S. Dep't of Just, Antitrust Div., Justice Department Sues to Block Visa's Proposed Acquisition of Plaid (Nov. 5, 2020), https://www.justice.gov/opa/pr/justice-department-sues-block-visas-proposed-acquisition-plaid (asserting, *inter alia*, that Visa's acquisition of Plaid was likely to prevent Plaid from competing with it in the future); *United States v. Bazaarvoice, Inc.*¸ No. 13-cv-0013-WHO, 2014 WL 203966 (N.D. Cal. Jan. 8, 2014), https://www.justice.gov/atr/case-document/file/488846/download (similar); *cf.* Press Release, Fed. Trade Comm'n, FTC Challenges Illumina's Proposed Acquisition of Cancer Detection Test Maker Grail (Mar. 30, 2021) https://www.ftc.gov/news-events/press-releases/2021/03/ftc-challenges-illuminas-proposed-acquisition-cancer-detection (similar).

1180.6(a)(2)	***A detailed discussion of the public interest justifications in support of the application, indicating how the proposed transaction is consistent with the public interest, with particular regard to the relevant statutory criteria, including:***
1180.6(a)(2)(i)	***The effect of the transaction on inter- and intramodal competition, including a description of the relevant market (see § 1180.7). Include a discussion of whether, as a result of the transaction, there is likely to be any lessening of competition, creation of a monopoly, or restraint of trade in freight surface transportation in any region of the United States.***

The overwhelmingly positive effect of this transaction on inter- and intramodal competition is described in Exhibit 12, which includes the Verified Statement of David Hunt; the Verified Statement of Keith Reardon; the Verified Statement of Daniel R. Bresolin; the Verified Statement of Sarah Slazinski; and the Verified Statement of David Przednowek. Those verified statements describe the positive effect the transaction would have on competitive options for intermodal, automotive, and grain shippers. And because of CN's commitment to give CPKC access (via a haulage agreement) on the Springfield Line, there will be no harm to competitive options whatsoever. To the contrary, customers on the Springfield Line would benefit from gaining access to two Class I rail carriers and from the service improvements and transit time improvement that would flow from CN's capital investments in the Line.

As the discussion above and in Exhibit 12 demonstrates, ICRR's acquisition of the Springfield Line poses no risk of harm to competition but will instead generate substantial, cognizable procompetitive and public interest benefits. Unlike

CP, CN has a pro-competitive vision for the Springfield line. It will invest at least $250 million in capital improvements on the Springfield Line and ICRR's adjacent Gilman Subdivision. This substantial investment will not only increase rail competition for traffic moving between Kansas City and Chicago/Detroit/Eastern Canada, it will improve service for local customers on the Springfield Line, create 140 jobs, and generate significant environmental benefits by diverting more than 80,000 trucks to rail annually from congested highways.

1180.6(a)(2)(ii) ***The financial consideration involved in the proposed transaction, and any economies, to be effected in operations, and any increase in traffic, revenues, earnings available for fixed charges, and net earnings, expected to result from the consummation of the proposed transaction.***

The financial considerations for the proposed divestiture and related trackage rights and haulage arrangements will be negotiated by Applicants and CPKC following any Board decision granting this Responsive Application. As stated previously, Applicants request that the Board provide for a 90-day negotiating period and that resolution of any disputed issues will be resolved by further order of the Board. The economies to be effected in operations, and the projected increase in traffic and revenues expected to result from the proposed divestiture transaction, are described in the verified statements set forth in Exhibit 12.

1180.6(a)(2)(iii) ***The effect of the increase, if any, of total fixed charges resulting from the proposed transaction.***

None. CN presently has no plans to take on additional debt or incur any fixed charges in connection with the transactions contemplated by this Responsive Application.

1180.6(a)(2)(iv) ***The effect of the proposed transaction upon the adequacy of transportation service to the public, as measured by the continuation of essential transportation services by applicants and other carriers.***

The proposed transaction would greatly increase the adequacy of transportation service to the public. If the CP-KCS merger were approved without Applicants' proposed condition, a combined CPKC would have no incentive to invest in or utilize the Springfield Line in a manner that would compete with CP's existing Kansas City – Chicago line. Nor would CPKC have an incentive to efficiently interchange with CN via the Springfield Line that could compete with CP's network. By contrast, divesting the Springfield Line to ICRR will enable the line to achieve its full potential—as a higher-speed routing option through the U.S. heartland that would offer shippers the benefits of increased competition with trucks and other rail carriers, new innovative product offerings (like temperature-protected service), faster transit time from upgraded track and more frequent service, new and improved intermodal and automotive terminal facilities, and access to new product markets, among other benefits.[15] The operating plan (Exhibit 13) discusses the significant capital projects that CN would undertake to ensure shippers would enjoy faster, safer, and more efficient rail transportation offerings on the Springfield Line if it is divested to ICRR.

The proposed transaction is decidedly pro-competitive: shippers would continue to enjoy their present transportation options. ICRR would grant CPKC

[15] *See* Exhibit 12.

haulage rights on the Springfield Line. As a result, no local customer on that line would lose a rail option. Instead, customers would enjoy new options via CN, *and* CPKC would still be able to commercially access those customers. In addition, the haulage rights would allow KCS to interchange with other carriers at East St. Louis.

1180.6(a)(2)(v) ***The effect of the proposed transaction upon applicant carriers' employees (by class or craft), the geographic points where the impact will occur, the time frame of the impact (for at least 3 years after consolidation), and whether any employee protection agreements have been reached.***

Divestiture of the Springfield Line is not anticipated to have any adverse impact on the current employees of ICRR or Canadian National Railway Company's other US rail subsidiaries. The anticipated hiring is based on limited information currently available. ICRR's likely staffing locations include the following: Missouri (including Mexico, Slater/Kansas City, and Louisiana), and Illinois (including East St. Louis, Roodhouse, and Pearl). ICRR anticipates hiring in Year 1 after consummation. No employee protection agreements have been reached.

The summary of the anticipated labor impacts is attached to the Operating Plan at Appendix E, Exhibit E-3 and is included below. ICRR will be hiring new employees to operate the Springfield Line after consummation. ICRR plans to offer qualified KCS employees currently working on the Springfield Line priority hiring consideration during ICRR's hiring process. As summarized below, ICRR estimates that it will hire 140 new employees in Missouri and Illinois (identified as "Anticipated Jobs Created" in the summary of anticipated labor impacts) to operate

the Springfield Line. Those employees will include 129 craft employees and 11 managers.

SPRINGFIELD LINE DIVESTITURE

Summary of Anticipated Labor Impacts

Illinois Central Railroad Company (ICRR)	
Craft or Class	**Anticipated Jobs Created**
BLET Locomotive Engineers	23
BMWED Engineering and Track Maintenance	55
BRS Signalmen	11
SMART-TD Conductors	36
IBEW Electrician	1
IAM Machinist	1
BRC Car Mechanic	2
Craft Total	129
Management	**Anticipated Jobs Created**
Management-Transportation	5
Management-Engineering	6
Management Total	11
GRAND TOTAL	**140**

For BLET locomotive engineers and SMART-TD conductors, ICRR anticipates T&E in East St. Louis will utilize 21 conductors and 8 engineers, based on current KCS staffing levels on the Springfield Line,[16] T&E in Mexico, Missouri will utilize 4 conductors and 4 engineers for two jobs; and T&E in Kansas City will utilize 11 conductors and 11 engineers for eight jobs.

[16] Application, Vol. 2 at 252. On the basis of the CP-KCS application, ICRR calculates that there are 108 total employees on the Springfield Line: 88 KCS union employees working under the former Gateway Western collective bargaining agreements, and 20 Non-Agreement. Application, Vol. 2 at 245.

For BMWED Engineering and Track Maintenance, ICRR has included 6 bridge tenders at Pearl, IL. KCS has a pending request before the US Coast Guard to automate the bridge at Pearl.[17] If KCS automates the bridge before consummation, the projected bridge tender employment would be reduced accordingly.

For the line sale divestiture in Docket No. FD 36500 (Sub-No. 1), employees adversely affected by the Transaction will be entitled to the employee protective conditions and other procedures adopted in *New York Dock—Control—Brooklyn Eastern District Terminal*, 360 I.C.C. 60, *aff'd sub nom. New York Dock Ry. v. United States*, 609 F.2d 83 (2d Cir. 1979), *as modified by Wilmington Terminal Railroad—Purchase & Lease—CSX Transportation Inc.*, 6 I.C.C.2d 799, 814–26 (1990), *aff'd sub nom. Railway Labor Executives' Ass'n v. ICC*, 930 F.2d 511 (6th Cir. 1991).

Two transactions—ICRR's acquisition of overhead trackage rights from KCS in Docket No. FD 36500 (Sub-No. 2) and ICRR's acquisition of overhead trackage rights via assignment from KCS in Docket No. FD 36500 (Sub-No. 4)—are subject to the employee protective conditions established in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry. Inc.—Lease and Operate*, 360 I.C.C. 653 (1980). ICRR does not anticipate that the

[17] *See Drawbridge Operation Regulation: Illinois Waterway, Pearl, IL*, Docket No. USCG-2019-0687, 84 Fed. Reg. 70090 (Dec. 20, 2019).

trackage rights transactions proposed in those two sub dockets will adversely affect any rail employees.

For the control proceeding in Docket No. FD 36500 (Sub-No. 3), the CP-KCS Application does not identify Gateway Eastern Railway Company as having any employees. Nonetheless, any active employees of the Gateway Eastern at the time of consummation would be entitled to the employee protective conditions and other procedures adopted in *New York Dock—Control—Brooklyn Eastern District Terminal*, 360 I.C.C. 60, *aff'd sub nom. New York Dock Ry. v. United States*, 609 F.2d 83 (2d Cir. 1979). If there are any active Gateway Eastern employees at the time of consummation, ICRR does not plan to change any terms and conditions of their employment with Gateway Eastern Railway Company as a result of the Springfield Line divestiture and the related control transaction.

1180.6(a)(2)(vi) ***The effect of inclusion (or lack of inclusion) in the proposed transaction of other railroads in the territory, under 49 U.S.C. 11324.***

Not applicable.

1180.6(a)(3) ***Any other supporting or descriptive statements applicants deem material.***

In addition to the previously described verified statements, in Appendix B Applicants enclose 71 support letters from stakeholders expressing their support for a Springfield Line divestiture to CN. Applicants also incorporate by reference the Comments submitted by CN in Docket No. FD 36500 and the accompanying testimony.

1180.6(a)(4) ***An opinion of applicants' counsel that the transaction meets the requirements of the law and***

will be legally authorized and valid, if approved by the Board. This should include specific references to any pertinent provisions of applicants' bylaws or charter or articles of incorporation.[18]

The opinion of counsel is set forth in Appendix A.

1180.6(a)(5) ***A list of the State(s) in which any part of the property of each applicant carrier is situated.***

CN

Canadian National Railway Company and its U.S. rail operating subsidiaries own and operate approximately 5,453 route miles in the United States in the following states:

- Grand Trunk Western Railroad Company: Illinois, Indiana, Michigan and Ohio[19]
- Wisconsin Central, Ltd.: Illinois, Indiana, Michigan, Minnesota, and Wisconsin
- Illinois Central Railroad Company: Alabama, Illinois, Kentucky, Louisiana, Mississippi, and Tennessee[20]
- Bessemer and Lake Erie Railroad Company: Ohio and Pennsylvania
- Chicago, Central & Pacific Railroad Company: Illinois, Iowa and Nebraska
- Cedar River Railroad Company: Iowa and Minnesota
- The Pittsburgh & Conneaut Dock Company: Ohio
- Sault. Ste Marie Bridge Company: Michigan and Wisconsin
- Waterloo Railway Company: Mississippi and Maine

[18] An opinion of counsel is not required in a control transaction for the party sought to be controlled, or in a responsive application for the party against whom relief is sought. 49 C.F.R. § 1180.6(a)(4).

[19] GTW also has non-rail property assets in Massachusetts.

[20] Illinois Central also has non-rail property in South Dakota and Wisconsin.

- Wisconsin Chicago Link Ltd.: Illinois
- Canadian National Railway Company: Minnesota, New York, and Vermont.

1180.6(a)(6) ***Map (exhibit 1). Submit a general or key map indicating clearly, in separate colors or otherwise, the line(s) of applicant carriers in their true relations to each other, short line connections, other rail lines in the territory, and the principal geographic points in the region traversed. If a geographically limited transaction is proposed, a map detailing the transaction should also be included. In addition to the map accompanying each application, 20 unbound copies of the map shall be filed with the Board.***

Exhibit 1 contains a series of maps that depict the Springfield Line, connections to ICRR, and connections with third party railroads.

1180.6(a)(7)(i) ***Describe the nature of the transaction (e.g., merger, control, purchase, trackage rights), the significant terms and conditions, and the consideration to be paid (monetary or otherwise).***

The transaction proposed in Docket No. FD 36500 (Sub-No. 1) involves the purchase by Applicant ICRR of KCS's Springfield Line, as defined herein; including an 8.33% equity ownership share of Kansas City Terminal Railway Company ("KCT") and acquisition of a 50% interest in KCS's IFG Terminal.

The transaction proposed in Docket No. FD 36500 (Sub-No. 2) involves ICRR's acquisition of overhead trackage rights on KCS's Pittsburg Subdivision between MP 5.6+/- at Airline Junction in Kansas City, MO, and MP 29.5+/- near Grandview, MO, to reach the IFG Terminal as shown in Exhibit 1B.

The transaction proposed in Docket No. FD 36500 (Sub-No. 3) involves the request by Canadian National Railway Company and ICRR for authority to control

via acquisition of KCS's 100% equity interest in the GWER, a KCS subsidiary that owns certain trackage in the East St. Louis terminal area as shown in Exhibit 1C.

The transaction proposed in Docket No. FD 36500 (Sub-No. 4) involves the assignment to ICRR of KCS's trackage rights agreement with UP relating to the 1.4-mile UP line between Milepost 276.8 at Rock Creek Junction and approximately Milepost 278.2 in the vicinity of Airline Junction in Kansas City, Missouri, as shown in Exhibit 1D.

The terms of the proposed transactions are detailed in Exhibit 2. The significant terms and conditions of the proposed transactions are described in the Asset Purchase Agreement included as Exhibit 2A.

1180.6(a)(7)(ii) ***Agreement (exhibit 2). Submit a copy of any contract or other written instrument entered into, or proposed to be entered into, pertaining to the proposed transaction. In addition, parties to exempt trackage rights agreements and renewal of agreements described at § 1180.2(d)(7) must submit one copy of the executed agreement or renewal agreement with the notice of exemption, or within 10 days of the date that the agreement is executed, whichever is later.***

Exhibit 2 contains copies of Applicants' proposed forms of the following agreements:

2A – Asset Purchase Agreement between ICRR and KCS relating to the sale by KCS to ICRR of the Springfield Line, a 100% equity interest in GWER, an 8.33% equity interest in KCT and 50% ownership interest in the IFG Terminal;

2B – Trackage Rights Agreement between KCS (as grantor) and ICRR (as grantee) relating to the KCS line between Airline Junction, Missouri and Grandview, Missouri (for ICRR to reach and access the IFG Terminal);

2C – Haulage Agreement between ICRR (as grantor) and KCS (as grantee) granting KCS haulage rights over the Springfield Line (including commercial access to all current and future customers on the Springfield Line, as well as the ability for KCS to interchange with other railroads, primarily in East St. Louis); and

2D – Assignment and Assumption Agreement between KCS and ICRR providing for the assignment to ICRR of KCS's current trackage rights agreement with UP relating to a 1.4-mile line between Rock Creek Junction, Missouri and Airline Junction, Missouri.

1180.6(a)(7)(iii) ***If a consolidation or merger is proposed indicate: (A) The name of the company resulting from the consolidation or merger; (B) the State or territory under the laws of which the consolidated company is to be formed or the merged company is to file its certificate of amendment; (C) the capitalization proposed for the resulting company; and (D) the amount and character of the capital stock and other securities to be issued.***

Not applicable.

1180.6(a)(7)(iv) ***Court Order (exhibit 3). If a trustee, receiver, assignee, or personal representative of the real party in interest is an applicant, submit a certified copy of the order, if any, of the court having jurisdiction, authorizing the contemplated action.***

Not applicable.

1180.6(a)(7)(v) ***State whether the property involved in the proposed transaction includes all the property of the applicant carriers and, if not, describe what property is included in the proposed transaction.***

The proposed transaction does <u>not</u> include all the property of KCS or ICRR. The proposed transaction consists of the following property:

- In FD 36500 (Sub-No. 1), KCS's line from MP 192.4 at Cockrell (Springfield), IL through MP 482.0 at Rock Creek Jct. (Kansas City), MO (milepost equation at Murrayville, IL where MP 221.7=MP 226.7); the line from MP 68.2 at Roodhouse, IL (MP 237.2 on the first segment) through MP 287.2 at Church (East St. Louis), IL, including KCS's interest in the UP/KCS Joint Facility between Godfrey, IL and Church, IL (milepost equation at Godfrey, IL where MP 28.0=MP 252.1); the Jacksonville Branch from MP 226.7 at Murrayville, IL to MP 216.3 at Jacksonville, IL; KCS's lessor interest in the Fulton Branch from MP 0.0 to MP 3.0 at Mexico, MO, leased to Ozark Valley Railroad, Inc.
    - Also in FD 36500 (Sub-No. 1), acquisition of an 8.33% ownership share of Kansas City Terminal Railway Company ("KCT") and a 50% interest in KCS's International Freight Gateway terminal south of Kansas City.
- In Docket No. FD 36500 (Sub-No. 2), overhead trackage rights on KCS's Pittsburg Subdivision to reach the International Freight Gateway terminal, extending from approximately MP 5.6 at Airline Junction in Kansas City, MO to MP 29.5 near Grandview, MO.
- In Docket No. FD 36500 (Sub-No. 3), Canadian National Railway Company and ICRR seek Board approval to control GWER, a KCS subsidiary which owns trackage in the East St. Louis terminal, through ICRR's acquisition of KCS's 100% equity interest in GWER.
- In Docket No. FD 36500 (Sub-No. 4), Applicant ICRR is requesting acquisition by assignment of KCS's trackage rights over UP between Rock Creek Junction and Airline Junction, Missouri. To the extent those rights are not assignable, Applicants request that the Board override the assignment provision.[21]

1180.6(a)(7)(vi) ***Briefly describe the principal routes and termini of the lines involved, the principal points of interchange on the routes, and the amount of main-line mileage and branch line mileage involved.***

As described in greater detail in the Operating Plan (Exhibit 13), Applicants seeks to acquire the Springfield Line—KCS lines between Kansas City, Missouri, on the one hand, and Springfield, Illinois, and East St. Louis, Illinois. The Springfield Line consists of approximately 400 route miles, including approximately 355 owned

[21] *See* 49 U.S.C. § 11321; *see, e.g., Union Pacific Corp., et al.—Control and Merger—Southern Pacific Rail Corp., et al.*, 1 S.T.B. 233, 450 n.217 (1996).

and leased (including perpetual freight easement) route-miles and approximately 43 trackage rights route-miles in Illinois and Missouri. In particular, the Springfield Line consists of the following lines of the former Gateway Western Railway and Gateway Eastern Railway:

- The line from MP 192.4 at Cockrell (Springfield), IL through MP 482.0 at Rock Creek Jct. (Kansas City), Mo. (milepost equation at Murrayville, IL where MP 221.7=MP 226.7).
- The line from MP 68.2 at Roodhouse, IL (MP 237.2 on the first segment) through MP 287.2 at Church (East St. Louis), IL, including KCS's interest in the UP/KCS Joint Facility between Godfrey, IL, and Church, IL (milepost equation at Godfrey, IL where MP 28.0=MP 252.1); Wann, IL, where MP 259.53=MP 262.00 and Q Tower, IL where MP 280.49=MP 280.70.
- The Jacksonville Branch from MP 226.7 at Murrayville, IL to MP 216.3 at Jacksonville, IL; and
- KCS's lessor interest in the Fulton Branch from MP 0.0 to MP 3.0 at Mexico, Mo., leased to Ozark Valley Railroad, Inc.

The junction of Applicants' existing network and the Springfield Line occurs at Cockrell in Springfield, IL, where ICRR trains move over a short segment as a subtenant of UP pursuant to a trackage rights agreement between SPCSL Corp. (UP's predecessor) and Norfolk & Western Company (NS's predecessor).[22]

CN also connects with the Springfield Line in East St. Louis at Church. CN also, infrequently, interchanges unit trains with KCS in East St. Louis Yard.

1180.6(a)(7)(vii) State whether any governmental financial assistance is involved in the proposed transaction and, if so, the

[22] *See Canadian National Ry. Co., et al.—Control—Illinois Cent. Corp., et al.*, 4 S.T.B. 122, 175, 190–99 (1999); *SPCSL Corp.—Trackage Rights Exemption—Norfolk and Western Railway Company*, STB Docket No. FD No. 33351 (STB served Feb. 12, 1997).

form, amount, source, and application of such financial assistance.

There is no government financial assistance involved in the proposed transaction.

1180.6(a)(8) ***Environmental data (exhibit 4). Submit information and data with respect to environmental matters prepared in accordance with 49 CFR part 1105. In major and significant transactions, applicants shall, as soon as possible, and no later than the filing of a notice of intent, consult with the Board's Office of Environmental Analysis for the proper format of the environmental report.***

Applicants have consulted with the Board's Office of Environmental Analysis ("OEA") and provided the information in the format requested by OEA on February 22, 2022. That information is set forth in Exhibit 4.

1180.6(b)(3) ***Change in control (exhibit 8). If an applicant carrier submits an annual report Form R-1, indicate any change in ownership or control of that applicant carrier not indicated in its most recent Form R-1, and provide a list of the principal six officers of that applicant carrier and of any related applicant, and also of their majority-owned rail carrier subsidiaries. If any applicant carrier does not submit an annual report Form R-1, list all officers of that applicant carrier, and identify the person(s) or entity/entities in control of that applicant carrier and all owners of 10% or more of the equity of that applicant carrier.***

ICRR is a wholly-owned indirect subsidiary of Canadian National Railway Company ("CNR"). ICRR and the other U.S. rail carrier subsidiaries of CNR report to the Board on a consolidated Class I basis under the name Grand Trunk Corporation. *See Consolidated Reporting By Commonly Controlled Railroads*, 5 S.T.B. 1050 (2001), codified at 49 C.F.R. §1201(1-1)(b)(1). While Applicants believe

the proposed transaction should be classified as "minor," in the event the Board decides to classify the proposed transaction as a "significant" transaction, Exhibit 8 is provided.

1180.6(b)(5) ***Issues (exhibit 10). Submit a discussion of any other issues relevant to the transaction.***

Attached as Appendix B are letters of support from interested stakeholders, who are excited by the prospect of a revitalized Springfield line with hundreds of millions of new investments that will preserve and increase competition for both existing railroad service and trucking alternatives.

1180.6(b)(6) ***Corporate chart (exhibit 11). Submit a corporate chart indicating all relationships between applicant carriers and all affiliates and subsidiaries and also companies controlling applicant carriers directly, indirectly or through another entity (with each chart indicating the percentage ownership of every company on the chart by any other company on the chart). For each company: include a statement indicating whether that company is a noncarrier or a carrier; and identify every officer and/or director of that company who is also an officer and/or director of any other company that is part of a different corporate family that includes a rail carrier. Such information may be referenced through notes to the chart.***

While Applicants believe the proposed transaction should be classified as "minor," in the event the Board decides to classify the proposed transaction as a "significant" transaction, Exhibit 11 is provided.

1180.6(b)(7) ***If applicant is not a carrier, indicate (i) the type of business in which it is engaged, (ii) the length of time so engaged, and (iii) its present and prospective activities which have or may have a relation to transportation subject to 49 U.S.C. Subtitle IV.***

Not applicable.

1180.6(b)(8) ***Intercorporate or financial relationships. Indicate whether there are any direct or indirect intercorporate or financial relationships at the time the application is filed, not disclosed elsewhere in the application, through holding companies, ownership of securities, or otherwise, in which applicants or their affiliates own or control more than 5% of the stock of a non-affiliated carrier, including those relationships in which a group affiliated with applicants owns more than 5% of the stock of such a carrier. Indicate the nature and extent of any such relationships, and, if an applicant owns securities of a carrier subject to 49 U.S.C. Subtitle IV, provide the carrier's name, a description of securities, the par value of each class of securities held, and the applicant's percentage of total ownership. For purposes of this paragraph, "affiliates" has the same meaning as "affiliated companies" in Definition 5 of the Uniform System of Accounts (49 CFR part 1201, subpart A).***

While Applicants believe the proposed transaction should be classified as "minor," in the event the Board decides to classify the proposed transaction as a "significant" transaction, all known financial relationships between applicant carriers, including persons affiliated with those carriers, and carriers from other corporate families, including persons affiliated with those carriers, are reported in Exhibit 11, Table 11.1.

2. <u>Competitive & Market Information</u>

1180.7 ***For … significant transactions, applicants shall submit impact analyses (exhibit 12) describing the impacts of the proposed transaction – both adverse and beneficial – on inter- and intramodal competition with respect to freight surface transportation in the regions affected and on the provision of essential services by applicants and other carriers. …***

While Applicants believe the proposed transaction should be classified as "minor," in the event the Board decides to classify the proposed transaction as a "significant" transaction, Exhibit 12 is provided. Exhibit 12 contains four verified statements from CN employees who describe the beneficial impact the proposed transaction would have on competition and on the provision of essential services by CN, ICRR, and other carriers. Exhibit 12 also includes the verified statement of David Hunt, who presents Applicants' traffic diversion study for the proposed transaction.

3. <u>Operational Information</u>

1180.8(b) ***For major and significant transactions: Operating plan (exhibit 13). Submit a summary of the proposed operating plan changes, based on the impact analyses, that will result from the transaction, and their anticipated timing, allowing for any time required to complete rehabilitation, upgrading, yard construction, or other major operational changes following consummation of the proposed transaction. The plan should make clear the gains in service, operating efficiencies, and other benefits anticipated from the merger. ...***

For the reasons explained elsewhere in this Responsive Application, Applicants believe the proposed divestiture transaction should properly be classified as a "minor" transaction because the transaction "clearly will not have any anticompetitive effects."[23] Nevertheless, Applicants are submitting an operating plan with all the information required in connection with a "significant" application.

[23] 49 C.F.R. § 1180.2(b)(1).

For this reason, Applicants are including an operating plan as Exhibit 13, along with Density Charts as Exhibit 14, in lieu of Exhibit 15, Operating Plan–Minor.

This Responsive Application involves the sale of a railroad line. Current operations on the Springfield Line are straightforward. The proposed transaction will add approximately 400 miles to CN's existing 5,300+ mile United States network. Although CN believes the line can be an important and economically beneficial component of the national rail network and will preserve and improve a competitive route between Kansas City and Chicago/Detroit/Eastern Canada, the scope of the transaction and the approximately two new through trains per day on the Line are not operationally complex. The Springfield Line and a few yards and terminals (East St. Louis and the IFG Terminal, which is 24 miles south of Kansas City) will be most affected by the transaction-related traffic growth. As discussed in the Operating Plan, CN plans to invest in those facilities to promote safe and efficient handling of traffic that moves on the Springfield Line. ICRR's adjacent Gilman Subdivision and certain CN yards will also experience some increase in intermodal and automotive traffic volumes, including CN's Detroit Intermodal Yard in Ferndale, Michigan; Chicago Intermodal Yard in Harvey, Illinois; and Markham Yard in Hazel Crest, Illinois, for automotive traffic. Most of the transaction-related Springfield Line manifest traffic will be added to existing trains already moving on CN.

The introduction of CN single-line service as envisioned by this Responsive Application will significantly increase the service capabilities of the CN system,

preserving and increasing competition between Kansas City and Chicago/Detroit/Eastern Canada. More than 80,000 trucks will be removed from the highways each year, generating public benefits including reduced carbon emissions, reduced highway congestion, and reduced public expenditures for highway maintenance. The more than 80,000 trucks that will be diverted to CN lines include approximately 77,800 dry vans and containers that will shift to rail intermodal service, approximately 1,480 car transporters carrying assembled automobiles that will divert to multilevel railcars ("multilevels"), and 900 trucks with commodities (*i.e.*, bulk commodities such as plastic pellets and cement that use rail for linehaul and transfer to/from truck for first/last mile pickups and deliveries) that will divert to covered hoppers and other types of railcars.[24]

A total of approximately 49,500 railcars will be diverted from other railroads due to preserved, renewed, and increased rail competition in the Midwest and Southeast, brought about by the preservation and upgrading of the KCS line between Kansas City and Chicago, the creation of new competitive rail routes from East St. Louis via the Springfield Line, and additional intermodal and automotive facilities in East St. Louis. The traffic diverted from other railroads includes approximately 31,000 intermodal containers, approximately 17,900 multilevels carrying assembled automobiles, and approximately 600 carloads of grain.

An additional 12,500 containers that currently are unloaded at congested U.S. East Coast ports and moved to Kansas City and East St. Louis by rail or truck

[24] *See* Exhibit 12, Verified Statement of David Hunt, at 3.

are projected to be diverted to the Port of Montreal, leveraging CN's new single-line service via the Springfield Line and ICRR's proposed new intermodal terminal in East St. Louis.

By acquiring the Springfield Line, CN will (1) preserve competition between Kansas City and Chicago over the historic Gateway Western line, which has been a competitive route for rail customers for more than 100 years; and (2) introduce new single-line rail automotive and intermodal service between Michigan/Eastern Canada and Kansas City. It also will establish a more direct route for traffic between Canada and the Midwest and East St. Louis, because traffic moving to East St. Louis via CN's current route from northern locations moves south of East St. Louis to Du Quoin, IL, before heading north for East St. Louis Yard; and traverses the same longer route on trips from East St. Louis to northern destinations. This would save approximately 100 miles round trip.

CN plans to invest to build new automotive and intermodal terminal facilities at the IFG Terminal and in East St. Louis. As discussed further in the Operating Plan and Verified Statement of David Hunt, these routes and facilities will be widely used by the shipping community:

- The new ICRR intermodal facility at the IFG Terminal in Kansas City is projected to originate and terminate approximately 95,300 annual containers, with another approximately 26,000 annual containers at the new ICRR intermodal terminal in East St. Louis.
- Approximately 10,000 annual multilevels carrying assembled automobiles are projected to originate and terminate on ICRR in Kansas City, with an additional, approximately 9,750 multilevels originating at the new ICRR terminal in East St. Louis.

The origin-destination pairs expected to attract the largest intermodal diversions from other railroads are detailed in the Operating Plan. The single largest lane for rail-to-rail auto diversions is St. Louis to Detroit (2,304 loads), followed by Chicago to Kansas City (1,147 loads), Kansas City to Detroit (878 loads), and Toledo to Kansas City (868 loads). While some of these movements may currently be Rule 11 rebills that do not actually originate in St. Louis or Chicago, with the Springfield Line, CN would be positioned to preserve, renew, and increase competition as a strong competitor for that traffic.

CN's purchase of the Springfield Line will provide shippers several important benefits. The service between Kansas City and destinations in Michigan, Ohio, and Eastern Canada will cross the "watershed" (a north-south area of the United States extending up to 300-400 miles east and west of the Mississippi River where trucks have an unusually high share of freight shipments), offering shippers a new rail alternative which will be attractive enough for 80,000 truckloads per year of freight to divert to CN's new service. CN has also committed to spend $250 million to (i) upgrade the Springfield Line and CN's adjacent line between Springfield and Gilman IL, where the new route will connect with CN's mainline to Chicago; and (ii) construct new intermodal and automotive facilities in Kansas City and East St. Louis. These improvements will enable CN to achieve improved transit times, faster car cycles, better asset utilization, and operating synergies made possible by fewer car handlings due to single-line service and capital improvements.

To enable its new intermodal/automotive service at Kansas City, CN proposes to acquire a 50 percent ownership interest in KCS's IFG Terminal. CN will invest to create new intermodal and automotive terminals that will expand the capacity of that facility to accommodate the anticipated increase in automotive and intermodal volumes resulted from the proposed transaction. Intermodal containers and multilevels originating in East St. Louis will be moved from the new intermodal/auto terminal that ICRR plans to build in East St Louis to Roodhouse, where that traffic will connect with the eastbound train from Kansas City.

CN's proposed operation will encompass several components, described in greater detail in the Operating Plan:

- Six days per week train service will be provided from East St. Louis to Kansas City for carload traffic.
- A daily turn job will operate between Roodhouse, IL, and East St. Louis to handle intermodal and automotive traffic between St. Louis and Kansas City.
- At Kansas City, ICRR will provide separate services to both Knoche Yard and the IFG Terminal, increasing the manifest service to six days per week, and the intermodal/automotive service to seven days per week, from KCS's existing {{ Redacted }}. Both existing and future customers will receive a superior level of service, as ICRR will eliminate the current KCS practice of shuttling cars between Knoche and IFG, thereby providing direct service to both terminals for CN and CSXT traffic.
- Local operations in East St. Louis to the NS interchange, Wood River, and Godfrey would remain the same. Interchange with CSXT and the TRRA would be increased, and the CSXT interchange could be upgraded. Other local service in the St. Louis area would remain as it is today. As both CN and KCS currently interchange with TRRA, ICRR's six days per week service would replace KCS's less frequent service.

  Service frequency for general carload traffic would be six days a week,

{{ Redacted

Reda }}. All local service would be operated at least five days a week and interchanges would be five or six days a week, based on future volumes.

Service in the Kansas City terminal area will also improve. As part of this Responsive Application, ICRR seeks to acquire an 8.33 percent ownership share in KCT and assignment to ICRR of KCS's overhead trackage rights over the UP line connecting the Springfield Line (at Rock Creek Junction) with Knoche Yard (at Airline Junction), as well as overhead trackage rights on the KCS line to the IFG Terminal from Airline Junction. ICRR plans to offer daily intermodal and automotive train service via the Springfield Line to the IFG Terminal facility at Grandview, Missouri.

ICRR's other daily through train on the Springfield Line would operate between Rock Creek Junction and Airline Junction over the KCS-assigned trackage rights on track owned by UP, to Knoche Yard. CPKC haulage traffic handled by ICRR on the Springfield Line would be physically interchanged with CPKC at Knoche Yard.

Existing customers on the Springfield Line will gain access to an improved level of service (compared to KCS's current service):

- A manifest train will operate six days per week in each direction between Kansas City and East St. Louis. This train will pick-up and set-off cars along its route to support the Springfield Line's local train and yard assignments, providing an improvement in service frequency from the current KCS local service.
- Combining the volumes of ICRR and the merged CPKC (much of it to/from interchange with CSXT at East St. Louis) will provide the critical density needed to support an increase in service levels for all the carriers using this route between Kansas City and East St. Louis. As discussed above, ICRR will also provide direct service for carload traffic to the Knoche joint agency Yard

and to the IFG Terminal for intermodal and automotive traffic without having to shuttle cars between the two terminals in Kansas City. This would eliminate current inefficient operations whereby KCS takes manifest traffic south to the IFG Terminal before moving it north to Knoche Yard on westbound trains, and shuttles intermodal loadings to Knoche for eastbound Kansas City – East St. Louis manifest trains.

- A ICRR turn assignment will transfer intermodal/auto traffic between Roodhouse and East St. Louis. Its schedule will be coordinated to provide rapid delivery to East St. Louis of cars set-off at Roodhouse by the new ICRR westbound Chicago-Kansas City train; and prompt handling to Roodhouse of intermodal/auto loads for the new eastbound Kansas City – Chicago train. This will be a new service offering for intermodal/auto shippers moving loads between St. Louis and Toronto/Port of Montreal, as neither CN nor KCS currently have intermodal or automotive facilities in East St. Louis. Detroit will be the largest source of new intermodal and multilevel traffic. The Roodhouse – East St. Louis turn will also move intermodal and automotive traffic coming from Mobile, Jackson, New Orleans, and Memphis (via Centralia) to the Chicago – Kansas City train at Roodhouse for delivery to the IFG Terminal (and vice versa for southbound traffic).

Finally, ICRR will provide improved local service along the key line segment between Roodhouse, IL and Mexico, MO:

- KCS's existing local from Mexico, Missouri would be extended to Laddonia, MO, with increased frequency as volume warrants.
- Service to Jacksonville, IL would be increased.
- Cars moving to/from Roodhouse would be picked up and set off at Mexico, MO, six days a week instead of the current four days a week.
- Service to Cockrell, IL; Springfield, IL, Jerseyville, IL and Carrollton, IL would remain unchanged.
- Customers west of Mexico, MO would be served by the six-day-a-week through train operating between East St. Louis and Kansas City. This would provide a significant improvement in service to the key existing and potential non-agricultural customers and the Ozark Valley Railroad.

KCS will continue to have access to existing unit train grain shippers on the Springfield Line pursuant to the proposed haulage agreement with ICRR, as described in greater detail in the Operating Plan. Under the haulage agreement,

CN would operate this unit train service over the Springfield Line on KCS's behalf with cars supplied by KCS or the customer and locomotives supplied by KCS.

In summary, the proposed divestiture transaction will increase the competitive rail options available to shippers on the Springfield Line.

CONCLUSION

For the reasons set forth above, Applicants respectfully request that the Board grant this Responsive Application in its entirety and impose the transactions contemplated herein as a condition of any approval of the proposed CP-KCS merger in Docket No. FD 36500.

Respectfully submitted,

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Counsel for Canadian National Railway Company and Illinois Central Railroad Company

Dated: February 28, 2022

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of February 2022, a copy of the foregoing Responsive Application was served by first-class mail on all persons designated in § 1180.4(c)(5) and by first-class mail or more expeditious means on all parties of record in Docket No. FD 36500.

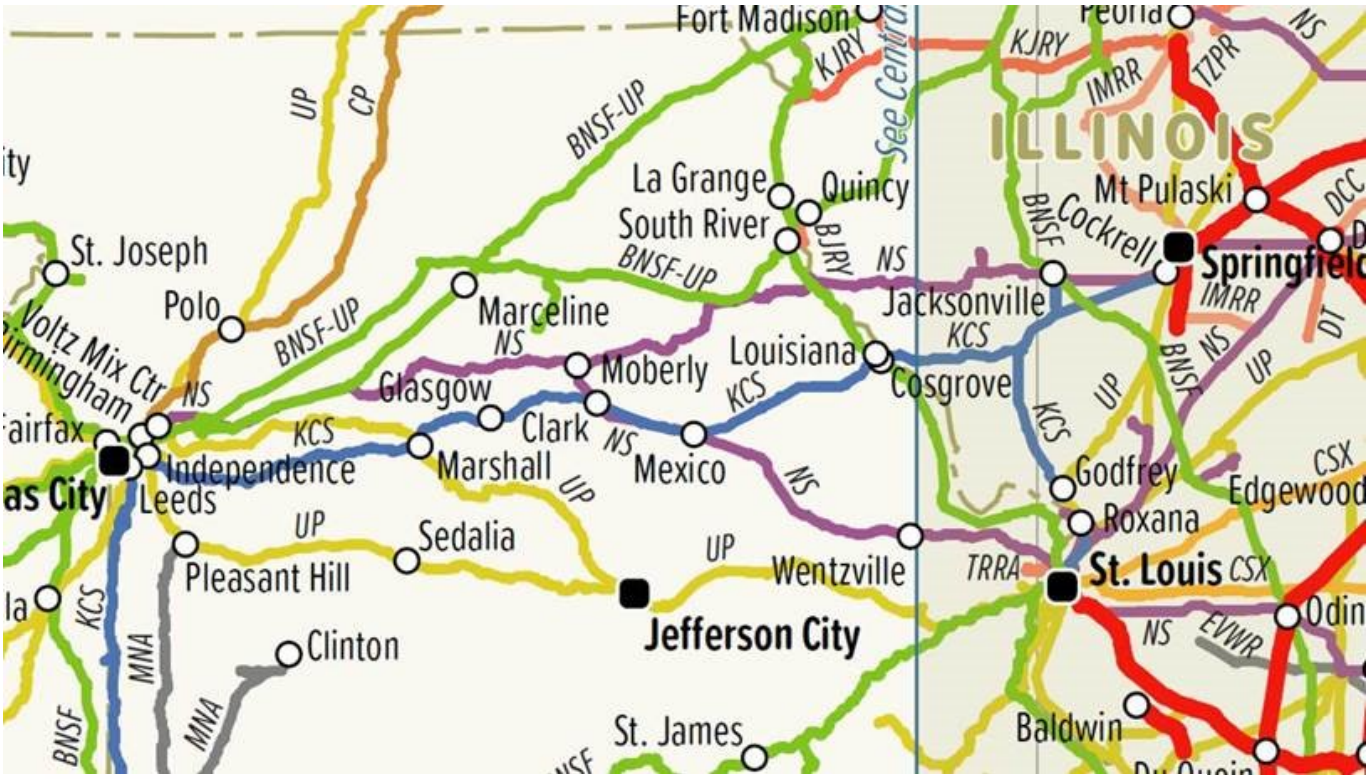
/s/ Matthew J. Warren
Matthew J. Warren
SIDLEY AUSTIN LLP

Exhibit 1

Maps

Exhibit 1A

Map of the Springfield Line
(Sub No. 1)



NORTH AMERICA SYSTEM MAP

LEGEND

- CN
- CN rail ferry
- CN trackage, haulage and commercial rights
- CN principal shortline partners

- BNSF — BNSF Railway
- CP — Canadian Pacific
- CSX — CSX Transportation
- FXE — Ferromex
- KCS — Kansas City Southern
- KCSM — Kansas City Southern de México
- NS — Norfolk Southern
- UP — Union Pacific
- Other connecting, regional and shortline railroads
- O/S — Out of service

0 100 200 300 400 kilometers

0 100 200 300 400 miles

Average scale

Map produced by HATRA Inc. September 2019 | Copyright © 2019 Canadian National Railway Company

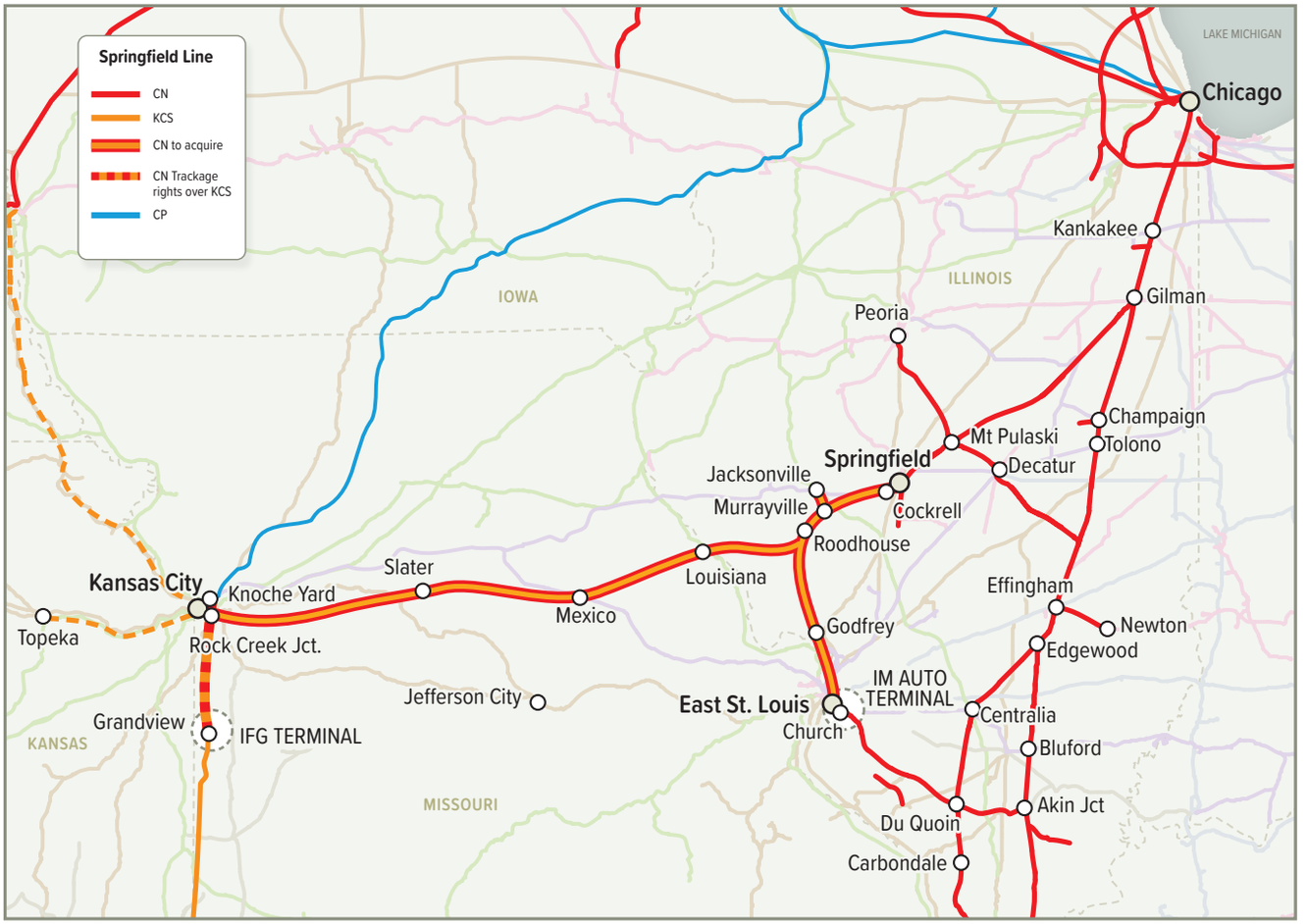

Springfield Line
CN
KCS
CN to acquire
CN Trackage rights over KCS
CP
LAKE MICHIGAN
Chicago
Kankakee
ILLINOIS
Gilman
IOWA
Peoria
Champaign
Tolono
Mt Pulaski
Springfield
Decatur
Jacksonville
Murrayville
Cockrell
Roodhouse
Louisiana
Slater
Kansas City
Knoche Yard
Mexico
Effingham
Topeka
Rock Creek Jct.
Godfrey
Newton
Edgewood
IM AUTO TERMINAL
Jefferson City
East St. Louis
Church
Centralia
Grandview
IFG TERMINAL
KANSAS
Bluford
MISSOURI
Akin Jct
Du Quoin
Carbondale

Exhibit 1B

Map of the Trackage Rights Between Airline Junction, MO and Grandview, MO (Sub-No. 2)

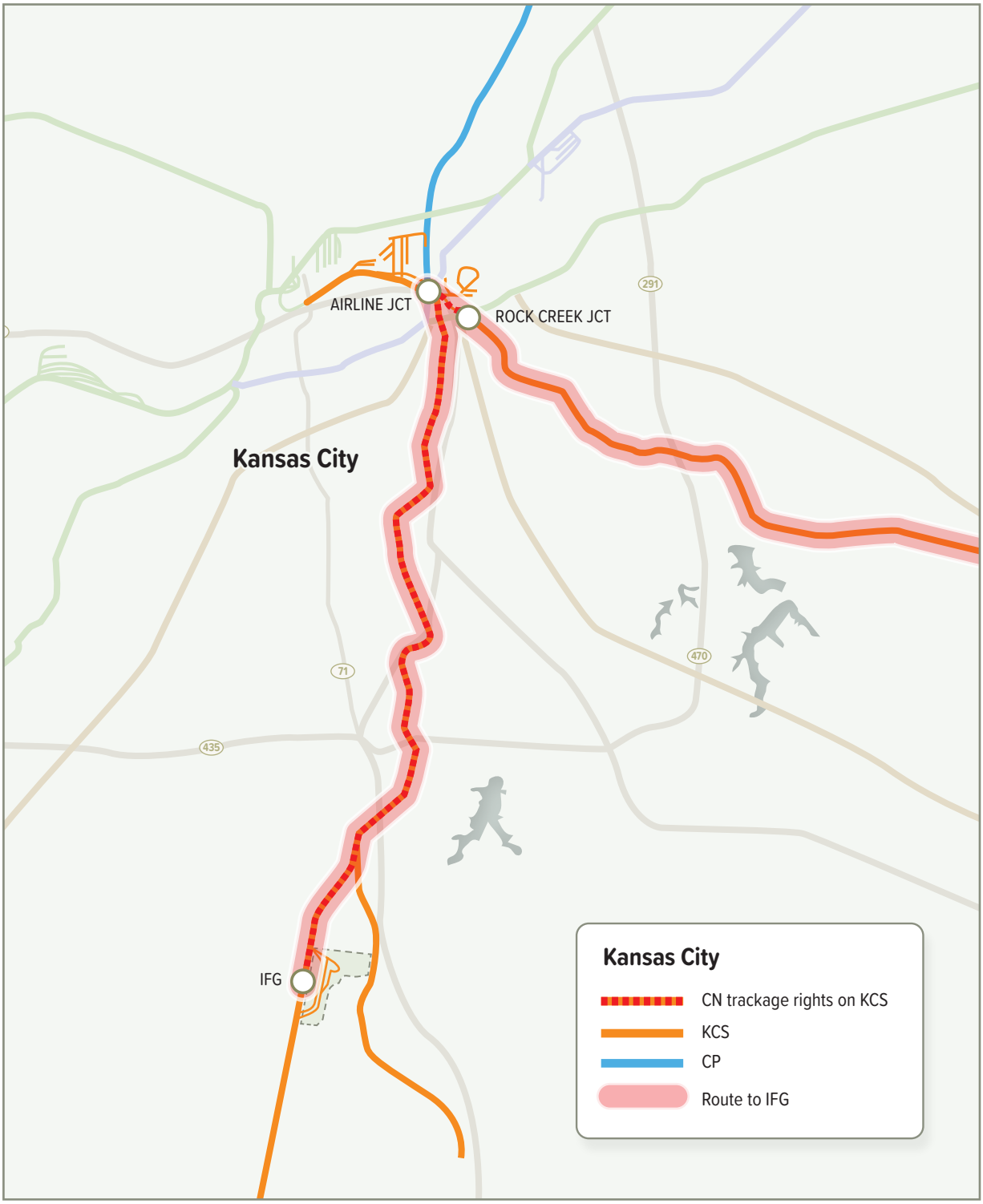

AIRLINE JCT
ROCK CREEK JCT
Kansas City
IFG
291
71
435
470
Kansas City
CN trackage rights on KCS
KCS
CP
Route to IFG

Exhibit 1C

Map of the Gateway Eastern Railway Company (Sub-No. 3)

PUBLIC VERSION

ALTON
EAST ALTON
NS FEDERAL YARD
FEDERAL
WANN
SP WOOD RIVER YARD
WOOD RIVER
REUTERS
I. T. JCT.
LOCK & DAM #25
BN WEST ALTON YARD
WEST ALTON
FORT BELLEFONTAINE
ST. CHARLES CO.
ST. LOUIS CO.
MISSISSIPPI RIVER
HARTFORD
NS WILDS YARD
NS ROXANA YARD
ROXANA
SHELL REFINERY
CLARK OIL REFINERY
OWER
IPANA SUBDIV.
POAG JCT.
OLDENBURG (CHEMETCO)
VIERLING JCT.
SPANISH LAKE
SWITCHING LIMITS
LARIMORE
270
LENOX
MITCHELL
ST. THOMAS
NAMEOKI
FERGUSON
PROSPECT HILL
JENNINGS
BADEN
BN BADEN YARD
CHAIN OF ROCKS BARGE CANAL
STALLINGS UP (EX-CNW)
A.O. SMITH YARD
WR TOWER
GRANITE CITY
COCHEM
HORSESHOE LAKE
U.S. ARMY DEPOT
SH TOWER
MADISON
UP MADISON YARD
DOUBLE TRACK JCT.
EASTON AVE.
CARRIE AVE.
GOODFELLOW
GERALDINE
PAGE AVE. JCT.
MAIN ST.
WEST APPROACH
BREMEN AVE.
TRRA BREMEN YARD
CP JCT.
COLLINSVILLE
MADISON CO.
ST. CLAIR CO.
DELMAR
NORTH MARKET
ST. LOUIS
ST. LOUIS CO.
CITY OF ST. LOUIS
VANDEVENTER
BSDA VANDEVENTER YARD
GRAND AVE.
UP GENERAL OFFICE BUILDING
BIDDLE ST.
UNION STATION
AMTRAK STATION
BRIDGE JCT.
UP BROOKLYN YARD
BROOKLYN JCT.
CR ROSE LAKE YARD TOFC
CSXT
CR EXERMONT YARD
HN CABIN
WILLOWS
CASEYVILLE
WINSTANLEY
TRENDLEY AVE. JCT.
M&O JCT.
SOUTHERN CROSSING
NS COAPMAN YARD
ALORTON
FRENCH VILLAGE
TOWER GROVE
BN CHOUTEAU YARD
(SEDALIA SUBDIV.)
UP 23RD ST. YARD
GRATIOT TOWER
LESPERANCE STREET YARD
SOUTHEASTERN JCT.
BN LINDENWOOD YARD
UP FYLER YARD
LOS SOTO SUBDIV.
TOLSON
SAUGET JCT.
VALLEY JCT.
PHILLIPS
CAHOKIA
CHURCH
CARONDELET
BROADWAY JCT. (LESPERANCE BRANCH)
DAVIS JCT.
MISSISSIPPI RIVER
NORTH DUPO
UP IVORY YARD
UP DUPO YARDS & TOFC
DUPO
SOUTH DUPO
BARRACKS JCT.
BIXBY
TRIANGLE SPUR
ST. CLAIR CO.
MONROE CO.
BELLEVILLE

MAP
EXHIBIT 1
F.D. NO. 33780
PAGE 2 of 2

LEGEND

GATEWAY EASTERN RY.
GATEWAY WESTERN RY.

File Name • k:\mike\dreiling\fd•33780-2.dgn

Exhibit 1D

Map of the Trackage Rights Between Airline Junction, MO and Rock Creek Junction, MO (Sub-No. 4)

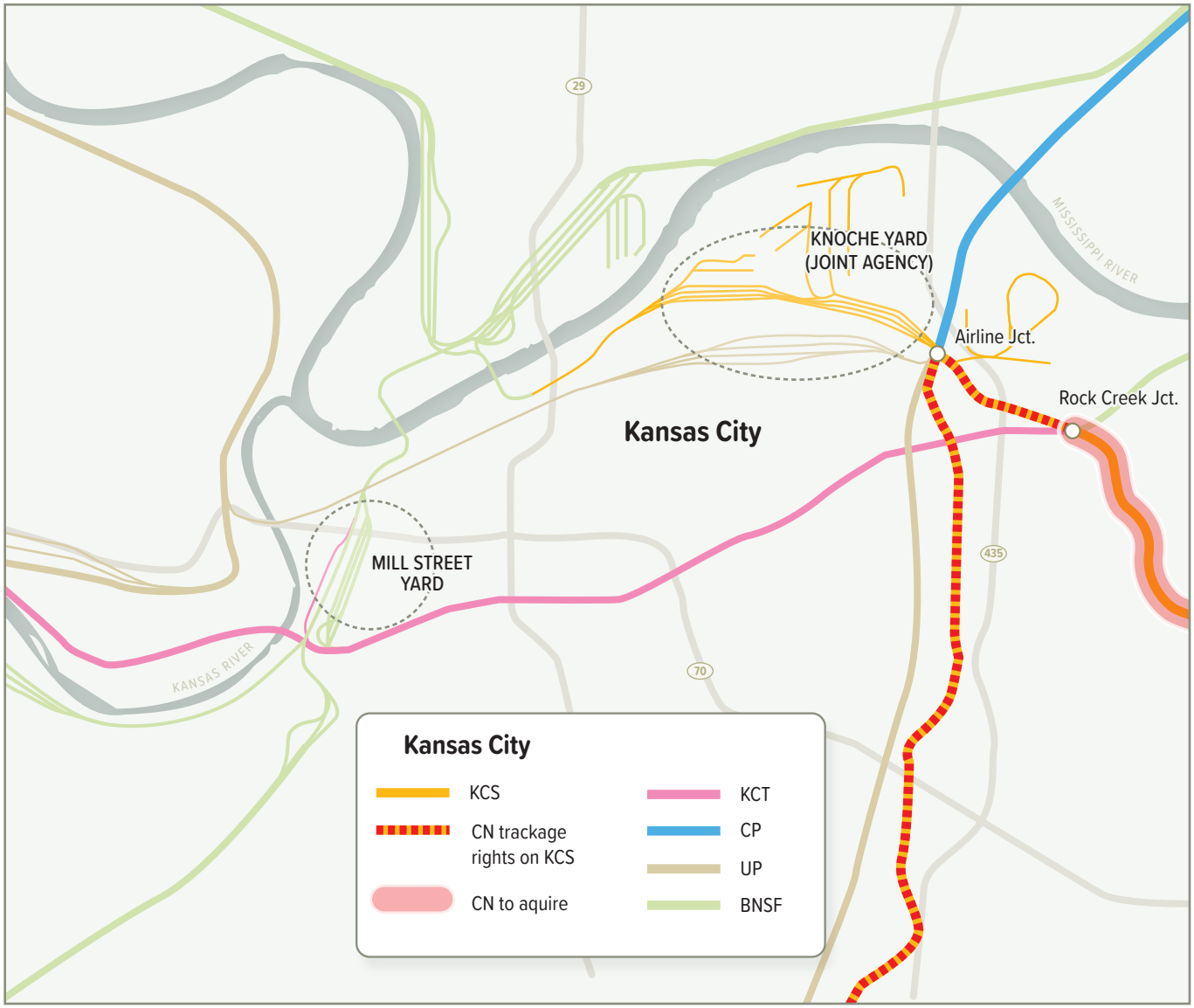

29
KNOCHE YARD
(JOINT AGENCY)
MISSISSIPPI RIVER
Airline Jct.
Rock Creek Jct.
Kansas City
MILL STREET
YARD
435
70
KANSAS RIVER
Kansas City
KCS
CN trackage
rights on KCS
CN to aquire
KCT
CP
UP
BNSF

Exhibit 2

Proposed Agreements

Exhibit 2A

Asset Purchase Agreement

ASSET PURCHASE AGREEMENT

By and Between

KANSAS CITY SOUTHERN RAILWAY COMPANY

and

ILLINOIS CENTRAL RAILROAD COMPANY

Dated as of [●], 2022

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Section 5.16	Sufficiency of Assets
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ASSET PURCHASE AGREEMENT

This ASSET PURCHASE AGREEMENT (this "Agreement"), dated as of [●], 2022, is entered into by and between Kansas City Southern Railway Company, a Delaware corporation ("KCSR" or "Seller") and Illinois Central Railroad Company, an Illinois corporation ("Purchaser"). Seller and Purchaser are referred to herein individually as a "Party" and collectively as the "Parties."

W I T N E S S E T H:

WHEREAS, Seller owns, operates and has certain right, title and interest in and to those certain lines of railroad located between (i) KCSR Milepost 192.4 in the vicinity of Springfield, Illinois and KCSR Milepost 482.0 in the vicinity of Kansas City, Missouri, a distance of approximately [●] miles, (ii) KCSR Milepost 68.2 in the vicinity of Roodhouse, Illinois and KCSR Milepost 287.2 in the vicinity of Church, Illinois, a distance of approximately [●] miles, (iii) KCSR Milepost 226.7 in the vicinity of Murrayville, Illinois and KCSR Milepost 216.3 in the vicinity of Jacksonville, Illinois, a distance of approximately [●] miles, and (iv) KCSR Milepost 0.0 and KCSR Milepost 3.0 in the vicinity of Mexico, Missouri, a distance of approximately [●] miles and certain related assets shown on Exhibit A (collectively, and as defined more fully below, the "Subject Line"), and certain other assets as defined in Section 2.01 (the Subject Line and such other assets referred to collectively hereinafter as the "Purchased Assets");

WHEREAS, Purchaser desires to acquire the Subject Line and the other Purchased Assets and is willing to assume certain liabilities, in each case as set forth hereinafter, and Seller is willing to sell, convey and assign the same, all on the terms and conditions set forth in this Agreement; and

NOW, THEREFORE, for and in consideration of the foregoing, the representations, warranties, covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE I.
DEFINITIONS

Section 1.01. Definitions.

The following terms shall have the respective meanings set forth below throughout this Agreement:

"Accounts Receivable" means the accounts receivable, billed and unbilled, of Seller.

"Adjustment Amount" shall have the meaning set forth in Section 4.02(b).

"Adjustment Statement" shall have the meaning set forth in Section 4.02(b).

"Affiliate" means, with respect to any Person, any other Person that, directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person. The term "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through ownership of voting securities, by contract or otherwise.

"Agreement" shall have the meaning set forth in the Preamble hereto.

"Allocation Schedule" shall have the meaning set forth in Section 7.04(d).

"Asset Taxes" means ad valorem, property, excise, sales, use, public utility and similar Taxes based upon the acquisition, operation or ownership of the Purchased Assets, the Purchased Interests and assets owned by the Purchased Entities, but excluding, for the avoidance of doubt, Income Taxes and Transfer Taxes.

"Assigned Contracts" shall have the meaning set forth in Section 2.01(c).

"Assignment and Assumption Agreement" shall have the meaning set forth in Section 4.03(e).

"Assumed Liabilities" shall have the meaning set forth in Section 3.01.

"Base Purchase Price" shall have the meaning set forth in Section 4.02(a)

"Bill of Sale" shall have the meaning set forth in Section 4.03(a).

"Business Day" means any day other than a Saturday, Sunday or a day on which the banks in New York, NY are authorized or obligated by Law or executive order to close.

"Cap" shall have the meaning set forth in Section 10.02(c).

"Claim Notice" shall have the meaning set forth in Section 10.02(d).

"Closing" shall have the meaning set forth in Section 4.01.

"Closing Date" shall have the meaning set forth in Section 4.01.

"Code" means the Internal Revenue Code of 1986, as amended.

"Confidential Information" shall have the meaning set forth in Section 7.08(e).

"CP" means Canadian Pacific Railway Company.

"Data Room" means the "[●]" virtual data room relating to the transactions contemplated by this Agreement hosted by [●].

"Deed" shall have the meaning set forth in Section 4.03(d).

"Disclosing Party" shall have the meaning set forth in Section 7.08(c).

"Disclosure Schedules" shall have the meaning set forth in ARTICLE V.

"Electronic Delivery" shall have the meaning set forth in Section 11.08.

"Encumbrance" means any mortgage, lien, encumbrance, charge, option, right of first refusal or first offer, security interest, pledge, right of way, easement or encroachment.

"Environmental Laws" means any and all Laws that have as their principal purpose the protection, preservation, investigation, remediation, or restoration of, or prevention of harm or damage to, natural resources or the environment, or (to the extent addressing human exposure to Hazardous Substances) occupational or human health and safety, including the Comprehensive Environmental Response, Compensation and Liability Act; the Resource Conservation and Recovery Act; the Hazardous Materials Transportation Act; the Federal Insecticide, Fungicide, and Rodenticide Act; the Toxic Substances Control Act; the Clean Water Act; the Clean Air Act; and the Oil Pollution Act.

"Environmental Liabilities" means any Liability that arises under or relates to Environmental Laws or a Hazardous Substance, including for property damage, personal injury or death caused by an actual or alleged Release, or exposure to, a Hazardous Substance at any location whatsoever including a location at which Hazardous Substances have been disposed, for Remedial Action, and for any violation of Environmental Law.

"Equity Transfer Document" means [●].[1]

"Excluded Assets" shall have the meaning set forth in Section 2.02.

"Excluded Contracts" shall have the meaning set forth in Section 2.02(g).

"Excluded Liabilities" shall have the meaning set forth in Section 3.02.

"FCC" means the Federal Communications Commission.

"FCC Approval" means authorization from the FCC pursuant to 49 U.S.C. § 310(d) for the assignment of all radio frequency licenses currently held by Seller related to the Purchased Assets.

"FCC Licenses" shall have the meaning set forth in Section 2.01(j).

"Final 338(h)(10) Allocation" shall have the meaning set forth in Section 7.04(g)(iv).

"Final Determination" shall have the meaning set forth in Section 10.02(e).

[1] **Note to Draft**: To include the documents transferring 8.33% of the equity share in KCT and 100% of the equity share in GWER.

"FRA" shall have the meaning set forth in Section 7.05(c).

"Fraud" means actual and intentional fraud or misrepresentation made by a Party with respect to the specific representations and warranties of such Party expressly set forth in this Agreement with the knowledge that such representation and warranty was false when made, that such Party had the intent to induce the other Party to act or refrain from acting in making such representation and warranty, that such other Party acted in reliance on such misrepresentation or false representation and warranty, and as a result such other Party suffers harm.

"Fundamental Representations" shall have the meaning set forth in Section 10.01.

"GAAP" means generally accepted accounting principles in the United States as in effect from time to time, as consistently applied.

"Governmental Authority" means any government or political subdivision, whether federal, state, local, foreign or supranational, or any agency, authority, official or instrumentality of any such government or political subdivision, or any federal, state, local, foreign or supranational court, tribunal or arbitrator.

"Governmental Order" means any order, judgment, injunction, decree, writ, stipulation, determination or award, in each case, entered by or with any Governmental Authority.

"GWER" shall have the meaning set forth in Section 2.01(e)(iii).

"Haulage Agreement" shall have the meaning set forth in Section 4.03(g).

"Hazardous Substance" means any pollutant or contaminant or any toxic, radioactive or otherwise hazardous substance, waste or material, including petroleum, as such terms are defined in, identified pursuant to, or give rise to Liability under any Environmental Law, per- and polyfluoroalkyl substances, and any substance that would reasonably be expected to have an adverse impact on human health or property.

"IFG Terminal" shall have the meaning set forth in Section 2.01(e)(ii).

"IFG Terminal Access Trackage Rights" shall have the meaning set forth in Section 2.01(f).

"Income Taxes" means (a) all Taxes based upon, measured by, or calculated with respect to gross or net income, gross or net receipts or profits (including franchise Taxes and any capital gains, alternative minimum, and net worth Taxes, but excluding ad valorem, property, excise, severance, production, sales, use, real or personal property transfer or other similar Taxes), (b) Taxes based upon, measured by, or calculated with respect to multiple bases (including corporate franchise, doing business or occupation Taxes) if one or more of the bases upon which such Tax may be based, measured by, or calculated with respect to is included in clause (a) above, or (c) withholding Taxes measured with reference to or as a substitute for any Tax included in clauses (a) or (b) above.

"Indemnified Party" shall have the meaning set forth in Section 10.02(d).

"Indemnitor" shall have the meaning set forth in Section 10.02(d).

"Intellectual Property" means all rights in intellectual property of any type throughout the world, including (a) patents, patent applications and statutory invention registrations, including continuations, continuations-in-part, divisionals, provisionals, reexaminations, reissues and extensions; (b) name and source identifiers; (c) copyrights, whether registered or unregistered, database rights, and registrations and applications for registration thereof; and (d) trade secrets.

"IRS" means the Internal Revenue Service.

"KCS" means Kansas City Southern, a Delaware corporation.

"KCSR" shall have the meaning set forth in the Preamble hereto.

"KCTR" shall have the meaning set forth in Section 2.01(e)(i).

"Knowledge" or any other similar knowledge qualification, shall mean the actual or constructive knowledge of an individual, assuming due inquiry. For purposes of this Agreement, Knowledge of Seller and Knowledge of Purchaser shall, respectively, be limited to the actual knowledge of those persons listed under such Party's name on Section 1.01 of the Disclosure Schedules.

"Law" means any law, statute, code, ordinance, regulation or Governmental Order or other legally enforceable requirement of any Governmental Authority.

["Leased Real Property" shall have the meaning set forth in Section 5.08(a).]

"Liability" means any liability, debt, guarantee, assurance, commitment, claim, deficiency, or obligation, whether known or unknown, fixed, absolute or contingent, matured or unmatured, accrued or unaccrued, liquidated or unliquidated, asserted or unasserted, due or to become due, whenever or however arising (including whether arising by operation of Law, or out of any contract, or of any tort based on negligence or strict liability, or otherwise based on strict liability) and whether or not the same would be required to be stated in financial statements or disclosed in the notes thereto.

"Losses" shall have the meaning set forth in Section 10.02(a).

"Material Adverse Effect" means any event, change, development, circumstance or effect that is materially adverse to (x) the value of the Purchased Assets or the amount of the Assumed Liabilities, taken as a whole, or (y) the ability of Seller to consummate the transactions contemplated by this Agreement; *provided* that none of the following shall be deemed to constitute, and none of the following shall be, either alone or in combination, taken into account in determining whether there has been, a Material Adverse Effect: (a) any adverse event, change, development, circumstance or effect (whether short-term or long-term) arising from or relating to (i) general business, industry or economic conditions, (ii) national or international political or social conditions, including the engagement by the United States or any other country in hostilities, whether or not pursuant to the declaration of a national emergency or war, or the occurrence of

any military or terrorist attack, any conditions resulting from natural or manmade disasters or other acts of God or weather conditions, flood, epidemics, pandemics or other similar outbreaks or health crises (including the COVID-19 pandemic) or other force majeure events, (iii) changes in financial, banking or securities markets (including any disruption thereof and any decline in the price of any security or any market index), (iv) changes in GAAP or other applicable accounting rules or standards, (v) changes in Laws or the entry, revision or reversal of any Governmental Order, (vi) the taking of any action required by this Agreement or any of the other Transaction Documents, (vii) the announcement, pendency or completion of the transactions contemplated by this Agreement or any of the other Transaction Documents or the identity of Purchaser, including Losses or threatened Losses of employees, customers, suppliers, distributors or others having relationships with Seller or any of its Affiliates or with the Purchased Assets, or (viii) the terms or availability of Purchaser's financing with respect to the transactions contemplated by the Transaction Documents; (b) any failure to meet a forecast (whether internal or published) of revenue, earnings, cash flow, or other data for any period or any change in such a forecast; *provided* that this clause (b) shall not prevent a determination that any event, change, development, circumstance or effect (whether short-term or long-term), not otherwise excluded from this definition of Material Adverse Effect, that results in such failure to meet projections or forecasts has resulted in a Material Adverse Effect; (c) matters disclosed or referred to in the Disclosure Schedules; (d) any event, change, development, circumstance or effect (whether short-term or long-term) with respect to which Purchaser has Knowledge on the date hereof; or (e) any actions taken or omitted to be taken by or at the request or with the consent of Purchaser or any of its Affiliates.

"National Priorities List" means the list of sites of national priority under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 et seq., among the known Releases or threatened Releases of Hazardous Substances, pollutants, or contaminants throughout the United States.

"Party" shall have the meaning set forth in the Preamble hereto.

"PCBs" shall have the meaning set forth in Section 5.09(i).

"Permits" means all governmental licenses, permits or other governmental authorizations related to the Purchased Assets.

"Permitted Encumbrances" means (a) all existing agreements, encroachments, claims, easements, servitudes, occupancies, grants, reservations, deed obligations and similar covenants, rights, title defects and other impediments, whether or not recorded and whether or not this Agreement provides actual notice thereof, by operation of Law or otherwise, (b) all existing telecommunications facilities, public and private utilities, pipe and wire crossings, reservations, exceptions and restrictions whether or not of record, (c) legally applicable building, zoning, subdivision and other federal, state, provincial, county, municipal or local Laws, ordinances and regulations, (d) property Taxes and assessments, both general and special, which may become due or payable on or after the Closing Date which relate to all periods from and after the Closing, (e) any and all encroachments which might be revealed by a survey meeting applicable state or provincial minimum technical requirements and (f) any and all existing ways and servitudes, and rights of way, howsoever created, for roads, streets and highways.

"Person" means any individual, corporation, partnership, firm, joint venture, association, limited liability company, limited liability partnership, joint-stock company, trust, joint venture, unincorporated organization, governmental, judicial or regulatory body, business unit, division or any other business entity, organization or Governmental Authority.

"Pre-Closing Tax Period" means any taxable period (or portion of any Straddle Period) ending on or before the Closing Date.

"Prior Environmental Liabilities" shall have the meaning set forth in Section 3.02(b).

"Proceeding" means any claim, charge, action, arbitration, audit, investigation, hearing, litigation or suit (whether civil, criminal, administrative or judicial) commenced, brought, conducted or heard by or before any Governmental Authority.

"PTC" shall have the meaning set forth in Section 7.05(c).

"Purchase Price" shall have the meaning set forth in Section 4.02(a).

"Purchased Assets" shall have the meaning set forth in the Recitals.

"Purchased Entities" shall mean KCTR and GWER.

"Purchased Interests" shall have the meaning set forth in Section 2.01(e).

"Purchaser" shall have the meaning set forth in the Preamble hereto.

"Purchaser Draft 338(h)(10) Allocation" shall have the meaning set forth in Section 7.04(g)(i).

"Purchaser Indemnified Parties" shall have the meaning set forth in Section 10.02(a).

"Release" means any spill, seepage, discharge, leak, migration, emission, escape, injection, pouring, pumping, emptying, dumping, disposal or other release of any Hazardous Substances into the indoor or outdoor environment.

"Remedial Action" means any investigation, remediation, clean-up, abatement, removal or monitoring (or words of similar import) of Hazardous Substances.

"Representative" means any director, officer, member, owner, partner, employee, agent or advisor (including attorneys, accountants, consultants, bankers and financial advisors) of a Party.

"Required Consent Contract" shall have the meaning set forth in Section 2.03(a).

"Reviewing Accountant" shall have the meaning set forth in Section 7.04(g)(iii).

"Section 338 Taxes" has the meaning set forth in Section 7.04(g)(vi).

"Section 338(h)(10) Election" has the meaning set forth in Section 7.04(f).

"Seller" shall have the meaning set forth in the Preamble hereto.

"Seller 338(h)(10) Allocation Notice" shall have the meaning set forth in Section 7.04(g)(ii).

"Seller Indemnified Parties" shall have the meaning set forth in Section 10.02(b).

"Seller Marks" shall have the meaning set forth in Section 7.09.

"Seller Taxes" means, without duplication, (a) any and all Income Taxes imposed on Seller, any of its direct or indirect owners or Affiliates, or any combined, unitary, or consolidated group of which any of the foregoing is or was a member, (b) Taxes of the Purchased Entities or attributable to the Purchased Assets and Purchased Interests Pre-Closing Tax Period, (c) Transfer Taxes that Seller is obligated to pay as set forth in Section 7.04(a), (d) Asset Taxes that Seller is obligated to pay as set forth in Section 7.04(b), (e) any and all Taxes resulting from a breach by Seller of any covenant relating to Taxes, (f) Section 338 Taxes and (g) any Taxes imposed on or with respect to the ownership or operation of the Excluded Assets or that are attributable to any asset or business of Seller that is not part of the Purchased Assets; *provided, however*, that no such Tax shall constitute a Seller Tax (i) if Purchaser is liable therefor under Section 7.04 or (ii) to the extent that the amount of such Tax was included as an adjustment to the Purchase Price under Section 4.02.

"STB" means the U.S. Surface Transportation Board.

"STB Approvals" shall mean, collectively, (a) approval pursuant to 49 U.S.C. § 11323 *et seq*. of the application in Finance Docket No. 36500 for CP to acquire control of KCS and Seller (and each of the related applications in Finance Docket No. 36500 (Sub-Nos. [●])); (b) approval or exemption pursuant to 49 U.S.C. § 11323 *et seq*. and/or 49 U.S.C. § 10901(as applicable) of the transactions contemplated by this Agreement, and (c) approval or exemption pursuant to 49 U.S.C. § 11323 *et seq*. of the transactions contemplated by the Trackage Rights Agreement, in each case by final order of the STB which shall have become effective and otherwise be in full force and effect.

"Straddle Period" means any taxable period that includes but does not end on the Closing Date. Where necessary to allocate Taxes under this Agreement with respect to a Straddle Period (a) property, ad valorem, intangible, and other periodic Taxes allocable to the Pre-Closing Tax Period shall be equal to the amount of such Taxes for the entire Straddle Period multiplied by a fraction, the numerator of which is the number of calendar days during the Straddle Period that are in the Pre-Closing Tax Period and the denominator of which is the number of calendar days in the entire Straddle Period; and (b) Taxes (other than Taxes allocable under clause (a) of this definition) allocable to the Pre-Closing Tax Period shall be computed on the basis of a "closing of the books," as if such taxable period ended as of the end of the day on the Closing Date; *provided* that exemptions, allowances or deductions that are calculated on an annual basis (including depreciation and amortization deductions) shall be allocated between the period ending on the Closing Date and the period beginning after the Closing Date in proportion to the number of calendar days in each period. Notwithstanding anything herein to the contrary, all Section 338

Taxes shall be allocable to the portion of the Straddle Period ending on and including the Closing Date.

"Subject Line" shall mean the lines of railroad described in the Recitals, and shall include, with respect to such lines, all tracks, rails, ties, ballast, spikes, tie plates, fastenings, rail anchors, track materials, connections, switches and frogs, shared diamonds, wyes, crossings, bridges, culverts, signals, crossing warning devices, and other rail-related fixtures and improvements, supporting structures and other infrastructure, including all buildings, improvements, shops, on-duty points, yards, terminals, parking and storage areas, adjoining siding, industrial, ancillary and yard track property located on the Transferred Real Property.

"Tax" or "Taxes" (a) all taxes, assessments, duties, levies, imposts or other similar charges in the nature of a tax imposed by a Governmental Authority (whether payable directly or by withholding and whether or not requiring the filing of a Tax Return), including all income, profits, gross receipts, license, payroll, employment, excise, fuel, environmental, severance, stamp, occupation, premium, customs duties, license, withholding, social security, unemployment, disability, ad valorem, real property, personal property, sales, use, lease, transfer, registration, value added, alternative or add-on minimum, estimated, and withholding (including backup withholding) or other similar taxes (together with any and all interest, penalties and additions to tax imposed with respect thereto), (b) including any Liability for payment of any amounts of the type described in clause (a) as a result of being a member of any affiliated, consolidated, combined or unitary group or required to be included in any Tax Return relating to such group prior to the Closing Date by reason of Treasury Regulations Section 1.1502-6(a) or any similar foreign, state or local Law, and (c) any Liability for the payment of any amounts of the type described in clause (a) or (b) as a result of the operation of Law or any express or implied obligation to indemnify any other Person.

"Tax Returns" means any and all returns, declarations, claims for refund, or information returns or statements, reports and forms relating to Taxes filed with any governmental Tax authority (including any schedule or attachment thereto) with respect to the Purchased Assets and Purchased Interests, including any amendment thereof.

"Third Party" means any Person not a Party to this Agreement.

"Third Party Claim" shall have the meaning set forth in Section 10.02(f).

"Threshold Amount" shall have the meaning set forth in Section 10.02(c).

"Trackage Rights Agreement" shall have the meaning set forth in Section 4.03(f).

"Transaction Documents" means this Agreement, the Bill of Sale, the Deed, the Assignment and Assumption Agreement, the Transition Services Agreement, the Haulage Agreement, the Trackage Rights Agreement, the Equity Transfer Documents and each certificate or instrument to be executed and delivered by any Party in connection with or pursuant to this Agreement.

"Transfer Taxes" shall have the meaning set forth in Section 7.04(a).

"Transferred Real Property" shall have the meaning set forth in Section 2.01(b).

"Transition Services Agreement" shall have the meaning set forth in Section 4.03(c).

ARTICLE II.
PURCHASE AND SALE OF ASSETS

Section 2.01. Purchase and Sale of the Purchased Assets.

On the terms and subject to the conditions set forth in this Agreement, Seller hereby agrees to sell, assign (but only to the extent assignable), transfer, convey and deliver to Purchaser, and Purchaser hereby agrees to purchase, acquire, and accept from Seller on the Closing Date, all of Seller's right, title and interest in, to and under the following assets, to the extent that such assets exist as of the Closing, in all cases excepting the Excluded Assets:

(a) the Subject Line;

(b) the real property as described in Section 2.01(b) of the Disclosure Schedules attached hereto, together with (and subject to) all easements, rights-of-way and other rights and interests appurtenant thereto (collectively, the "Transferred Real Property");

(c) those certain agreements, leases and contracts of Seller that relate to the ownership and operation of the Subject Line[, including the Leased Real Property,] and are listed in Section 2.01(c) of the Disclosure Schedules (the "Assigned Contracts");[2]

(d) Seller's interest in the Godfrey-East. St. Louis Joint Facility Agreement, dated as of October [●], 1989, related to the joint facility located between KCSR Milepost 28.0 in the vicinity of Godfrey, Illinois and KCSR Milepost 287.2 in the vicinity of Church, Illinois, a distance of approximately [●] miles;

(e) The following share interest owned by Seller (collectively, the "Purchased Interests"):

(i) 8.33% of the total equity share interest in Kansas City Terminal Railway Company ("KCTR") and all rights, privileges and post-Closing obligations associated therewith;

(ii) a 50% ownership interest in KCSR's International Freight Gateway intermodal terminal (the "IFG Terminal") located south of Kansas City, Missouri (including the right to use all tracks and facilities within, and providing access to, the IFG Terminal); and

[2] **Note to Draft**: Contracts to be discussed. Not certain whether any portion of the KCS line is leased.

(iii) 100% of the total equity share interest in Gateway Eastern Railway Company ("GWER").

(f) overhead trackage rights on KCSR's Pittsburgh Subdivision to reach the IFG Terminal, extending from approximately KCSR Milepost 5.6 at Airline Junction in the vicinity of Kansas City, Missouri and KCSR Milepost 29.5 in the vicinity of Grandview, Missouri, a distance of approximately 23.9 miles (the "IFG Terminal Access Trackage Rights");

(g) assignment of Seller's existing overhead trackage rights, pursuant to the August 5, 1997 agreement or any amended or successor agreement, over Union Pacific Railroad Company's KC Metro Subdivision between approximately milepost 276.8 at Rock Creek Junction and approximately milepost 278.2 in the vicinity of Southwest Junction/Air Line Junction in Kansas City, Missouri, a distance of approximately 1.4 miles;

(h) all Permits, in each case to the extent transferable by Seller;

(i) all keys, entry devices and passcodes with respect to the Purchased Assets including combinations to any locks or vaults (if any) in Seller's possession;

(j) the radio license authorizations currently held by Seller with respect to the Purchased Assets, as set forth on Section 2.01(j) of the Seller Disclosure Schedule (the "FCC Licenses"); and

(k) copies of the books and records relating to the ownership and operation of the Purchased Assets by Seller and the Purchased Interests, including those records provided in the Data Room (but excluding (i) all Tax Returns and related books and records except Tax Returns and related books and records related to the Purchased Interests, (ii) any records prepared by Seller in connection with the transactions contemplated by this Agreement, (iii) Seller's corporate charter, seal, minute books, stock record books, and other similar documents relating to the organization, maintenance and existence of Seller, (iv) any records that are the subject to the work product or other similar privilege or protection and (v) any transportation or customer agreements that are Excluded Contracts).

Section 2.02. Excluded Assets.

Other than the Purchased Assets and the Purchased Interests, all of Seller's assets, properties, rights and contracts of every description, real, personal, mixed, tangible and intangible, wherever situated (collectively, the "Excluded Assets") will remain the property of Seller after the Closing. The Excluded Assets include the following assets of Seller:

(a) all cash, cash equivalents and marketable securities;

(b) all Accounts Receivable (including rights to rebates, refunds, and similar items) of Seller;

(c) all tangible personal property other than the Subject Line, including all raw materials, work-in-process and other inventory, radios, locomotives, rolling stock and vehicles, maintenance-of-way equipment, and hand tools;

(d) all Intellectual Property owned by Seller together with the right to sue and collect for past infringement thereof, and all radio licenses or frequencies owned or operated by Seller;

(e) subject to Section 2.03 below, any Required Consent Contracts for which an effective consent or approval permitting the assignment of such contract(s) has not been obtained prior to the Closing Date;

(f) all claims, rights and causes of action relating to or arising from (i) any of the Excluded Assets or the Excluded Liabilities, and (ii) the ownership and operation of the Purchased Assets prior to the Closing Date;

(g) all agreements, leases and contracts of Seller that relate to the ownership and operation of the Subject Line other than those listed in Section 2.01(c) the Disclosure Schedules (the "Excluded Contracts");

(h) all prepaid expenses, credits, advance payments, security, deposits, charges, sums and fees;

(i) all policies of insurance and any proceeds or return of premiums thereunder;

(j) all claims, rights and interests of Seller in and to any deposits or refunds of Taxes, or Tax credits for any period, and all Tax deposits, refunds and credits related to the Purchased Assets for taxable periods (or portions thereof, having regard to Section 7.04) ending on or prior to the Closing Date (with all such Tax refunds and credits calculated as if the relevant Tax period ended on the Closing Date);

(k) Seller's Tax Returns and related books and records (excluding Tax Returns and related books and records relating to the Purchased Interests);

(l) all rights of Seller under or pursuant to this Agreement, the other Transaction Documents or any other instrument between Seller and Purchaser or their respective Affiliates entered into pursuant to this Agreement or the transactions contemplated hereby; and

(m) all other assets of Seller and its Affiliates.

Section 2.03. Required Consent Contracts.

(a) Anything in this Agreement to the contrary notwithstanding, this Agreement shall not constitute an agreement to assign or otherwise sell, convey or transfer any Assigned Contract (or any claim, right or benefit arising thereunder or resulting therefrom) prior to receiving any required consent or approval for such assignment, conveyance or transfer, or to enter into any other agreement or arrangement with respect thereto, if an attempted assignment, sale, conveyance or transfer thereof, or entering into any such agreement or arrangement, without the consent or approval of a Third Party, would constitute a breach thereof, or other contravention thereunder, be ineffective with respect to any party thereto or in any way adversely affect the rights of Seller or Purchaser thereunder; *provided*, *however*, that, if any such Assigned Contract may be so assigned, sold, conveyed or transferred without having any of the foregoing consequences, such

Assigned Contract shall be so assigned, sold, conveyed and transferred. With respect to any Assigned Contract as to which the consent or approval of a Third Party is required (each a "Required Consent Contract"), promptly after the date hereof, and for a period of 12 months from and after the Closing, Seller and Purchaser will use commercially reasonable efforts to obtain the written consent or approval of such Third Party(ies) to such Required Consent Contract for the sale, transfer, assignment and novation thereof to Purchaser, or written confirmation from such parties reasonably satisfactory in form and substance to Seller and Purchaser confirming that such consent is not required; *provided*, *however*, that Seller shall not be required to pay or incur any costs or expenses (including any requested consent fees) to obtain any required consent or approval under a Required Consent Contract, such costs and expenses to be borne solely by Purchaser, in the event that Purchaser, in its discretion, approves the payment or incurrence of such costs and expenses.

(b) Until such consent or approval is obtained with respect to any Required Consent Contract, to the extent permitted by applicable Law and the terms of any Required Consent Contract not assigned pursuant to Section 2.03(a), from and after the Closing Date, (i) Purchaser will obtain the claims, rights and benefits of Seller arising under such Required Consent Contract, (ii) Purchaser will perform, fulfill and discharge all of Seller's obligations and Liabilities thereunder that are Assumed Liabilities in a timely manner and in accordance with all applicable Laws and the terms of such Required Consent Contract for the benefit of Seller and the other party or parties thereto, (iii) Purchaser will indemnify, defend, and hold harmless Seller and its Affiliates from any Losses asserted against, incurred or suffered by any of them that relate to, result from or arise out of the failure of Purchaser to comply with this Section 2.03(b) with respect to any Required Consent Contract, including as a result of performance, non-performance or deficient performance under such Required Consent Contract and (iv) Seller agrees to enforce, at the reasonable request of Purchaser and at the expense and for the account of Purchaser, any rights of Seller under or arising from the Required Consent Contracts against any Third Party, including the right to elect to terminate any such Required Consent Contracts (or rights thereunder) in accordance with the terms of such Required Consent Contracts upon the written direction of Purchaser; *provided* that Purchaser shall be responsible for any termination fees resulting from or arising out of the termination of any Required Consent Contracts at the direction of Purchaser.

(c) With respect to any Required Consent Contract not assigned or transferred pursuant to Section 2.03(a) for which Purchaser must undertake performance pursuant to Section 2.03(b), Seller will pay to Purchaser any monies received by Seller from any Third Party for services rendered by Purchaser after the Closing Date, less any actual out-of-pocket costs or expenses incurred by Seller and payable to any Third Party as a result of receiving and processing payment of such monies.

(d) At the request of Seller, Purchaser shall use commercially reasonable efforts to assist Seller in seeking the unconditional release of Seller from any and all obligations or Liabilities under or in respect of any Assigned Contract constituting a Purchased Asset on the Closing Date or thereafter deemed a Purchased Asset as of the Closing Date, including by means of novation, release or similar arrangement with the applicable Third Party; *provided* that Purchaser shall not be responsible for any fees, out-of-pocket costs or expenses resulting from or arising out of seeking such unconditional releases.

ARTICLE III.
LIABILITIES

Section 3.01. Assumed Liabilities.

From and after the Closing Date, Purchaser assumes, and agrees to pay, perform and discharge in accordance with the respective terms and subject to the respective conditions thereof, the following Liabilities of Seller in all cases excepting the Excluded Liabilities (collectively, the "Assumed Liabilities"):

(a) all Liabilities arising out of, related to or required to be performed under the Purchased Assets, including the Assigned Contracts, to the extent arising out of, relating to or resulting from any act, error or omission of Purchaser occurring at or following the Closing; *provided*, *however*, that until such time as any Required Consent Contract is assigned or transferred to Purchaser pursuant to an effective consent or approval, Purchaser shall assume and undertake to pay, perform and discharge such Required Consent Contract in accordance with the terms of Section 2.03 herein;

(b) All obligations of Purchaser pursuant to the terms of the Haulage Agreement and the Trackage Rights Agreement;

(c) except as otherwise provided in the Trackage Rights Agreement and the Haulage Agreement, all Liabilities arising out of or related to the ownership, operation and use of the Subject Line from and after the Closing, including all Taxes that Purchaser is obligated to assume under Section 7.04; and

(d) all Liabilities arising out of, or related to, the ownership, operation or use of the Purchased Assets from and after the Closing. Seller shall fully cooperate and timely provide to Purchaser any information requested by Purchaser to properly review, evaluate, settle and/or litigate any Liabilities to be assumed by Purchaser pursuant to this Section 3.01(d).

Section 3.02. Excluded Liabilities.

Purchaser shall not assume or be obligated to pay, perform or otherwise discharge any of the following Liabilities of Seller (all of such Liabilities not so assumed by Purchaser being referred to herein as the "Excluded Liabilities"):

(a) except as otherwise provided in Section 2.03 herein, any Liabilities arising out of or related to the Excluded Assets or arising out of or related to indebtedness for borrowed money or capital lease obligations;

(b) except for any Environmental Liabilities of Purchaser for the removal and/or remediation of petroleum and petroleum-related substances on and emanating from the diesel shop refueling area of Seller's Venice, Illinois rail yard facility set forth in that certain Settlement Agreement and Release for KCS Venice, Illinois Facility Remediation, dated as of June 21, 2006, by and between Purchaser and Seller, which, for the avoidance of doubt, shall be retained by Purchaser, all Environmental Liabilities arising out of or related to the ownership, operation or use of the Purchased Assets, including the disposal of Hazardous Substances at any location

whatsoever, whether arising out of, related to, or resulting from, the ownership, operation or use of the Purchased Assets prior to the Closing, including all Environmental Liabilities for any Release of Hazardous Substances at the Purchased Assets or any other location whatsoever or violation of Environmental Law at the Purchased Assets, first occurring prior to the Closing even if continuing after the Closing, including any Environmental Liabilities for the Remedial Action or Release of Hazardous Substances identified on Section 3.02(b) of the Disclosure Schedules[3] ("Prior Environmental Liabilities");

(c) any Liability of GWER arising prior to or at the Closing;

(d) any Liability for Seller Taxes or public utilities relating to the Purchased Assets for periods (or portions thereof, having regard to Section 7.04), ending on or prior to the Closing Date;

(e) any Liability of Seller (i) to any employees or independent contractors of Seller and its Affiliates relating to their employment or retention by Seller and its Affiliates (including for salary, wages, commissions, labor protective conditions, or any other form of compensation, severance pay, termination pay, notice of termination of employment or pay in lieu of such notice, damages for wrongful dismissal, health, accident, sickness, death and disability benefits, workers compensation benefits, claims made under the Federal Employers Liability Act or the Consolidated Omnibus Budget Reconciliation Act of 1985, each as amended from time to time, employee benefits and claims, employee welfare benefits and claims, and all other claims arising out of, relating to or resulting from their employment or provision of services to Seller and its Affiliates) or (ii) under any employee benefit plan or agreement, employee welfare plan or employee pension plan of Seller and its Affiliates, including any multi-employer pension plan in which Seller or any of its Affiliates participates;

(f) any Liability of Seller in respect of any breach of or default under, or any non-compliance with respect to, any Assigned Contract by Seller to the extent arising out of, relating to or resulting from any act, error or omission of Seller occurring at or prior to Closing or any payment obligation of Seller for any goods or services provided to Seller under any Assigned Contract prior to Closing;

(g) All obligations of Seller pursuant to the terms of the Haulage Agreement and the Trackage Rights Agreement;

(h) any Liabilities arising out of, related to, or resulting from, the ownership, operation or use of the Purchased Assets prior to the Closing. Purchaser shall fully cooperate and timely provide to Seller any information requested by Seller to properly review, evaluate, settle and/or litigate any Liabilities to be assumed by Seller;

(i) any Liability of Seller to indemnify any Person by reason of the fact that such Person was a partner, manager, trustee, director, officer, employee or agent of Seller or any

[3] **Note to Draft**: Schedule will include description of certain known contamination/remediation issues on the Subject Line.

of its Affiliates or was serving at the request of any such Person as a partner, manager, trustee, director, officer, employee or agent of another Person;

(j) except as otherwise provided by the terms of this Agreement, any Liability of Seller for costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby, or under this Agreement or any other Transaction Document, or of Seller to any Affiliate or Representative of Seller;

(k) any Liability of Seller arising out of any collective bargaining agreement or labor contract to which Seller or any Affiliate is a party; and

(l) except as otherwise provided in this Agreement, any Liability of Seller to any customer of Seller or any Liability for any accounts payable of Seller as of the Closing, in each case related to or resulting from the ownership and operation of the Purchased Assets prior to the Closing.

ARTICLE IV.
CLOSING AND PURCHASE PRICE

Section 4.01. Closing; Closing Date Deliveries.

The closing of the transactions contemplated by this Agreement (the "Closing") shall take place, by exchange of documents by Electronic Delivery (except for the Deed, for which Seller shall deliver to Purchaser one (1) original wet-ink, signed and notarized copy for each county in which the Transferred Real Property is located), (a) within 90 days of the effective date of the STB Approvals, subject to the satisfaction of the conditions set forth in ARTICLE VIII (other than those conditions that are to be satisfied by action taken at the Closing, but subject to the satisfaction or waiver of such conditions at the Closing) or, to the extent permitted, waived by the Party(ies) entitled to the benefit thereof, or (b) at such other place, time and date as may be agreed between Seller and Purchaser (such date, the "Closing Date").

Section 4.02. Purchase Price; Adjustment Amount.

(a) In consideration of the transactions contemplated by this Agreement, Purchaser agrees (i) to pay $[●] (the "Base Purchase Price") *plus or minus* the Adjustment Amount calculated in the manner set forth in Section 4.02(b) (collectively, the "Purchase Price") and (ii) to assume the Assumed Liabilities.

(b) Not less than three Business Days prior to the Closing Date, Seller shall deliver to Purchaser a written statement in the form of Exhibit B (the "Adjustment Statement") setting forth (i) Seller's good faith estimate of Purchaser's share of the prorated amounts for the following, in each case as of the Closing Date (collectively, the "Adjustment Amount"): (A) Taxes in accordance with Section 7.04(b), (B) pre-paid (or accrued, but unpaid) fees related to the Permits, (C) payables and receivables under the Assigned Contracts and (D) [●][4], and (ii) on the basis of the foregoing, a calculation of the Purchase Price payable by Purchaser at Closing. For the

[4] **Note to Draft**: Additional items to be determined.

avoidance of doubt, if the Adjustment Amount is a positive number, such amount shall be added to the Base Purchase Price to calculate the Purchase Price and, if the Adjustment Amount is a negative number, the absolute value of such amount shall be deducted from the Base Purchase Price to calculate the Purchase Price.

Section 4.03. Seller Closing Deliveries.

At the Closing and subject to the terms and conditions herein contained, Seller shall deliver to Purchaser the following:

(a) a bill of sale for the personal property included in the Purchased Assets, in substantially the form attached hereto as Exhibit C, duly executed by Seller (the "Bill of Sale");

(b) a certificate pursuant to Treasury Regulations Section 1.1445-2(b) that Seller is not a foreign Person within the meaning of Section 1445 of the Code as well as IRS Form W-9 of Seller;

(c) the Transition Services Agreement, in substantially the form attached as Exhibit D regarding the provision of transition services, duly executed by Seller (the "Transition Services Agreement");

(d) for each county in which the Transferred Real Property is located, a quitclaim deed with respect to the transfer to Purchaser of the Transferred Real Property in such county, duly executed by Seller (collectively, the "Deed");

(e) an assignment and assumption agreement evidencing the sale, assignment, transfer, conveyance and delivery to Purchaser, and Purchaser's purchase, acquisition and acceptance from Seller on the Closing Date, of the Assigned Contracts and Assumed Liabilities, in substantially the form attached hereto as Exhibit E, duly executed by Seller (the "Assignment and Assumption Agreement");

(f) a trackage rights agreement granting Purchaser trackage rights over the IFG Terminal Access Trackage Rights, in substantially the form attached hereto as Exhibit F, duly executed by Seller (the "Trackage Rights Agreement");

(g) an agreement pursuant to which Purchaser agrees to provide haulage service for the account of Seller over the Subject Line, in substantially the form attached hereto as Exhibit G, duly executed by Seller (the "Haulage Agreement");

(h) a counterpart to the Equity Transfer Documents, duly executed by Seller;

(i) a certificate executed by an officer of Seller certifying that attached thereto are (i) true and correct copies of the organizational documents of Seller; (ii) a true and correct copy of the resolutions of the board of directors or other governing body of Seller authorizing the execution and delivery of this Agreement and the other Transaction Documents and the performance by Seller of the transactions contemplated hereby and thereby; and (iii) a certificate of good standing in respect of Seller from its applicable jurisdiction of organization;

(j) with respect to GWER, IRS Form 8023 (and any state forms) as required to effect the Section 338(h)(10) Election, completed and properly executed by Seller; and

(k) an officer's certificate of Seller required by Section 8.02(c) dated as of the Closing Date in substantially the form attached hereto as Exhibit H.

provided that where this Section 4.03 (or the definition of such document) refers to a Transaction Document other than this Agreement as being in substantially the form attached hereto, the form of such Transaction Document shall be subject to such changes as may be agreed to by the Parties, acting reasonably and in good faith, between the date hereof and the Closing Date.

Section 4.04. Purchaser Closing Deliveries.

At the Closing and subject to the terms and conditions herein contained, Purchaser shall deliver to Seller the following:

(a) the Purchase Price, by wire transfer of immediately available funds to an account designated in writing by Seller to Purchaser prior to the Closing Date;

(b) a counterpart of each Bill of Sale, duly executed by Purchaser;

(c) a counterpart of the Transition Services Agreement, duly executed by Purchaser;

(d) a counterpart of the Assignment and Assumption Agreement, duly executed by Purchaser;

(e) a counterpart of the Trackage Rights Agreement, duly executed by Purchaser;

(f) a counterpart of the Haulage Agreement, duly executed by Purchaser;

(g) a counterpart to the Equity Transfer Documents, duly executed by Purchaser;

(h) an officer's certificate of Purchaser required by Section 8.03(c), dated as of the Closing Date in substantially the form attached hereto as Exhibit I;

(i) a certificate, dated as of the Closing Date, from an officer of Purchaser certifying that attached thereto are (i) true, correct and complete copies of the organizational and governing documents of Purchaser; (ii) a true and correct copy of the resolutions of the board of directors (or board of managers, as applicable) of Purchaser authorizing the execution and delivery of this Agreement and the other Transaction Documents and the performance by Purchaser of the transactions contemplated hereby and thereby; and (iii) a good standing certificate in respect of Purchaser from its applicable jurisdiction of organization;

(j) with respect to GWER, IRS Form 8023 (and any state forms) as required to effect the Section 338(h)(10) Election, completed and properly executed by Purchaser; and

(k) an IRS Form W-9 or applicable IRS Form W-8.

Section 4.05. Withholding.

Provided that the certification contemplated by Section 4.03(b) is provided by Seller, neither Seller nor Purchaser expects for any withholding to be imposed under any applicable Tax Law in connection with the transactions contemplated by this Agreement. Notwithstanding the foregoing, Purchaser and its Affiliates shall be entitled to deduct and withhold from the consideration otherwise payable or deliverable pursuant to this Agreement to Seller such amounts as are required to be withheld and paid over to the applicable Governmental Authority under the Code or any applicable provision of Tax Law; *provided*, *however*, that (a) Purchaser shall use commercially reasonable efforts to notify Seller prior to making any such deduction or withholding and consider in good faith any claim by Seller that such withholding is not required or should be imposed at a reduced rate, and (b) Seller shall be given a reasonable opportunity to provide any Tax forms which might reduce or eliminate such withholding. Any amounts deducted and withheld pursuant to this Section 4.05 and timely paid over to the applicable Governmental Authority shall be treated for all purposes of this Agreement as having been paid to Seller in respect of which such deduction or withholding was made.

ARTICLE V.
REPRESENTATIONS AND WARRANTIES OF SELLER

Seller hereby represents and warrants to Purchaser that the statements set forth in this ARTICLE V are true and correct as of the date hereof, except as qualified by the correspondingly numbered disclosure schedules delivered by Seller to Purchaser (the "Disclosure Schedules") and arranged in sections corresponding to numbered and lettered sections contained in this ARTICLE V.

Section 5.01. Organization and Standing.

Seller (a) is duly organized, validly existing and in good standing under the Laws of the State of [Delaware], (b) is duly qualified to do business as a foreign entity and is in good standing in each jurisdiction in which the conduct of its business so requires, and (c) has the corporate power and authority to own the Purchased Assets owned by it.

Section 5.02. Authorization, Execution and Enforceability.

Seller has the requisite corporate power, capacity and authority to execute and deliver this Agreement and each other Transaction Document to which it is a party, and to perform its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery by Seller of this Agreement and each other Transaction Document to which it is a party, the performance of its obligations hereunder and thereunder and the consummation of the transactions contemplated hereby and thereby have been duly authorized by all necessary corporate action on the part of Seller. This Agreement has been, and each other Transaction Document to which it is a party will be, duly executed and delivered by Seller. Assuming due authorization, execution and delivery by Purchaser, this Agreement constitutes, and each other Transaction Document to which it is a party will constitute when executed, the valid

and binding obligation of Seller, enforceable against Seller in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other similar Laws relating to or affecting creditors' rights generally, and by general equitable principles (regardless of whether such enforceability is considered in a Proceeding in equity or at Law).

Section 5.03. No Conflict or Violation.

Except as set forth in Section 5.03 of the Disclosure Schedules, and subject to the STB Approvals, the execution, delivery and performance of this Agreement and each other Transaction Document to which it is a party and the consummation of the transactions contemplated hereby and thereby by Seller will not: (a) conflict with any of the provisions of Seller's organizational documents, (b) result in a violation or contravention of any Law or Governmental Order applicable to Seller, (c) result in a breach of, or constitute a default under, or otherwise give any Person the right to terminate or accelerate the performance required under, any Assigned Contract, or (d) result in the creation or imposition of any Encumbrance on or with respect to any of the Purchased Assets.

Section 5.04. No Governmental Consent or Filing.

No consent, approval or authorization of, or declaration or filing with, or notice to, any Governmental Authority is required to be obtained, made or given by Seller to transfer or assign any Purchased Asset to Purchaser, or otherwise in connection with the execution, delivery or performance of this Agreement or any other Transaction Document, or the consummation of the transactions contemplated hereby or thereby, except for the STB Approvals and FCC Approval.

Section 5.05. Assigned Contracts.

Other than expirations or non-renewals following the date of this Agreement in accordance with the terms of the applicable Assigned Contract, each Assigned Contract is in full force and effect, and is valid, binding and enforceable against Seller and, to the Knowledge of Seller, the other parties thereto in accordance with its terms, in each case, except as such enforceability may be limited by bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other similar Laws relating to or affecting creditors' rights generally, and by general equitable principles (regardless of whether such enforceability is considered in a Proceeding in equity or at Law). As of the date hereof, neither Seller nor, to the Knowledge of Seller, any other party to an Assigned Contract is in breach or violation of, or default under, any Assigned Contract and, to the Knowledge of Seller, no event has occurred that with or without notice or lapse of time or both would constitute a breach or default (whether by lapse of time or notice or both) of any Assigned Contract. Seller has not received, since January 1, 2021, any written notice of any dispute or claim asserting any material breach or default under any Assigned Contract that has not been fully resolved or withdrawn by a Third Party without any further Liability or obligation of Seller. Seller is not currently renegotiating any of the Assigned Contracts or paying liquidated damages in lieu of performance thereunder. No Assigned Contract contains terms unduly burdensome to Seller with respect to the Purchased Assets or is harmful to the Subject Line.

Section 5.06. Purchased Assets.

Except as set forth in Section 5.06 of the Disclosure Schedules, Seller owns good, valid and marketable title to, or other legal rights to possess and use, the tangible personal property included in the Purchased Assets, free and clear of Encumbrances other than Permitted Encumbrances.

Section 5.07. Litigation.

Except as set forth in Section 5.07 of the Disclosure Schedules, there are no Proceedings pending or, to the Knowledge of Seller, threatened, seeking to restrain or prohibit Seller from entering into this Agreement or any transactions contemplated hereby or prohibit the Closing, or seeking damages against Seller or the Purchased Assets or Purchased Interests as a result of the consummation of this Agreement. No Proceeding is pending, and, to Sellers' Knowledge, no claim has been made or threatened, nor does there exist any fact or circumstance that could give rise to such a claim, in each case, since January 1, 2021, which has resulted in or reasonably could be expected to result in a liability or an indemnification obligation with respect to Seller or GWER.

Section 5.08. Real Property.

(a) [Section 5.08(a) of the Disclosure Schedules sets forth a list of all leases of real property to which Seller is a party included in the Purchased Assets (the real property subject to such leases being referred to herein as the "Leased Real Property"). Except as set forth in Section 5.08(a) of the Disclosure Schedules (i) Seller is not in default under any lease of Leased Real Property or has received notice of any asserted default, (ii) no event or condition exists which constitutes, or after notice or lapse of time or both would constitute, a default on the part of Seller under any lease of Leased Real Property, and (iii) as of the date of this Agreement, Seller has not received written notice from any other party to a lease of Leased Real Property that such other party intends to terminate, not renew, or renegotiate the terms of, any such lease.]

(b) There are no leases, subleases, concessions, licenses or other contracts granting to any Person other than Seller the right to use or occupy any Transferred Real Property [or Leased Real Property, in each case] that would constitute an Encumbrance (other than a Permitted Encumbrance). There are no outstanding options, rights of first offer, or rights of first refusal to purchase or lease any Transferred Real Property or any portion thereof or any interest therein.

(c) Seller has title to or other valid rights in and to the Transferred Real Property, subject only to Permitted Encumbrances[, and has a valid leasehold interest in each Leased Real Property, in each case] sufficient to enable Purchaser to operate the Purchased Assets after Closing in the same manner as currently operated by Seller and its Affiliates.

Section 5.09. Environmental Matters.[5]

Except as set forth in Section 5.09 of the Disclosure Schedules:

(a) Seller in its ownership, operation and use of the Purchased Assets, including operation of the Subject Line, ownership of the Transferred Real Property[, and use of the Leased Real Property,] (i) is, and has been since March 1, 2017, in compliance with all Environmental Laws and (ii) possesses and is in compliance with and has since March 1, 2017 possessed, been in compliance with and filed timely renewal applications for, all Permits that are required pursuant to Environmental Laws;

(b) (i) No Governmental Orders have been received by Seller from a Governmental Authority or other Person, and (ii) there are no Proceedings pending or, to the Knowledge of Seller, threatened against Seller, in the case of each of clauses (i) and (ii), that (A) relates to the Purchased Assets and (B) alleges a violation of any Environmental Law by Seller, seeks to impose Liabilities on Seller under an Environmental Law, or seeks the revocation, modification or termination of a Permit required pursuant to Environmental Laws held by Seller, that has not been settled, dismissed, paid or otherwise resolved or for which outstanding obligations exist under a settlement agreement;

(c) To the Knowledge of Seller, none of the Transferred Real Property [or the Leased Real Property] has been placed or proposed for placement on the National Priorities List or any similar state list of properties requiring Remedial Action under Environmental Law;

(d) Seller is not subject to any pending or threatened Proceeding in connection with the Purchased Assets alleging or concerning (i) any Liabilities arising from the Release or threatened Release of any Hazardous Substances, (ii) any Liabilities for personal injury or threatened personal injury, or damage or threatened damage to property or natural resources or (iii) any Liabilities or costs arising out of or under any Environmental Law;

(e) There has been no Releases of any Hazardous Substances on, at, under, to or from the Transferred Real Property [or the Leased Real Property,] that would reasonably be expected to require Remedial Action;

(f) The Remedial Action identified on Section 3.02(b) of the Disclosure Schedules[6] for certain Purchased Assets has been completed;

(g) To the Knowledge of Seller, there are no state or federal liens on the Transferred Real Property [or the Leased Real Property] arising under Environmental Laws for the payment of money by any Governmental Authority;

[5] **Note to Draft**: Subject to further review by environmental counsel.
[6] **Note to Draft**: Schedule will include description of certain known contamination/remediation issues on the Subject Line.

(h) [Neither] the Transferred Real Property [nor the Leased Real Property] is subject to a pending or recorded activity use limitation, institutional control or engineering control pursuant to any Environmental Laws;

(i) To the Knowledge of Seller, there is not constructed, placed, deposited, released, stored, disposed, leaching nor located on any of the Purchased Assets any polychlorinated biphenyls ("PCBs") or transformers, capacitors, ballasts or other equipment which contain dielectric fluid containing PCBs, or any other insulating material containing urea formaldehydes;

(j) To the Knowledge of Seller, there are no underground storage tanks, landfills, impoundments, waste piles, sumps, or gas or oil wells, or associated piping, located on the Transferred Real Property [or the Leased Real Property];

(k) Neither this Agreement nor the consummation of the transactions contemplated herein will result in any obligation for site investigation or cleanup, or notification to or consent of any Governmental Authority or Third Party, pursuant to any Environmental Laws, including any of the so-called "transaction triggered" or "responsible property transfer" Environmental Laws; and

(l) Seller has provided to Purchaser all material environmental reports, including compliance audits, Phase I environmental site assessments, and Phase II environmental site assessments, in Seller's possession regarding the Purchased Assets.

Section 5.10. Tax Matters.

(a) all Tax Returns required to be filed by or with respect to the Purchased Assets, the Purchased Interests, and the Purchased Entities have been timely filed and all such Tax Returns are correct and complete in all material respects. All material Taxes required to have been paid by the Purchased Entities or with respect to the Purchased Assets and Purchased Interests have been timely paid (whether or not shown as due on any Tax Return);

(b) There are no Encumbrances for Taxes upon the Purchased Assets or Purchased Interests;

(c) Seller and the Purchased Entities have withheld and paid or remitted all material Taxes required to be withheld and paid in connection with amounts paid or owing by it to any Person, and all Tax Returns required with respect thereto have been completed substantially in accordance with Law and timely filed;

(d) There is no pending dispute or claim concerning (i) any Taxes of Seller with respect to the Purchased Assets or the Purchased Interests, (ii) GWER, or (iii) to Seller's Knowledge, KCTR claimed or raised by any taxing authority in writing. Seller has not waived any statute of limitation or agreed to any extension of time with respect to any Tax assessment or deficiency pertaining to the Purchased Assets or Purchased Interests. GWER, and, to Seller's Knowledge, KCTR, have not waived any statute of limitation or agreed to any extension of time with respect to any Tax assessment or deficiency;

(e) All of the Purchased Assets have been properly listed and described on the applicable property Tax rolls prior to and including the Closing Date and no portion of the Purchased Assets constitutes omitted property for property Tax purposes;

(f) Each of the Purchased Entities is, and has been since its formation, properly treated as a corporation for U.S. federal income tax purposes;

(g) No Purchased Entity is or has been a member of any affiliated, consolidated, combined or unitary group for U.S. federal, state or non-U.S. income Tax purposes, other than any such group including Seller, and no Purchased Entity has any liability for Taxes of another Person under Treasury Regulation Section 1.1502-6 (or any similar provision of state, local or non-U.S. Law), under any agreement or arrangement, as a transferee or successor, or by contract or otherwise;

(h) None of the Purchased Entities is party to or bound by any Tax allocation or sharing agreement;

(i) None of the Purchased Entities has been a "distributing corporation" or "controlled corporation" in a transaction intended to qualify under Section 355 of the Code in the preceding three years;

(j) No Purchased Entity has participated in any "listed transaction" as defined in Treasury Regulations Section 1.6011-4(b)(2) (or any other transaction requiring disclosure under a similar provision of state, local or non-U.S. Law) and, with respect to each transaction in which any Purchased Entity has participated that is a "reportable transaction" within the meaning of Treasury Regulation Section 1.6011-4(b)(1), such participation has been properly disclosed on IRS Form 8886 (Reportable Transaction Disclosure Statement) and on any corresponding form required under state, local or non-U.S. Law;

(k) None of the Purchased Assets or the Purchased Interests are subject to any tax partnership agreement or are otherwise treated, or required to be treated, as held in an arrangement requiring a partnership income Tax Return to be filed under Subchapter K of Chapter 1 of Subtitle A of the Code; and

(l) There are no abatements of or exemptions from Taxes applicable to the Purchased Assets.

The representations and warranties contained in this Section 5.10 constitute the sole representations and warranties of Seller relating to Taxes.

Section 5.11. Compliance with Laws; Permits.

Seller has complied with and is in compliance with all Laws applicable to the Subject Line and the Purchased Assets. No violation of any Permit or Laws governing the issuance or continued validity thereof has occurred. Seller has all Permits necessary to own the Purchased Assets and operate the Subject Line lawfully and in the manner in which the Purchased Assets and the Subject Line are now operated, which Permits are listed in Section 5.11 of the Disclosure

Schedules. No Proceeding is pending or, to the Knowledge of Seller, threatened, to revoke or limit any Permit.

Section 5.12. Conduct of Business.

Since January 1, 2021 to the date of this Agreement, (a) no unrepaired physical Loss or damage has occurred to the Purchased Assets in an amount exceeding $1,000,000 individually, and (b) the Purchased Assets have not suffered any event, change, development, circumstance or effect that, individually or together with any other event, change, development, circumstance or effect, has resulted in or would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect (for the avoidance of doubt, excluding impacts of the COVID-19 pandemic).

Section 5.13. Condition of Subject Line and Bridges.

True and complete copies of all periodic Subject Line and bridge inspections and exemption reports in the possession or under the control of Seller or any of its Affiliates describing the condition of all of the Subject Line and bridges owned, leased or operated by Seller have been provided to Purchaser. All of such Subject Line and bridges are in good operating condition and repair and are capable of being utilized by Purchaser after Closing in the same manner in which it has been used by Seller, except as otherwise indicated on Section 5.13 of the Disclosure Schedules (specified by mile posts). Section 5.13 of the Disclosure Schedules sets forth the current track class of all Subject Line owned, lease or operated by Seller, and all slow orders affecting the designated track class. All of the Subject Line and bridges owned, leased or operated by Seller and currently in service are maintained and operated in compliance with all Laws in all material respects.

Section 5.14. Brokerage.

Except as set forth in Section 5.14 of the Disclosure Schedules, no Person is entitled to any brokerage commission, finders' fee or similar compensation in connection with this Agreement and the transactions contemplated hereby based on any arrangement or agreement made by or on behalf of Seller.

Section 5.15. Insurance.

Section 5.15 of the Disclosure Schedules sets forth a true and complete list and brief description (including nature of coverage, limits, deductibles, premiums and the loss experience for the most recent two years with respect to each type of coverage) of all policies of insurance maintained, owned or held by Seller on the date hereof with respect to the Purchased Asset. All insurance policies have been in effect since they were issued and remain in full force and effect in accordance with their terms. All premiums payable under such insurance policies have been timely paid and Seller has complied with each of such insurance policies and has not failed to give any notice or present any claim thereunder in a due and timely manner. With respect to each insurance policy, (a) the coverage limits under such policy have not been exhausted or impaired, (b) to the Knowledge of Seller, Seller has given timely notice to the applicable carrier of all matters occurring prior to the date hereof which may give rise to a claim under such policy and (c) to the Knowledge of Seller, the applicable carrier is not bankruptcy or insolvent or seeking

reorganization, winding-up, liquidation, dissolution or other similar relief with respect to it or its debts.

Section 5.16. Sufficiency of Assets.

(a) The Purchased Assets include all of the assets and rights necessary to conduct the business of Seller with respect to the Subject Line in the same manner as currently conducted by Seller and to enable Purchaser to operate the business of Seller with respect to the Subject Line after the Closing in the same manner as operated by Seller as of the Closing Date.

(b) Except as disclosed on Section 5.16(b) of the Disclosure Schedules, there are no material assets, rights, licenses, Permits or businesses of any kind or description, real, personal or mixed, tangible or intangible, owned, held or currently used for the conduct of the business of Seller with respect to the Purchased Assets that are not owned by Seller or currently used by it pursuant to valid and existing leases or licenses.

ARTICLE VI.
REPRESENTATIONS AND WARRANTIES OF PURCHASER

Purchaser hereby represents and warrants to Seller that the statements set forth in this ARTICLE VI are true and correct as of the date hereof.

Section 6.01. Organization and Standing.

(a) Purchaser is duly organized, validly existing and in good standing under the Laws of the State of Illinois, (b) Purchaser is duly qualified and in good standing as a foreign entity and is in good standing in each jurisdiction in which the conduct of its business so requires, except where the failure to be so qualified and in good standing would not reasonably be expected to have a material adverse effect on the ability of Purchaser to consummate the transactions contemplated by this Agreement and (c) Purchaser has all requisite corporate power and authority to own, lease, and operate its properties and to carry on its businesses as now being conducted.

Section 6.02. Authorization, Execution and Enforceability.

Purchaser has the requisite corporate power, capacity and authority to execute and deliver this Agreement and each other Transaction Document to which it is a party, and to perform its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery by Purchaser of this Agreement and each other Transaction Document to which it is a party, the performance of its obligations hereunder and thereunder and the consummation of the transactions contemplated hereby and thereby have been duly authorized by all necessary corporate action on the part of Purchaser. This Agreement has been, and each other Transaction Document to which it is a party will be, duly executed and delivered by Purchaser. Assuming due authorization, execution and delivery by Seller, this Agreement constitutes, and each other Transaction Document to which it is a party will constitute when executed, the valid and binding obligation of Purchaser, enforceable against Purchaser in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other similar Laws relating to or affecting

creditors' rights generally and by general equitable principles (regardless of whether such enforceability is considered in a Proceeding in equity or at Law).

Section 6.03. No Conflict or Violation.

Subject to the STB Approvals and the FCC Approval, the execution, delivery and performance of this Agreement and each other Transaction Document to which it is a party and the consummation of the transactions contemplated hereby and thereby by Purchaser will not: (a) conflict with any of the provisions of its organizational documents, (b) result in a violation or contravention of any statute, Law or Governmental Order applicable to it, (c) result in a breach of or constitute a default under, or otherwise give any Person the right to terminate or accelerate the performance required under, any contract or agreement to which Purchaser is a party, or (d) result in the creation or imposition of any Encumbrance on or with respect to any property or asset of Purchaser.

Section 6.04. No Governmental Consent or Filing.

No consent, approval or authorization of, or declaration or filing with, or notice to, any Governmental Authority is required to be obtained, made or given by Purchaser in connection with the execution, delivery or performance of this Agreement or any other Transaction Document to which it is a party, or the consummation of the transactions contemplated hereby or thereby, except for (a) the STB Approvals, (b) the FCC Approval and (c) those that, if not obtained, made or given, would not reasonably be expected to have, individually or in the aggregate, a material adverse effect on the ability of Purchaser to consummate the transactions contemplated hereby.

Section 6.05. Litigation.

As of the date hereof there are no Proceedings pending or, to the Knowledge of Purchaser, threatened in writing against Purchaser, in each case that would reasonably be expected to have, individually or in the aggregate, a material adverse impact on the ability of Purchaser to consummate the transactions contemplated hereby.

Section 6.06. No Brokers.

No Person is entitled to any brokerage commission, finders' fee or similar compensation in connection with this Agreement and the transactions contemplated hereby based on any arrangement made by or on behalf of Purchaser.

ARTICLE VII.
COVENANTS

Section 7.01. Effort

(a) From and after the date hereof, Purchaser and Seller shall use their respective commercially reasonable efforts to take, or cause to be taken, all actions, and to do, or cause to be done, all things necessary, proper or advisable under any applicable Law to consummate and make effective in the most expeditious manner possible the transactions

contemplated by this Agreement, including (i) the preparation and filing of all applications, forms, registrations and notices required to be filed to consummate the transactions contemplated by this Agreement, (ii) taking all actions necessary to obtain (and cooperating with each other in obtaining) any consent or approval of any Third Party, including any Governmental Authority, required to be obtained or made by Purchaser or Seller in connection with the transactions contemplated by this Agreement and (iii) the execution and delivery of any additional instruments necessary to consummate the transactions contemplated by this Agreement and to fully carry out the purposes of this Agreement.

(b) Notwithstanding anything to the contrary herein, Seller shall not be obligated to pay any costs, fees or expenses or incur any Liability in connection with any applications, petitions for exemption, forms, registrations, documentation or notices required to be filed by Purchaser to obtain any required consent or approval of any Governmental Authority or other Person in connection with the transactions contemplated by this Agreement, such costs, fees, expenses or Liabilities to be borne entirely by Purchaser.

Section 7.02. Conduct of Business.

(a) Except as set forth in Section 7.02(a) of the Disclosure Schedules, as required by applicable Law, as otherwise required or contemplated by the terms of this Agreement, or as Purchaser may otherwise consent to (such consent not to be unreasonably withheld, conditioned or delayed), from the date of this Agreement to the Closing, Seller shall:

(i) maintain and operate the Purchased Assets in the ordinary course and preserve intact the Purchased Assets and Seller's business relationships with material customers and others having material business relationships with Seller relating to the Purchased Assets;

(ii) pay or cause to be paid all material costs and expenses (including insurance premiums) incurred in connection therewith in a timely manner, except those contested in good faith by Seller;

(iii) use commercially reasonable efforts to keep all Assigned Contracts in full force and effect (and, where such Assigned Contracts are due to expire prior to Closing, to secure a renewal or extension of such Assigned Contracts on terms substantially similar to their existing terms);

(iv) comply with all of the material covenants contained in all Assigned Contracts;

(v) maintain in force until the Closing Date insurance policies equivalent to those in effect on the date hereof;

(vi) comply in all material respects, with all applicable Laws;

(vii) during normal business hours, in accordance with reasonable procedures established by Seller and in a manner that does not unreasonably interfere with the normal operation of Seller's business, including any procedures established by Seller

in response to the COVID-19 pandemic, accommodate reasonable access by Purchaser to (A) the Transferred Real Property [and the Leased Real Property] included in the Purchased Assets to allow Purchaser to prepare and stage for operations effective as of the Closing Date and (B) copies of the books and records relating to the ownership and operation of the Purchased Assets;

(viii) cause each of KCTR and GWER to not (A) make any material amendment to any Tax Return, (B) make, change or rescind any material Tax election, (C) make any settlement of or compromise any material Tax liability, (D) change or rescind any material Tax method of accounting, (E) make or surrender any right to claim a material refund of Taxes; or (F) consent to any extension or waiver of the limitation period applicable to any Tax assessment; and

(ix) not take any of the following actions: (A) sell, pledge, dispose of, lease, license or encumber any of the Purchased Assets other than in the ordinary course of business; (B) terminate or materially amend any Assigned Contract; (C) grant trackage rights, haulage rights or any right to use all or a part of the Subject Line to any Person; (D) abandon any part of the rail lines included in the Purchased Assets; (E) authorize any of, or commit or agree to take, whether in writing or otherwise, or do any of, the foregoing actions; (F) enter into, modify, amend or terminate any Assigned Contract.

(b) Anything to the contrary in this Agreement notwithstanding, the Parties acknowledge and agree that nothing in this Section 7.02 shall be deemed to limit the sale, lease, license, disposition or transfer of any Excluded Assets by Seller prior to, at or after the Closing.

(c) Anything to the contrary in this Agreement notwithstanding, nothing in this Section 7.02 shall prohibit or otherwise restrict in any way the operation of any business of Seller or its Affiliates, except solely with respect to the operation of the Subject Line and the Purchased Assets by Seller and its Affiliates.

(d) In the event of any damage to or destruction of any of the tangible Purchased Assets following the date hereof but prior to Closing (normal wear and tear excepted), to the extent that such damage or destruction results in costs to repair or replace such tangible Purchased Assets in excess of $1,000,000 in the aggregate, Seller shall, at its sole discretion, either (i) repair or replace such tangible Purchased Assets prior to or after Closing, at its own expense, or (ii) assign to Purchaser the value of any insurance proceeds received with respect to such damage or destruction.

Section 7.03. Expenses; No Offset.

Except as otherwise specifically provided in this Agreement, the Parties to this Agreement each shall bear their respective expenses incurred in connection with the preparation, execution and performance of this Agreement and consummation of the transactions contemplated hereby, including all fees and expenses of their respective Representatives. Neither Party may make any offset against amounts due to the other Party or its Affiliates pursuant to this Agreement, the other Transaction Documents or otherwise.

Section 7.04. Tax Matters[7].

(a) All amounts payable by Purchaser to Seller pursuant to this Agreement do not include any goods and services, harmonized sales, value-added, sales, use, consumption, multi staged, ad valorem, personal property, customs, excise, stamp, documentary, transfer or similar Taxes, duties or charges arising out of or in connection with the transactions effected pursuant to this Agreement (collectively, "Transfer Taxes"). All Transfer Taxes, and the collection and remittance thereof to appropriate Governmental Authorities, are the responsibility and for the account of Seller. Seller and Purchaser agree to use commercially reasonable efforts to mitigate, reduce or eliminate any Transfer Taxes, and to obtain any certificate or other document from any Governmental Authority or any other Person, and to jointly make any election as may be available to mitigate, reduce or eliminate any such Transfer Taxes that could be imposed on Seller as a result of the consummation of the transactions contemplated by this Agreement. Seller and Purchaser shall cooperate with one another in the preparation of any necessary Tax Returns and other related documentation with respect to such Transfer Taxes (including any exemption certificates and forms as each may request to establish an exemption from (or otherwise reduce) or make a report with respect to such Transfer Taxes).

(b) At Closing, Purchaser, on the one hand, and Seller, on the other hand, shall each pay its share of Asset Taxes through an adjustment to the Purchase Price, prorated as of the Closing Date based on the number of days in the tax period that ends on and includes the Closing Date and the number of days in the tax period that begins after the Closing Date, of any Asset Taxes that are due and payable with respect to the calendar year in which Closing occurs. At least three Business Days prior to Closing, Seller shall provide Purchaser its calculation of such proration, including supporting documentation. If the relevant property Tax notices have not been received prior to Closing, the Taxes shall be prorated based upon the most recent property Tax notices, which proration shall be final and not subject to further adjustment based on receipt of actual property Tax notices or any audit. To the extent the actual amount of an such Asset Tax (or the amount thereof paid or economically borne by a Party) is ultimately determined to be different than the amount (if any) that was taken into account as an adjustment to the Purchase Price under Section 4.02(b), timely payments will be made from one Party to the other to the extent necessary to cause each Party to bear the amount of such Tax that is allocable to such Party under this Section 7.04(b).

(c) Purchaser and Seller shall, and shall cause their respective Affiliates to, cooperate fully, as and to the extent reasonably requested by the other Party, in connection with the filing of Tax Returns and any Section 338(h)(10) Election, opening and closing of Tax accounts, and any audit, litigation or other Proceeding with respect to Taxes owed or claimed to be owed with respect to the Purchased Assets, the Purchased Interests, the Purchased Entities and the Assumed Liabilities.

(d) The Purchase Price related to the Purchased Assets (and the agreed fair market value of the Assumed Liabilities, if any, required to be treated as consideration under Section 1060 of the Code) shall be allocated among the Purchased Assets for Tax purposes (and also for all non-Income Tax purposes to the extent acceptable) in accordance with Section 1060 of

[7] **Note to Draft**: Subject to further review by tax counsel.

the Code and the Treasury Regulations thereunder and as set forth on Exhibit J, which schedule also sets forth the identifying information to be included in Part I of IRS Form 8594 (the "Allocation Schedule"). Such Allocation Schedule shall specifically set forth the allocation in accordance with Section 1060 of the Code the amount allocated to the Purchased Assets that are within the Subject Line. A draft of the Allocation Schedule shall be prepared by Purchaser and delivered to Seller not less than three Business Days prior to the Closing Date. Seller shall review and provide comments, and Purchaser shall duly consider all reasonable comments of Seller, and Seller and Purchaser will mutually determine the amounts set forth in the Allocation Schedule as of Closing. If Seller and Purchaser are unable to agree on the specific amounts to be allocated among the Purchased Assets in accordance with the Allocation Schedule then they shall continue to work together in good faith after Closing to reach agreement on such allocation. Upon reaching final agreement, either before or after Closing, the Parties shall reflect the agreed allocation in writing in an updated version of the Allocation Schedule.

(i) Purchaser and Seller shall file their income (and non-income, to the extent permitted under applicable Law) Tax Returns (including IRS Form 8594 and any corresponding state or local Tax form) in all respects and for all purposes consistent with the Allocation Schedule, and no Party shall thereafter take a position on any such Tax Return that is inconsistent with the Allocation Schedule unless expressly required to do so by Law. Purchaser and Seller shall also apply the values in the Allocation Schedule as of Closing for purposes of determining the amount of any Transfer Tax and the value of recording any Transferred Real Property conveyed pursuant to this Agreement. If Seller and Purchaser are unable to agree on the specific amounts to be allocated among the Purchased Assets in accordance with the Allocation Schedule then they shall be required to continue to work together in good faith to agree after Closing on a preliminary allocation among the Purchased Assets that shall be used for purposes of determining the amount of any Transfer Taxes or property transfer Taxes, and such preliminary allocation shall be used for all such related Tax Returns.

(ii) If any such allocation is disputed by any taxation or other Governmental Authority, the Party receiving notice of such dispute shall promptly notify the other Party and the Parties shall use commercially reasonable efforts to sustain those allocations. The parties shall share information and cooperate to the extent reasonably necessary to permit the transactions contemplated by this Agreement to be properly, timely and consistently reported.

(e) Any adjustments to the Purchase Price shall be reflected as an adjustment to the price allocated to the specific asset, if any, giving rise to the adjustment, and if any such adjustment does not relate to a specific asset, such adjustment shall be allocated among the Purchased Assets in a manner consistent with the Allocation Schedule. Such adjustments, if any, shall be determined in good faith by mutual agreement of Seller and Purchaser.

(f) Purchaser and Seller shall make a joint election under Section 338(h)(10) of the Code (and any corresponding elections under state and local Tax Law) with respect to the purchase and sale of GWER (the "Section 338(h)(10) Election") in accordance with applicable Law. Seller and Purchaser shall each deliver completed and executed copies of IRS Form 8023, required schedules thereto, and any similar state forms at the Closing in accordance with Section

4.03(j) and Section 4.04(j), or following the Closing as may be otherwise agreed by the Parties. If any changes are required in these forms as a result of information which is first available after these forms are prepared, the Parties will promptly make such changes. Seller shall include any income, gain, loss, deduction or other Tax item resulting from such Section 338(h)(10) Elections on its Tax Returns to the extent required by applicable Law.

(g) Section 338(h)(10) Allocation.

(i) Within 90 days following the Closing Date, Purchaser shall provide Seller with a proposed allocation statement allocating the "aggregate deemed sales price" (as such term is defined in U.S. Treasury Regulation Section 1.338-4) with respect to GWER in accordance with the U.S. Treasury Regulations promulgated under Section 338(h)(10) of the Code and consistent with the Allocation Schedule (the "Purchaser Draft 338(h)(10) Allocation").

(ii) If Seller disagrees with the Purchaser Draft 338(h)(10) Allocation, then Seller may, within 30 days after delivery of the Purchaser Draft 338(h)(10) Allocation, deliver a notice (the "Seller 338(h)(10) Allocation Notice") to Purchaser specifying the items with which Seller disagrees and setting forth Seller's proposed allocation. If the Seller 338(h)(10) Allocation Notice is duly delivered, Seller and Purchaser shall, during the 30 days following such delivery, use commercially reasonable efforts to reach agreement on the disputed items or amounts.

(iii) If Seller and Purchaser are unable to reach such agreement, then Seller and Purchaser shall submit all matters that remain in dispute with respect to the Seller 338(h)(10) Allocation Notice (along with a copy of the Purchaser Draft 338(h)(10) Allocation marked to indicate those line items not in dispute) to an independent, nationally recognized accounting firm mutually agreed to by Seller and Purchaser (the "Reviewing Accountant"). Seller and Purchaser shall instruct the Reviewing Accountant to make a determination no later than 30 days following the submission of such dispute, based solely on the written submissions of Purchaser, on the one hand, and Seller, on the other hand. The Reviewing Accountant shall adjust the Purchaser Draft 338(h)(10) Allocation based on these determinations. All fees and expenses relating to the work, if any, to be performed by the Reviewing Accountant shall be borne equally by the Parties.

(iv) The Purchaser Draft 338(h)(10) Allocation, (A) as prepared by Purchaser if Seller has not delivered a Seller 338(h)(10) Allocation Notice in accordance with Section 7.04(g)(ii), (B) or as adjusted pursuant to any agreement between Seller and Purchaser, or as adjusted by the Reviewing Accountant (in each case, the "Final 338(h)(10) Allocation"), shall, absent Fraud or a final determination within the meaning of Section 1313(a) of the Code (or any similar provision of applicable state, local or non-U.S. Law) to the contrary by a Tax authority, be conclusive and binding on Seller and Purchaser for all Tax purposes.

(v) Seller and Purchaser shall file and cause to be filed all Tax Returns and execute such other documents as may be required by any Tax authority, in a manner consistent with the Final 338(h)(10) Allocation, and shall not take any position inconsistent

with the Final 338(h)(10) Allocation in the examination of any Tax Return, in any refund claim or in any action with respect to Taxes, in each case, unless otherwise required pursuant to a final determination within the meaning of Section 1313(a) of the Code (or any similar provision of applicable state, local or non-U.S. Law).

(vi) Seller shall pay any and all Taxes that would not have been imposed but for the Section 338(h)(10) Election or any elections under state, local or other Tax law that are required to be made or deemed to have been made as a result of any Section 338(h)(10) Election ("Section 338 Taxes").

Section 7.05. Further Actions.

(a) After the Closing, at the request of a Party, the other Party shall cooperate and use commercially reasonable efforts to carry out the intent of this Agreement, and each Party will execute and deliver such other documents and instruments of conveyance, assignment, transfer, assumption and delivery and take such other actions as the other Party reasonably may request in order to consummate, complete and carry out the transactions contemplated hereby, at the expense of the requesting Party.

(b) At Purchaser's sole cost and expense and within 30 days of the Closing Date, at each railroad-highway at-grade crossing on and along the Subject Line, Purchaser shall either (i) replace Seller's Emergency Notification Systems (ENS) signs posted at such crossings with Purchaser's ENS signs, which shall identify Purchaser as the emergency contact and provide an emergency telephone number to contact Purchaser at all times (24/7) pursuant to 49 C.F.R. 234, Subpart E, or (ii) use a sticker, decal or other device to cover Seller's name and emergency telephone number on the emergency sign and replace such information with Purchaser's name and an emergency telephone number to contact Purchaser at all times (24/7). Within 35 days of the Closing Date, Purchaser shall provide Seller notice, pursuant to Section 11.01 of this Agreement, that it has complied with this Section 7.05(b).

(c) Seller shall cooperate with Purchaser in connection with any requirement the Federal Railroad Administration ("FRA") may impose related to Positive Train Control ("PTC") and Purchaser adding any PTC-equipped subdivision on the Subject Line to Purchaser's PTC Implementation Plan or other changes related to PTC. Such cooperation shall include responding to communications from the FRA, submitting historical information in Seller's possession to the FRA directly or through Purchaser, providing physical access to the Subject Line, testing of PTC on the Subject Line, and any other actions necessary to comply with FRA requirements and requests.

(d) Seller shall provide to Purchaser copies of the Assigned Contracts prior to or as soon as practicable after the Closing.

Section 7.06. Insurance.

From and after the Closing Date, the Purchased Assets, the Assumed Liabilities, and the operations and assets and Liabilities in respect thereof, shall cease to be insured by Seller's or its Affiliates' insurance policies or by any of their self-insured programs, and none of Purchaser or its Affiliates shall have any access, right, title or interest to or in any Seller insurance policies

(including to all claims and rights to make claims and all rights to proceeds) to cover the Purchased Assets, the Assumed Liabilities, the operation of the Subject Line or Liabilities in respect thereof. Seller or its Affiliates may amend any insurance policies in the manner it deems appropriate to give effect to this Section 7.06. Except as may be otherwise required in the Transaction Documents, from and after the Closing, Purchaser shall be responsible for securing all insurance it considers appropriate for the Subject Line, the Purchased Assets, the Assumed Liabilities, and the operations and Liabilities in respect thereof.

Section 7.07. Real Property Matters.

Conveyance of the Transferred Real Property shall be made by the Deed, which shall convey all of Seller's right, title and interest in the Transferred Real Property free and clear of any Encumbrances other than Permitted Encumbrances. In the event Purchaser is unable to record the Deed related to the Transferred Real Property due to state or local recording requirements (including as to subdivision, survey, legal description, perfection or opposability of Seller's rights in the Transferred Real Property) Purchaser shall be responsible for satisfying such state or local requirements at its sole cost and expense; *provided* that Seller shall provide any assistance reasonably requested by Purchaser at the expense and cost of Purchaser, including executing further documents or providing further information that may be necessary to record the Deed, including real estate transfer tax valuation forms required under applicable Law. Purchaser acknowledges and agrees that the conveyance of the Transferred Real Property shall be made subject to the Permitted Encumbrances which shall survive Closing:

Section 7.08. [Nondisclosure].

(a) The terms of the [Nondisclosure Agreement] are incorporated into this Agreement by reference and shall continue in full force and effect and the confidentiality obligations thereunder shall be binding upon Purchaser and its Representatives until the Closing, at which time the confidentiality obligations under the Nondisclosure Agreement shall terminate subject to the continuing obligations set forth herein. Notwithstanding the terms of the Nondisclosure Agreement, Purchaser may prior to the Closing disclose Confidential Information to existing or prospective lenders or equity investors of Purchaser who have a reasonable need to know such Confidential Information, are informed of the confidential nature of the information and are subject to confidentiality obligations to Purchaser. Purchaser acknowledges and agrees that Purchaser shall be responsible for any breach of the terms of this Agreement or the Nondisclosure Agreement by such existing or prospective lenders or equity investors of Purchaser.

(b) Subject to Section 7.08(c), for a three-year period following the Closing, unless otherwise agreed to in writing by the other Party, each of Seller, on the one hand, and Purchaser, on the other hand, hereby agrees not to (and to cause its Representatives not to) (i) disclose any Confidential Information to any Person other than (A) its Representatives who need to know the Confidential Information for the purpose of the consummation of the transactions contemplated by this Agreement and the other Transaction Documents, (B) public authorities for the purpose of recording the Deed, (C) the STB in connection with obtaining the STB Approvals, or (D) existing or prospective lenders or equity investors of such Party who (1) have a reasonable need to know the Confidential Information, (2) are informed of the confidential nature of the information and (3) are subject to confidentiality obligations to such Party, and (ii) use any

Confidential Information for any purpose other than as contemplated by this Agreement or any of the other Transaction Documents. Each Party shall be responsible for any breach of the terms of this Agreement by its Representatives or existing or prospective lenders or equity investors who receive Confidential Information.

(c) If a Party or its Representative (the "Disclosing Party") determines, based upon the advice of its legal counsel, that it is required by applicable Law, by applicable stock exchange regulation, by legal process, or for the purposes of enforcement of its rights under this Agreement, to disclose all or any portion of the Confidential Information, the Disclosing Party may so disclose such Confidential Information; *provided* that the Disclosing Party shall, to the extent permitted by Law, (i) provide the other Party with a written notice of such requirement so that the other Party may seek a protective order or other appropriate remedy to the extent applicable; (ii) exercise commercially reasonable efforts to narrow the scope of any such disclosure and consult with the other Party regarding the scope of such disclosure; and (iii) if such protective order or other remedy is not obtained, furnish only that portion of the Confidential Information which the Disclosing Party is compelled to disclose and exercise commercially reasonable efforts to obtain assurance that confidential treatment will be accorded to such Confidential Information to the extent applicable.

(d) If the transactions contemplated by this Agreement are not consummated, Purchaser shall (and shall ensure that its Representatives will) promptly, upon Seller's written request, and in any event within 20 Business Days of such request return or destroy all copies of Confidential Information in its possession or in the possession of any of its Representatives and return or destroy all information or other documents derived from such Confidential Information. Notwithstanding the foregoing, Purchaser (and its Representatives) shall be permitted, subject to their continued compliance with the obligations specified in this Section 7.08, to retain copies of any computer records and files containing such Confidential Information which have been created pursuant to its automatic electronic archiving and back up procedures and retain any Confidential Information to the extent required by Law. If so requested by Seller, Purchaser shall confirm in writing that its undertakings relating to the return or destruction of any such Confidential Information have been complied with.

(e) For purposes of this Agreement, "Confidential Information" means: (i) in relation to the obligations of Purchaser, any and all information related to Seller and/or its Affiliates and, prior to the Closing, the Purchased Assets[, the Leased Real Property] or the Assumed Liabilities received or held by Purchaser or its Representatives, but shall not include any and all information related to the Purchased Assets[, the Leased Real Property] or the Assumed Liabilities following the Closing, whether oral or written; (ii) in relation to the obligations of Seller, any and all information related to Purchaser, and/or its Affiliates and, following the Closing, the Purchased Assets[, the Leased Real Property] or the Assumed Liabilities, received or held by Seller or its Representatives, whether oral or written; and (iii) any of the terms, conditions or content of the discussions between the Parties with respect to, and the existence and the terms of, this Agreement and the other Transaction Documents; *provided*, *however*, that Confidential Information shall not include any information that: (A) is or becomes generally available to the public other than as a result of a disclosure by that Party or any of its Representatives in violation of this Section 7.08; (B) was lawfully in the possession of that Party or any of its Representatives prior to such information being received from the other Party or its Representatives free of any

restriction as to its use and disclosure (as can be demonstrated by that Party's or its Representative's written records); (C) becomes available to that Party or any of its Representatives thereafter; *provided* that, at the time of its receipt, such information is not, to the Knowledge of that Party, subject to any confidentiality or restricted-use obligation for the benefit of the other Party; and/or (D) is independently developed by that Party or any of its Representatives without reference to the other Party's Confidential Information (as can be demonstrated by that Party's or its Representative's written records).

Section 7.09. Removal of Seller Marks.[8]

No interest in or right to use any Intellectual Property, trademarks, trade names and trade dress of Seller or any of its Affiliates (the "Seller Marks") is being, or will be, assigned, transferred or otherwise conveyed to Purchaser pursuant to this Agreement or the transactions contemplated hereby. As promptly as practicable following the Closing Date, but in no event later than 30 days after the Closing Date, Purchaser shall remove, permanently obliterate, cover or otherwise stop displaying all Seller Marks in or on any signage, tools, dies, equipment, real estate or other durable items included in the Purchased Assets.

Section 7.10. Surface Transportation Board.

Purchaser shall prepare such documents or filings (in addition to the Application filed by Canadian National Railway Company and Purchaser in Finance Docket No. 36500 (Sub-No. [●])), if any, as may be required to secure STB Approval, or exemption from approval, of the transactions contemplated by this Agreement. In preparing such filings, the Parties shall cooperate fully with each other and shall furnish to the others such necessary information and reasonable assistance as the other may reasonably request in connection with the preparation of any such required STB filings.

Section 7.11. FCC Radio Licenses.

Purchaser and Seller shall cooperate to obtain the consent of the FCC pursuant to 47 U.S.C. § 310(d) and 47 C.F.R. § 1.948 for the assignment of FCC Licenses. Promptly following execution of this Agreement, but not later than five Business Days following execution of this Agreement, Seller shall initiate the electronic filing of a FCC Form 603, "FCC Application for Assignments of Authorization or Transfers of Control," through the FCC's Universal Licensing System, for each FCC License and shall be responsible for the filing fees associated with such applications. Purchaser shall electronically approve and sign the FCC Form 603 applications through the Universal Licensing System and shall, within 30 days after the Closing Date, notify the FCC of the consummation of the transfer of control of each FCC License through the filing of FCC Form 603, Schedule D.

Section 7.12. Notice Regarding Changes.

Prior to the Closing Date, Seller shall promptly inform Purchaser in writing of (a) the receipt of a written or oral notice from any counterparty that they intend to terminate, not renew, or renegotiate the terms of an Assigned Contract, (b) any event, change or circumstance

[8] **Note to Draft**: Discuss whether any IP licenses (e.g., related to PTC) are necessary.

that could reasonably result in a Material Adverse Effect, and (c) any change in facts and circumstances that could render any of the representations and warranties made herein by Seller inaccurate or misleading if such representations and warranties had been made upon the occurrence of the fact or circumstance in question. Purchaser shall promptly inform Seller in writing of any change in facts and circumstances that could render any of the representations and warranties made herein by Purchaser inaccurate or misleading if such representations and warranties had been made upon the occurrence of the fact or circumstance in question.

Section 7.13. Employment.

Purchaser shall have the right but not the obligation and shall not otherwise have the responsibility or obligation to absorb, hire, or otherwise employ any employees of Seller that may or will be dismissed or displaced as a result of implementing the transaction contemplated by this Agreement, except as may be required by the STB. In the event Purchaser hires any employees for the continued operation of the Subject Line, Purchaser agrees to offer priority hiring consideration to Seller employees (both craft and non-craft) working on the Subject Line whose employment is impacted by Purchaser acquiring the Subject Line on the Closing Date.

ARTICLE VIII.
CONDITIONS PRECEDENT TO OBLIGATIONS OF THE PARTIES

Section 8.01. Conditions to Each Party's Obligations to Close.

The respective obligations of Seller and Purchaser to effect the Closing and to consummate the transactions contemplated by this Agreement are subject to the satisfaction or waiver at or prior to the Closing of the following conditions:

(a) No Governmental Order or Proceedings. There shall not be in force any Governmental Order to and there shall be no Proceeding pending, or to Seller's Knowledge threatened by any Governmental Authority (other than the STB, which shall be governed by Section 8.01(b)) that seeks to, enjoin or prohibit the transactions contemplated by this Agreement or any other Transaction Documents;

(b) STB Approvals. The STB Approvals shall have been obtained and become final and effective and otherwise be in full force and effect.

(c) FCC Approvals. The FCC Approvals shall have been obtained and become final and effective and otherwise be in full force and effect.

(d) No Law. No Governmental Authority shall have enacted, issued or promulgated any Law which has the effect of (i) making any of the transactions contemplated by this Agreement illegal, or (ii) otherwise prohibiting, preventing or restraining the consummation of any of the transactions contemplated by this Agreement (including any STB order approving an inconsistent application with respect to any of the transactions contemplated by this Agreement or the application in Finance Docket No. 36500 for CP to acquire control of KCS and Seller, or otherwise directing Seller to divest all or a portion of the Purchased Assets to a Person other than Purchaser).

Section 8.02. Conditions to Obligations of Purchaser to Close.

The obligation of Purchaser to effect the Closing is subject to the satisfaction (or waiver by Purchaser) at or prior to the Closing of the following additional conditions:

(a) Representations and Warranties. The Fundamental Representations of Seller shall be true and correct in all respects as of the Closing Date and the representations and warranties of Seller contained in ARTICLE V (other than the Fundamental Representations of Seller) shall be true and correct in all material respects as of the Closing Date (without regarding to any express qualifier therein as to materiality);

(b) Performance of Obligations of Seller. The covenants and agreements of Seller to be performed on or before the Closing Date in accordance with this Agreement shall have been performed in all material respects;

(c) Officer's Certificate. Purchaser shall have received a certificate, dated as of the Closing Date and signed on behalf of Seller by an executive officer of Seller, stating that the conditions specified in Section 8.02(a) and Section 8.02(b) have been satisfied;

(d) Seller Closing Deliveries. Seller shall have delivered those instruments and performed those actions set forth in Section 4.03;

(e) Purchaser shall have received prior written approval from its board of directors validly authorizing and approving the transactions contemplated by this Agreement; and

(f) no Proceeding shall have been initiated against Seller by any Person (other than Purchaser or any of its Affiliates), arising by reason of the acquisition of the Purchased Assets pursuant to this Agreement, which could reasonably be expected to restrain, prohibit or invalidate the consummation of the transactions contemplated by this Agreement and that remains in effect at the time of the Closing.

Section 8.03. Conditions to Obligations of Seller to Close.

The obligation of Seller to effect the Closing is subject to the satisfaction (or waiver by Seller) at or prior to the Closing of the following additional conditions:

(a) Representations and Warranties. The Fundamental Representations of Purchaser shall be true and correct in all respects as of the Closing Date and the representations and warranties of Purchaser contained in ARTICLE VI (other than the Fundamental Representations of Purchaser) shall be true and correct in all material respects as of the Closing Date (without regarding to any express qualifier therein as to materiality);

(b) Performance of Obligations of Purchaser. The covenants and agreements of Purchaser to be performed on or before the Closing Date in accordance with this Agreement shall have been performed in all material respects;

(c) Purchaser Officer's Certificate. Seller shall have received a certificate, dated as of the Closing Date and signed on behalf of Purchaser by an executive officer of

Purchaser, stating that the conditions specified in Section 8.03(a) and Section 8.03(b) have been satisfied; and

(d) Purchaser Closing Deliveries. Purchaser shall have delivered those instruments and performed those actions set forth in Section 4.04.

Section 8.04. Frustration of Closing Conditions.

Neither Purchaser nor Seller may rely on the failure of any condition set forth in this ARTICLE VIII to be satisfied if such failure was caused by such Party's failure to act in good faith or to use the requisite efforts to cause the Closing to occur as required by this Agreement, including the requirements of Section 7.01.

ARTICLE IX.
TERMINATION; EFFECT OF TERMINATION

Section 9.01. Termination.

Anything to the contrary in this Agreement notwithstanding, this Agreement may be terminated and the transactions contemplated by this Agreement abandoned at any time prior to the Closing:

(a) by mutual written consent of Seller and Purchaser; or

(b) by Purchaser, if any of Seller's representations and warranties contained in ARTICLE V of this Agreement shall fail to be true and correct or Seller shall have breached or failed to perform in any material respect any of its covenants or other agreements contained in this Agreement, and such failure or breach would give rise to the failure of a condition set forth in Section 8.02(a) or Section 8.02(b) and has not been cured by the date that is 10 days after the date that Purchaser has notified Seller in writing of such failure or breach; *provided* that Purchaser is not then in breach of any of its representations, warranties, covenants or agreements contained in this Agreement such that the conditions set forth in Section 8.03(a) or Section 8.03(b) would fail to be satisfied.

Section 9.02. Effect of Termination.

If this Agreement is terminated and the transactions contemplated by this Agreement are abandoned as described in Section 9.01, this Agreement shall become null and void and of no further force and effect, except for the provisions of Section 7.03, Section 7.08, this ARTICLE IX and ARTICLE XI. Nothing in this Section 9.02 shall be deemed to release any Party from any Liability for Fraud or willful breach by such Party of the terms and provisions of this Agreement. For purposes of this Agreement, "willful breach" means a material breach or failure to perform that is the consequence of an act or omission of a Party with the knowledge that such act or omission would, or would be reasonably expected to, cause a material breach of this Agreement.

Section 9.03. Notice of Termination.

In the event of termination by Purchaser pursuant to Section 9.01(b), written notice of such termination shall be given by Purchaser to Seller in the manner set forth in Section 11.01.

ARTICLE X.
SURVIVAL, INDEMNIFICATION AND REMEDIES

Section 10.01. Survival.

All representations and warranties made by each party in this Agreement and in any certificate delivered in connection herewith shall survive the Closing until the third anniversary of the Closing Date; *provided, however*, that the representations and warranties set forth in (a) Section 5.01, Section 5.02, Section 5.08(c), Section 5.14, Section 6.01, Section 6.02 and Section 6.06 (the "Fundamental Representations") shall survive indefinitely, (b) Section 5.09 and Section 5.16 shall survive the Closing until the fourth anniversary of the Closing Date and (c) Section 5.10 shall survive the Closing until the date that is 60 days following the expiration of the statute of limitations applicable to any claim arising in respect thereof (including any extensions thereof). All representations and warranties related to any claim asserted in writing prior to the expiration of the applicable survival period shall survive (but only with respect to such claim) until such claim shall be resolved and payment in respect thereof, if any is owing, shall be made. Notwithstanding anything to the contrary contained herein, any claim that a party committed Fraud shall survive until the expiration of the applicable statute of limitations. The survival periods set forth above in this Section 10.01 are intended to replace and supersede any applicable statute of limitations to bring a Proceeding even though the survival period may be shorter or longer than otherwise provided by applicable Law.

Section 10.02. Indemnification.

(a) Seller shall indemnify, defend, reimburse and hold harmless Purchaser and its Representatives, Affiliates, and their respective successors and assigns (the "Purchaser Indemnified Parties") against and with respect to any and all demands, claims, obligations, complaints, actions or causes of action, suits, Proceedings, investigations, arbitrations, assessments, losses, damages, fines, penalties, liabilities, judgments, settlements, costs and expenses (including reasonable attorneys' fees) (collectively, "Losses") (including any Losses based on claims for breach of contract, warranty, tortious conduct (including negligence) or otherwise and whether predicated on common Law, statute, strict liability, or otherwise) arising from, in connection with or with respect to the following items:

(i) any breach or misrepresentation of a representation or warranty by Seller contained in this Agreement, any certificate delivered in connection herewith or any other Transaction Document;

(ii) any breach or failure to fulfill any agreement or covenant on the part of Seller;

(iii) any Encumbrances other than Permitted Encumbrances;

(iv) any Labor Protective Conditions imposed for the benefit of Seller's employees;

(v) any pre-Closing violations of, and non-compliance with, FCC regulations with respect to the maintenance and use of radio frequency licenses currently held by Seller with respect to the Purchased Assets (including the payment of any fine or penalty, and the satisfaction of any condition, imposed by the FCC on account of such violations or non-compliance); and

(vi) any Excluded Liabilities.

(b) Purchaser shall indemnify, defend and hold harmless Seller and its Representatives, Affiliates and assigns (the "Seller Indemnified Parties") against and with respect to any and all Losses, arising from, in connection with or with respect to the following items:

(i) any breach or misrepresentation of a representation or warranty by Purchaser contained in this Agreement or an certificate delivered in connection herewith;

(ii) any breach or failure to fulfill any agreement or covenant on the part of Purchaser;

(iii) any Labor Protective Conditions imposed for the benefit of Purchaser's employees; and

(iv) any Assumed Liabilities.

(c) Notwithstanding anything to the contrary contained in this Agreement, (i) Seller shall not have any obligation to indemnify, defend and hold harmless any Purchaser Indemnified Party pursuant to Section 10.02(a)(i) (A) unless the aggregate amount of Losses incurred by the Purchaser Indemnified Parties exceeds $**[●]** (the "Threshold Amount") at which point, Seller shall indemnify, defend and hold harmless the Purchaser Indemnified Parties for the full amount of such Losses and (B) except as provided in clause (iii) below, in excess of $**[●]** (the "Cap"),[9] (ii) Purchaser shall have no obligation to indemnify any Seller Indemnified Parties pursuant to Section 10.02(b)(i) (A) unless the aggregate amount of Losses incurred by the Seller Indemnified Parties exceeds the Threshold Amount, at which point Purchaser shall indemnify Seller Indemnified Parties for the full amount of such Losses and (B) in excess of the Cap, and (iii) the parties acknowledge that the Threshold Amount and the Cap shall not apply to any Losses resulting from (A) Fraud, (B) breaches or misrepresentations of the Fundamental Representations, (C) any Adjustment Amount or (D) any indemnification obligations of the parties hereto (other than as set forth in Section 10.02(a)(i) and Section 10.02(b)(i)).

(d) Any Purchaser Indemnified Party or Seller Indemnified Party seeking indemnification hereunder (the "Indemnified Party") shall promptly give to the party obligated to provide indemnification to such Indemnified Party (the "Indemnitor") a written notice (a "Claim Notice"); *provided, however*, that the failure of any Indemnified Party to give the Claim Notice promptly as required by this Section shall not affect such Indemnified Party's rights under this

[9] **Note to Draft**: Threshold Amount and Cap amounts to be based on the Purchase Price.

Section 10.02 unless and only to the extent that such failure actually prejudices the Indemnitor. The Claim Notice shall provide reasonable detail of the claims being asserted.

(e) After the giving of any Claim Notice pursuant hereto, the amount of indemnification to which an Indemnified Party shall be entitled under this Section 10.02 shall be determined: (i) by the written agreement between the Indemnified Party and the Indemnitor; (ii) by a final non-appealable determination of a court of competent jurisdiction pursuant to Section 11.06; or (iii) by any other means to which the Indemnified Party and the Indemnitor shall agree (a "Final Determination"). Subject to Section 10.03, all amounts due to the Indemnified Party shall be paid by wire transfer within 10 Business Days after such Final Determination.

(f) An Indemnified Party shall notify the Indemnitor in writing, and in reasonable detail, of any Proceeding commenced by any third Person against the Indemnified Party (a "Third Party Claim") promptly after receipt by such Indemnified Party of written notice of the Third Party Claim. Notwithstanding the foregoing, should a party be physically served with a complaint with regard to a Third Party Claim, the Indemnified Party must deliver a copy of the complaint to the Indemnitor within 10 days after the receipt of such complaint; *provided, however*, that the failure of any Indemnified Party to give such notice shall not affect such Indemnified Party's rights under this Section 10.02 unless and only to the extent that such failure actually prejudices the Indemnitor.

(g) In the event of the initiation of any Proceeding with respect to a Third Party Claim (in which the only relief sought is monetary damages), the Indemnitor may elect, at its own expense, to be represented by counsel of its choice (reasonably acceptable to the Indemnified Party) and to control and defend such Third Party Claim. The Indemnified Party shall have the right to participate (and to retain legal counsel to participate) in any such defense at its sole cost and expense. The Parties hereto agree to cooperate fully with each other in connection with the defense, negotiation or settlement of any such Proceeding. Such cooperation shall include the retention and the provision of records and information that are reasonably relevant to such Third Party Claim, and making employees available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder. The Indemnitor shall not settle or agree to the entry of a final order in any such Proceeding without the prior written consent of the Indemnified Party unless (i) the sole recourse under such settlement or final order is payment by the Indemnitor of monetary damages, (ii) such settlement or final order does not obligate the Indemnified Party to admit any liability, and (iii) such settlement includes a full and unconditional release of the Indemnified Parties.

(h) Any indemnification payment under this Agreement shall be considered an adjustment to the Purchase Price.

(i) This Section 10.02 constitutes the Indemnified Parties' sole and exclusive remedy for any and all Losses or other claims relating to or arising from this Agreement and the transactions contemplated hereby, except for claims based on Fraud. No Indemnitor shall have any indemnification, contribution, or other obligation for any Loss that the Indemnified Parties may suffer, and the Indemnified Parties shall have no remedies, with respect to (i) the subject matter of this Agreement or the transactions contemplated hereby or (ii) any other matter relating to Seller, prior to the Closing, the operation of its businesses prior to the Closing, or any other transaction

or state of facts involving the Purchased Assets or Seller prior to the Closing (including any common law or statutory rights or remedies), in each case, other than the provisions of this ARTICLE X, which are the Indemnified Parties' sole and exclusive remedies with respect thereto, except for claims based on Fraud.

Section 10.03. Expiration of Claims.

The ability of any Person to receive indemnification under Section 10.02 shall terminate on the applicable survival termination date (as set forth in Section 10.01), unless such Person shall have incurred a Loss and made a valid claim for indemnification pursuant to Section 10.02 prior to such termination date. If a Person has made a valid claim for indemnification pursuant to Section 10.02 prior to such termination date, such valid claim, if then unresolved, shall not be extinguished by the passage of the deadlines set forth in Section 10.01.

Section 10.04. Determination of Loss Amount.

The amount of any Loss subject to indemnification hereunder or of any claim therefor shall be calculated net of and shall be limited to the amount of such Loss that remains after deducting therefrom any insurance proceeds and any other indemnity, contribution or similar payment actually realized by and paid to the applicable Indemnified Parties in respect of any such claim, less any related costs and expenses, including the aggregate cost of pursuing any related insurance claims. The Indemnified Parties shall use commercially reasonable efforts to seek full recovery under all insurance policies or other such indemnity, contribution or similar agreements or sources of payment covering any Loss to the same extent as they would if such Loss were not subject to indemnification hereunder. Promptly after the realization of any such insurance proceeds, or other indemnity, contribution or similar payment, the Indemnified Parties shall reimburse the applicable Indemnitor for such reduction in Losses for which the Indemnified Parties was indemnified prior to the realized reduction of such Losses.

Section 10.05. Mitigation.

Each Person entitled to indemnification hereunder shall take all reasonable steps to mitigate all Losses after becoming aware of any event which could reasonably be expected to give rise to any Losses that are indemnifiable or recoverable hereunder or in connection herewith.

ARTICLE XI.
GENERAL PROVISIONS

Section 11.01. Notices.

All notices and other communications under this Agreement shall be in writing and shall be deemed given (a) when delivered personally by hand (with written confirmation of receipt), (b) on the day transmitted by electronic mail (with written confirmation of transmission), if sent before 5:00 p.m. Eastern Time on a Business Day, otherwise on the next Business Day following transmission, or (c) one Business Day following the day sent by overnight courier (with written confirmation of receipt), in each case at the following addresses (or to such other address as a Party may have specified by notice given to the other Party pursuant to this provision):

If to Seller:

[●]
[●]
[●]
Attention: [●]
Email: [●]

with a copy (which shall not constitute notice) to:

[●]
[●]
[●]
Attention: [●]
Email: [●]

If to Purchaser:

Illinois Central Railroad Company
[●]
[●]
Attention: [●]
Email: [●]

with a copy (which shall not constitute notice) to:

Sidley Austin LLP
1501 K. Street, NW
Washington, DC 20005
Attention: Terence M. Hynes
Email: thynes@sidley.com

Section 11.02. Waiver.

No delay or failure on the part of any Party hereto in exercising any right, power or privilege under this Agreement or under any other instrument or document given in connection with or pursuant to this Agreement shall impair any such right, power or privilege or be construed as a waiver of any default or any acquiescence therein. No single or partial exercise of any such right, power or privilege shall preclude the further exercise of such right, power or privilege, or the exercise of any other right, power or privilege. No waiver shall be valid against a Party hereto unless made in writing and signed by the Party against whom enforcement of such waiver is sought and then only to the extent expressly specified therein.

Section 11.03. Benefit and Assignment.

No Party to this Agreement shall assign this Agreement, in whole or in part, whether by operation of Law or otherwise, without the prior written consent of the other Parties; *provided* that no such assignment shall relieve the assigning Party of its obligations hereunder.

Any purported assignment contrary to the terms hereof shall be null, void and of no force and effect. Subject to the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and permitted assigns. No Person other than the Parties hereto and their respective successors and permitted assigns is or shall be entitled to bring any action to enforce any provision of this Agreement against any of the Parties hereto, and the representations and warranties, covenants and other agreements set forth in this Agreement shall be solely for the benefit of, and shall be enforceable only by, the Parties hereto or their respective successors and assigns as permitted hereunder. Notwithstanding the foregoing, Purchaser shall (subject to the terms of the STB Approvals) be entitled to assign all or any portion of its rights and liabilities hereunder to an Affiliate of Purchaser without consent of (but with notice to) Seller; *provided* that no such assignment shall relieve Purchaser of its obligations hereunder.

Section 11.04. Amendment.

No amendment, modification or supplement to this Agreement shall be binding unless executed in writing by all of the Parties hereto.

Section 11.05. Severability.

If any part of any provision of this Agreement or any other Transaction Document shall be invalid or unenforceable under applicable Law, such part shall be ineffective to the extent of such invalidity or unenforceability only, without in any way affecting the remaining parts of such provisions or the remaining provisions of this Agreement or any other Transaction Document.

Section 11.06. Governing Law; Waiver of Jury Trial; Submission to Jurisdiction.

(a) This Agreement, the rights and obligations of the Parties hereto, and any claims or disputes relating thereto, shall be governed by and construed under and in accordance with the Laws of the State of Delaware, without regarding to any choice of Law provision or rule of the State of Delaware that would otherwise result in the application of the Laws of any other State or jurisdiction.

(b) THE PARTIES HEREBY WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, ANY OTHER TRANSACTION DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY, WHETHER NOW EXISTING OR HEREAFTER EXISTING, AND WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. THE PARTIES HERETO AGREE THAT ANY OF THEM MAY FILE A COPY OF THIS SECTION 11.06(B) WITH ANY COURT AS WRITTEN EVIDENCE OF THE KNOWING, VOLUNTARY AND BARGAINED-FOR AGREEMENT BETWEEN THE PARTIES HERETO IRREVOCABLY TO WAIVE TRIAL BY JURY AND THAT ANY ACTION OR PROCEEDING WHATSOEVER BETWEEN THEM RELATING TO THIS AGREEMENT, ANY OTHER TRANSACTION DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY SHALL INSTEAD BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.

(c) Each of the Parties agrees that any Proceeding with respect to this Agreement brought by a Party hereto or its successors or assigns shall be brought and determined in the Federal or state court sitting in the State of Delaware and each of the Parties hereby submits

with regard to any such Proceeding for itself and in respect to its property, generally and unconditionally, to the jurisdiction of the aforesaid courts. Each of the Parties hereby irrevocably waives, and agrees not to assert, by way of motion, as a defense, counterclaim, or otherwise, in any Proceeding with respect to this Agreement, (i) any claim that it is not personally subject to the jurisdiction of the above named courts for any reason, (ii) that it or its property is exempt or immune from jurisdiction of such court or from any legal process commenced in such court (whether through judgment or otherwise), and (iii) to the fullest extent permitted by applicable law that (A) the Proceeding in any such court is brought in an inconvenient forum, (B) the venue of such Proceeding is improper and (C) this Agreement, or the subject matter hereof, may not be enforced in or by any such court.

Section 11.07. Interpretation.

(a) When a reference is made in this Agreement to a Section, subsection, Exhibit or Schedule, such reference shall be to a Section, subsection, Exhibit or Schedule of this Agreement unless otherwise indicated. The headings contained in this Agreement, in any Schedules and in the table of contents to this Agreement, are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. All Exhibits and Schedules annexed hereto or referred to herein are hereby incorporated in and made part of this Agreement as if set forth in full herein. Any fact or item which is clearly disclosed on any Schedule to this Agreement in such a way as to make its relevance or applicability to information called for by another Schedule or Schedules to this Agreement reasonably apparent on the face of the disclosure shall be deemed to be disclosed on such other Schedule or Schedules, as the case may be, notwithstanding the omission of a specific reference or cross-reference thereto. Any capitalized term used in any Exhibit or Schedule and not otherwise defined shall have the meaning given to such term in this Agreement.

(b) Unless the context clearly requires otherwise, whenever the words "include", "includes", "including", "such as" or terms of similar meaning are used in this Agreement, they shall be deemed to be followed by the words "without limitation." The words "hereof", "herein", "hereby" and "hereunder" and terms of similar meaning when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. The term "or" is not exclusive. The word "extent" in the phrase "to the extent" means the degree to which a subject or other thing extends, and such phrase shall not mean simply "if". The definitions contained in this Agreement are applicable to the singular as well as to the plural forms of such terms. Any agreement or instrument defined or referred to herein means such agreement or instrument as from time to time amended, modified or supplemented. References to a Person are also to its permitted successors and assigns. Pronouns of one gender shall include all genders. All accounting conventions shall be consistent with GAAP, unless otherwise specified. All references to "Dollars" or "$" shall be to U.S. Dollars unless otherwise specified. All references to "days" shall mean calendar days unless Business Days are specified. Unless otherwise specified herein, undefined terms shall be given the meaning customarily applied to such terms in the railroad industry in the United States.

Section 11.08. Signature in Counterparts; Electronic Delivery.

This Agreement may be executed in separate counterparts, none of which need contain the signatures of all Parties, each of which shall be deemed to be an original, and all of which taken together shall constitute one and the same instrument. It shall not be necessary in making proof of this Agreement to produce or account for more than the number of counterparts containing the respective signatures of, or on behalf of, each of the Parties. This Agreement, the other Transaction Documents and any signed agreement or instrument entered into in connection with this Agreement, and any amendments hereto or thereto (in each case other than the Deed), to the extent delivered by means of a facsimile, email or electronic .pdf transmission (any such delivery, an "Electronic Delivery"), shall be treated in all manner and respects as an original agreement or instrument and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. At the request of any Party hereto or to any such agreement or instrument, each other Party hereto or thereto shall re-execute original forms thereof and deliver them to the other Party. No Party hereto or to any such agreement or instrument shall raise the use of Electronic Delivery to deliver a signature or the fact that any signature or agreement or instrument was transmitted or communicated through the use of Electronic Delivery as a defense to the formation of a contract, and each such Party forever waives any such defense, except to the extent such defense related to lack of authenticity.

Section 11.09. Entire Agreement.

This Agreement, together with all Exhibits and Schedules hereto and the Transaction Documents, constitutes the entire agreement between the Parties pertaining to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties, except for any prior agreements regarding obligations of Seller or an Affiliate or predecessor for the performance of and/or payment for Remedial Action identified on Section 3.02(b) of the Disclosure Schedules.[10]

[Remainder of page intentionally left blank]

[10] **Note to Draft**: Schedule will include description of certain known contamination/remediation issues on the Subject Line.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

SELLER:

Kansas City Southern Railway Company

By:_____
Name: [●]
Title: [●]

PURCHASER:

Illinois Central Railroad Company

By:_____
Name: [●]
Title: [●]

Exhibit 2B

Trackage Rights Agreement

TRACKAGE RIGHTS AGREEMENT

THIS TRACKAGE RIGHTS AGREEMENT (the "Agreement"), is made and entered into this [●]th day of [●], 202[●] by and between KANSAS CITY SOUTHERN RAILWAY COMPANY, a Delaware corporation ("**KCSR**" or "**Owner**") and ILLINOIS CENTRAL RAILROAD COMPANY, an Illinois corporation ("**ICRR**" or "**User**").

WHEREAS, pursuant to that certain Asset Purchase Agreement (the "**Springfield - Kansas City APA**") dated as of [●], 20[●] by and among ICRR, KCSR and Gateway Eastern Railway Company ("GWER"), ICRR purchased from KCSR and GWER certain lines of railroad extending between Springfield, Illinois and East St. Louis, Illinois, on the one hand, and Kansas City, Missouri, on the other hand, as more particularly described in the Springfield – Kansas City APA; and

WHEREAS, in connection with the transactions contemplated by the Springfield – Kansas City APA, ICRR desires to obtain trackage rights over KCSR's rail line between Airline Junction, Missouri and KCSR's International Freight Gateway Intermodal Terminal at Grandview, Missouri (the "**IFG Terminal**"), and the tracks located within and providing access to the IFG Terminal, and KCSR has agreed to grant such trackage rights to ICRR, on the terms and subject to the conditions set forth hereinafter;

NOW, THEREFORE, for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

Section 1. **TRACKAGE SUBJECT TO AGREEMENT**

Attached hereto as Exhibit "A," and incorporated herein by reference, is a print that depicts the KCSR rail line between MP 5.6 +/- at Airline Junction, Missouri (including tracks within and providing access to the joint agency facility at Knoche Yard) and MP 29.5 ± in the vicinity of Grandview, Missouri (including the tracks within and providing access to the IFG Terminal), over which User shall be granted trackage rights pursuant to this Agreement (referred to collectively as the "**Joint Trackage**").

Section 2. **GRANT OF TRACKAGE RIGHTS**

(a) Subject to the terms and conditions (the "**General Conditions**") set forth in Exhibit "B" to this Agreement (which is attached hereto and incorporated herein by reference), KCSR grants to User the nonexclusive right to operate its trains with its own Equipment and crews in either direction over the Joint Trackage. User's use of the Joint Trackage shall be in common with KCSR and such other railroad company or companies as KCSR may hereafter at any time admit to the joint use of any and all of the Joint Trackage. For purposes of this Agreement, trains and "**Equipment**" (as

defined in Section 1.5 of Exhibit "B") of such other railroad company or companies admitted by KCSR to the use of the Joint Trackage shall be considered trains and Equipment of KCSR.

(b) The trackage rights granted to User pursuant to this Agreement may be exercised by ICRR or by a rail carrier affiliate of ICRR, including Canadian National Railway Company ("CN"); *provided*, however, that only one of ICRR, CN or an affiliate may exercise such trackage rights at any time; and *provided further*, that ICRR, CN or such affiliate (as applicable) shall have first obtained any required Surface Transportation Board ("STB") approval or exemption for the exercise of such trackage rights.

(c) The exercise of the trackage rights granted to User by this Agreement shall be subject at all times to the General Conditions. If any conflict between the General Conditions and this Agreement shall arise, the provisions of this Agreement shall prevail.

(d) Except as otherwise provided in Section 2(b), User may not admit any third party to the use of the Joint Trackage, nor may User provide haulage service or otherwise transport rail traffic moving in the account of any third party over the Joint Trackage; *provided*, however, that User may transport railcars moving in the account of CN or ICRR over the Joint Trackage; and *provided further*, that User may operate locomotives of another railroad as its own pursuant to a run-through agreement with such other railroad.

It is understood and agreed that User shall not have the right to:

(1) Serve industries or transload freight at intermediate points on and along the Joint Trackage; *provided*, however, that User may transload freight at the IFG Terminal;

(2) Set out, pick up or store Equipment on or about Joint Trackage, or any part thereof, except (i) on tracks at the IFG Terminal (ii) User may tie up, fuel and service its locomotives and Equipment on such track(s) as shall be designated from time to time by KCS's dispatcher or other designated operating officer in charge of operations at Knoche Yard, and (iii) as otherwise provided in Exhibit "B";

(3) Serve any industry, team or house track, transload, intermodal or auto facility (other than the IFG Terminal) on and along the Joint Trackage;

(4) Operate onto or off the Joint Trackage at any location other than the end points of the Joint Trackage;

(5) Build-in to or build-out from any point on or along the Joint Trackage;

(6) Interchange with any railroad or other party at any point on or along the Joint Trackage;

(7) Provide any passenger service of any kind or handle or operate passenger trains on or along the Joint Trackage;

(8) Transport Dimensional Traffic on or along the Joint Trackage without first obtaining the common clearance protocol from KCSR;

(9) Detour trains of any other railroad over or upon the Joint Trackage;

(10) Load or unload cars on or along the Joint Trackage except as permitted by this Agreement or the General Conditions or incidental to cleaning derailments or other similar emergencies; or

(11) Make scheduled crew changes on or along the Joint Trackage, except at the termini.

(c) User shall qualify its crew members as pilots and provide pilots or qualified crews on all User trains prior to entering the Joint Trackage.

(d) User locomotives shall have sufficient fuel for the entire movement on and along the Joint Trackage. User will be responsible for performing any required 1,000 mile inspection of its trains.

Section 3. **MAINTENANCE AND OPERATION OF TRACKAGE**

Owner, at its expense, shall maintain, repair and renew the Joint Trackage in a manner permitting operation at no less than the track standard designated in the timetable in effect on the date of this Agreement (a copy of which is appended hereto as Exhibit "C." In the event that, for operating convenience, necessity or emergency, Owner permits or directs User to use adjacent tracks or track connections between or beyond the termini of the Joint Trackage as an alternate route, then and in such event, such trackage, track connections and appurtenances shall be deemed to be part of the Joint Trackage and shall be governed by all the provisions of this Agreement while such use continues.

Section 4. **LIMITATIONS AND MEASUREMENT OF TRACKAGE RIGHTS TRAINS**

User trains shall have a sufficient horse-power per ton ratio ("HPT") to traverse the Joint Trackage; *provided*, that Owner shall accept User trackage rights trains of similar size and operating characteristics as Owner's own trains, consistent with available capacity, mainline and siding restrictions, operating rules such as designated horsepower per ton, maximum train length, and maximum gross tonnage parameters that govern Owner's (and other users') trains moving over the Joint Trackage.

All trains of Owner and User shall be treated equally and operated and dispatched on a first-come first-served basis without prejudice or partiality, except for passenger trains which shall have priority. In the event of refusal to grant a User train admission to or operation on the Joint Trackage, User shall have no claim of any nature against Owner by reason of such refusal provided that the trains of Owner and User are treated equally and operated and dispatched without prejudice or partiality.

Section 5. **COMPENSATION**

(a) In addition to any other payments to be made under this Agreement, User shall remit to Owner for its use of the Joint Trackage, on a monthly basis, [●] cents per car mile for each loaded or empty car, locomotive or caboose moved by User (the **"Base Charge"**) The Base Charge shall be deemed to include compensation to Owner for ordinary and programmed maintenance of the Joint Trackage, operating expenses, interest rental, depreciation and taxes. With respect to articulated units, the number of cars shall be determined by the AAR Car Type Code as defined in the UMLER Specification Manual. The second character in the Car Type Code field covering codes "Q" and "S" will be the factor in determining the car count for an articulated unit. For example, AAR Car Type Code (S566) would equate to a five (5) car count as these type cars have five wells capable of handling 40' to 53' containers in each well. (Car count data for articulated units are subject to change upon development of technology to separate units by car numbers.)

(b) For the purpose of computing the Base Charge under this Section 5, the parties hereby mutually agree that the track mileage between the termini of the Joint Trackage (KCT Junction and the IFG Terminal) is [●] miles (the "**Mileage Factor**"). In the event that for whatever reason physical changes are made to the Joint Trackage that result in a change in the track mileage provided in the prior sentence, then the Mileage Factor will be adjusted up or down to reflect such new mileage, and such adjusted Mileage Factor will be used to calculate the monthly Base Charge effective with the commencement of train operations over the new track.

(c) The Base Charge set forth in Section 5(a) of this Agreement shall be adjusted annually during the term of this Agreement beginning 1st day of April, 202[●] to reflect 100 percent of increase or decrease in the cost of labor and material, excluding fuel, as reflected in Table A, Annual Indices of Charge-Out Prices and Wage Rates (1977=100), Series RCR, included in "AAR Railroad Cost Indexes" and supplements thereto, issued by the Association of American Railroads (the "AAR"). In making such determination, the final "Material prices, wage

rates and supplements combined (excluding fuel)" index for the East District shall be used. The Base Charge shall be revised by calculating the percentage of increase or decrease for the year to be revised based on the final index of the most recently completed calendar year as related to the final index of the calendar year prior to the most recently completed calendar year; and applying this percentage of increase or decrease to the current Base Charge to be escalated.

By way of example, assuming "A" to be the "Material prices, wage rates and supplements combined (excluding fuel)" final index figure for the calendar year prior to the most recently completed calendar year; "B" to be the "Material prices, wage rates and supplements combined (excluding fuel)" final index figure for the most recently completed calendar year; and "C" to be the current Base Charge to be escalated; the revised Base Charge would be determined by the following formula:

B/A x C = Revised Base Charge, Rounded to Nearest Whole Cent (5 Mills or More Rounds to Next Cent)

In the event the base for the Annual Indexes of Charge-Out Prices and Wage Rates issued by the AAR shall be changed from the year 1977, appropriate revision shall be made. If the AAR or any successor organization discontinues publication of the Annual Indices of Charge-Out Prices and Wage Rates, an appropriate substitute for determining the percentage of increase or decrease shall be negotiated by the parties hereto. In the absence of agreement, the matter will be referred to the STB for determination. In the event said Board is without jurisdiction to make such a determination, the parties shall submit the matter to binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association. The decision of the arbitrator so appointed by said Association shall be final and binding upon the parties hereto. Each party to the arbitration shall pay the compensation, costs, fees, and expenses of its own witnesses, exhibits, and counsel. The compensation, costs, and expenses of the arbitrator shall be borne equally by such parties; *provided*, that the per car mile rate shall never be less than the Base Charge set forth in this Section 5.

Section 6. **LIABILITY**

Any liability for loss, damage, injury or death which arises from the operation of trains under this Agreement shall be allocated, settled and paid in the manner set forth in Section 5 of the General Conditions attached hereto.

Section 7. **TERM AND TERMINATION**

This Agreement shall become effective (the **"Effective Date"**) on the later of (i) the date upon which KCSR and ICRR consummate the line sale transaction contemplated by the Springfield - Kansas City APA, (ii) the date upon which User having obtained any required STB approval or exemption for the exercise of the trackage rights granted pursuant to this Agreement, and (iii) such other date as the Parties may mutually agree in writing. This Agreement shall remain in effect for an initial term of thirty (30) years (the **"Initial Term"**). Upon expiration of the Initial

Term, this Agreement shall automatically renew for five (5) successive terms of ten (10) years (each a **"Renewal Term"**). Upon expiration or termination of this Agreement, all obligations (including, without limitation, obligations to remit fees and obligations of indemnity) arising or accruing prior to such termination or expiration and all provisions of this Agreement necessary to enforce and resolve same shall survive and remain enforceable.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

ILLINOIS CENTRAL RAILROAD COMPANY

By:_____

KANSAS CITY SOUTHERN RAILWAY COMPANY

By:_____

EXHIBIT "A"
(attached)

EXHIBIT "B"
GENERAL CONDITIONS

Section 1. DEFINITIONS

1.1 "Agreement" shall mean that certain Trackage Rights Agreement dated as of the [●]th day of [●], 202[●] by and between Kansas City Southern Railway Company ("KCSR") and Illinois Central Railroad Company ("ICRR"), to which this Exhibit "B" is appended. The term "Agreement" shall include this Exhibit "B" in its entirety.

1.2 "Owner" shall mean KCSR.

1.3 "User" shall mean ICRR.

1.4 "Joint Trackage" shall mean those certain lines of railroad extending between MP 5.6 ± in the vicinity of Airline Junction, Missouri (including tracks within and providing access to the joint agency facility at Knoche Yard) and MP 29.5± at the IFG Intermodal Terminal ("IFG Terminal") in the vicinity of Grandview, Missouri (including all of the tracks within and providing access to the IFG Terminal), including all necessary head room/tail room, right-of-way and appurtenances and support facilities thereof, and all additions and betterments to, and changes in, the tracks and facilities constituting the Joint Trackage in the future as are required or desirable for the operation of the trains of the parties hereto

1.5 "Equipment" shall mean and include (i) trains, locomotives, cars and cabooses, (ii) vehicles and machinery which are capable of being operated on railroad tracks that, at the time of an occurrence, are being operated on the Joint Trackage, and (iii) vehicles and machinery that, at the time of an occurrence, are on the Joint Trackage or its right-of-way for the purpose of performing maintenance, repairs or the clearing of wrecks thereon.

1.6 "STB" shall mean the Surface Transportation Board, or any successor agency.

Section 2. MAINTENANCE CHANGES IN AND/OR ADDITIONS, OPERATION AND CONTROL

2.1 The construction, maintenance, repair, and renewal of the Joint Trackage shall be the responsibility, and under the exclusive direction and control, of Owner. Owner shall use reasonable and customary care, skill, and diligence in the construction, operation, maintenance, repair, and renewal of the Joint Trackage and in managing same. Notwithstanding anything to the contrary contained in the Agreement, User shall not, by reason of Owner's performing or failing or neglecting to perform any construction, operation, maintenance, repair, renewal, or management of the Joint Trackage, have or make against Owner any claim or demand for any

loss, damage, destruction, injury, or death whatsoever resulting therefrom; *provided,* that the Joint Trackage is at all times maintained to Federal Railroad Administration Class 3 or higher track standards.

2.2 Owner may make any additions and betterments to, and changes in, the Joint Trackage which may be required by law, or which Owner deems necessary or desirable for the safe, efficient, and economical use of the Joint Trackage by the parties. Such additions, betterments and changes shall progressively become part of the Joint Trackage during construction as they are completed. User may request additions and betterments to, and changes in, the Joint Trackage which User shall deem necessary or desirable for the safe, efficient, and economical use of the Joint Trackage by the parties. If Owner concurs with such additions and betterments, or changes requested by User, Owner shall construct the same upon such terms and conditions as may be agreed upon and they shall become part of the Joint Trackage. In the event that Owner does not concur with such additions, betterments or changes requested by User, Owner shall nevertheless construct the same at User's sole cost and expense if so requested by User. Owner shall make no retirement, withdrawal, elimination or disposal of any part of the Joint Trackage which would permanently or materially impair the usefulness thereof to User.

2.3 The management and operation of the Joint Trackage shall be under the exclusive direction and control of Owner. Owner shall make such changes to the management and operations on and over the Joint Trackage as in Owner's reasonable judgment may be necessary, expedient, or proper for the operations thereof herein intended.

2.4 If the use of the Joint Trackage shall at any time be interrupted or traffic thereon or thereover be delayed for any cause, neither party shall have or make any claim against the other for loss, damage, or expense of any kind, caused by or resulting from such interruption or delay.

2.5 Owner may from time to time substitute any track or tracks for those delineated in the Agreement for use by User; *provided*, User shall at all times have access to contiguous route of equal utility as the Joint Trackage for the operation of User's Equipment between the termini of the Joint Trackage. When tracks that are not specified as part of the Joint Trackage in Section 1.4 of these General Conditions are used as provided in this Section 2.5, the Agreement shall govern for purposes of direction and control and liability as if all train movements had been made over the Joint Trackage.

2.6 Each party shall be responsible for furnishing, at its own expense, all labor, fuel, and train supplies necessary for the operation of its own Equipment over the Joint Trackage. In the event a party hereto does furnish such labor, fuel, or train supplies to another party hereto, the party receiving same shall promptly, upon receipt of billing therefor, reimburse the party furnishing same for its reasonable costs of furnishing such labor, fuel, or train supplies.

2.7 The operation by User on or along the Joint Trackage shall at all times be in accordance with the rules, instructions and bulletins of Owner as they may be amended and supplemented from time to time; *provided*, however, that such rules, instructions and bulletins

shall be reasonable, just, and applied fairly to all parties using the Joint Trackage and shall not discriminate against any of them.

2.8 User shall be responsible for reporting and paying any mileage, per diem, use, or rental charges accruing on Equipment in User's account while on the Joint Trackage. Except as may be specifically provided for in the Agreement, nothing herein contained is intended to change practices with respect to interchange of traffic between the parties or with other carriers on or along the Joint Trackage.

2.9 The total cost of clearing a derailment, cleaning up any Hazardous Materials released during such derailment, and/or repairing the Joint Trackage or any other property damaged thereby shall be borne by the party or parties liable therefor in accordance with Section 4 of these General Conditions.

2.10 In the event of release of Hazardous Materials caused by faulty equipment or third parties, cleanup will be conducted and total costs resulting therefrom shall be borne by the parties as provided for in Section 4 of these General Conditions.

2.11 All employees of User engaged in or connected with the operations of User on or along the Joint Trackage shall be required to pass periodic examination on the rules of Owner related to the Joint Trackage; *provided,* with respect to such examinations that, upon request of User, owner shall qualify one or more of User's supervisory officers on said rules and such supervisory officer or officers so qualified shall thereafter examine all employees of User engaged in or connected with User's operations on or along the Joint Trackage. Pending qualification of train and engine crews of User, Owner shall furnish a pilot or pilots, at the expense of User, as deemed necessary by owner to assist in operating trains of User over the Joint Trackage.

2.12 If any employee of User shall neglect, refuse, or fail to abide by Owner's rules, instructions, and bulletins governing the operation on or along the Joint Trackage, such employee shall, upon written request of Owner, be prohibited by User from working on the Joint Trackage. If either party shall deem it necessary to hold a formal investigation to establish such neglect, refusal, or failure on the part of any employee of User, then upon such notice presented in writing, Owner and User shall promptly hold a joint investigation in which all parties concerned shall participate and bear the expense for its officers, counsel, witnesses, and employees. Notice of such investigation shall be given to employees of User by User's officers, and such investigation shall be conducted in accordance with applicable terms and conditions of schedule agreements between User and its employees. If, in the judgment of Owner, the result of such investigation warrants, such employee shall, upon written request of Owner, be withdrawn by User from service on the Joint Trackage, and User shall release and indemnify Owner from and against any and all claims and expenses because of such withdrawal, except as otherwise provided below.

If the disciplinary action is appealed by an employee of User to the National Railroad Adjustment Board or other tribunal lawfully created to adjudicate such cases, and if the decision of such board or tribunal sustains the employee's position, such employee shall not thereafter be barred from service on the Joint Trackage by reason of such occurrence.

It is understood that Owner shall reimburse User for all payments that User might be required to make as a result of a successful challenge being made by the employee or his representative as to the discipline recommended by Owner and assessed by User. User agrees to notify Owner before committing itself to making payment of any such employee claim. In the event a claim is progressed to an Adjustment Board, Owner will be given an opportunity to review User's submission. Any payments made to employees, as a result of an investigation being "overturned", shall include not only actual wages, but in addition, shall include expenses which User may be required to pay covering vacation allowances, Railroad Retirement taxes, unemployment insurance taxes and any other payroll tax or fringe benefits.

2.13 If any Equipment of User is bad ordered enroute on the Joint Trackage and it is necessary that it be set out, such bad ordered Equipment shall, after being promptly repaired, be promptly picked up by User. Unless otherwise agreed, Owner may, upon request of User and at User's expense, furnish the required labor and material and perform light repairs to make such bad ordered Equipment safe for movement. The employees and Equipment of Owner while in any manner so engaged or while en route to or returning to Owner's terminal from such an assignment shall be considered sole employees of User and sole property of User. However, should Owner after repairing such Equipment for User, move directly to perform service for Owner's benefit rather than return to Owner's terminal, then User's exclusive time and liability will end when owner's employees depart for work to be performed for Owner's benefit. In the case of such repairs by Owner to freight cars in User's account, billing therefor shall be in accordance with the Field and Office Manuals of the Interchange Rules adopted by the Association of American Railroads, hereinafter called "Interchange Rules", in effect at the date of performance of the repairs. Owner shall prepare and submit billing directly to and collect from the car owner for car-owner responsibility items as determined under said Interchange Rules. Should said car owner refuse or otherwise fail to make payment therefor, Owner shall submit billing to and collect from User any charges for repair to freight cars that are car-owner responsibility items, as determined under said Interchange Rules.

2.14 If Equipment of User shall become derailed, wrecked, or otherwise disabled while upon the Joint Trackage, it shall be re-railed or cleared by Owner; *provided*, that employees of User may re-rail User's derailed Equipment on the Joint Trackage whenever use of motorized on or off track equipment is not required and User has obtained permission to perform such re-railing from Owner (which permission shall not be unreasonably denied, conditioned or delayed). The costs and expenses of clearing derailments and wrecks shall be at User's expense unless otherwise provided for in allocation of liability in Section 5 of these General Conditions.

2.15 In the event Equipment of User shall be forced to stop on Joint Trackage, and such stoppage is due to insufficient hours of service remaining among User's employees, or due to mechanical failure of User's Equipment, or any other cause not resulting from an accident or derailment, and such Equipment is unable to proceed, or if a train of User fails to maintain the speed required by Owner on the Joint Trackage, or if in emergencies, crippled or otherwise defective Equipment is set out of User's trains on the Joint Trackage, Owner shall have the option to furnish motive power or such other assistance (including but not limited to the right to re-crew User's train) as may be necessary to haul, help or push such Equipment, or to properly move the disabled Equipment off the Joint Trackage. The costs and expenses of furnishing motive power or of rendering such other assistance shall be at User's expense.

2.16 In the event any accident, derailment, or wreck (hereinafter, a "**Derailment**") involving Units on or in a train operated by User or for User by Owner carrying hazardous materials, substances, pollutants or wastes, as defined pursuant to federal, state or local laws, regulations and ordinances and/or court decisions interpreting such laws, regulations and ordinances (hereinafter, "**Hazardous Materials**") shall occur on any segment of the Joint Trackage, any report required by federal, state or local authorities shall be the responsibility of User. User shall also advise the owner/shipper of the Hazardous Materials involved in the derailment, and Owner, immediately.

Unless otherwise agreed by the parties, Owner shall assume responsibility for cleaning up any release of Hazardous Materials from User's cars in accordance with all federal, state, or local regulatory requirements. User may have representatives at the scene of the derailment to observe and provide information and recommendations concerning the characteristics of Hazardous Materials release and the cleanup effort. Such costs shall be borne in accordance with Section 4 of these General Conditions.

If Hazardous Materials must be transferred to undamaged cars, User shall perform the transfer, provided, however, that if the Hazardous Materials are in damaged cars that are blocking the Joint Trackage, Owner, at its option, may transfer the Hazardous Materials. Transfers of Hazardous Materials by User shall only be conducted after being authorized by Owner.

Section 3. BILLING; DEFAULT

3.1 Billing shall be accomplished on the basis of data contained in a billing form mutually agreed to between the parties. Such billing form shall contain sufficient detail to permit computation of payments to be made hereunder. Billing shall be prepared in accordance with the Base Charge and Mileage Factor set forth in Sections 5(a) and 5(b), respectively, of this Agreement (and, as applicable, the rules, additives, and equipment rental rates published by Owner). User shall pay to Owner at the Office of the Treasurer of Owner or at such other location as Owner may from time to time designate, all the compensation and charges of every

name and nature that User is required to pay pursuant to the Agreement, in lawful money of the United States, within sixty (60) days after the receipt of bills therefor. Bills shall contain a statement of the amount due on account of the expenses incurred and services rendered during the billing period.

3.2 Errors or disputed items in any bill shall not be deemed a valid excuse for delaying payment, and bills shall be paid subject to subsequent adjustment. No exception to any bill shall be honored, recognized, or considered if filed after the expiration of three (3) years from the last day of the calendar month during which the bill is rendered. No bill shall be rendered later than three (3) years (i) after the last day of the calendar month in which the expense covered thereby is incurred, or (ii) in the case of claims disputed as to amount or liability, after the amount is settled and/or the liability(ies) established. This provision shall not limit the retroactive adjustment of billing made pursuant to retroactive adjustment of wage rates and settlement of wage claims.

3.3 So much of the books, accounts and records of each party hereto as are related to the subject matter of the Agreement shall at all reasonable times be open to inspection by the authorized representatives and agents of the parties hereto.

All books, accounts, and records shall be maintained to furnish readily full information for each item in accordance with 49 U.S.C. § 11161 *et seq*. and the related regulations of the STB in 49 C.F.R. Part 1201, 1-3, *et seq*.

3.4 Should any amount become payable by Owner to User under the Agreement, the provisions of Section 3.1 through Section 3.3 of these General Conditions shall apply with User as the billing party and Owner as the paying party.

No action of Owner in waiving any default of User under this Agreement shall be deemed to waive any subsequent default of User, or to impair any rights of Owner under the Agreement.

Section 4. COMPLIANCE WITH LAWS

4.1 User shall not treat, store or dispose of petroleum products or Hazardous Materials at any location on or along the Joint Trackage.

4.2 Responsibility for "**Environmental Claims**" (as defined in Section 4.6, below) as between the parties shall be borne by the party or parties liable therefor pursuant to the allocation of liability in Section 5 of these General Conditions.

4.3 Each party shall release the other party to the extent it is responsible for an Environmental Claim, and, to the extent of such responsibility, shall defend, indemnify, protect and save harmless such other party from and against such Environmental Claim and costs associated therewith, including, but not limited to, environmental consultant fees, attorneys' fees and third party claims.

4.4 In the event that any incident, accident, Derailment, or vehicle striking or being struck by Equipment (hereinafter "**Incident**") involving Equipment operated by a party hereto carrying Hazardous Materials shall occur on the Joint Trackage, any report required by Federal, State or local authorities shall be the responsibility of such party. Each party shall advise the other party immediately of the occurrence of an Incident involving Equipment operated by the party carrying Hazardous Materials.

Unless otherwise agreed by the parties, Owner shall undertake any "**Response Action**" (as defined in Section 4.5, below) in accordance with all Federal, State, or local regulatory requirements necessitated by a release of Hazardous Materials resulting from an Incident involving Equipment operated by either party on Owner's right-of-way underlying the Joint Trackage. User shall provide data or a representative available at the scene of any Incident involving Equipment operated by it to provide information concerning the characteristics of Hazardous Materials released.

If, following an Incident occurring on or along the Joint Trackage, Hazardous Materials must be transferred to undamaged cars or other vehicles, unless otherwise agreed by the parties, the party whose Equipment was involved in such Incident shall perform the transfer; *provided*, however, that if the Hazardous Materials are in damaged cars of a train of User that are blocking the Joint Trackage, Owner shall transfer the Hazardous Materials; *provided further* that transfers of Hazardous Materials by User shall only be conducted after being authorized by Owner (which authorization shall not be unreasonably denied, conditioned or delayed). The cost of such transfer of Hazardous Materials shall be borne by the party or parties liable therefor pursuant to the allocation of liability in Section 5 of these General Conditions.

4.5 In the event any cleanup, response, removal or remediation of any environmental condition on the Joint Trackage is necessary (collectively, a "**Response Action**"), neither party shall be entitled to any damages, actual or consequential, by reason of the Response Action's interference with the other party's use of the Joint Trackage. Owner and its contractors shall have full, unrestricted and unconditional access to the Joint Trackage for the purpose of completing or engaging in a Response Action for which Owner has any responsibility or, at Owner's option, a Response Action which Owner has undertaken should User fail to diligently pursue and complete such Response Action to the satisfaction of Owner; *provided*, however, that any Response Action (i) shall be undertaken and completed pursuant to a work plan (including a schedule) submitted to the other party for its review and, in the case of Owner, approval, and (ii) shall not unreasonably, in terms of duration or otherwise, restrict the other party's use of the Joint Trackage. Either party's completion of the other party's obligations hereunder shall not be

deemed a waiver of such obligations under the Agreement. Owner shall have the right, but not the obligation, to conduct reasonable inspections of any Response Action of User and User shall provide Owner all information requested by Owner regarding any Response Action of User or any Environmental Claims for which User is responsible.

4.6 The term "**Environmental Claim**" means the direct costs of any cleanup, Response Action, removal, remediation, natural resource damage, closure and/or post-closure required by any environmental condition affecting the air, soil, surface waters, ground waters, streams, sediments and similar environmental conditions caused by, resulting from, arising out of, or occurring in connection with this Agreement.

4.7 The liability and indemnity provisions of this Section 4 shall continue in full force and effect regardless of whether this Agreement is terminated pursuant to any other provision, or the Joint Trackage is abandoned and vacated by User.

4.8 The total cost of clearing a Derailment or other Incident, cleaning up any Hazardous Materials released during such Derailment or Incident, and repairing the Joint Tracks or any other property damaged thereby shall be borne by the party or parties liable therefor pursuant to the allocation of liability in Section 5 of these General Conditions.

Section 5. LIABILITY

5.1 The responsibility and liability as between the parties for: (i) any personal injury or death of any person (including employees of the parties and third parties), (ii) any real or personal property damage (including property of the parties and any third person), (iii) any damage or destruction to the environment (including land, air, water, wildlife and vegetation), and (iv) all cleanup and remedial expenses, court costs, litigation expenses and attorney's fees resulting from the use of the Joint Trackage by the parties to this Agreement or by third party users, all of which are collectively referred to as a "**Loss**", will be divided as follows:

(a) If a Loss results from the use of the Joint Trackage solely by the Equipment of only one of the parties to this Agreement without the involvement of any Equipment of the other party, then the party whose Equipment is involved shall be solely responsible for the Loss, even if caused partially or completely by the other party.

(b) If a Loss results from the use of the Joint Trackage by both Owner and User and involves the Equipment of both parties, then: (i) each of Owner and User shall be solely responsible for any Loss to its own employees and Equipment in its own account (including lading) and (ii) Owner and User shall each be responsible for one-half of any Loss to the Joint Trackage and Loss sustained by third parties, regardless of the proportional responsibility between or among them as to the cause of the Loss.

(c) If a Loss results from the use of the Joint Trackage by both User and a third party user of the Joint Trackage that is not a party to this Agreement, and involves the Equipment of both User and such third party user, then the responsibility of User and such third party user for the Loss shall be allocated in the manner specified in subsection (b), with the third party user being considered as Owner for the purpose of allocating such Loss. Owner shall be responsible for, and shall indemnify, defend, and hold harmless User from and against, all Loss allocated to a third party user in accordance with subsection 5(b).

(d) Notwithstanding any provision of this Section 5 to the contrary, each Party shall assume and bear all responsibility for any Loss or Damage is that is directly or proximately caused by acts or omissions of any of its employees while under the influence of drugs or alcohol.

(e) Whenever any liability, cost, or expense is assumed by or allocated to any party to this Agreement pursuant to this Section 5, that party shall forever protect, defend, indemnify, and save harmless the other party to this Agreement and its subsidiaries and affiliates, and all of its and their respective directors, officers, agents, and employees from and against that liability, cost, and expense assumed by that party or apportioned to it, regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance or misfeasance of the indemnitee or its directors, officers, agents or employees. Notwithstanding any provision to the contrary herein, no obligations of indemnity of either party shall apply with respect to punitive or exemplary damages to the extent arising from the conduct of the party to be otherwise indemnified hereunder.

(f) In every case of death or injury suffered by an employee of any party to this Agreement, when compensation to such employee or employee's dependents is required to be paid under any workmen's compensation, occupational disease, employer's liability, or other law, and either of said parties under the provisions of this Agreement is required to pay said compensation, if such compensation is required to be paid in installments over a period of time, such party shall not be released from paying any future installments by reason of the expiration or other termination of this Agreement prior to any of the respective dates upon which any such future installments are to be paid.

(f) For purposes of determining liability, pilots furnished by Owner to User pursuant to this Agreement shall be considered as the employees of User while such employees are on board or getting on or off trains of User .

(g) If any suit or action shall be brought against any party for damages which under the provisions of the Agreement are in whole or in part the responsibility of the other party, said other party shall be notified in writing by the party sued, and the party so

notified shall have the right and be obligated to take part in the defense of such suit and shall pay its allocated share of the judgment and cost, expense and attorneys' fees incurred in such suit as determined pursuant to this Section 5.

(h) In the event of a Loss involving lading, the parties to this Agreement shall be bound by the Freight Claim Rules, Principles, and Practices of the Association of American Railroads (AAR) as to the handling of any claims for the loss or damage to lading, except to the extent expressly provided otherwise herein.

5.2 Notwithstanding any provision to the contrary herein, the obligation of a party to indemnify the other party pursuant to this Section 5 shall not include any obligation to indemnify such other party for punitive or exemplary damages to the extent arising from conduct of such indemnified party.

Section 6. ARBITRATION

6.1 If at any time a question or controversy shall arise between the parties hereto in connection with the Agreement upon which the parties cannot agree, then, upon the written request of either party setting forth the issue in dispute, such question or controversy shall be submitted to arbitration. If the parties involved in such dispute are able to agree upon a single arbitrator experienced in matters of the character in dispute within thirty (30) days after the party desiring such arbitration (the "**Demanding Party**") shall notify in writing the other party to such dispute (the "**Noticed Party**"), such dispute shall be submitted to such single arbitrator. Otherwise, the Demanding Party shall appoint an arbitrator and notify the Noticed Party in writing of such appointment. Within twenty (20) days after receipt of said notice, the Noticed Party shall appoint an arbitrator and notify the Demanding Party in writing of such appointment. Should the Noticed Party fail within twenty (20) days after receipt of such notice to name its arbitrator, the arbitrator for the Demanding Party shall select one for the Noticed Party so failing and, if they cannot agree, said arbitrator may be appointed by the Chief Judge (or acting Chief Judge) of the United States District Court for the District in which the headquarters office of the Demanding Party is located upon application by either party after ten (10) days' written notice to the other party. The arbitrators so chosen, if an even number, shall select a third arbitrator to complete the panel. If they fail to agree upon a third arbitrator, the third arbitrator shall, upon application of any party, be appointed by said judge in the manner heretofore stated.

Upon selection of the arbitrator(s), said arbitrator(s) shall with reasonable diligence determine the questions set forth in said notice of demand for arbitration, shall give all parties reasonable notice of the time and place (which shall be at the discretion of the arbitrator(s)) of hearing evidence and argument, may take such evidence as they deem reasonable or as either party may submit with witnesses required to be sworn, and may hear arguments of counsel or others. If any arbitrator declines or fails to act, the party (or parties in the case of a single arbitrator) by whom such arbitrator was chosen or said judge shall appoint another to act in such

arbitrator's place. After considering all evidence, testimony, and arguments, said single arbitrator or the majority of said panel of arbitrators shall promptly state such decision or award in writing which shall be final, binding, and conclusive on all parties to the arbitration when delivered to them. Until the arbitrator(s) shall issue the first decision or award upon any question submitted for arbitration, performance under the Agreement shall continue in the manner and form existing prior to the rise of such question. After delivery of said first decision or award, each party shall forthwith comply with said first decision or award immediately after receiving it.

Each party to the arbitration shall pay the compensation, costs, and expenses of the arbitrator appointed in its behalf and all fees and expenses of its own witnesses, exhibits, and counsel. The compensation, costs, and expenses of the single arbitrator or the additional arbitrator in the board of arbitrators shall be paid in equal shares by all parties to the arbitration.

6.2 The books and papers of all parties, as far as they relate to any matter submitted for arbitration, shall be open to examination by the arbitrator(s).

Section 7. APPLICABLE LAW

This Agreement and any claims, disputes or controversies arising hereunder shall be governed by and construed in accordance with the laws of the state of Illinois, without giving effect to any choice or conflict of laws provision or rule (whether of the State of Illinois or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Illinois.

Section 8. GOVERNMENTAL APPROVAL; ABANDONMENT

8.1 User shall, at its own cost and expense, initiate by appropriate application or petition and thereafter diligently prosecute proceedings to obtain any required STB and Federal Communications Commission ("FCC") approval or exemption for the exercise of the trackage rights granted to User pursuant to the Agreement. Owner, at its expense, shall assist and support said application or petition and will furnish such information and execute, deliver, and file such instrument or instruments in writing as may be necessary or appropriate to obtain such STB and/or FCC consent, approval, or authority. User and Owner agree to cooperate fully to procure all such necessary consent, approval, or authority.

8.2 Owner reserves the right, to the extent that Owner may lawfully do so and subject to any required STB approval or exemption, to abandon all or any part of the Joint Trackage at any time during the life of the Agreement without concurrence of User, by giving six (6) months prior written notice to User of its intention so to do; *provided*, that User shall have a right of first refusal to purchase all or such part of the Joint Trackage that Owner proposes to abandon at a price to be calculated in the manner prescribed by the STB's regulations governing Offers of Financial Assistance at 49 C.F.R. § 1152.27 or any successor regulations.

8.3 Each party shall be responsible for any labor claims of, and shall bear the cost of employee protection payable to, its own employees and the employees of companies affiliated with it, to the extent resulting from the Agreement and/or such party's operations on the Joint Trackage.

Section 9. OTHER CONSIDERATIONS

9.1 Nothing in the Agreement contained shall limit the right of Owner to admit other companies to the use of the Joint Trackage or any part thereof on such terms and conditions as are acceptable to Owner; *provided*, that the operations of such other companies shall not unduly interfere with or delay the operations of User on and along the Joint Trackage. Except as otherwise provided in Sections 2 (b) of the Agreement, User shall have no right to admit any person, firm, or corporation to the use of the Joint Trackage.

9.2 The Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective successors, lessees, and assigns. Neither KCSR nor ICRR may assign this Agreement, or any of its rights, interests or obligations hereunder, including by operation of law or otherwise, without the prior consent in writing of the other Party, which consent will not unreasonably be withheld, conditioned or delayed; *provided*, that either Party may assign this Agreement without the prior consent of the other Party in connection with a corporate merger, asset sale, assignment, mortgage or lease of substantially all of such Party's railroad lines and business. In connection with the sale, lease or transfer by Owner of all or a portion of the Joint Trackage, Owner shall require the purchaser, lessee or transferee of such portion (or all) of the Joint Trackage to accept assignment in writing of this Agreement with respect to, and to perform Owner's obligations under this Agreement, with respect to the portion of the Joint Trackage sold, leased or transferred.

9.3 The Agreement and each and every provision hereof is for the exclusive benefit of the parties hereto and not for the benefit of any third party. Nothing herein contained shall be taken as creating or increasing any right in any third person to recover by way of damages or otherwise against any of the parties hereto.

9.4 All notices, demands, requested, or submissions which are required or permitted to be given pursuant to the Agreement shall be given by either party to the other in writing by serving the same upon the Vice President of Operations of each company.

9.5 If any covenant or provision of the Agreement not material to the right of User to use the Joint Trackage shall be adjudged void, such adjudication shall not affect the validity, obligation, or performance of any other covenant or provision which is in itself valid. No controversy concerning any covenant or provision shall delay the performance of any other covenant or provision. Should any covenant or provision of the Agreement be adjudged void, the

parties will make such other arrangements as, under the advice of counsel, will effect the purposes and intent of the Agreement.

9.6 All Section headings are inserted for convenience only and shall not affect any construction or interpretation of the Agreement.

9.8 No term or provision of the Agreement may be changed, waived, discharged, or terminated except by an instrument in writing signed by both parties to the Agreement.

9.9 All words, terms and phrases used in the Agreement shall be construed in accordance with the generally applicable definition or meaning of such words, terms, and phrases in the railroad industry in the United States.

9.10 The Agreement is the result of mutual negotiations between the parties hereto, neither of whom shall be considered the drafter for purposes of contract construction.

9.11 Except as provided by law or by rule, order, or regulation of any court or regulatory agency with jurisdiction over the subject matter of the Agreement, or as may be necessary or appropriate for a party hereto to enforce its rights under the Agreement, all commercial information to which access is provided or obtained hereunder will be kept confidential and will not be disclosed by either Owner or User to any party other than Owner or User (as applicable), their respective affiliates, and its and their respective officers, employees, and attorneys,, without the prior written approval of the other party.

End of Exhibit “B”.

Exhibit 2C

Haulage Services Agreement

HAULAGE SERVICES AGREEMENT

THIS HAULAGE SERVICES AGREEMENT (the **"Agreement"**) is entered into as of this [●] day of [●], 20[●], by and between KANSAS CITY SOUTHERN RAILWAY COMPANY, a Delaware corporation ("**KCSR**"), and ILLINOIS CENTRAL RAILROAD COMPANY, an Illinois corporation ("**ICRR**"). KCSR and ICRR are referred to individually herein as a "Party" and collectively as the "Parties."

RECITALS

WHEREAS, pursuant to that certain Asset Purchase Agreement (the "**Springfield - Kansas City APA**") dated as of [●], 20[●] by and among ICRR, KCSR and Gateway Eastern Railway Company ("**GWER**"), ICRR purchased from KCSR and GWER certain lines of railroad extending between Springfield, Illinois and East St. Louis, Illinois, on the one hand, and Kansas City, Missouri, on the other hand, as more particularly described in the Springfield – Kansas City APA (the "**Subject Line**"); and

WHEREAS, in connection with the sale of the Subject Line to ICRR, KCSR desires to obtain **"Haulage Services"** (as defined in Section 2.1 below) for **"KCSR Traffic"** (as defined in Section 1.3 below) moving to and from customers, transload, intermodal and auto facilities, and interchange points on and along the Subject Line, and ICRR has agreed to provide such Haulage Services to KCSR, on the terms and subject to the conditions set forth hereinafter;

NOW, THEREFORE, for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

SECTION 1.
DEFINITIONS

1.1 **"Railcars"** shall mean and include each loaded or empty railroad freight car, caboose or similar equipment tendered by KCSR for handling by ICRR pursuant to this Agreement. For articulated cars, each platform or well shall be counted as one Railcar. Railcars shall also include a locomotive moving under waybill (but not a locomotive furnished by KCSR for the transportation of Haulage Cars over the Haulage Route).

1.2 **"Haulage Route"** shall mean and include (i) the Subject Line and all side tracks, spur tracks, industry tracks (whether owned by ICRR or a customer), yard and terminal facilities, rights-of-way and appurtenances and support facilities thereof, (ii) all changes and/or additions and betterments thereto as are used now or in the future for the handling of Haulage Cars by ICRR pursuant to this Agreement, and (iii) the joint agency facility at Knoche Yard in Kansas City (for purposes of delivering Haulage Cars to, and receiving Haulage Cars from, KCS at Kansas City.

1.3 **"KCSR Traffic"** shall mean Railcars moving in the revenue account of KCSR, Canadian Pacific Railway Company ("**CP**") and their respective U.S. rail carrier affiliates.

1.4 **"Haulage Cars"** shall mean KCSR Traffic tendered for handling by ICRR pursuant to this Agreement. Haulage Cars may include:

(1) Railcars originating or terminating at any (a) customer facility, (b) industry, team or house track, and (c) transload, intermodal or auto facility (except to any such facility that is owned or operated by ICRR or an affiliate of ICRR) , in each case located at any point on and along the Haulage Route during the Term of this Agreement.

(2) Railcars tendered by KCSR for interchange with any third party railroad at any location where the lines of such railroad connect with the Haulage Route.

1.5 **"Haulage Services"** shall have the meaning set forth in Section 2 of this Agreement.

SECTION 2.
HAULAGE SERVICES

2.1 ICRR hereby agrees to provide, upon request by KCSR, the following **"Haulage Services,"** on the terms and subject to the conditions set forth in this Agreement:

(i) line haul transportation of Haulage Cars to, from and between points on and along the Haulage Route;

(ii) pick up, delivery, switching, spotting and placement of Haulage Cars at customer facilities, on industry, team or house tracks, and at transload, intermodal or automotive facilities, in each case, as directed by KCSR and/or the subject customer or facility operator;

(iii) the receipt of Haulage Cars tendered by KCSR, and the placement of Haulage Cars delivered to KCSR, on the designated tracks at the joint agency facility at Knoche Yard in Kansas City, Missouri;

(iv) the placement of Haulage Cars tendered by KCSR for interchange to any third party railroad, and the receipt of Haulage Cars delivered by any third party railroad for interchange to KCSR, in each case on the designated interchange tracks at locations where the lines of such third party railroad connect with the Haulage Route;

(v) movement of bad order equipment to or from repair tracks on ICRR's lines; *provided,* however, that KCSR will be billed separately for repairs to such equipment performed by ICRR pursuant to Section 3.6 of this Agreement;

(vi) such mechanical or other inspections of Haulage Cars as may be required by applicable laws or regulations or by ICRR's operating practices; and

(vii) provision of supervision as required.

2.2 Haulage Cars shall be blocked by KCSR or ICRR (as applicable) prior to movement on and along the Haulage Route in the manner set forth in Exhibit 1 to this Agreement.

2.3 ICRR shall provide Haulage Cars substantially the same types and levels of service for the protection of freight (such as inspections, load shifting and security) as ICRR does for other traffic moving in ICRR trains.

2.4 For (i) any intact train consisting of 75 or more Haulage Cars of the same commodity ("**Unit Train**") and (ii) any train (regardless of commodity) that is 8,000 feet or longer, in each case tendered by KCSR for handling by ICRR over the Haulage Route, KCSR shall, at its expense, provide a sufficient number of PTC-equipped locomotives to enable movement of such Unit train on and along the Haulage Route at the rated track speed.

2.5 If ICRR, in its reasonable judgment, is required to construct or install additional main line track, siding capacity, spur or lead track to serve new online industries, or other infrastructure (collectively, "Capacity Improvements") on any portion of the Haulage Route as a result of (i) an increase in the volume of Haulage Cars, (ii) an increase in the frequency of Haulage Services set forth in Section 4.2, or (iii) a request by KCSR that ICRR provide Haulage Services in addition to those set forth in Section 2.1, and such Capacity Improvements are not required in connection with ICRR's own traffic or operations over the Haulage Route, KCSR shall be responsible for all costs associated with the construction, installation and maintenance of such Capacity Improvements.

SECTION 3.
MANAGEMENT AND OPERATION

3.1 ICRR shall deliver Haulage Cars to, and shall receive Haulage Cars from, KCSR (i) at the joint agency facility at Knoche Yard in Kansas City, Missouri on such track(s) as shall be designated from time to time by the designated operating officers in

charge of operations at Kansas City, Missouri, and (ii) at transload, intermodal or auto facilities served by ICRR (except any such facility that is owned or operated by ICRR or an affiliate of ICRR) at any point on and along the Haulage Route. KCSR and ICRR shall at all times be subject to the direction and control of the ICRR or KCSR (as applicable) operating officer in charge of such tracks and facilities, and to all applicable provisions of ICRR's or KCSR's (as applicable) safety and operating rules, while operating on the other carrier's tracks and facilities.

3.2 KCSR and ICRR each shall provide, via EDI transmission (or by such other means as may be mutually agreed by the Parties), information necessary for the efficient interchange and movement of Haulage Cars that are delivered or received at Kansas City, Missouri, and at customer facilities, transload, intermodal or auto facilities or interchange locations on and along the Haulage Route. Such information shall include, for each Haulage Car:

(1) Car initial and number.

(2) Loaded or empty.

(3) Commodity.

(4) All required hazardous materials information.

(5) Such other information as the Parties may agree is necessary or convenient for the safe and efficient exchange and further movement of such cars, to support efficient car management and to support their respective customer service functions.

3.3 Haulage Cars shall be considered as physically delivered by KCSR to ICRR:

(1) at Kansas City, Missouri when those Haulage Cars have been placed by KCSR on the designated track(s) at Knoche Yard and the KCSR locomotive(s) are uncoupled from those Haulage Cars or, for trains

operating with run-through power, when the KCSR crew disembarks the train.

(2) at a customer facility, transload, intermodal or auto facility or interchange location on or along the Haulage Route when the ICRR locomotive(s) are coupled to those Haulage Cars or the ICRR crew embarks the train.

In each case, the physical delivery of Haulage Cars shall be preceded by the delivery of the car movement information specified in Section 3.2 of this Agreement.

3.4 Haulage Cars shall be considered as physically delivered by ICRR to KCSR:

(1) at Kansas City, Missouri when those Haulage Cars have been placed by ICRR on the designated track(s) at Knoche Yard and the ICRR locomotive(s) are uncoupled from those Haulage Cars or, for trains operating with run-through power, when the ICRR crew disembarks the train.

(2) at a customer facility, transload, intermodal or auto facility or interchange location on or along the Haulage Route when the ICRR locomotive(s) are uncoupled from those Haulage Cars or the ICRR crew disembarks the train.

In each case, the physical delivery of Haulage Cars shall be preceded by the delivery of the car movement information specified in Section 3.2 of this Agreement.

3.5 ICRR shall have exclusive management and control over the movement of trains containing Haulage Cars while on ICRR's rail lines.

3.6 ICRR may arrange for repairs to Haulage Cars, and adjustments to or transfers of lading from bad ordered, defective or overloaded Haulage Cars, in accordance with the Field and Office Manuals of the Interchange Rules of the Association of American Railroads ("AAR"), as may be necessary to move such Haulage Cars safely on or along the Haulage Route. KCSR shall reimburse ICRR for the cost of such work at rates prescribed in, and submitted pursuant to, the AAR Interchange Rules. KCSR shall also pay to ICRR

the switch fee set forth on Schedule 6.1 for each of (i) removing the car from the train and (ii) picking up the car after repairs are made and placing it in a train for further movement.

3.7 KCSR shall permit ICRR to tie up, fuel and service its locomotives and Equipment (as defined in Section 7.1), at no charge, on such track(s) at Knoche Yard in Kansas City, Missouri as shall be designated from time to time by KCSR's dispatcher or other designated operating officer in charge of operations at Knoche Yard; *provided*, however, that ICRR shall do so at its sole risk and expense.

SECTION 4.
SERVICE STANDARDS

4.1 ICRR shall accord Haulage Cars the same level of service as other traffic of the same type moving in ICRR trains.

4.2 ICRR will, upon request by KCSR, provide Haulage Services at least [●] days per week, in each direction, subject to weather conditions and the availability of sufficient Haulage Cars to warrant such frequency of service. The Parties shall cooperate to establish (and to adjust as necessary from time to time) mutually beneficial train service schedules. ICRR shall make commercially reasonable efforts to provide Haulage Services in accordance with the schedules agreed to by the Parties.

SECTION 5.
CAR ACCOUNTING AND CAR HIRE

5.1 ICRR shall not be entitled to any line haul revenue for the handling of Haulage Cars, nor shall ICRR participate in the routing of, nor appear in tariffs, waybills or other shipping documents (other than transportation routing documents) as a participating carrier in connection with, the movement of Haulage Cars. ICRR shall be entitled to collect all applicable accessorial charges set forth in ICRR tariffs including, but not limited to,

demurrage, storage and other car-related charges from customers served (or accessed) by ICRR to which Haulage Cars are originated or delivered.

5.2 Haulage Cars shall at all times remain in the car hire account of KCSR while moving on or along the Haulage Route, while awaiting interchange with KCSR or a third party railroad, and while located at customer facilities, industry, team or house tracks and transload, intermodal or auto facilities on and along the Haulage Route. KCSR shall report and pay, or arrange to have reported and paid, directly to the owner(s) of such Haulage Cars, all appropriate allowances and charges for the time period(s) during which such Haulage Cars are moving on or along the Haulage Route, awaiting interchange with KCSR or a third party railroad, and located at customer facilities, industry, team or house tracks and transload, intermodal or auto facilities on and along the Haulage Route. If a Haulage Car is at any time found to be in the car hire account of ICRR, ICRR shall be entitled to reclaim from KCSR any car hire assessed to ICRR with respect to such Haulage Car.

SECTION 6.
COMPENSATION

6.1 KCSR shall pay to ICRR as compensation for Haulage Services provided with respect to Haulage Cars the fees set forth in Schedule 6.1 attached to this Agreement (the **"Haulage Fees"**). The Haulage Fees set forth in Schedule 6.1 shall include (i) fuel and fuel surcharge (set forth in ICRR Fuel Surcharge Tariff Number [●], as amended from time to time) and (ii) all applicable ICRR switching charges for access to customer facilities.

6.2 The Haulage Fees set forth in Schedule 6.1 of this Agreement shall be adjusted annually beginning on the 1st day of April, 202[●] to reflect 100 percent of increase or decrease in the cost of labor and material, excluding fuel, as reflected in Table A, Annual Indices of Charge-Out Prices and Wage Rates (1977=100), Series RCR, included in

"AAR Railroad Cost Indexes" and supplements thereto, issued by the Association of American Railroads ("**AAR**"). In making such determination, the final "Material prices, wage rates and supplements combined (including fuel) " index for the East District shall be used. The Haulage Fees shall be revised by calculating the percentage of increase or decrease for the year to be revised based on the final index of the most recently completed calendar year as related to the final index of the calendar year prior to the most recently completed calendar year; and applying that percentage of increase or decrease to the current Haulage Fees to be escalated.

By way of example, assuming "A" to be the "Material prices, wage rates and supplements combined (including fuel) " final index figure for the calendar year (202[●]) ; "B" to be the "Material prices, wage rates and supplements combined (including fuel)" final index figure for the calendar year (202[●]); and "C" to be the current Haulage Fees to be escalated; the revised Haulage Fees would be determined by the following formula:

B/A x C = Revised Haulage Fee, Rounded to Nearest Whole Cent (5 Mills or More Rounds to Next Cent);

provided, however, that under no circumstances shall the Haulage Fees ever be less than the Haulage Fees set forth in Schedule 6.1.

6.3 In the event the base for the Annual Indexes of Charge-Out Prices and Wage Rates issued by the AAR shall be changed from the year 1977, appropriate revision shall be made. If the AAR or any successor organization discontinues publication of the Annual Indices of Charge-Out Prices and Wage Rates, an appropriate substitute index for determining the percentage of increase or decrease shall be negotiated by the Parties. In the

absence of agreement, the Parties shall submit the matter to binding arbitration pursuant to the procedures set forth in Section 12 of this Agreement.

6.4 No later than the 15th day of each month, KCSR shall submit to ICRR a list of all Haulage Cars handled by ICRR during the prior month. ICRR shall then prepare and deliver to KCSR an invoice (the **"Haulage Invoice"**), computed in accordance with the Haulage Fees set forth in Schedule 6.1 (as adjusted pursuant to Section 6.3), for Haulage Services provided during the prior calendar month. KCSR shall make payment to ICRR within fifteen (15) days after the date of each Haulage Invoice.

6.5 Any dispute regarding the amount of a Haulage Invoice shall be reconciled between KCSR and ICRR, and any adjustment resulting from such reconciliation shall be reflected in a subsequent Haulage Invoice. If KCSR disputes any portion of a Haulage Invoice, it shall nevertheless pay the undisputed portion of such Haulage Invoice. No exception to any Haulage Invoice shall be honored, recognized, or considered if tendered to ICRR after the expiration of three (3) years from the last day of the calendar month during which such Haulage Invoice was delivered, and no Haulage Invoice shall be issued by ICRR later than three (3) years (i) after the last day of the calendar month in which the Haulage Services covered thereby were provided by ICRR to KCSR, or (ii) in the case of claims disputed as to amount or liability, after the amount is settled and/or the liability(ies) established.

6.6 KCSR and ICRR each shall have the right, at its own expense, to audit the records of the other Party pertaining to Haulage Services provided under this Agreement at any time within one (1) year of the date of the relevant Haulage Invoice. All such audits shall be conducted at reasonable intervals (not to exceed once every twelve (12) months),

locations and times. Each Party agrees that, except as permitted by Section 14, all information disclosed to it or its representatives in connection with such an audit will be held in strictest confidence and will not be disclosed to any third party (other than to an arbitrator in connection with an arbitration conducted pursuant to Section 12 of this Agreement, or as required by applicable law). Any adjustment resulting from an audit conducted pursuant to this Section 6.6 with respect to which KCSR and ICRR are in concurrence shall be reflected in a subsequent Haulage Invoice.

SECTION 7.
LIABILITY

As between the Parties hereto, responsibility for any loss or destruction of, or damage to, any property whatsoever (including without limitation Cars and Equipment, as defined in Section 7.1), damage to or destruction of the environment (including without limitation land, air, water, wildlife and vegetation), and any injury to or death of any person or persons whomever (including without limitation employees of ICRR and KCSR), resulting from, arising out of, incidental to or occurring in connection with this Agreement and the Haulage Services contemplated hereby (collectively, **"Loss or Damage"**), shall be allocated as follows, without regard to considerations of fault or negligence (except as otherwise provided in Sections 7.4 and 7.5 hereof).

7.1 For purposes of this Section 7, the following words shall have the meanings set forth in this Section 7.1:

(1) "**Cars**" shall mean loaded and empty freight cars, trailers and containers (including lading).

(2) "**Equipment**" shall mean locomotives, cabooses, hi-rail vehicles, track inspection equipment and other non-revenue vehicles and machinery capable of being operated on railroad tracks that, at the time of an

occurrence, (i) are being operated on the trackage upon which such occurrence takes place, or (ii) are on the trackage upon which such occurrence takes place, or on the adjoining right-of-way, for the purpose of maintenance or repair thereof or the clearing of wrecks thereon.

7.2 Whenever Loss or Damage occurs with one or more KCSR and/or ICRR trains being involved, and one or more of such trains contains Haulage Cars, then the responsibility of the Parties, as between themselves, for such Loss or Damage shall be determined as follows:

(1) KCSR shall assume and bear all liability for Loss or Damage to (i) all Haulage Cars (including lading) moving in such KCSR and ICRR train(s), (ii) all other Cars and Equipment (including lading) moving in such KCSR train(s) and (iii) for any injury to, or death of, any KCSR employee(s);

(2) ICRR shall assume and bear all liability for Loss or Damage to (i) Cars and Equipment other than Haulage Cars (including lading) moving in such ICRR train(s), (ii) ICRR Locomotives and Equipment tied up, fueled or serviced on KCSR track and/or Knoche Yard pursuant to Section 3.7 of this Agreement, and (iii) for any injury to, or death of, any ICRR employee(s).

(3) Any other Loss or Damage, including without limitation Loss or Damage to trackage or to property, to the environment, and any injury to or death of any other person or persons, so occurring shall be allocated between ICRR and KCSR in proportion to the number of Haulage Cars and other KCSR Cars and Equipment, on the one hand, and the number of ICRR Cars and Equipment, on the other hand, moving in such trains.

7.3 For purposes of determining responsibility for Loss and Damage as between the Parties hereto pursuant to this Section 7, (i) any Cars or Equipment of any railroad not a party to this Agreement and moving in a ICRR train shall be deemed to be Cars or Equipment of ICRR, and (ii) any Cars or Equipment of any railroad not a party to this Agreement and moving in a KCSR train shall be deemed to be Cars or Equipment of KCSR.

7.4 Notwithstanding any provision of this Section 7 to the contrary, each Party shall assume and bear all responsibility for any Loss or Damage is that is directly or

proximately caused by acts or omissions of any of its employees while under the influence of drugs or alcohol.

7.5 Whenever circumstances require wrecking service or wrecking train service on the lines of KCSR or at Knoche Yard in connection with the subject of this Agreement, KCSR shall arrange for such services to be performed as promptly as reasonably possible, and the cost thereof shall be allocated as between the Parties in accordance with the terms of this Section 7. Whenever circumstances require wrecking service or wrecking train service on ICRR's lines in connection with the subject of this Agreement, ICRR shall arrange for such services to be performed as promptly as reasonably possible, and the cost thereof shall be allocated as between the Parties in accordance with the terms of this Section 7.

7.6 If any suit or action shall be brought against either Party for Loss or Damage which under the provisions of this Agreement is in whole or in part the responsibility of the other Party, said responsible Party shall be notified in writing by the Party sued, and the Party so notified shall have the right and be obligated to take part in the defense of such suit and shall pay its share of the judgment and the costs and expense incurred in such suit in accordance with the terms of this Section 7.

7.7 In every case of death or injury suffered by an employee of ICRR or KCSR, when compensation to such employee or employee's dependents is required to be paid under any present or future state or federal worker's compensation, occupational disease, employers' liability or other law, and a Party is required under provisions of this Agreement to pay some or all of such compensation in installments over a period of time, said Party shall not be released from paying any such future installment(s) by reason of the expiration

or other termination of this Agreement prior to any of the respective date(s) upon which any such future installments are to be paid.

7.8 Whenever any liability, cost or expense is assumed by or the responsibility of a Party under this Section 7, that Party shall (i) forever protect, defend, indemnify and save harmless the other Party, its parent corporations, subsidiaries and affiliates, and their respective directors, officers, agents, and employees from and against that liability, cost and expense, regardless of whether such liability, cost and expense was caused in whole or in part by the fault, failure, negligence, misconduct, malfeasance or misfeasance of the indemnitees, their parent corporations, subsidiaries and affiliates, or their respective directors, officers, agents or employees, and (ii) defend such indemnitees, their parent corporations, subsidiaries and affiliates, and their respective directors, officers, agents or employees against such claims with counsel selected by the responsible Party and reasonably acceptable to the indemnified Party..

7.9 As between KCSR and ICRR, responsibility for investigating, adjusting and defending cargo related claims filed in accordance with 49 U.S.C. Section 11706 or 49 C.F.R. Section 1005 (or any applicable Canadian or Mexican law or regulation), or in accordance with any applicable transportation contract filed pursuant to 49 U.S.C. Section 10709 (or any applicable Canadian or Mexican law or regulation) shall be allocated between KCSR and ICRR in the manner set forth in Section 7.2, Section 7.3 and Section 7.4.

7.10 All costs and expenses in connection with the investigation, adjustment and defense of any claim or suit (other than cargo-related claims made against a Party by a customer of such Party) under this Agreement shall be included as costs and expenses in

applying the liability provisions of this Section 7; *provided*, however, that salaries or wages of full-time agents, full-time attorneys and other full-time employees of a Party engaged directly or indirectly in such work shall be borne by such Party.

7.12 No Party shall settle or compromise any claim, demand, suit or cause of action (other than a cargo-related claim filed with it in accordance with 49 U.S.C. Section 11706 or 49 C.F.R. Section 1005, in accordance with any applicable transportation contract filed pursuant to 49 U.S.C. Section 10709, or in accordance with any applicable Canadian or Mexican law or regulation) for which the other Party has any liability under this Agreement without the written concurrence of such other Party.

SECTION 8.
COMPLIANCE WITH LAW

8.1 KCSR and ICRR each shall comply with all applicable federal, state and local laws, rules, regulations and orders promulgated by any government or governmental agency that relate to the loading, handling, movement, inspection, repair and maintenance of Haulage Cars. If any fine, penalty, cost or charge is imposed or assessed on or against a Party hereto by reason of the other Party's failure to comply with any such laws, rules, regulations or orders, such non-complying Party shall reimburse and indemnify the other Party for or on account of any such fine, penalty, cost, or charge, and all expenses and attorney's fees incurred in connection therewith, and, to the extent feasible, such non-complying Party shall defend the interests of that other Party in any related legal proceeding free of cost, charge or expense to such other Party.

SECTION 9.
TERM

9.1 This Agreement shall become effective (the **"Effective Date"**) on the later of (i) the date upon which KCSR and ICRR consummate the line sale transaction contemplated by the Springfield -Kansas City APA, and (ii) such other date as the Parties may agree in writing.

9.2 This Agreement shall remain in effect for an initial term of thirty (30) years (the **"Initial Term"**). Upon expiration of the Initial Term, this Agreement shall automatically renew for five (5) successive terms of ten (10) years (each a **"Renewal Term"**); *provided*, that KCSR and ICRR each shall have the right to request renegotiation of the Haulage Fees set forth in Schedule 6.1 (as adjusted pursuant to Section 6.3 of this Agreement) by providing written notice to the other Party no less than one calendar year prior to the expiration of the Initial Term or a Renewal Term (as applicable); and *provided further*, that the Party seeking an adjustment to the Haulage Fee(s) shall demonstrate that the then-current Haulage Fee(s) is/are unreasonable in light of unforeseen circumstances or otherwise imposes undue economic hardship on such Party. If the Parties are unable to agree upon the adjustment (if any) to be made to the Haulage Fee(s), the matter shall be submitted to binding arbitration pursuant to the procedures set forth in Section 12 of this Agreement.

9.3 Termination of this Agreement shall not relieve or release any Party hereto from any obligation assumed or from any liability which may have arisen or been incurred by that Party under the terms of this Agreement prior to such termination. Upon expiration or termination of this Agreement, all obligations (including, without limitation, obligations to remit fees and obligations of indemnity) arising or accruing prior to such termination or

expiration and all provisions of this Agreement necessary to enforce and resolve same shall survive and remain enforceable.

SECTION 10.
FORCE MAJEURE

10.1 The obligations, other than payment obligations, of the Parties to this Agreement shall be subject to force majeure, including (including strikes, riots, weather or floods, explosion, accidents, Acts of God, acts of war or terrorism, pandemic, and other causes or circumstances beyond the control of the Party invoking such force majeure as an excuse for nonperformance), but only for as long as, and to the extent that, such force majeure shall reasonably prevent performance of such obligations by the affected Party; *provided*, that the Party experiencing such force majeure or promptly gives to the other Party prompt notice in writing of such force majeure. In the event that an event of force majeure impairs a Party's ability to fulfill its obligations to the other Party under this Agreement, said Party shall take reasonable measures to restore performance of its obligations in a timely manner.

SECTION 11.
SUCCESSORS AND ASSIGNS

11.1 This Agreement shall inure to the benefit of and be binding upon each of the Parties and their respective successors and permitted assigns.

11.2 Except as otherwise provided in Section 11.3, neither KCSR nor ICRR may assign this Agreement, or any of its rights, interests or obligations hereunder, including by operation of law or otherwise, without the prior consent in writing of the other Party, which consent will not unreasonably be withheld, conditioned or delayed.

11.3 Notwithstanding the provisions of Section 11.2, either Party may assign this Agreement without the prior consent of the other Party in connection with a corporate merger, asset sale, assignment, mortgage or lease of substantially all of such Party's railroad lines and business. In connection with a sale, lease or transfer involving all or a portion of the Haulage Route, ICRR shall require the purchaser, lessee or transferee of such portion (or all) of the Haulage Route to accept assignment in writing of this Agreement with respect to, and to perform ICRR's obligation to provide Haulage Services for KCSR on and along, the portion of the Haulage Route sold, leased or transferred.

11.4 Assignment of this Agreement by a Party shall not transfer or extinguish any liability or obligation incurred by that Party under this Agreement prior to such assignment.

SECTION 12.
ARBITRATION

12.1 Any dispute arising between the Parties with respect to the interpretation, enforcement or breach of this Agreement shall be referred to their respective senior operating officers for resolution. In the event such officers are unable to resolve the dispute within thirty (30) days, then, upon the written request of either Party setting forth the issue in dispute, such question or controversy shall be submitted to arbitration. If the Parties involved in such dispute are able to agree upon a single arbitrator experienced in matters of the character in dispute within thirty (30) days after the Party invoking arbitration (the **"Demanding Party"**) has notified the other Party to such dispute (the **"Noticed Party"**) in writing, such dispute shall be submitted to such single arbitrator. Otherwise, the Demanding Party shall appoint an arbitrator and notify the Noticed Party in writing of such appointment. Within twenty (20) days after receipt of said notice, the Noticed Party shall appoint an arbitrator and notify the Demanding Party in writing of such appointment. Should the

Noticed Party fail within twenty (20) days after receipt of such notice to name its arbitrator, the arbitrator for the Demanding Party shall select one for the Noticed Party so failing and, if the Noticed Party does not agree with such selected arbitrator, said arbitrator may be appointed by the Chief Judge (or acting Chief Judge) of the United States District Court for the District in which the headquarters office of the Demanding Party is located upon application by any Party after ten (10) days' written notice to all other Parties. The arbitrators so chosen shall select one additional arbitrator to complete the arbitration panel. If they fail to agree upon an additional arbitrator, the same shall, upon application of any Party, be appointed by said judge in the manner heretofore stated.

12.2 Upon selection of the arbitrator(s), said arbitrator(s) shall with reasonable diligence determine the questions set forth in said notice of demand for arbitration, shall give all Parties reasonable notice of the time and place (which shall be at the discretion of the arbitrator(s)) of hearing evidence and argument, may take such evidence as they deem reasonable or as either Party may submit with witnesses required to be sworn, and may hear arguments of counsel or others. If any arbitrator declines or fails to act, the Party (or Parties in the case of a single arbitrator) by whom he was chosen or said judge shall appoint another to act in his place. After considering all evidence, testimony, and arguments, said single arbitrator or the majority of said panel of arbitrators (as applicable) shall promptly issue a decision or award in writing on the issue(s) in dispute, which shall be final, binding, and conclusive on all Parties to the arbitration when delivered to them. Until the arbitrator(s) shall issue the first decision or award upon any question or dispute submitted for arbitration, performance under the Agreement shall continue in the manner and form existing prior to

the rise of such question or dispute. After delivery of said first decision or award, each Party shall forthwith comply with said first decision or award immediately after receiving it.

12.3 Each Party to the arbitration shall pay the compensation, costs, and expenses of the arbitrator appointed in its behalf and all fees and expenses of its own witnesses, exhibits, and counsel. The compensation, costs, and expenses of the single arbitrator (or the additional arbitrator in the panel of arbitrators) shall be paid in equal shares by all Parties to the arbitration.

12.4 The books and papers of the Parties, as far as they relate to any matter submitted for arbitration, shall be open to the examination of the arbitrator(s).

SECTION 13.
NOTICE

13.1 Any notice required or permitted to be given by one Party to another Party under this Agreement (a "**Notice**") shall be in writing. Notices shall be deemed to have been given, made or delivered: (a) if delivered in person or by overnight courier service, when received; and (b) if sent by registered or certified mail return receipt requested, on the earlier of the date of receipt or the fifth day after it is mailed. Notices shall be addressed as follows:

(a) If to ICRR:

_____
_____
_____
_____
Attention: _____

with a copy to:

_____
_____

_____
Attention:

(b) If to KCSR:

_____
_____
_____
_____
_____
Attention : _____

with a copy to:

_____
_____
_____
Attention: _____

Any Party may provide notice of changes in the above addressees to the other Party by personal service or certified or registered mail.

SECTION 14.
CONFIDENTIALITY

14.1 Except as provided by law or by rule, order or regulation of any court or government agency with jurisdiction over the subject matter of this Agreement, or as may be necessary or appropriate for a Party hereto to enforce its rights under this Agreement, during the Initial Term and any Renewal Term(s), the terms and provisions of this Agreement and all information to which access is provided or which is obtained pursuant to this Agreement will be kept confidential and will not be disclosed by any Party to any person other than such Party's officers, employees, and attorneys, without the prior written approval of the other Party.

SECTION 15.
GENERAL PROVISIONS

15.1 This Agreement and each and every provision hereof is for the exclusive benefit of the Parties hereto and not for the benefit of any third person. Nothing herein contained shall be taken as creating or increasing any right of any third person to recover by way of damages or otherwise against any Party hereto.

15.2 This Agreement contains the entire understanding of the Parties hereto and supersedes any and all prior oral or written agreements or understandings between the Parties with respect to the subject matter hereof. In the event of any conflict between the terms of this Agreement and the terms of any interchange agreement, arrangement or understanding between ICRR and KCSR, the terms of this Agreement shall govern with respect to the movement, handling, delivery and transfer of Haulage Cars between the Parties.

15.3 No term or provision of this Agreement may be changed, waived, discharged or terminated except by an instrument in writing signed by all Parties.

15.4 Each definition in this Agreement includes the singular and the plural, and references in this Agreement to the neuter gender include the masculine and feminine where appropriate. References herein to any agreement or contract mean such agreement or contract as amended. As used in this Agreement, the word "including" means "without limitation", and the words "herein", "hereof" and "hereunder" refer to this Agreement as a whole. All dollar amounts stated herein are in United States currency.

15.5 All words, terms and phrases used in this Agreement, and not otherwise defined explicitly, shall be construed in accordance with the generally applicable definition or meaning of such words, terms and phrases in the railroad industry in the United States.

15.6 The division of this Agreement into sections and subsections and the insertion of headings and section numbers are for convenience of reference only, and shall not affect the construction or interpretation of this Agreement. Unless the context otherwise requires, all references to sections are to sections of this Agreement.

15.7 This Agreement is the result of mutual negotiations between the Parties hereto, neither of whom shall be considered the drafter for purposes of contract construction.

15.8 No consent or waiver, expressed or implied, by a Party of any breach or default by the other Party in the performance by such other Party of its obligations hereunder shall be deemed or construed to be a consent to or waiver of any other breach or default in the performance hereunder by such other Party. Failure on the part of a Party to complain of any act or failure of the other Party or to declare the other Party in default, irrespective of how long such failure continues, shall not constitute a waiver by such first mentioned Party of its rights hereunder.

15.9 If any provision of this Agreement, or the application thereof to any Party hereto or to any circumstance, shall be determined by a court of competent jurisdiction to be invalid or unenforceable to any extent or for any reason, the remainder of this Agreement or the application of the provisions thereof to such Party or circumstance, other than those determined to be invalid or unenforceable, shall not be affected thereby and shall be enforced to the fullest extent permitted by law. In such event, the Parties shall promptly enter into such other agreement(s) as their respective legal counsel may deem appropriate in order to replace such invalid or unenforceable provisions in a manner that produces a result which is substantially equivalent to the terms of this Agreement in all material respects.

15.10 Nothing herein shall be interpreted as creating an association, partnership, joint venture or other joint undertaking between KCSR and ICRR.

15.11 This Agreement shall be construed in accordance with the domestic laws of the State of Illinois, without giving effect to any choice or conflict of laws provision or rule (whether of the State of Illinois or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Illinois. Any legal action or proceeding involving the interpretation or application of this Agreement or arising out of this Agreement shall be subject to the exclusive jurisdiction and venue of the courts of the State of Illinois.

15.12 This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all such separate counterparts shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed as of the date first above written.

KANSAS CITY SOUTHERN RAILWAY COMPANY

By: _____
Name:
Title:

ILLINOIS CENTRAL RAILROAD COMPANY

By: _____
Name:
Title:

SCHEDULE 6.1
HAULAGE FEES

Exhibit 2D

Assignment and Assumption Agreement

[DRAFT]
ASSIGNMENT AND ASSUMPTION AGREEMENT

This ASSIGNMENT AND ASSUMPTION AGREEMENT (this "Agreement") is dated as of the _____day of _____202___ (the "Execution Date") by and between Illinois Central Railroad Company, an Illinois corporation ("Assignee") and The Kansas City Southern Railway Company, a Missouri corporation ("Assignor"). All capitalized terms used but not otherwise defined in this Agreement shall have the meaning ascribed to such terms in the Trackage Rights Agreement between Union Pacific Railroad Company ("Owner") and Assignor dated August 5, 1997, as may be amended, attached hereto as Appendix 1 (the "TRA").

WHEREAS, pursuant to decision of the U.S. Surface Transportation Board (the "STB") dated _____ __, 202_, in Docket No. FD 34500 (Sub-Nos. 1 and 4), the STB authorized and directed the conveyance of certain of Assignor's rail lines to Assignee and the assignment of the TRA to Assignee;

WHEREAS, Assignor and Assignee wish to provide for the assignment by Assignor and the assumption by Assignee of all of Assignor's rights and obligations under the TRA to and by Assignee; and

WHEREAS, Assignee hereby accepts such assignment and assumes such rights and obligations.

NOW, THEREFORE, for and in consideration of the premises, the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

Section 1. Assignment. Assignor agrees to assign to Assignee all of its rights and obligations under the TRA, effective as of the date (the "Assignment Effective Date") indicated in a written notice by Assignee to Owner and Assignor that the Assignor and Assignee have closed on the conveyance of certain of Assignor's rail lines connecting to the TRA to Assignee (the "Transaction"). This Agreement will take effect if and only if Assignee provides written notice that the Transaction has closed to Owner and Assignor within two years of the date of this agreement.

Section 2. Assumption. Assignee agrees to accept the assignment of and assume all of Assignor's rights and obligations under the TRA on the Assignment Effective Date.

Section 3. Effect of the Assignment and Assumption. All obligations and liabilities under the TRA prior to the Assignment Effective Date shall remain the obligations and

liabilities of Assignor and not Assignee. All rights, obligations and liabilities under the TRA accruing after the Assignment Effective Date shall be the rights, obligations and liabilities of Assignee and not Assignor. Assignment of the TRA shall not relieve or release Assignor or Owner from any obligation or liability which may have accrued under the terms of the TRA prior to the Assignment Effective Date.

Section 4. Further Assurances. The parties shall, from time to time, upon the reasonable request of the other party, execute and deliver all such further documents and instruments, and take all such further acts as shall be necessary or desirable to give full effect to the intent and meaning of this Agreement.

Section 5. Governing Law. The laws of the state of Missouri, excluding conflicts of law principles, shall govern the validity of this Agreement.

Section 6. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

Section 7. Successors and Assigns. This Agreement shall be binding upon and inure solely to the benefit of each party hereto and their respective successors and permitted assigns, and nothing in this Agreement, express or implied, is intended to or shall confer upon any other person any rights, interests, benefits or remedies of any nature whatsoever under or by reason of this Agreement.

*****Signature Page Follows*****

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Execution Date.

ILLINOIS CENTRAL RAILROAD COMPANY

By: _____

Its:_____

THE KANSAS CITY SOUTHERN RAILWAY COMPANY

By: _____

Its:_____

APPENDIX 1

Exhibit 4

Environmental Data

Exhibit 4

WITHHELD AS CONTAINING HIGHLY CONFIDENTIAL OR CONFIDENTIAL INFORMATION

Exhibit 8

Change in Ownership or Control

CHANGE IN CONTROL – EXHIBIT 8

TABLE 8.1
APPLICANT CARRIER INFORMATION

APPLICANT ILLINOIS CENTRAL RAILROAD COMPANY		
Ownership	100% by Illinois Central Corporation	
Principal Officers	**Name**	**Title**
	Jean-Jacques Ruest[1]	President and Chief Executive Officer
	Sean Finn	Executive Vice-President, Corporate Services and Chief Legal Officer
	Ghislain Houle	Executive Vice-President and Chief Financial Officer
	Brenda L. Gunn	Senior Manager, Risk Mitigation
	Paul Westman	Director, Taxation US
	John B. Furlan	Counsel
	Derek M. Taylor	Vice-President, Eastern Region

WATERLOO RAILWAY COMPANY		
Ownership	100% by Illinois Central Railroad Company	
Principal Officers	**Name**	**Title**
	Jean-Jacques Ruest	President and Chief Executive Officer
	Sean Finn	Executive Vice-President, Corporate Services and Chief Legal Officer
	Ghislain Houle	Executive Vice-President and Chief Financial Officer
	Brenda L. Gunn	Senior Manager, Risk Mitigation
	Paul Westman	Director, Taxation US
	John B. Furlan	Counsel
	Derek M. Taylor	Vice-President, Eastern Region

CHICAGO, CENTRAL & PACIFIC RAILROAD COMPANY		
Ownership	100% by Illinois Central Corporation	
Principal Officers	**Name**	**Title**
	Jean-Jacques Ruest	President and Chief Executive Officer
	Sean Finn	Executive Vice-President, Corporate Services and Chief Legal Officer
	Brenda L. Gunn	Senior Manager, Risk Mitigation
	Paul Westman	Director, Taxation US
	John B. Furlan	Counsel
	Derek M. Taylor	Vice-President, Eastern Region
	Bernd Beyer	Vice-President and Treasurer

[1] Tracy Robinson will shortly replace Jean-Jacques Ruest as President and Chief Executive Officer.

CEDAR RIVER RAILROAD COMPANY		
Ownership	100% by Illinois Central Corporation	
Principal Officers	**Name**	**Title**
	Jean-Jacques Ruest	President and Chief Executive Officer
	Sean Finn	Executive Vice-President, Corporate Services and Chief Legal Officer
	Ghislain Houle	Executive Vice-President and Chief Financial Officer
	Salvatore Forgione	Vice-President
	Brenda L. Gunn	Senior Manager, Risk Mitigation
	Paul Westman	Director, Taxation US
	John B. Furlan	Counsel
	Derek M. Taylor	Vice-President, Eastern Region

GRAND TRUNK WESTERN RAILROAD COMPANY		
Ownership	100% by Grand Trunk Corporation	
Principal Officers	**Name**	**Title**
	Jean-Jacques Ruest	President and Chief Executive Officer
	Ghislain Houle	Executive Vice-President and Chief Financial Officer and Treasurer
	Brenda L. Gunn	Senior Manager, Risk Mitigation
	Paul Westman	Director, Taxation US
	John B. Furlan	Counsel
	Derek M. Taylor	Vice-President, Eastern Region
	Sean Finn	Executive Vice-President, Corporate Services and Chief Legal Officer & Secretary

BESSEMER AND LAKE ERIE RAILROAD COMPANY		
Ownership	100% by Grand Trunk Corporation	
Principal Officers	**Name**	**Title**
	Jean-Jacques Ruest	President and Chief Executive Officer
	Sean Finn	Executive Vice-President, Corporate Services and Chief Legal Officer & Secretary
	Ghislain Houle	Executive Vice-President and Chief Financial Officer and Treasurer
	Brenda L. Gunn	Senior Manager, Risk Mitigation
	Paul Westman	Director, Taxation US
	John B. Furlan	Counsel
	Derek M. Taylor	Vice-President, Eastern Region

THE PITTSBURGH AND CONNEAUT DOCK COMPANY		
Ownership	100% by Grand Trunk Corporation	
Principal Officers	**Name**	**Title**
	Jean-Jacques Ruest	President and Chief Executive Officer
	Sean Finn	Executive Vice-President, Corporate Services and Chief Legal Officer & Secretary
	Brenda L. Gunn	Senior Manager, Risk Mitigation
	John B. Furlan	Counsel
	Paul Westman	Director, Taxation US
	Derek M. Taylor	Vice-President, Eastern Region
	Bernd Beyer	Vice-President and Treasurer

WISCONSIN CENTRAL LTD.		
Ownership	100% by Grand Trunk Corporation	
Principal Officers	**Name**	**Title**
	Jean-Jacques Ruest	President and Chief Executive Officer
	Sean Finn	Executive Vice-President, Corporate Services and Chief Legal Officer & Secretary
	Ghislain Houle	Executive Vice-President and Chief Financial Officer and Treasurer
	Paul Westman	Director, Taxation US
	John B. Furlan	Counsel
	Brenda L. Gunn	Senior Manager, Risk Mitigation
	Derek M. Taylor	Vice-President, Eastern Region

SAULT STE. MARIE BRIDGE COMPANY		
Ownership	100% by Wisconsin Central Ltd.	
Principal Officers	**Name**	**Title**
	Jean-Jacques Ruest	President and Chief Executive Officer
	Sean Finn	Executive Vice-President, Corporate Services and Chief Legal Officer & Secretary
	Brenda L. Gunn	Senior Manager, Risk Mitigation
	Paul Westman	Director, Taxation US
	John B. Furlan	Counsel
	Derek M. Taylor	Vice-President, Eastern Region
	Bernd Beyer	Vice-President and Treasurer

WISCONSIN CHICAGO LINK LTD.		
Ownership	100% by Wisconsin Central Ltd.	
Principal Officers	**Name**	**Title**
	Jean-Jacques Ruest	President and Chief Executive Officer
	Sean Finn	Executive Vice-President, Corporate Services and Chief Legal Officer & Secretary
	Brenda L. Gunn	Senior Manager, Risk Mitigation
	John B. Furlan	Counsel
	Paul Westman	Director, Taxation US
	Derek M. Taylor	Vice-President, Eastern Region
	Bernd Beyer	Vice-President and Treasurer

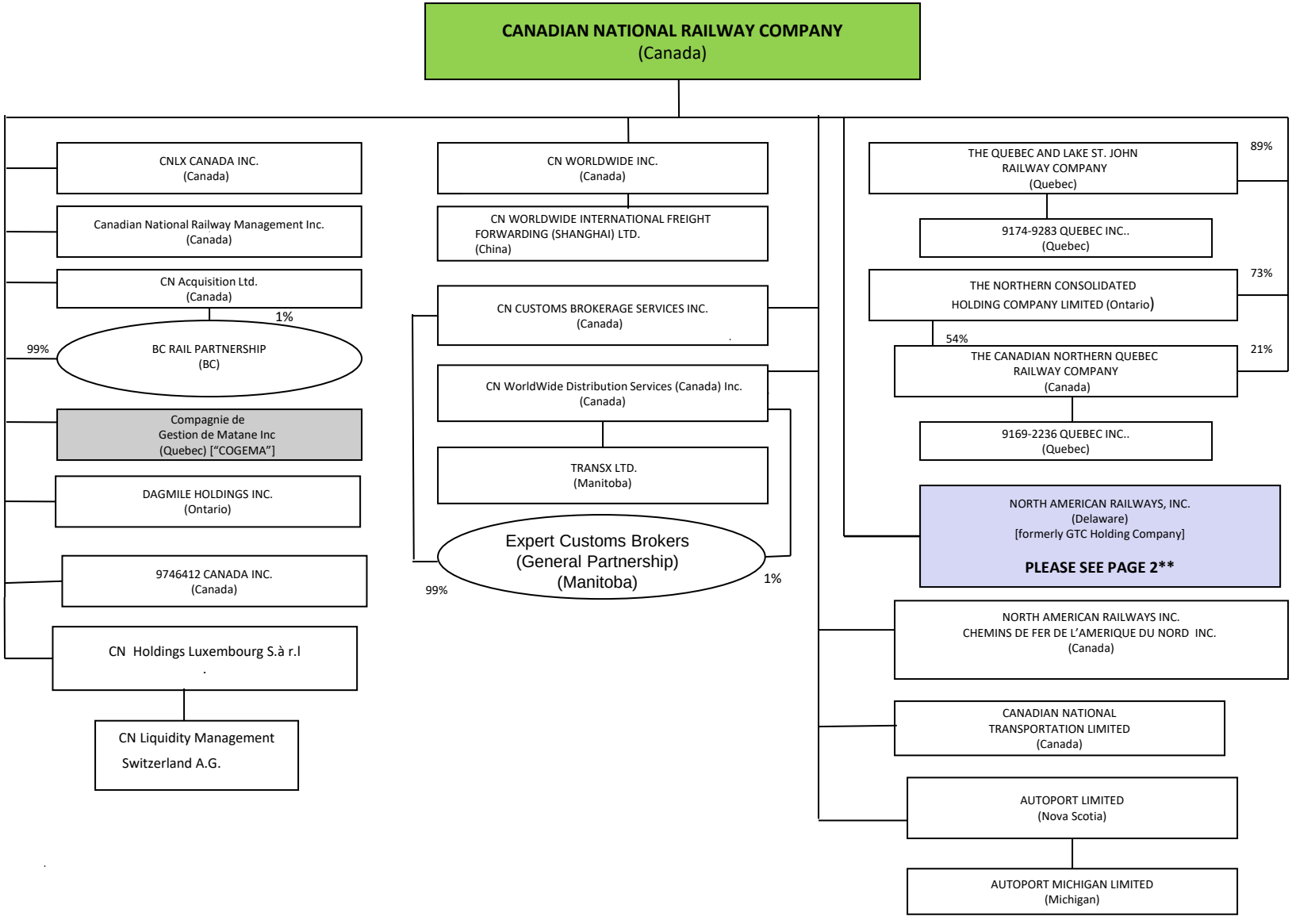
CANADIAN NATIONAL RAILWAY COMPANY		
Ownership	Public	
Principal Officers	**Name**	**Title**
	Jean-Jacques Ruest	President and Chief Executive Officer
	Sean Finn	Executive Vice-President, Corporate Services and Chief Legal Officer
	Ghislain Houle	Executive Vice-President and Chief Financial Officer
	Dominique Malenfant	Executive Vice-President and Chief Information and Technology Officer
	Rob Reilly	Executive Vice-President and Chief Operating Officer
	James Cairns	Senior Vice-President, Rail Centric Supply Chain
	Dorothea Klein	Senior Vice-President and Chief Human Resources Officer
	Doug Macdonald	Senior Vice-President, Office of the President and CEO, Special Projects
	Helen Quirke	Senior Vice-President and Chief Strategy Officer
	Keith Reardon	Senior Vice-President, Consumer Product Supply Chain

Exhibit 11

Corporate Chart

PUBLIC VERSION

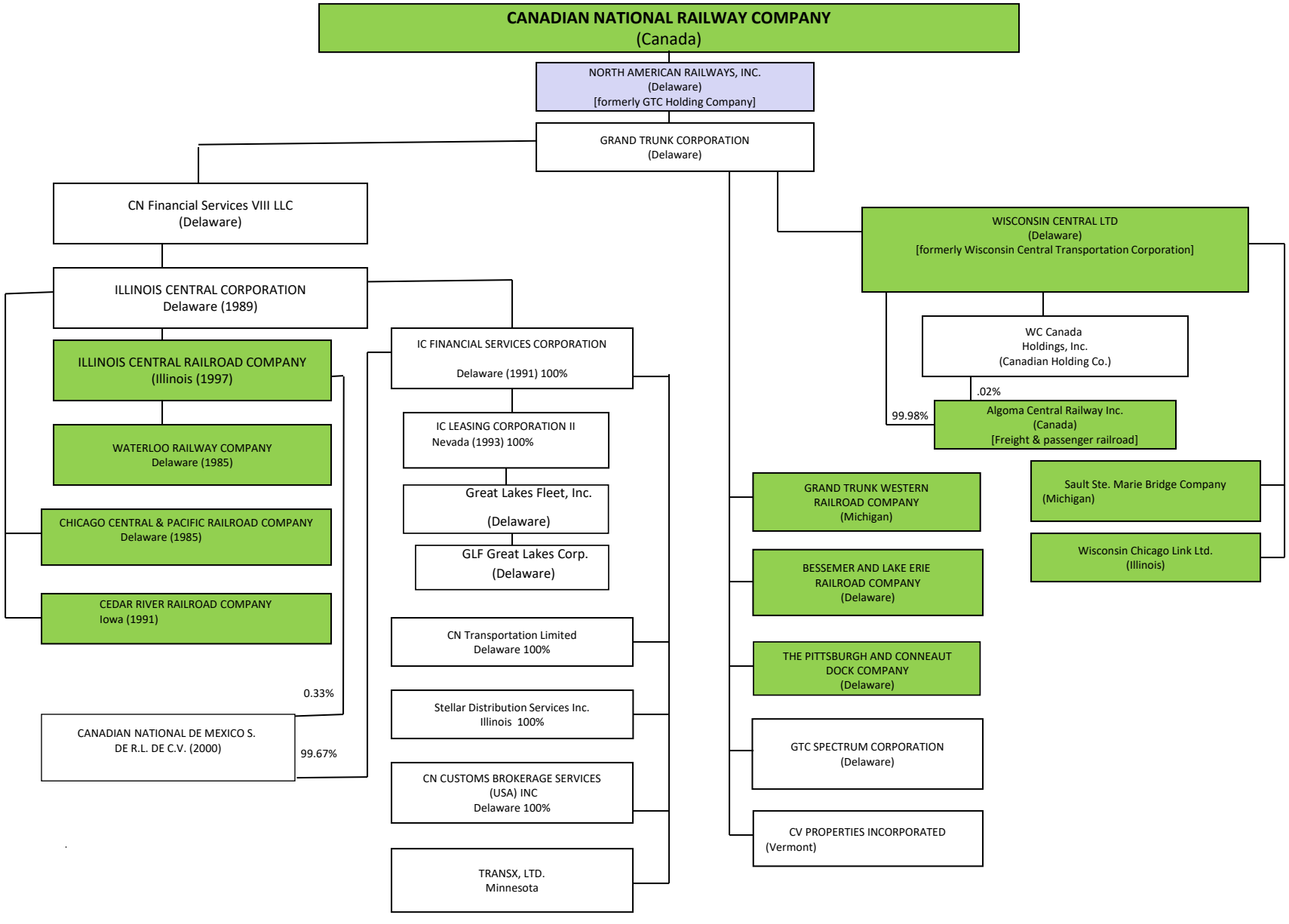
CORPORATE STRUCTURE



OPERATING RAILROADS SHADED GREEN

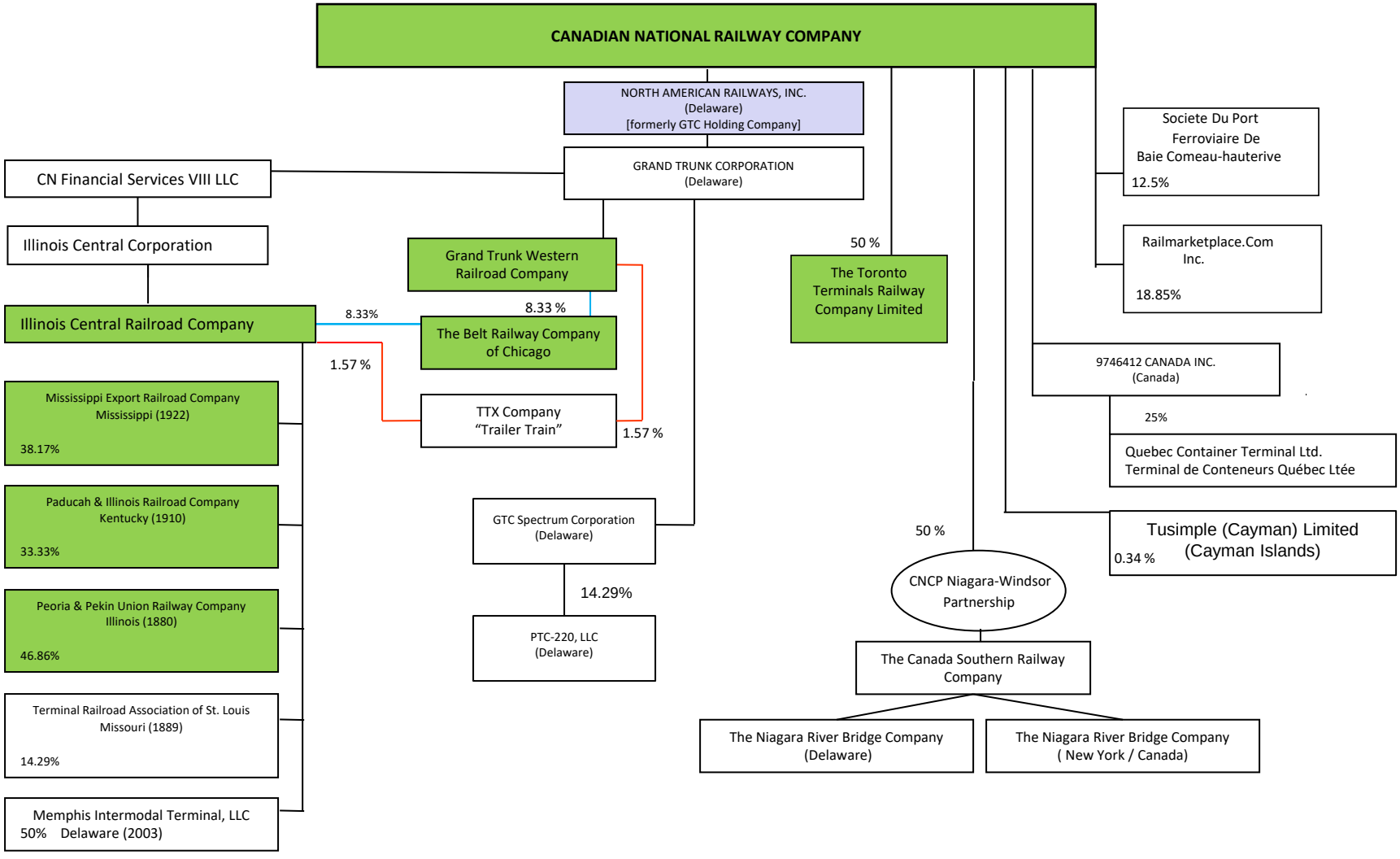
PUBLIC VERSION

CORPORATE STRUCTURE



2**

INVESTMENTS



Non-Affiliated Carrier Ownership Interests
[49 C.F.R. § 1180.6(b)(8)]

Minority rail holdings:

Mississippi Export Railroad Company
- 38.17% held by Illinois Central Railroad Company

Paducah & Illinois Railroad Company
- 33.33% held by Illinois Central Railroad Company

Peoria & Pekin Union Railway Company
- 46.86% held by Illinois Central Railroad Company

The Belt Railway Company of Chicago
- 8.33% held by Illinois Central Railroad Company
- 8.33% held by Grand Trunk Western Railroad Company

Terminal Railroad Association of St. Louis
- 14.29% held by Illinois Central Railroad Company

OFFICER/DIRECTOR OVERLAPS BETWEEN CN CORPORATE FAMILY AND OTHER RAILROAD CORPORATE FAMILIES

TABLE 11.1

THE BELT RAILWAY COMPANY OF CHICAGO
(16.67% BNSF/16.67% IC & GTW/8.33% SOO(CP)/25% CSX/25% NS/8.33% UP)

Name	Title	Other Corporate Family
Rance Randle	Director	IC (CN) Representative
Derek Taylor	Director	GTW (CN) Representative
J. Jenkins	Director	BNSF Representative
J. Gabriel	Director	BNSF Representative
William Albright	Director	CSX Representative
R.A. Holtz	Director	CSX Representative
Greg Jaggernauth	Director	CSX Representative
John Friedmann	Director	NS Representative
Randall Hunt	Director	NS Representative
Jason Zampi	Director	NS Representative
J.W. Turner	Director	UP Representative
Tracy Miller	Director	CP Representative

TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS
(42.84% UP/14.29% BNSF/14.29% CSX/14.29% IC (CN)/14.29% NS)

Name	Title	Other Corporate Family
Michael Matteucci	Director	IC (CN) Representative
Edward Boyle	Director	NS Representative
Paul Duncan	Director	BNSF Representative
Greg Jaggernauth	Director	CSX Representative
Shane Keller	Director	UP Representative
Tanya Spratt	Director	UP Representative
John Turner	Director	UP Representative
Michael A. McCarthy	President	TRRA Employee
Asim Raza	Secretary	TRRA Employee
Brent R. Wood	Treasurer	TRRA Employee

PEORIA & PEKIN UNION RAILWAY COMPANY
(46.86% IC (CN)/40.64% NS/12.5% UP)

Name	Title	Other Corporate Family
William Albritton, Jr.	Director	IC (CN) Representative
James Anders	Director	IC (CN) Representative
Michael Matteucci	Director	IC (CN) Representative
Stacy Holleran	Director	NS Representative
Randall W. Hunt	Director	NS Representative
Tanya Spratt	Director	UP Represntative

PADUCAH & ILLINOIS RAILROAD COMPANY
(33.33% IC (CN)/33.33% BNSF/33.33% PADUCAH & LOUISVILLE RAILWAY, INC.)

Name	Title	Other Corporate Family
Michael Matteucci	Director	IC (CN) Representative
Derek Taylor	Director	IC (CN) Representative
Sarah W. Bailiff	Director	BNSF Representative
Thomas A. Greene	Director	PAL Representative
Jason Jenkins	Director	BNSF Representative
Tim Wyatt	Director	PAL Representative

TTX COMPANY
(0.6% KCS/ 0.6% B&M/ PAN AM/0.6% FERROCARRIL MEXICANO SA DE CV ("FXE")/
1.6% SOO LINE (CP)/3.1% CN/17.3% BNSF/19.7% CSX/19.7% NS/36.8% UP)

Name	Title	Other Corporate Family
Robert Reilly	Director	CN Representative
David Fink	Director	B&M/ Pan Am Representative
Keith Creel	Director	CP Representative
Jaime Boychuk	Director	CSX Representative
Isaac Franklin	Director	FXE Representative
Michael J. Naatz	Director	KCS Representative
Alan Shaw	Director	NS Representative
Jennifer Hamann	Director	UP Representative

PTC-220, LLC
(EQUAL 1/7TH OWNERSHIP BY EACH OF BNSF/CN/CP/CSX/KCS/NS/UP)

Name	Title	Other Corporate Family
Catalin Miu	Voting Member	CN Representative
Paul Sztanko	Voting Member	CP Representative
Miles Francis	Voting Member	BNSF Representative
Sunny Bajaj	Voting Member	BNSF Representative
Kevin Stokes	Voting Member	CSX Representative
Joel Pangborn IV	Voting Member	CSX Representative
Tom Schnautz	Voting Member	NS Representative
Danny Hall	Voting Member	KCS Representative
Tom Burns	Voting Member & Chair	KCS Representative
Thomas Vaiskunas	Voting Member	UP Representative
Blake Loper	Voting Member	UP Representative

RAILMARKETPLANE.COM INC.
(EQUAL OWNERSHIP AMONGST BNSF/CN/CP/CSX/NS/UP)

Name	Title	Other Corporate Family
Paul Harridine	Director	CN Representative
Andrew Ruiz	Director	BNSF Representative
Rhea Adama	Director, Chair President	CP Representative
Evan Bell	Director	CSX Representative
Anna Webster	Vice President & Secretary	CSX Representative
Jacqueline Gray	Director	NS Representative
Clark Ponthier	Director	UP Representative

THE TORONTO TERMINALS RAILWAY COMPANY LIMITED
(50% CN/50% CP)

Name	Title	Other Corporate Family
Doug Ryhorchuk	Director Vice-President	CN Representative
James Thompson	Director	CN Representative
Greg Squires	Director	CP Representative
Ben Serena	Director, Chair President	CP Representative

CNCP NIAGARA-WINDSOR PARTNERSHIP
(50% CN/50% CP OWNERSHIP)

Name	Title	Other Corporate Family
Sean Finn	Director, Secretary & Treasurer	CN Representative
Ghislain Houle	Director	CN Representative
Derek Taylor	Director Vice-President	CN Representative
Salvatore Forgione	Vice-President & Corporate Controller	CN Representative
Ben Serena	Director	CP Representative
Adolph Gameiro	Director and Chairman President	CP Representative
Johane Lemay	Director General Manager	CP Representative

THE CANADA SOUTHERN RAILWAY COMPANY
(50% CN/50% CP)

Name	Title	Other Corporate Family
Sean Finn	Director Chief Legal Officer & Secretary	CN Representative
Ghislain Houle	Director	CN Representative
Derek Taylor	Director Vice-President	CN Representative
Clarke Trolley	Joint Manager	CN Representative
Marnie Dawson	Comptroller	CP Representative
Ben Serena	Director	CP Representative
Adolph Gameiro	Director President	CP Representative
Johane Lemay	Director Joint Manager	CP Representative

THE NIAGARA RIVER BRIDGE COMPANY
(ULTIMATE 50% CN/50% CP OWNERSHIP)

Name	Title	Other Corporate Family
Sean Finn	Director Secretary-Treasurer	CN Representative
Ghislain Houle	Director	CN Representative
Derek Taylor	Director Vice-President	CN Representative
Marnie Dawson	Comptroller	CP Representative
Ben Serena	Director	CP Representative
Adolph Gameiro	Director President	CP Representative
Johane Lemay	Director	CP Representative

THE NIAGARA RIVER BRIDGE COMPANY LIMITED
(ULTIMATE 50% CN/50% CP OWNERSHIP)

Name	Title	Other Corporate Family
Sean Finn	Director Secretary	CN Representative
Ghislain Houle	Director	CN Representative
Derek Taylor	Director President	CN Representative
Clarke Trolley	Joint Manager	CN Representative
Marnie Dawson	Comptroller	CP Representative
Ben Serena	Director	CP Representative
Adolph Gameiro	Director Vice-President	CP Representative
Johane Lemay	Director Joint Manager	CP Representative

CORPORATE CHART – EXHIBIT 11

TABLE 11.2
AFFILIATE CARRIER STATUS

Company	Carrier?	Mode	Certificate / Docket Number
9169-2236 QUEBEC INC.	No	N/A	N/A
9174-9283 QUEBEC INC.	No	N/A	N/A
9746412 CANADA INC.	No	N/A	N/A
Algoma Central Railway Inc.	Yes	Rail (Canada)	N/A
Autoport Limited	No	N/A	N/A
Autoport Michigan Limited	No	N/A	N/A
BC Rail Partnership	Yes	Rail (Canada)	N/A
Belt Railway Company of Chicago, The	Yes	Rail	N/A
Bessemer and Lake Erie Railroad Company	Yes	Rail	N/A
Canada Southern Railway Company, The	No	N/A	N/A
Canadian National de Mexico S. de R.L. de C.V.	No	N/A	N/A
Canadian National Railway Company	Yes	Rail	N/A
Canadian National Railway Management Inc.	No	N/A	N/A
Canadian National Transportation Limited	Yes	Motor	N/A
Canadian Northern Quebec Railway Company, The	No	N/A	N/A
Cedar River Railroad Company	Yes	Rail	FD 31958
Chicago, Central & Pacific Railroad Company	Yes	Rail	FD 30663
CN Acquisition Ltd.	No	N/A	N/A
CN Customs Brokerage Services (USA) Inc	No	N/A	N/A
CN Customs Brokerage Services Inc.	No	N/A	N/A
CN Financial Services VIII LLC	No	N/A	N/A
CN Holdings Luxembourg S.àr.l	No	N/A	N/A
CN Liquidity Management Switzerland A.G.	No	N/A	N/A
CN Transportation Limited	Yes	Motor	N/A
CN WorldWide Distribution Services (Canada) Inc.	No	N/A	N/A
CN Worldwide Inc.	No	N/A	N/A
CN Worldwide International Freight Forwarding (Shanghai) Ltd.	No	N/A	N/A
CNCP Niagara-Windsor Partnership	No	N/A	N/A
CNLX Canada Inc.	No	N/A	N/A
Compagniede Gestion de Matane Inc	No	N/A	N/A
CV Properties Incorporated	No	N/A	N/A
Dagmile Holdings Inc.	No	N/A	N/A
Expert Customs Brokers	No	N/A	N/A

Company	Carrier?	Mode	Certificate / Docket Number
GLF Great Lakes Corp.	No	N/A	N/A
Grand Trunk Corporation	No	N/A	N/A
Grand Trunk Western Railroad Company	Yes	Rail	FD 32116
Great Lakes Fleet, Inc.	Yes	Water	N/A
GTC Spectrum Corporation	No	N/A	N/A
IC Financial Services Corporation	No	N/A	N/A
IC Leasing Corporation II	No	N/A	N/A
Illinois Central Corporation	No	N/A	N/A
Illinois Central Railroad Company	Yes	Rail	FD 33383
Memphis Intermodal Terminal, LLC	No	N/A	N/A
Mississippi Export Railroad Company	Yes	Rail	N/A
Niagara River Bridge Company, The	No	N/A	N/A
Northern Consolidated Holding Company Limited, The	No	N/A	N/A
North American Railways Inc. (Chemins de fer de L'amerique du Nord Inc.)	No	N/A	N/A
North American Railways, Inc.	No	N/A	N/A
Paducah & Illinois Railroad Company	Yes	Rail	N/A
Peoria & Pekin Union Railway Company	Yes	Rail	N/A
Pittsburgh & Conneaut Dock Company, The	Yes	Rail	N/A
PTC-220, LLC	No	N/A	N/A
Quebec and Lake St. John Railway Company, The	No	N/A	N/A
Quebec Container Terminal Ltd. Terminal de Conteneurs Québec Ltée	No	N/A	N/A
Railmarketplace.com Inc.	No	N/A	N/A
Sault Ste. Marie Bridge Company	Yes	Rail	N/A
Societe du Port Ferroviaire de Baie Comeau-Hauterive	No	N/A	N/A
Stellar Distribution Services Inc.	No	N/A	N/A
Terminal Railroad Association of St. Louis	Yes	Rail	N/A
Toronto Terminals Railway Company Limited, The	Yes	Rail (Canada)	N/A
TRANSX Ltd.	No	N/A	N/A
TTX Company	No	N/A	N/A
Tusimple (Cayman) Limited	No	N/A	N/A
Waterloo Railway Company	Yes	Rail	FD 30176
WC Canada Holdings, Inc.	No	N/A	N/A
Wisconsin Central Ltd.	Yes	Rail	FD 31102
Wisconsin Chicago Link Ltd.	Yes	Rail	FD 33825

Exhibit 12

Market Analyses

Exhibit 12A

Verified Statement of David Hunt

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 36500 (SUB-NO. 1)

ILLINOIS CENTRAL RAILROAD COMPANY – ACQUISITION OF A LINE OF RAILROAD BETWEEN KANSAS CITY, MO, AND SPRINGFIELD AND EAST ST. LOUIS, IL – KANSAS CITY SOUTHERN RAILWAY COMPANY

STB FINANCE DOCKET NO. 36500 (SUB-NO. 2)

ILLINOIS CENTRAL RAILROAD COMPANY – TRACKAGE RIGHTS BETWEEN AIRLINE JUNCTION, MO, AND GRANDVIEW, MO – KANSAS CITY SOUTHERN RAILWAY COMPANY

STB FINANCE DOCKET NO. 36500 (SUB-NO. 3)

CANADIAN NATIONAL RAILWAY COMPANY AND ILLINOIS CENTRAL RAILROAD COMPANY – CONTROL – GATEWAY EASTERN RAILWAY COMPANY

STB FINANCE DOCKET NO. 36500 (SUB-NO. 4)

ILLINOIS CENTRAL RAILROAD COMPANY – ASSIGNMENT OF KCS TRACKAGE RIGHTS BETWEEN ROCK CREEK JUNCTION, MO, AND AIRLINE JUNCTION, MO – UNION PACIFIC RAILROAD COMPANY

Verified Statement of David T. Hunt
in Support of Springfield Line Divestiture to CN

February 28, 2022

PUBLIC VERSION

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1. Qualifications

My name is David T. Hunt. I am a Vice President with Oliver Wyman, a global general management consulting firm with more than 60 offices in 31 countries. My office address is 1 University Square, Suite 100, Princeton, NJ 08540.

Oliver Wyman is a leading general management consulting firm. We maintain one of the largest practices in the world dedicated to the transportation and logistics sectors. Oliver Wyman's transportation clients include national and regional governments on six continents, as well as many of the world's largest users of rail services, railroads, motor carriers, leasing companies, and industrial and consumer manufacturing firms.

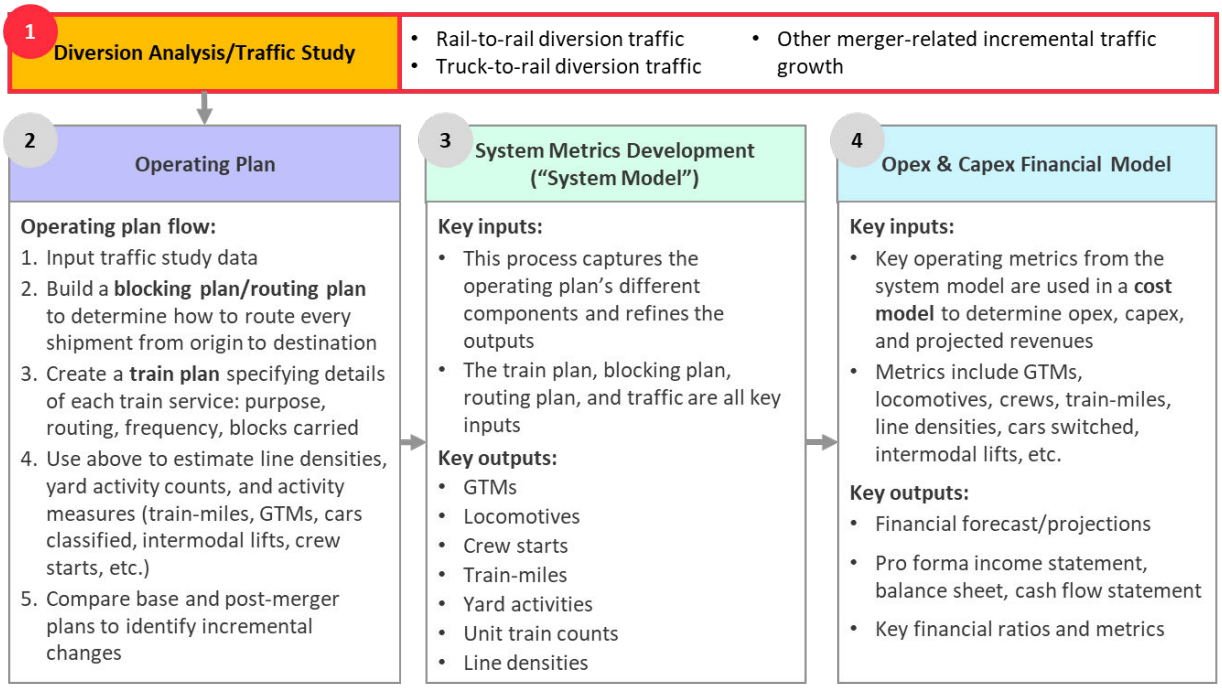
I have been a consultant in the transportation sector for more than 35 years. I joined Oliver Wyman in 2008, specializing in strategic planning, regulatory issues, and operations for freight railroads and other freight transportation providers. Prior to joining Oliver Wyman, I was a consultant at Cambridge Systematics, Wilbur Smith Associates, and ALK Associates. While at ALK from 1983 through 2000, I provided services to clients in connection with all the Class I railroad mergers that occurred during that time period. I also was responsible for the annual calibration of and updates to ALK's Advanced Traffic Diversion Model that was used in ICC and STB merger proceedings. I hold a Bachelor's degree in civil engineering from West Virginia University and a Master's degree in civil engineering and operations research from Princeton University. My resume is included in Appendix A.

2. Assignment and Summary of Findings

I have been asked to assess the traffic that CN could expect to divert from trucking companies and other railroads if it acquires the Springfield Line of the Kansas City Southern Railway (KCS) and makes certain investments in intermodal and automotive terminals at Kansas City and East St. Louis. The Springfield Line connects Springfield, IL with Kansas City, MO and East St. Louis, IL. By acquiring the Springfield Line, CN will gain new access to Kansas City and improved access to East St. Louis, thereby enhancing competition for shippers.

As shown in Exhibit 2-1, analyzing the traffic CN can attract if it acquires the Springfield Line is an essential element in planning for the acquisition. The operating plan, operating statistics, and financial projections all depend on accurate traffic projections.

Exhibit 2-1: The operating plan and financial model are dependent on the accuracy of Applicants' traffic projections[1]



[1] This is the logic flow explicitly cited in the Canadian National-Illinois Central and Norfolk Southern-Conrail merger applications to the Board. *See* FD33556, Canadian National Railway Company, Grand Trunk Corporation, and Grand Trunk Western Railroad Incorporated – Control – Illinois Central Corporation, Illinois Central Railroad

Findings: By applying traffic diversion models, which are described in Appendices B and C of this Verified Statement, I have estimated that acquisition of the Springfield Line by CN will lead to the following results, which are summarized in Exhibit 2-2:

- More than 80,000 trucks will be removed from the highways each year, producing public benefits, including reduced carbon emissions, reduced highway congestion, and reduced public expenditures for highway maintenance. The more than 80,000 trucks that will be diverted to CN include approximately 77,800 dry vans and containers that will divert from highway to rail intermodal service, approximately 1,480 car transporters carrying assembled automobiles that will divert to multilevel railcars ("multilevels"), and approximately 900 trucks with cargoes that can move via transload service (i.e., bulk commodities such as plastic pellets and cement that use rail for linehaul and transfer to/from truck for first/last mile pickups and deliveries) and that will divert to covered hoppers and other types of railcars.
- A total of approximately 49,500 railcars will be diverted from other railroads due to increased rail competition in the Midwest and Southeast, brought about by the creation of CN's new competitive rail routes to Kansas City and improved routes to East St. Louis via the Springfield Line. The traffic diverted from other railroads includes approximately 31,000 intermodal containers, approximately 17,900 multilevels carrying assembled automobiles, and approximately 600 carloads of grain.
- An additional 12,500 containers that currently are unloaded at East Coast ports and moved to Kansas City and East St. Louis by rail or truck will be diverted to the Port of Montreal, leveraging CN's new single-line service via the Springfield Line and CN's proposed new intermodal terminal in East St. Louis.
- In total, the acquisition of the Springfield Line is estimated to generate $106.9 million (2019 USD) in annual revenue for CN.

Company, Chicago, Central & Pacific Railroad Company, and Cedar River Railroad Company Railroad Control Application, Volume 2 of 4, Section 2.0.

Exhibit 2-2: Diversion results summary for CN's acquisition of the Springfield Line[2]

	Rail-to-Rail Units	Truck-to-Rail Units	Port of Montreal Units	Total Units	Total Revenue
Intermodal	31,006	77,771	12,500	121,277	$51.0M
Automobiles	17,903	1,479	-	19,382	$50.3M
Grain	604	-	-	604	$2.2M
Other	-	890	-	890	$3.3M
Totals	49,513	80,140	12,500	142,153	$106.9M

Assumptions: Key assumptions used in the model and throughout this report include:

- All results represent fully phased-in totals. Full phase-in is assumed to occur in 2025 (Year 3); however, the values are reported as if they occurred in the Base Year of 2019, with no adjustments for organic growth. Revenues also are reported in 2019 values, without adjustment for inflation.
- The truck-to-rail and rail-to-rail models do not attempt to predict how increased competition or reduced costs may lead to an increase in production or demand. Therefore, the model assumes a gain in traffic by CN is offset by an equal loss of traffic for trucks or another railroad.
- It is assumed that the CN acquisition of the Springfield Line is a condition of a CP-KCS merger. The model reflects CP-KCS as a single railroad for competition purposes but does not attempt to predict CP-KCS market shares.
- Both the truck-to-rail and rail-to-rail diversion models are based on logistics regression and are similar to the types of models used in diversion models in prior merger proceedings before the Board.

As demonstrated by these diversion results, CN's acquisition of the Springfield Line will introduce a competitive rail option for shippers moving goods between Kansas City and St. Louis to and from regions such as Michigan, Ohio, Eastern Canada, and the Gulf Coast.

[2] Oliver Wyman work paper Exhibit 3-3 Sources.xlsx.

3. Overview of the Springfield Line

The Springfield Line is owned by KCS, which acquired it from the Gateway Western Railway in 1997. As shown in Exhibit 3-1, the Springfield Line runs from Springfield, IL west to Kansas City and East St. Louis. It connects with CN lines from the north and east at Springfield, and with CN lines from the southeast at East St. Louis.

By acquiring the Springfield Line, CN will create new single-line rail services from Michigan and Eastern Canada to Kansas City and from the Southeast to Kansas City. CN also will establish a more direct route for traffic from Canada and the Midwest to East St. Louis, since the current CN route from northern locations runs south of East St. Louis to Du Quoin, IL before heading north (Exhibit 3-2).

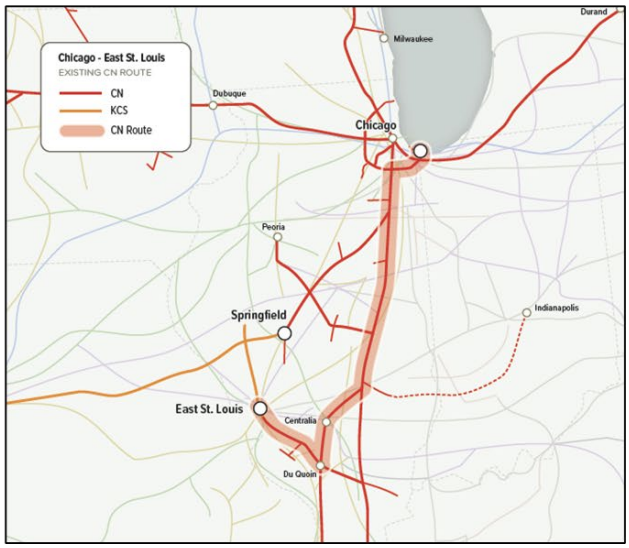
Exhibit 3-1: The Springfield Line in relation to the CN network[3]



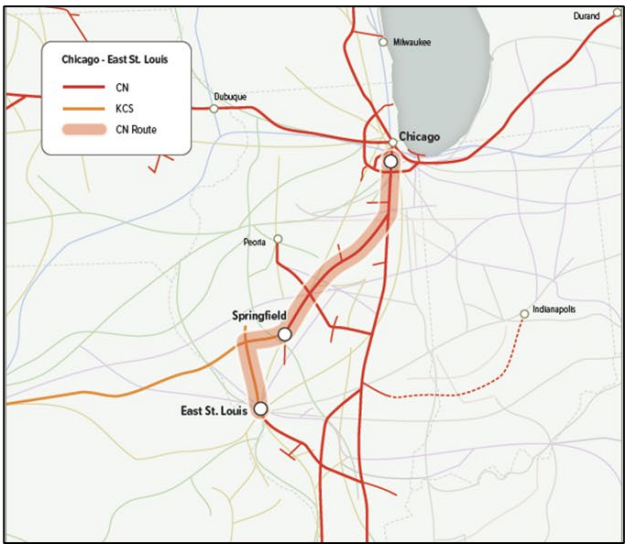
[3] Map provided by Canadian National Railway.

Exhibit 3-2: Acquisition of the Springfield Line will reduce CN distances between East St. Louis and northern locations by 50 miles[4]

CN Existing Route From Chicago Area to East St. Louis Via Du Quoin, IL
Distance is 360.5 miles from FSAC 55978 to 58112 through Du Quoin



CN Route with Springfield Line From Chicago Areas to East St. Louis Via Springfield, IL
Distance is 310.5 miles from FSAC 55978 to 58112 through Cockrell

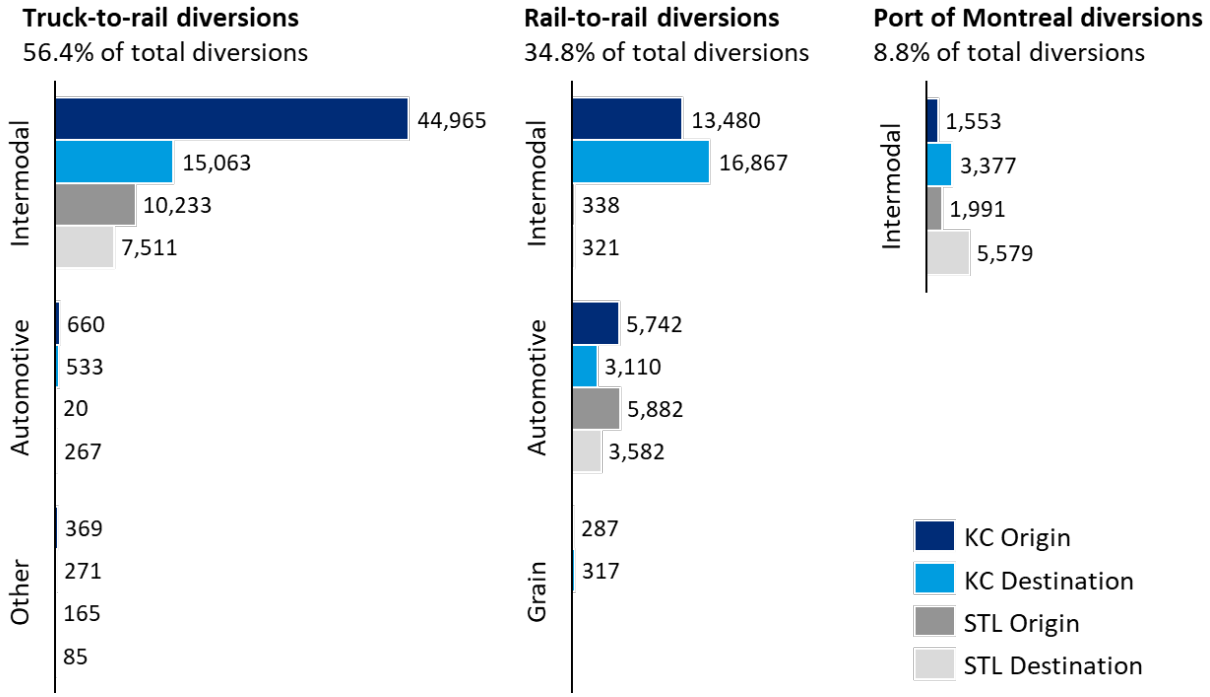


To augment these new and more direct routes, CN plans to invest in new automobile terminal facilities and new intermodal facilities at Kansas City, MO and East St. Louis, IL. As shown in Exhibit 3-3, my analysis finds that these routes and facilities will be widely used by the shipping community:

- The new CN intermodal terminal in Kansas City is projected to originate and terminate approximately 95,300 annual containers, with another approximately 26,000 annual containers at the new intermodal terminal in East St. Louis.
- Approximately 10,000 annual multilevels carrying assembled automobiles are projected to originate and terminate on CN in Kansas City, with approximately an additional 9,750 at the new automotive terminal in East St. Louis.

[4] Maps provided by Canadian National Railway. Distances from PC*Miler|Rail ver. 27. Maps are illustrative and do not use the same Chicago origin; however, distances are based on the same freight stations. PC*Miler|Rail "shortest" path was used for both routes to adjust for incorrect CN routing in the software.

Exhibit 3-3: 75 percent of the diversions will use the Kansas City Terminal and 25 percent will use the proposed new intermodal and automotive terminals in St Louis[5]



4. Projected Traffic Gained by Removing Trucks from Roadways

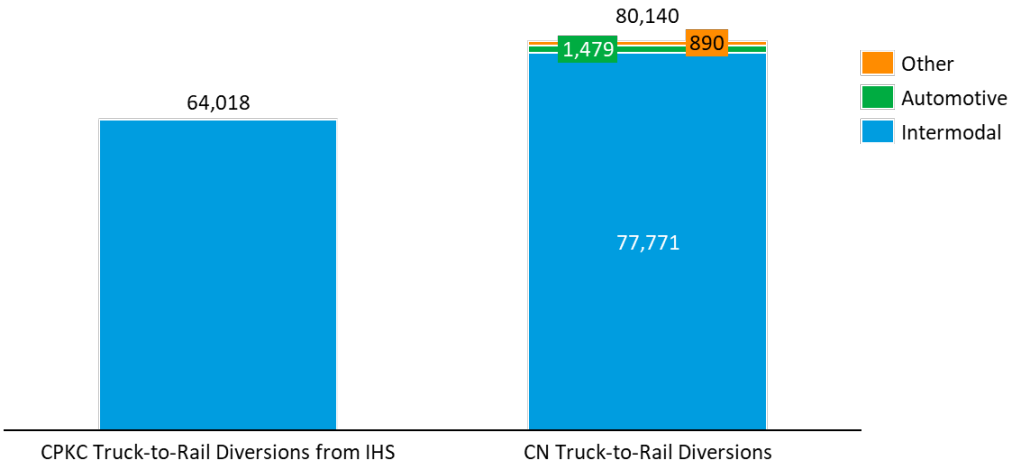
A CN acquisition of the Springfield Line will remove over 80,000 trucks per year from roadways in the Midwest, including I-94 in Michigan and Indiana, I-55 in Illinois, and I-72 in Missouri.[6] This total for CN operations on the Springfield Line exceeds the total estimated truck-to-rail diversions by CP-KCS for their entire merger, as I demonstrate in Section 4.1. Sections 4.2 through 4.4 break down total diversions from truck by intermodal, assembled automobiles, and transloads, respectively. The details of the truck-to-rail diversion model are provided in Appendix B.

[5] IHS Transearch 2019; STB Carload Waybill Sample, 2019; CP-KCS 2019 waybill traffic file received from FTI; CN 2019 waybill file; Oliver Wyman work paper Exhibit 3-3 Sources.xlsx.
[6] "Truck" refers to a standard five-axle Class 8 truck. Routes were identified using Google Map directions.

4.1 CN's acquisition of the Springfield Line removes more than 80,000 trucks annually from the roads

CP-KCS witness Bengt Mutén estimated that 64,018 trucks will be removed from the highways annually by the proposed merger of CP and KCS.[7] As shown in Exhibit 4-1, the new service options that will be created by CN's proposed acquisition of the Springfield Line will remove 80,140 trucks from the highways each year, or 25 percent more truck-to-rail diversions than CP would create over its entire merged network. This reduces annual truck-miles on the roadways by 45.6 million and it reduces the annual net truck ton-miles by 637 million.[8]

Exhibit 4-1: CN's acquisition of the Springfield Line is estimated to divert 25 percent more trucks off the roads than claimed by the proposed CP-KCS merger[9]



Mr. Mutén's analysis only identified intermodal containers as diverting to CPKC, and he did not identify any diversion of trucks for automotive or bulk commodities. My analysis shows that assembled automobile shippers and bulk shippers also will benefit from the increased

[7] Verified statement of Bengt Mutén,CP-KCS Application Vol. 2, p. 223, ¶52.
[8] Calculations are in work paper 20220224 TTR Carmile Summaries final.xlsx, Ton-Miles tab.
[9] Verified statement of Bengt Mutén,CP-KCS Application Vol. 2, p. 223, ¶52; IHS Transearch, 2019; Oliver Wyman work paper 20220121_Springfield_T2R_v19.xlsx. The 80,140 value represents railcars and containers. Using average truck net weights from the 2019 IHS Transearch data for non-intermodal traffic, the total number of trucks removed from the roadways is estimated at 83,625. Calculations are in work paper 20220224 TTR Carmile Summaries final.xlsx, Truck Rail Adjustment tab.

competition created by CN's acquisition of the Springfield Line. Furthermore, the more than 80,000 trucks that CN will divert annually are concentrated on a limited number of roadways – including I-94 in Michigan and Indiana; I-55 in Illinois, Missouri, Arkansas, Tennessee, Mississippi, and Louisiana; and I-72 in Missouri – allowing a more significant impact to be realized in communities along those roads.

4.2 Intermodal truck-to-rail diversion estimates

As shown in Exhibits 4-2 through 4-4, these new intermodal service options will benefit current truck shippers in traffic lanes throughout the Midwest and Southeast. The greatest benefits will be in the Kansas City – Chicago and Kansas City – Detroit markets, where CN will provide a new competitive rail service over the Springfield Line. The new intermodal terminal in East St. Louis also will help to divert trucks from roadways, by drawing traffic from the Detroit and New Orleans markets. In addition, Exhibits 4-3 and 4-4 show several thousand trucks originating and terminating in Ontario, many of them traveling to/from the US over the highly congested Ambassador Bridge between Detroit and Windsor, which would be diverted to move via rail on CN.

An important step in preparing the diversion estimates was discussions with the CN commercial team to receive feedback on the geographical regions they viewed as opportunities for traffic gain as a result of the acquisition of the Springfield Line and the opening of new terminals. (*See* the statement of witness Dan Bresolin, Vice-President, Intermodal, for a commercial understanding of the intermodal opportunities.)

Exhibit 4-2: Intermodal truck-to-rail diversions: top 15 origin-destination pairs[10]
Total across all markets = 77,771 annual containers

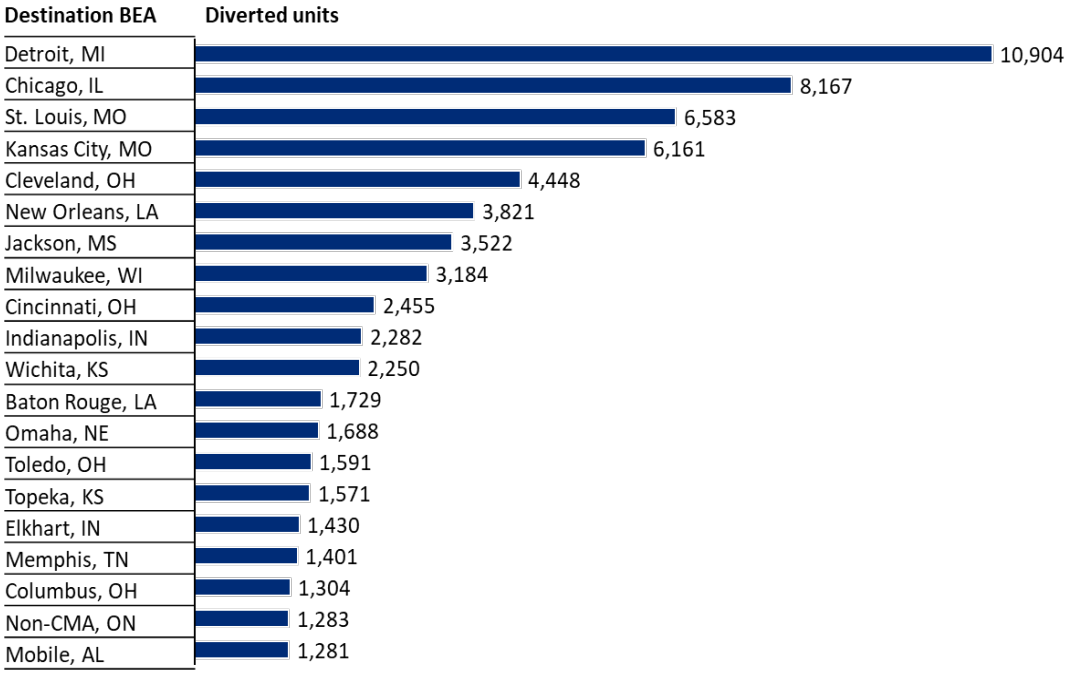
Origin BEA	Destination BEA	Diverted units
Kansas City, MO	Chicago, IL	3,213
Kansas City, MO	Detroit, MI	3,008
St. Louis, MO	Detroit, MI	2,559
Detroit, MI	St. Louis, MO	2,345
Wichita, KS	Chicago, IL	2,144
Des Moines, IA	Jackson, MS	1,465
Topeka, KS	Chicago, IL	1,259
Wichita, KS	Detroit, MI	1,253
New Orleans, LA	St. Louis, MO	1,165
Wichita, KS	Cleveland, OH	1,144
Kansas City, MO	Cincinnati, OH	1,143
Kansas City, MO	Cleveland, OH	1,074
Kansas City, MO	Milwaukee, WI	994
Omaha, NE	Detroit, MI	925
St. Louis, MO	New Orleans, LA	920

Exhibit 4-3: Intermodal truck-to-rail diversions: top origins[11]
Total of 56 locations originating traffic diverted from truck. The top 20 account for 91 percent

Origin BEA	Diverted units
Kansas City, MO	16,371
Wichita, KS	8,557
St. Louis, MO	7,590
Topeka, KS	5,258
Omaha, NE	4,605
Detroit, MI	4,309
New Orleans, LA	3,696
Des Moines, IA	3,596
Lincoln, NE	2,070
Joplin, MO	2,058
Springfield, MO	1,788
Chicago, IL	1,663
Springfield, IL	1,641
Toledo, OH	1,311
Non-CMA, ON	1,289
Cleveland, OH	1,040
Milwaukee, WI	984
Indianapolis, IN	919
Evansville, IN	915
Toronto, ON	861

[10] IHS Transearch 2019, Oliver Wyman work paper 20220121_Springfield_T2R_v19.xlsx.
[11] IHS Transearch 2019, Oliver Wyman work paper 20220121_Springfield_T2R_v19.xlsx. A "Non-CMA" is a non-Census Metropolitan Area and indicates locations outside of metropolitan areas such as Toronto, ON.

Exhibit 4-4: Intermodal truck-to-rail diversions: top destinations[12]
Total of 59 locations terminating traffic diverted from truck. The top 20 account for 86 percent



4.3 Assembled automobiles truck-to-rail diversion estimates

The new services and facilities CN will create through acquisition of the Springfield Line also will create new options for shippers now using car transporters to move assembled automobiles over the highways. Exhibits 4-5 through 4-7 illustrate that CN's new services and automotive terminals in East St. Louis and Kansas City will benefit shippers in lanes throughout the Midwest and South.

An important step in preparing the diversion estimates was discussions with the CN commercial team to receive feedback on the geographical regions they viewed as opportunities for traffic gain due to the acquisition of the Springfield Line and the opening of new terminals. (*See* the statement of witness Sarah Slazinski, Assistant Vice-President, Automotive, for a commercial understanding of the automotive opportunities.)

[12] IHS Transearch 2019, Oliver Wyman work paper 20220121_Springfield_T2R_v19.xlsx. A "Non-CMA" is a non-Census Metropolitan Area and indicates locations outside of metropolitan areas such as Toronto, ON.

Exhibit 4-5: Automotive truck-to-rail diversions: top 15 origin-destination pairs[13]

Total across all markets = 1,479 carloads

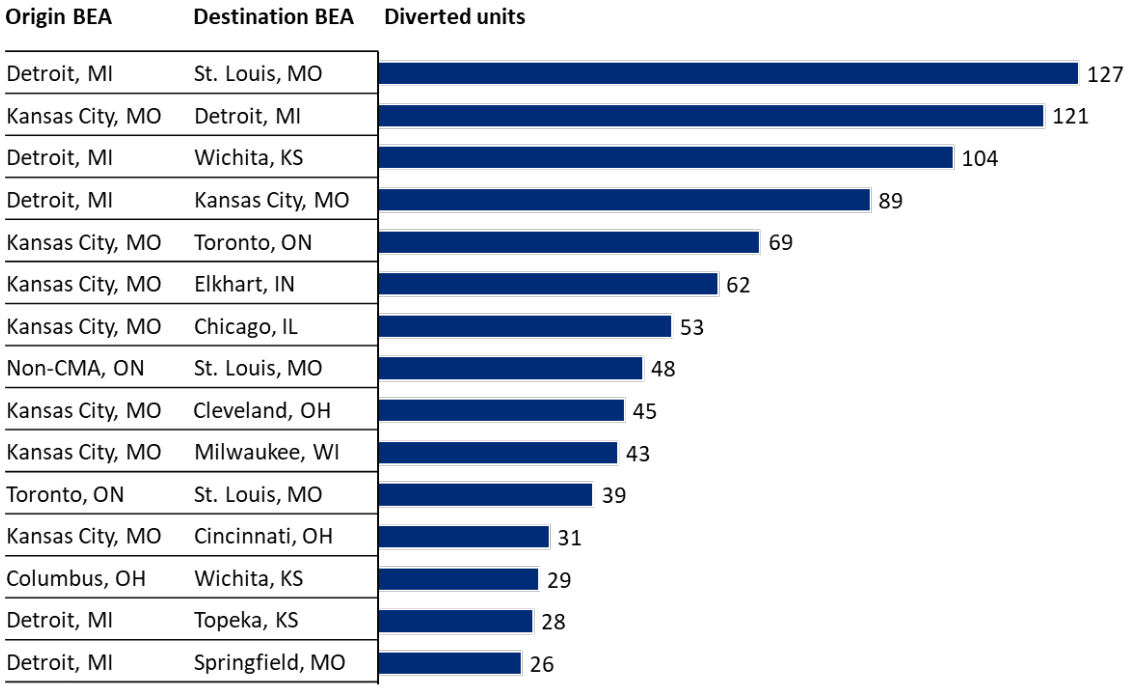
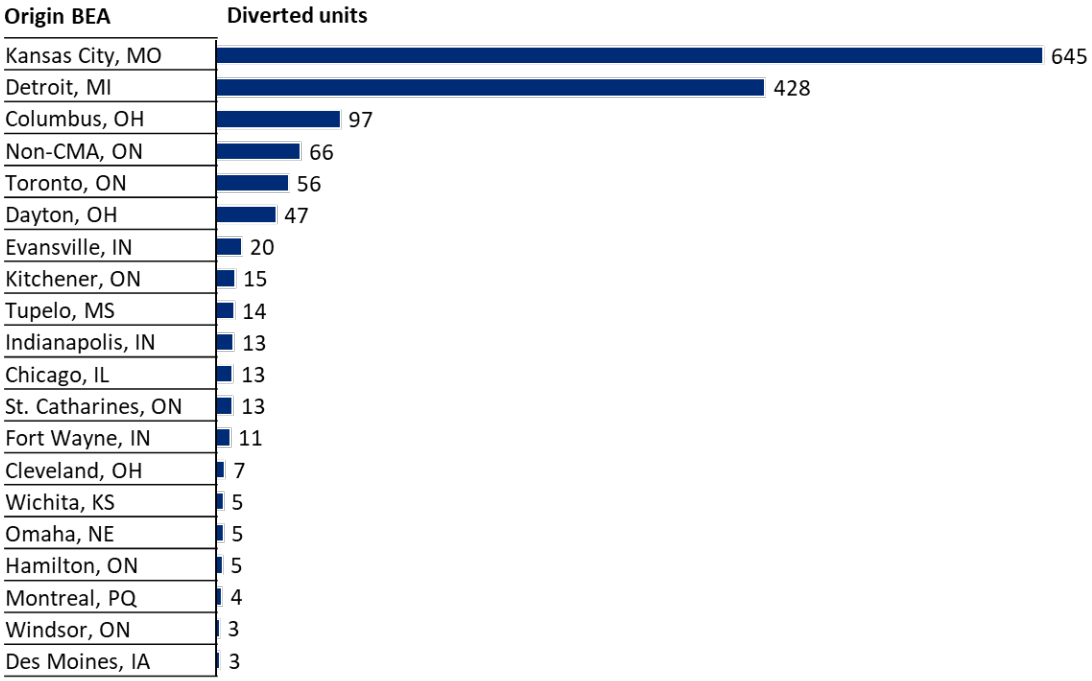


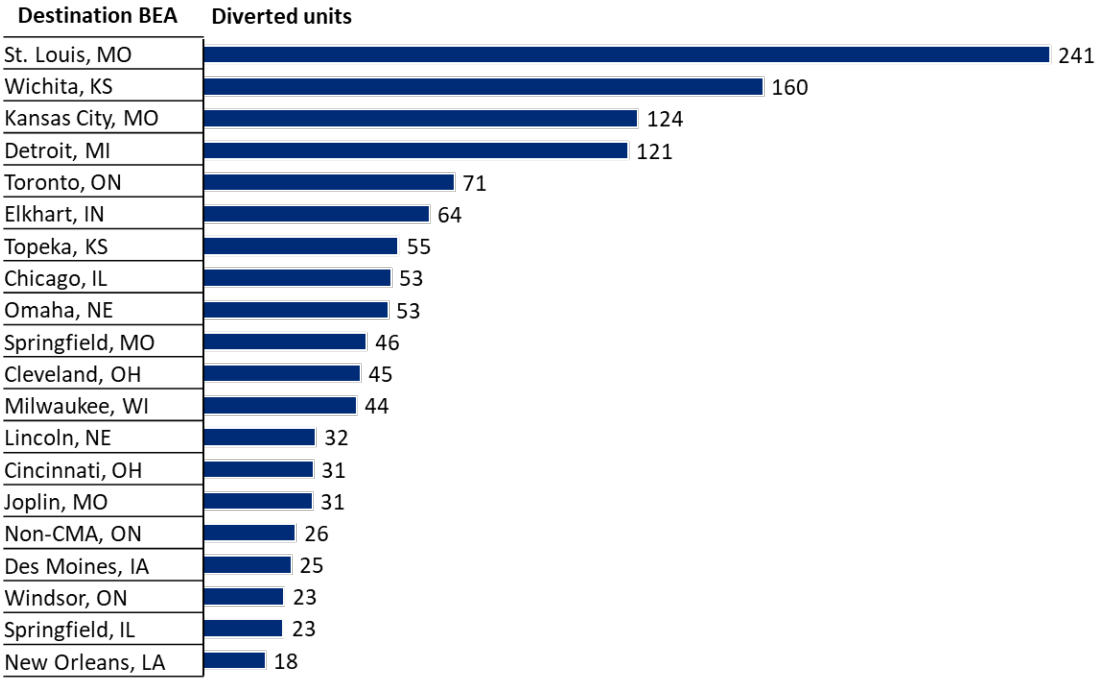
Exhibit 4-6: Automotive truck-to-rail diversions: top origins[14]

Total of 34 locations originating traffic diverted from truck. The top 20 account for 99 percent



[13] IHS Transearch 2019, Oliver Wyman work paper 20220121_Springfield_T2R_v19.xlsx.
[14] IHS Transearch 2019, Oliver Wyman work paper 20220121_Springfield_T2R_v19.xlsx.

Exhibit 4-7: Automotive truck-to-rail diversions: top destinations[15]
Total of 54 locations terminating traffic diverted from truck. The top 20 account for 87 percent

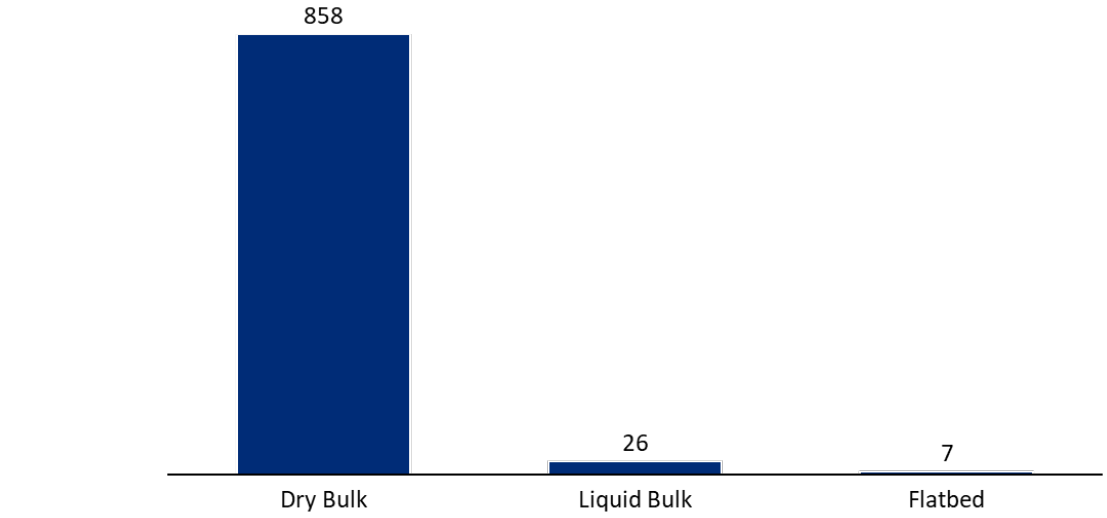


4.4 Transload truck-to-rail diversion estimates

An estimated 890 carloads of other commodities would be diverted from truck to CN. These involve commodities moving in trucks as dry bulk and liquid bulk and commodities moving on flatbed trucks. These commodities are transloads, using truck for the first and/or last mile and transferring to rail for the linehaul portion of the move. The presence of a new CN transload service will provide shippers with increased competitive options for bringing these products to market.

[15] IHS Transearch 2019, Oliver Wyman work paper 20220121_Springfield_T2R_v19.xlsx.

Exhibit 4-8: Transload truck-to-rail diversions[16]



5. Projected Traffic Gained by Increasing Rail Competition

Acquisition of the Springfield Line will create new competitive routes for rail shippers, particularly between Eastern Canada and Michigan and Kansas City, and between the Southeast and Kansas City. In total, I estimate that CN will divert approximately 49,500 containers and carloads per year. Sections 5.1 through 5.3 demonstrate that the benefits of these new options will be widely available to shippers, including shippers using lanes linking Western Canada, Eastern Canada, the Midwest and the South with Kansas City and East St. Louis. Section 5.4 shows the expected impact on other railroads. The details of the rail-to-rail diversion model are provided in Appendix C.

5.1 Intermodal rail-to-rail diversion estimates

The primary rail-to-rail diversion opportunity for a CN acquisition of the Springfield Line will be intermodal shipments between Detroit and Kansas City. The presence of CN in this

[16] IHS Transearch 2019, Oliver Wyman work paper 20220121_Springfield_T2R_v19.xlsx.

market will provide shippers with a strong competitive rail option. While the contents of intermodal containers can be difficult to ascertain from waybill data, because the STCC code is often "Miscellaneous Mixed Shipments," this traffic most likely contains a high percentage of automobile parts.

An important step in preparing the diversion estimates was discussions with the CN commercial team to receive feedback on the geographical regions they viewed as opportunities for traffic gain due to the acquisition of the Springfield Line and the opening of new terminals. (*See* the statement of witness Dan Bresolin for a commercial understanding of the intermodal opportunities.)

Exhibit 5-1: Intermodal rail-to-rail diversions: origin-destination pairs[17]

The 26,101 diverted containers are concentrated in seven origin-destination pairs

Origin	Destination	Diverted units
Kansas City, MO-KS	Detroit-Ann Arbor-Flint, MI	8,575
Detroit-Ann Arbor-Flint, MI	Kansas City, MO-KS	8,460
Chicago-Gary-Kenosha, IL-IN-WI	Kansas City, MO-KS	5,892
Kansas City, MO-KS	Chicago-Gary-Kenosha, IL-IN-WI	4,906
Memphis, TN-AR-MS-KY	Omaha, NE-IA-MO	2,515
St. Louis, MO-IL	Detroit-Ann Arbor-Flint, MI	338
Detroit-Ann Arbor-Flint, MI	St. Louis, MO-IL	321

[17] STB Carload Waybill Sample, 2019; CP-KCS 2019 waybill traffic file received from FTI; CN 2019 waybill file; Oliver Wyman work paper HC-2022January_R2R_Intermodal_v4.xlsx.

5.2 Assembled automobiles rail-to-rail diversion estimates

The single largest lane for rail-to-rail automobile diversions is St. Louis to Detroit, as shown in Exhibit 5-2, followed by Chicago to Kansas City. While some of these movements may be Rule 11 rebills that do not originate in St. Louis or Chicago, CN, with the acquisition of the Springfield Line, would be positioned as a strong competitor for traffic, regardless of whether it is an ultimate origin or an interline movement.[18]

An important step in preparing the diversion estimates was discussions with the CN commercial team to receive feedback on the geographical regions they viewed as opportunities for traffic gain due to the acquisition of the Springfield Line and the opening of new terminals. (*See* the statement of witness Sarah Slazinski for a commercial understanding of the automotive opportunities.)

[18] Rule 11 traffic moves under different waybills, thus masking the ultimate origin and/or destination of the shipment. This can occur, for example, when trucks are used to transport shipments between rail yards, a practice known as "rubber-tired" interchanges.

Exhibit 5-2: Assembled automobiles rail-to-rail diversions, top 15 origin-destination pairs[19]

The St. Louis to Detroit market makes up 12.8 percent of the total 17,903 rail-to-rail diverted multilevels

Origin	Destination	Diverted units
St. Louis, MO-IL	Detroit-Ann Arbor-Flint, MI	2,304
Chicago-Gary-Kenosha, IL-IN-WI	Kansas City, MO-KS	1,147
Kansas City, MO-KS	Detroit-Ann Arbor-Flint, MI	878
Toledo, OH	Kansas City, MO-KS	861
St. Louis, MO-IL	Baton Rouge, LA-MS	670
Toledo, OH	St. Louis, MO-IL	655
St. Louis, MO-IL	Memphis, TN-AR-MS-KY	628
Kansas City, MO-KS	Chicago-Gary-Kenosha, IL-IN-WI	590
St. Louis, MO-IL	Chicago-Gary-Kenosha, IL-IN-WI	559
Kansas City, MO-KS	Agincourt, ON	517
Chicago-Gary-Kenosha, IL-IN-WI	St. Louis, MO-IL	489
Detroit-Ann Arbor-Flint, MI	St. Louis, MO-IL	430
Detroit-Ann Arbor-Flint, MI	St. Louis, MO-IL	396
Kansas City, MO-KS	Chicago-Gary-Kenosha, IL-IN-WI	382
Kansas City, MO-KS	Elkhart-Goshen, IN-MI	366

5.3 Grain rail-to-rail diversion estimates

Acquisition of the Springfield line will generate modest gains for CN in grain traffic moving in existing markets, including the opportunity to divert traffic from western Canada into Midwest markets.

An important step in preparing the diversion estimates was discussions with the CN commercial team to receive feedback on the geographical regions they viewed as opportunities for traffic gain due to the acquisition of the Springfield Line and the opening of new terminals. (*See* the statement of witness David Przednowek, Assistant Vice-President, Grain, for a commercial understanding of the grain opportunities.)

[19] STB Carload Waybill Sample, 2019; CP-KCS 2019 waybill traffic file received from FTI; CN 2019 waybill file; Oliver Wyman work paper HC-2022January_R2R_Auto_v4.xlsx.

Exhibit 5-3: Grain rail-to-rail diversions: origin-destination pairs[20]

An estimated total of 604 carloads of grain will divert to CN, of which 53 percent originates in Canada

Origin	Destination	Diverted units
Saskatchewan	Kansas City, MO-KS	229
Kansas City, MO-KS	Chicago-Gary-Kenosha, IL-IN-WI	96
Manitoba	Kansas City, MO-KS	89
Kansas City, MO-KS	Toledo-Fremont, OH	68
Slater, MO	New Orleans, LA-MS	43
Topeka, KS	Hattiesburg, MS	30
Kansas City, MO-KS	Hattiesburg, MS	30
Columbia, MO	Hattiesburg, MS	19
Kansas City, MO-KS	Milwaukee-Racine-Waukesha, WI	2

5.4 Impacts on other railroads from rail-to-rail diversions

Given the importance of Kansas City as an origin and destination for Springfield Line rail-to-rail diversions, the greatest increase in competition between CN and incumbent carriers will be with BNSF and NS. As shown in Exhibit 5-4, 54 percent of the rail-to-rail diversions will involve traffic now carried by NS and 28 percent traffic carried by BNSF. Only approximately 3 percent of diversions will involve traffic now carried by CP and KCS.

[20] STB Carload Waybill Sample, 2019; CP-KCS 2019 waybill traffic file received from FTI; CN 2019 waybill file; Oliver Wyman work paper HC-2022January_R2R_Grain_v4.xlsx.

Exhibit 5-4: Rail-to-rail diversions: traffic diverted from other railroads to CN[21]

Railroad	Intermodal		Automotive		Grain		Total
	New To CN	CN Extended Haul	New To CN	CN Extended Haul	New To CN	CN Extended Haul	
NS	17,693	-	6,457	2,483	68	-	26,701
BNSF	12,764	-	962	68	185	43	14,022
UP	548	-	2,909	1,651	-	-	5,108
CSXT	-	-	2,304	-	-	-	2,304
CPRS[22]	-	-	1,384	14	230	-	1,628
KCS[23]	-	-	-	10	78	-	88

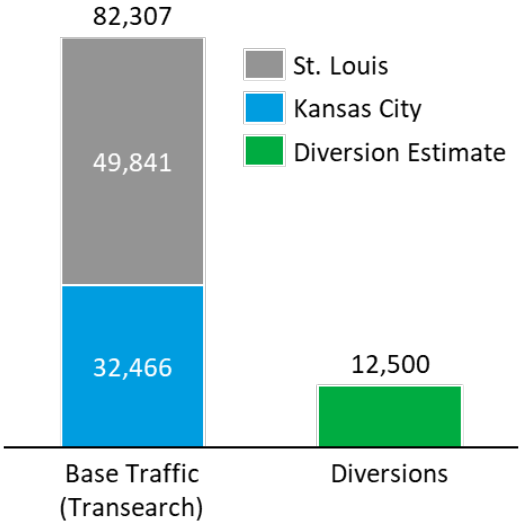
6. Diversions Through the Port of Montreal

Acquisition of the Springfield Line by CN will create a new, single-line competitive route linking the Port of Montreal with shippers and receivers in the Midwest. This new route will give these shippers a competitive, alternative option to the Port of New York and New Jersey and other ports on the East Coast. These ports are often congested and are located further from European ports than is the Port of Montreal. For example, the Port of Montreal is 200 miles closer to the primary ports in Europe than is the Port of New York and New Jersey. This equates to one to two days of additional sailing time. With the acquisition of the Springfield Line, the rail distance between Montreal and Kansas City on CN will be equivalent to the rail distance on NS between New York/New Jersey and Kansas City.

As shown in Exhibits 6-1 and 6-2, approximately 12,500 containers per year will be diverted to CN service between the Port of Montreal and the Midwest. This represents 15 percent of the approximately 82,300 containers moving from East Coast ports to the Midwest.

[21] STB Carload Waybill Sample, 2019; CP-KCS 2019 waybill traffic file received from FTI; CN 2019 waybill file; Oliver Wyman work paper HC-Rail to Rail losses by carrier.xlsx.
[22] For purposes of diversion modeling, CP and KCS were treated as a single railroad competitor, but no attempt was made to estimate a combined CP-KCS market share. Diversions are shown individually for CP and KCS.
[23] Ibid.

Exhibit 6-1: Port of Montreal: CN diversion estimate for St. Louis and Kansas City[24]



The estimated 12,500 diverted units to/from the Port of Montreal were assigned to Midwestern origins/destinations proportionally, based on the historical traffic patterns in the IHS Transearch data for movements between East Coast ports and the Midwest.

Exhibit 6-2: Port of Montreal diversions by origin and destination[25]

Origin	Destination	Pct of Total Volume	Diverted units
Port of Montreal	St. Louis	45%	5,579
Port of Montreal	Kansas City	27%	3,377
St. Louis	Port of Montreal	16%	1,991
Kansas City	Port of Montreal	12%	1,553

[24] IHS Transearch 2019, Oliver Wyman work paper POM analysis.xlsx.
[25] IHS Transearch 2019, Oliver Wyman work paper POM analysis.xlsx.

7. Diverted Traffic is Estimated to Generate $107 Million in Annual Revenue for CN

Once traffic diversions are fully phased in, which is assumed to be three years from approval of the CN acquisition of the Springfield Line (i.e., 2025), CN is projected to earn $106.9 million in incremental revenues on an annual basis.[26]

Exhibit 7-1: Projected CN revenue from acquisition of the Springfield Line[27]

	Estimated change in CN car-miles not receiving discount	Average CN revenue per car-mile	Estimated change in CN car-miles receiving discount	Average CN revenue per car-mile with 5% discount	Unadjusted revenue estimate (2019 US$)	Adjusted annual revenue estimate (2019 $US)
Intermodal	{ }	{ }	{ }	{ }	$ 52.7	$ 51.0
Automotive	{ }	{ }	{ }	{ }	$ 57.2	$ 50.3
Grain	-	{ }	{ }	{ }	$ 2.6	$ 2.2
Other	{ }	{ }	-	{ }	$ 3.3	$ 3.3
Totals	{ }	**N/A**	{ }	**N/A**	**$115.8**	**$106.9**

- This revenue is in 2019 US dollars and does not consider inflation nor any organic growth of traffic on the Springfield Line.
- Average revenue per car-mile is based on revenue splits for CN originated and terminated traffic in the 2019 STB Carload Waybill Sample.
- Estimates include all mileage for new moves and only new mileage for extended haul diversions, thus not double-counting existing CN revenue.
- If the estimated revenue CN would receive for moving a rail-to-rail diverted shipment exceeds the historical revenue received by the incumbent carrier, the estimated revenues were adjusted, since a higher CN rate would be less likely to attract traffic.

[26] Carl Van Dyke and Derik Taylor Verified Statement shows full phase in by the year 2025
[27] IHS Transearch 2019; STB Carload Waybill Sample, 2019; CP-KCS 2019 waybill traffic file received from FTI; CN 2019 waybill file; Oliver Wyman work paper HC-20220208 Rev Adjustment v03.xlsx.

- A 5 percent discount was applied to the rate for rail-to-rail new volumes and non-CN originating extended hauls, since a discount may be necessary to incentivize shippers to switch carriers.
- Revenue is expected to be fully realized three years after agreement and approval to acquire the Springfield Line. Values are not adjusted for inflation.

VERIFICATION

I, David Hunt, declare under penalty of perjury that the foregoing information is true and correct. Further, I certify that I am qualified and authorized to file this statement.

Executed on this 28th day of February, 2022.



David Hunt

Appendix A. Resume of David Hunt

Mr. Hunt, a Director in Oliver Wyman's Transportation & Service practice, has over 30 years of experience in the areas of transportation operations and strategic planning, national and regional transportation policy, and network modeling and operations research. Mr. Hunt focuses on projects involving regulatory and policy analysis, strategic planning, and operational improvements. His projects include:

- Developed a market share model that predicted truck/rail shares and volumes under various scenarios, including autonomous truck technologies and the potential responses by the rail industry.
- Worked with a Class I railroad to explore opportunities and value of adopting predictive maintenance practices for their railcar fleet.
- Prepared several policy white papers filed with the US Department of Transportation, addressing issues such as positive train control and use of electronically controlled pneumatic brakes.
- Called as an expert witness in rail capacity modeling as part of an international arbitration case in South America.
- Participated in discussions with the Mexican government that led to a favorable ruling for the rail industry regarding proposed regulatory action to promote competition through expanded interconnection of rail services.
- Managed the design and development of BlueNet, a facility location model used in network design.
- Developed a simulation model that showed the benefits of operating a nationwide railcar pool, the results of which were used in a Surface Transportation Board proceeding to reauthorize the operation of the pool.
- Worked with a rail industry supplier to restructure their support services, incorporating predictive maintenance tools for safer and more reliable operations.

Prior to joining Oliver Wyman, Mr. Hunt was a Senior Associate at Cambridge Systematics (CS). Mr. Hunt was also a Vice President at ALK Associates. Mr. Hunt is active in the Institute for Operations Research and the Management Sciences (INFORMS), where he was the recipient of the 2017 INFORMS President's Award. He currently serves on the INFORMS Board of Directors as Treasurer and is a member of the Transportation Research Board's Railroad Operating Technologies Committee.

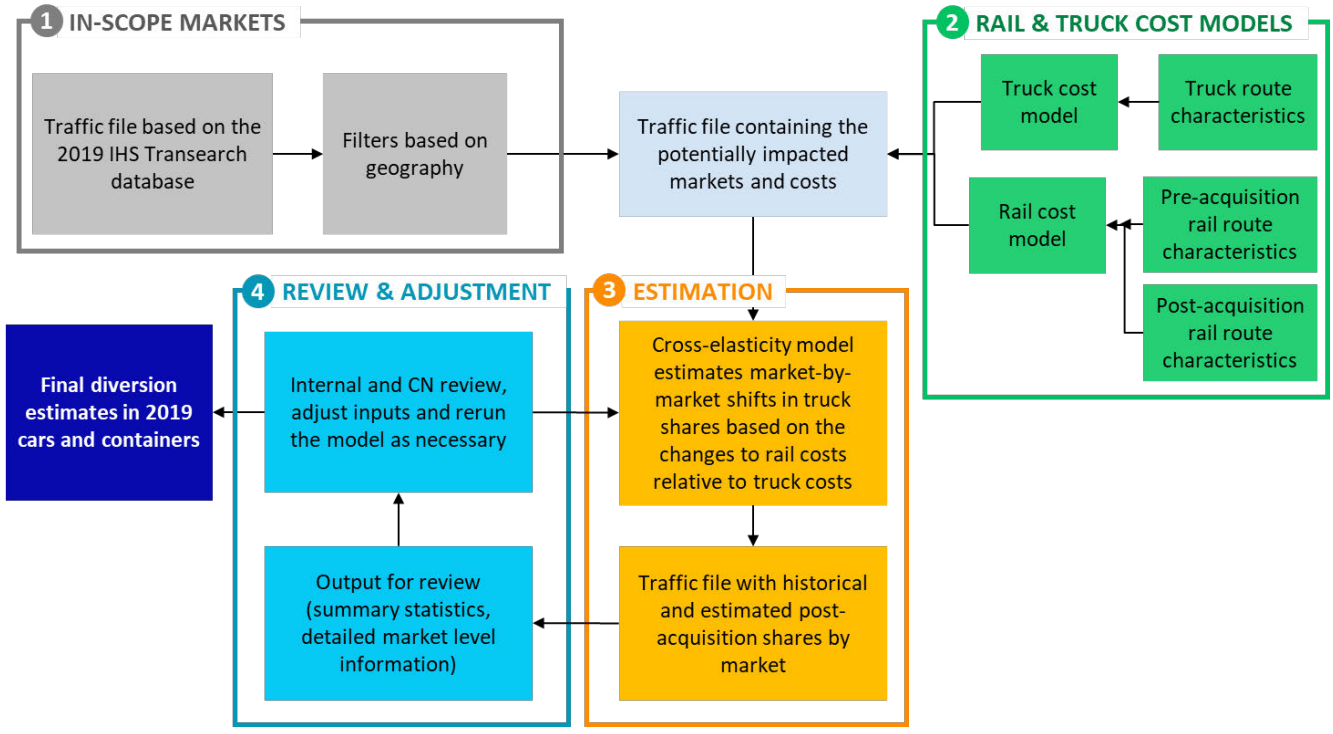
Mr. Hunt earned a BS in civil engineering from West Virginia University and a MSE from the Civil Engineering and Operations Research Department at Princeton University.

Appendix B. Truck-to-Rail Model Description

The truck-to-rail model is contained in work paper "20220121_Springfield_T2R_ v19.xlsx." The scale of the potentially divertible traffic for the Springfield Line acquisition made it possible to run the model as a spreadsheet exercise.

The components of Oliver Wyman's truck-to-rail model are shown in Exhibit B-1, with each component discussed in more detail below. This is a cost-based model that considers the cost of a truck move relative to a rail move, using the same basic principle as used in models to evaluate previous railroad mergers in cases before the ICC and STB.[28]

Exhibit B-1: Oliver Wyman truck-to-rail model



The key assumptions used in modeling the potential truck-to-rail diversions due to CN's acquisition of the Springfield Line were:

[28] *See*, for example, FD 32549 Verified Statement of Peter Stone, Reebie Associates.

- A market is defined as an origin, destination, and service type.
- Market volume is fixed (cost changes will not change total demand).
- Costs for truck and rail other than the CN-Springfield Line are unchanged post-acquisition.
- Diversions of truck market volumes are bound between zero and current truck volume.

B.1 In-scope markets

Since the commodities are currently moving by truck, it is assumed that any commodity can be drayed to and from a rail terminal. The catchment areas were defined based on Bureau of Economic Analysis (BEA) regions, where the major location in the BEA was less than 200 miles from a CN terminal. A BEA was assigned to only one terminal – the closest one. The assignment of BEAs to terminals is shown in Exhibit B-2.

Exhibit B-2: Catchment area for existing and proposed new terminals, based on 200-mile limit

Existing CN Terminal	BEA
Calgary	Calgary, AB
Chicago	Milwaukee, WI
	Chicago, IL
	Elkhart, IN
	Champaign, IL
Detroit	Cleveland, OH
	Toledo, OH
	Detroit, MI
	Grand Rapids, MI
	London, ON
	Windsor, ON
East Regina	Regina, SK
Edmonton	Edmonton, AB
	Non-CMA AB
Halifax	Halifax, NS
	Non-CMA NS
Indianapolis	Cincinnati, OH
	Dayton, OH
	Columbus, OH
	Fort Wayne, IN
	Indianapolis, IN
Jackson	Greenville, MS
	Jackson, MS

Existing CN Terminal	BEA
Memphis	Memphis, TN
	Tupelo
Mobile	Mobile, AL
Moncton	Saint John, NB
	Prince Edward I
	Non-CMA NB
Montreal	Montreal, PQ
	Quebec, PQ
	Trois Rivieres, PQ
	Non-CMA QC
New Orleans	New Orleans, LA
	Baton Rouge, LA
Prince George	Non-CMA BC
Saskatoon	Saskatoon, SK
	Non-CMS SK
Toronto	Hamilton, ON
	Kitchener, ON
	Oshawa, ON
	St Catharines, ON
	Toronto, ON
	Non-CMA ON
Vancouver	Vancouver, BC
	Victoria, BC

Existing CN Terminal	BEA
Winnipeg	Winnipeg, MB
	Non-CMA MB

New CN Terminal	BEA
Kansas City	Columbia, MO
	Joplin, MO
	Kansas, MO
	Springfield, MO
	Topeka, KS
	Des Moines, IA
	Omaha, NE
	Lincoln, NE
	Wichita, KS
St. Louis	Evansville, IN
	Paducah, KY
	St. Louis, MO
	Springfield, IL

Diversions were considered by the model if the truck traffic moved from a BEA assigned to an existing terminal to or from a BEA assigned to a new terminal (i.e., Kansas City or St. Louis). However, not every combination of BEA to BEA was included. Four rules were used to identify origin BEA – destination BEA pairs for input into the diversion model:

- **Rule 1**: Drayage catchment area is 200 miles or less at the origin and at the destination.
- **Rule 2**: CN rail length-of-haul (LOH) is greater than 400 miles.
- **Rule 3**: Average truck length-of-haul is greater than 400 miles.
- **Rule 4**: Retain origin-destination pairs where the average circuity is less than 1.57, based on:[29]

$$Circuity = \frac{Orig\ Dray + Rail\ LOH + Dest\ Dray}{Truck\ LOH}$$

Exhibit B-3 contains examples of how the rules were applied.

Exhibit B-3: Examples of rules for retaining or removing origin-destination BEA pairs
Red indicates failed rule, green indicates passed rule

Orig (Term)	Dest (Term)	Rule 1 Dray O/D	Rule 2 R-LOH	Rule 3 T-LOH	Rule 4 Circuity	Incl.
Det (Det)	KCity (KC)	<200 / <200	754	764	1.05	✓
Det (Det)	Omaha (KC)	<200 / <200	754	733	1.32	✓
Det (Det)	Tulsa (KC)	**<200 / >200**	754	926	1.13	X
Det (Det)	Des Moines (KC)	<200 / <200	754	600	**1.62**	X
Chicago (CHI)	KCity (KC)	<200 / <200	497	510	1.07	✓
Chicago (Chi)	St. Louis (ESL)	<200 / <200	**290**	**297**	1.14	X
Winpg (Win)	KCity (KC)	<200 / <200	1365	820	**1.73**	X
Vanc (Van)	St. Louis (ESL)	<200 / <200	2699	2219	1.24	✓

[29] 1.57 represents a 25 percent allowance on an average rail/truck circuity of 1.26, calculated from the 2019 IHS Transearch database for truck (excluding LTL) and rail traffic.

B.2 Rail and truck cost models

Rail cost estimation model

The cost for a rail haul was estimated using the STB's Uniform Rail Costing System (URCS) figures included in the 2019 STB Waybill Sample "Total Variable Cost" field, American Trucking Research Institute figures to estimate the representative cost of drayage, and R-1 data submitted to the Board by the railroads, to estimate the incremental per-ton cost due to fixed cost allocations, which would otherwise be excluded from URCS figures. Cost estimates were then reviewed with CN's accounting team to ensure their plausibility and consistency. Exhibit B-4 shows the cost parameters applied to moves originated in CN-served locations, while Exhibit B-5 shows the cost parameters applied to moves originated in KCS-served locations. A combination of CN and KCS cost parameters was used, since all diverted traffic will use the Springfield Line. An explanation of each cost parameter follows.

Exhibit B-4: Cost of rail moves originated in CN-served locations

Service type	O-D Cost per Ton originated	Variable Cost per Ton-Mile	Fixed Cost Allocation per Ton	Fixed Cost per Ton Interchanged	Additional Cost per Ton Interchanged, per Mile >400
Auto	15.954	0.083	5.361	8.996	0.007
Intermodal	32.358	0.023	5.361	14.732	0.012
Bulk - Dry	3.963	0.026	5.361	1.886	0.002
Bulk - Tank	4.658	0.026	5.361	2.217	0.002
Flatcar	4.918	0.026	5.361	2.341	0.002

Exhibit B-5: Cost of rail moves originated in KCS-served locations

Service type	O-D Cost per Ton originated	Variable Cost per Ton-Mile	Fixed Cost Allocation per Ton	Fixed Cost per Ton Interchanged	Additional Cost per Ton Interchanged, per Mile >400
Auto	15.954	0.083	5.579	8.996	0.007
Intermodal	23.520	0.021	5.579	14.732	0.012
Bulk - Dry	3.963	0.026	5.579	1.886	0.002
Bulk - Tank	4.658	0.026	5.579	2.217	0.002
Flatcar	4.918	0.026	5.579	2.341	0.002

The costs are established as follows:[30]

- **O-D cost per ton originated**: the cost of originating or terminating a rail haul and corresponds to the intercept of an Ordinary Least Squares (OLS) regression on the costed 2019 STB Carload Waybill Sample, for each service type (i.e., the extrapolated "zero-mile cost"), divided by the average number of tons per railcar in each service type. Conceptually, the figure corresponds to loading/unloading, switching, and other operations which must take place regardless of the distance traveled for a railcar. The focus was on carload traffic, so only included movements in the calculations that had less than 10 carloads of the same commodity group.
- **Variable cost per ton-mile**: the variable component of cost, which corresponds to the variable coefficient in the Ordinary Least Squares (OLS) regression on the costed 2019 STB Carload Waybill Sample, for each service type. Unit trains were excluded from the calculation by only considering rail moves with less than 10 carloads of the same commodity group.
- **Fixed cost allocation per ton**: URCS-based STB Carload Waybill Sample costs only consider the variable portion of railroad costs. However, to fully capture the cost of rail service, certain fixed costs should be allocated to each move. To determine the total amount to be allocated, I used R-1 reported cost data for CN and for KCS and subtracted the total estimated costs in the expanded Carload Waybill Sample for CN (US only) and KCS (US only). The Carload Waybill Sample data only considers variable costs, whereas R-1 data includes both this variable portion as well as fixed costs. I then allocated these fixed costs on a per-ton basis for each rail move.
- Finally, to determine the cost of an interchange, I used the URCS software for 2019 to estimate the cost of rail moves of different lengths, adding and removing interchanges. Based on the results I obtained from the software, and using a simple extrapolation, I determined the average cost gap between a 400-mile move with an interchange and a 400-mile move without interchanges and used it to estimate the fixed cost per ton

[30] In cases where parameters for KCS costs had a wide confidence interval (driven by smaller sample sizes for certain types of moves on the KCS network), I applied CN costs. I believe that the costs thus obtained are reasonable and representative of the true costs of a rail move for modeling purposes.

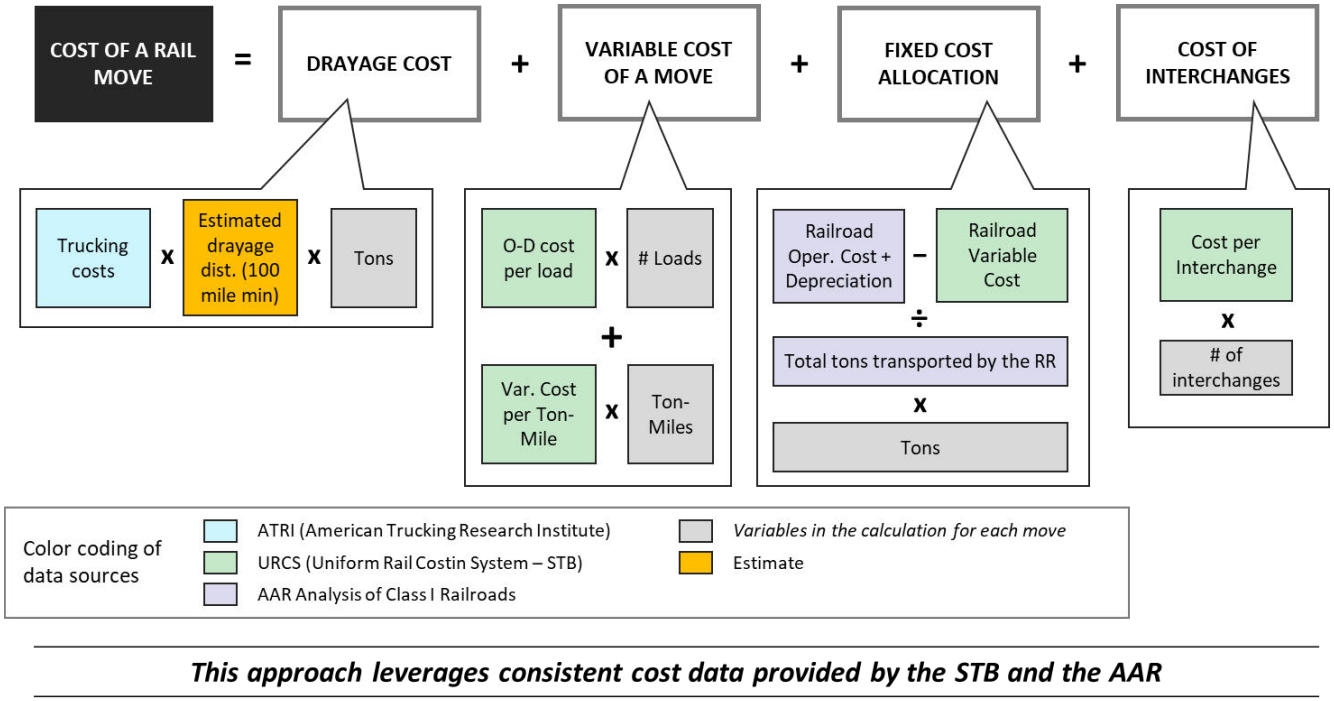
interchanged. Since URCS estimated an additional cost for longer hauls with interchanges, I applied the same increase in my cost model, in the form of an additional cost per ton interchanged, per mile of haul beyond the initial 400 miles.[31]

- In addition to the rail costs described above, I applied a drayage cost assumption for rail moves with a minimum of 100 miles at each end, to represent a minimum cost and then an additional charge for each mile above 100.

The resulting rail costs were discussed with CN's accounting teams and deemed to be in line with their expectations. The cost per ton-mile is higher for commodity groups with lower average net weight (automotive and intermodal) and lowest for bulk (which includes general merchandise). As expected, the estimated cost per ton-mile also decreases with distance. Finally, rail becomes increasingly competitive against trucking for longer distances, with a substantially lower cost per ton-mile for long distances.[32] Exhibit B-6 is a diagram depicting the rail cost process.

[31] I use 400 miles as a cutoff because no truck-to-rail diversions are assumed to occur on moves that are shorter than 400 miles.
[32] Although rail costs per ton-mile are generally substantially lower, in many cases rail routes are more circuitous than trucking routes, due to the many more miles of roadway available for use versus rail miles.

Exhibit B-6: Process used to estimate rail costs



This approach leverages consistent cost data provided by the STB and the AAR

Truck cost estimation model

To estimate truck transportation costs, I used data provided by ATRI (American Trucking Research Institute) in their 2020 update of the Analysis of the Operational Costs of Trucking.[33] In my experience, ATRI provides the most credible and useful data source available for trucking costs. The report estimates an average cost per mile of $1.652 in 2019, which is the base year for all my calculations. To estimate the average cost per ton-mile, I used Oliver Wyman estimates of the average payload and percent of empty miles by truck type. I used these figures in conjunction with the ATRI cost estimates to obtain the figures presented in Exhibit B-7. Since my analysis only covers O-D pairs located more than 400 miles apart, I modeled trucking costs as being linear, with an intercept at zero. I believe that these costs are representative of trucking costs for lengths of haul that are in scope for this study.

[33] Analysis of the Operational Costs of Trucking 2020, American Truck Research Institute, p. 19.

Exhibit B-7: Process used to estimate truck costs

A	• Starting point: Average cost per mile (2019)	**$1.652**	Source: American Trucking Research Institute (ATRI) – An Analysis of the Operational Cost of Trucking 2020
B	• Adjustment by truck type: – Automotive – Intermodal – Hopper truck, tank truck, flatbed		Source: Characteristics & Changes in Freight Transportation Demand, Oliver Wyman analysis
C	• Adjustment to Cost per Net Ton Mile: – Truck payload by type – % of empty trips by type of truck		Source: Characteristics & Changes in Freight Transportation Demand, Oliver Wyman analysis
D	Cost per net ton mile: Automotive	$0.1315	
	Cost per net ton mile: Intermodal	**$0.1315**	
	Cost per net ton mile: Dry Bulk	$0.0941	
	Cost per net ton mile: Tank	$0.1329	
	Cost per net ton mile: Flatbed	$0.0806	

Drayage costs were based on net ton-mile costs, except that since drayage moves will be shorter distances, a 100-mile minimum was set at both the origin and destination. If drayage distances exceeded 100 miles, then the additional mileage charges were added to the cost, which has the effect of reducing diversion percentages, since long drays increase rail cost when compared to a truck move.

B.3 Estimation process

The data for the model came from the IHS Transearch freight database. Rail was defined as modes Rail Carload (mode=1), Rail Intermodal (mode=2) and Rail Not Elsewhere Classified (mode=3). Trucks were defined as Truck Truckload (mode=4), Truck Private (mode=6), and Truck Not Elsewhere Classified (mode=7). Less-than-truckload truck moves were excluded. The geography included was based on the description contained in Section B.1.

The Oliver Wyman truck-to-rail diversion model is a logistics regression that predicts how truck-rail market share will change based on changes in the cost differential between truck and rail. The detailed model is contained in work paper "20220121_Springfield_T2R_v19.xlsx." The truck-to-rail model is first used to estimate pre-acquisition market shares (base case) and then used to estimate post-acquisition market shares. If the difference between post-acquisition and the base case results in a gain in rail market share, the difference is the diversion estimate.

Subtracting the diversions from the base case, rather than from historical traffic volume, helps to eliminate biases in the model. The model is prevented from diverting more tons than historically moved by truck in each market. Diverted tons were then converted into carloads and containers using average weights obtained from the 2019 STB Carload Waybill Sample, as shown in Exhibit B-8.

Exhibit B-8: Conversion of diverted tons to railcars and containers

Service Type	Key	Tons/Unit	Criteria Used in STB CWS
Intermodal	I	12.86	Service Type = 2
Auto	A	21.29	Service Type = 4
Flatbed	F	81.53	AAR Cartype = F
Dry Bulk	D	90.57	Service Type = 1
Liquid Bulk	L	86.37	AAR Cartype = T

Calibration of the logistics regression model was based on the 2019 IHS Transearch freight database for truck (excluding LTL) and rail, for moves exceeding 400 miles. Coefficients were calculated for intermodal, automotive, dry bulk, liquid bulk, and flatbeds by minimizing the sum of the square error (the square of the base case model prediction minus the historical market share).[34]

[34] Oliver Wyman work paper T2R_Calibrations.xlsx.

B.4 Review and adjustment

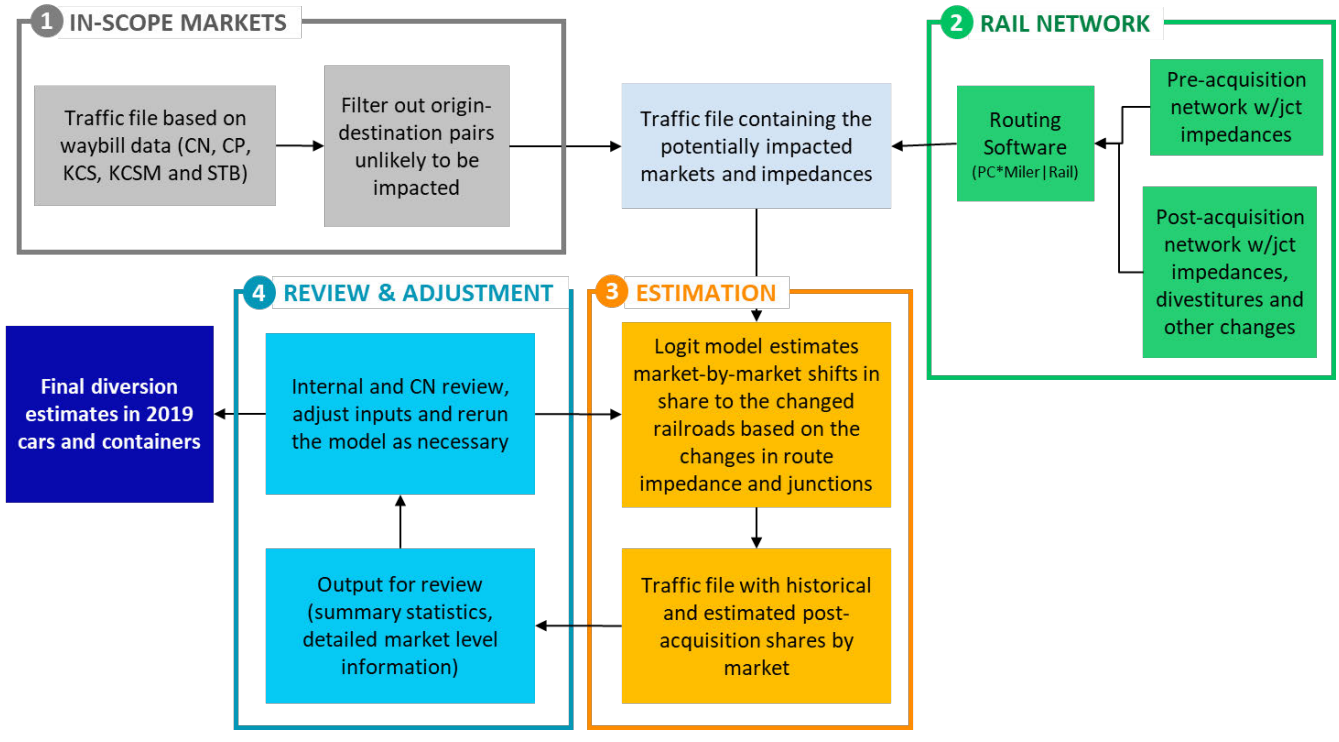
The final step was to review the diversion results internally and with CN to assess the findings. The reviews involved an explanation of the model assumptions and a review of diverted traffic, with market totals and diversion percentages removed to protect confidential data. Based on the review feedback, adjustments were made to the markets eligible for diversions and the model rerun and reviewed again.

Appendix C: Rail-to-Rail Model Description

The rail-to-rail model is contained in work papers "HC-2022January_R2R_Auto_v4.xlsx," "HC-2022January_R2R_Intermodal_v4.xlsx," and "HC-2022January_R2R_Grain_v4.xlsx." The scale of potentially divertible traffic for the Springfield Line acquisition made it possible to run the model as a spreadsheet exercise.

The components of Oliver Wyman's rail-to-rail model are shown in Exhibit C-1, with each component discussed in more detail below. This is the same structure and type of model I used to evaluate diversion analyses for railroad mergers in the 1980s and 1990s, while employed at ALK Associates. This model has been used in numerous ICC and STB rail merger cases.[35]

Exhibit C-1: Oliver Wyman rail-to-rail model



[35] For example, *see* FD 32549 Verified Statement of Mark Hornung of ALK Associates.

The key assumptions used in modeling the potential rail-to-rail diversions due to CN's acquisition of the Springfield Line were:

- A market is defined as an origin, destination, and service type.
- Market volume is fixed (a gain by CN's acquisition of the Springfield Line is offset by losses on other railroads).
- To isolate the impact of the proposed Springfield Line acquisition, junction impedances for CP-KCS are set to zero (assumes they are merged) to reflect where the merged carrier is a competitor, but no effort was made to estimate CP-KCS market share.
- Impedance and junction frequency are surrogates for costs and service quality, which are properties that influence shipper route choice selection.

C.1 In-scope markets

The data was assembled from 2019 waybill files provided by CN, CP-KCS (through FTI) and the STB. To avoid double-counting traffic, the CN waybill data was used first, then the CP-KCS waybill data with all records involving CN removed, and finally the STB Carload Waybill Sample with all records involving CN, CNUS, CPRS, CPUS, KCS, and KCSM removed. Geographic filters were applied to select traffic between CN currently served regions and the proposed new terminals in Kansas City and East St. Louis and areas served by these new terminals.

Whether or not rail traffic is competitive is dependent on a range of factors, including the type of traffic, length of haul, and volumes. The details of which markets were included and which were cut are contained in the diversion model work papers.[36] In general:

- **Intermodal**: traffic within the same BEA or neighboring BEA at both the origin and destination was considered to be competitive.

[36] Oliver Wyman work papers HC-2022January_R2R_Auto_v4.xlsx, HC-2022January_R2R_Intermodal_v4.xlsx, and HC-2022January_R2R_Grain_v4.xlsx.

- **Automotive**: since assembled automobiles tend to have more concentrated origins and disbursement destinations (e.g., auto assembly plant shipping to a region for distribution to dealers), auto diversions were restricted to a SPLC at the origin and a BEA at the destination.
- **Grain**: has some flexibility in rail loading and unloading locations. BEAs were used at the origin and destination for grain diversions.

C.2 Rail network

The traffic diversion model is network-based, where before and after scenarios are constructed that reflect pre- and post-transaction changes to the network. In the case of the Springfield Line acquisition by CN, I assumed the "before case" is the current North American rail network with CP-KCS merged. This reflects CN's request that the Springfield Line be divested as a condition of the merger. I did not attempt to determine CP-KCS post-merger market shares; I included CP-KCS for the purpose of modeling the competitive routes.

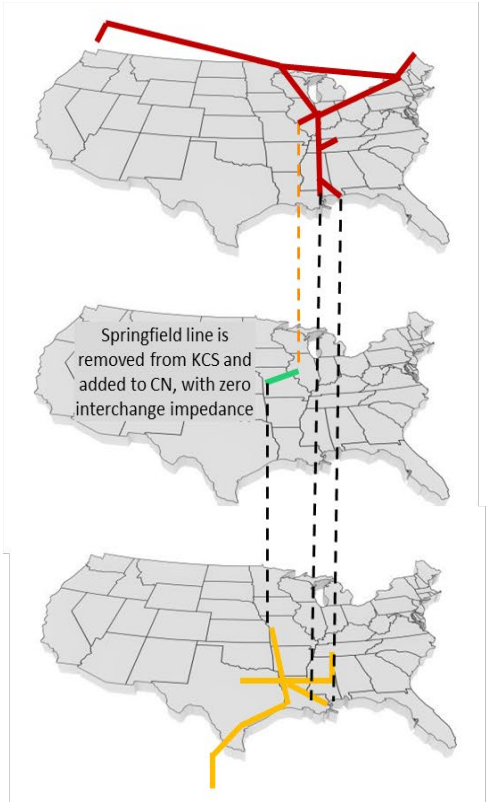
Exhibit C-2 demonstrates the type of changes made to the post-merger network. "Vertical" junction links are added reflecting interchanges, and impedances (which represent an "interchange cost" specified in terms of miles) are assigned based on historical traffic volumes at the junction between railroads. A 350-mile impedance is used for high-volume junctions, while a 650-mile impedance is used for low-volume junctions. A junction between two railroads in the same family, as would be the case for CP-KCS interchange locations post-merger, is assigned an impedance of zero. The rules for assigning impedances to junctions are provided in Exhibit C-3. In modeling the Springfield Line, I assumed the pre-acquisition base case has an impedance of 650 miles between CN and KCS at Springfield.[37] In the post-acquisition case, the impedance is set to zero, reflecting the assumption that the Springfield Line is part of CN.

[37] The name "Springfield" is used for the interchange in the Springfield area, which is physically at Cockrell, IL.

Exhibit C-2: Defining the network-based scenarios

Post-Merger Network

Illustrative – does not show all railroads included in model



Pre and Post-Acquisition Network Scenarios

- **Pre-Acquisition**: CN and KCS have low interchange volumes at Springfield/Cockrell in the 2019 base year, therefore the impedance is set to 650 miles.
- **Post-Acquisition**: the Springfield line is considered part of CN, and there is a zero interchange impedance for CN to move traffic over this line to any location, including Kansas City and St. Louis.
- **Other Interchanges**: all other interchange locations between railroads are retained at the impedances reflecting 2019 base year interchange volumes. This has the effect of keeping the gateway open and operating as it did in 2019.
- **Example**: moving from Detroit to Kansas City on CN-KCS through Springfield has an impedance of 1404 (754 miles + 650 jct imp) pre-acquisition, and 754 (754 miles + 0 jct imp) post-acquisition

Exhibit C-3: Junction impedances are set based on historical volumes from waybill data

2019 Interchange Volume	Junction Impedance	Notes
Same Family	0	No impedance at the interchange
< 730	650	< 2 loaded units/day
730 to < 3,650	550	2 to 10 loaded units/day
3,650 to < 17,800	450	10 to 50 loaded units/day
> 17,800	350	> 50 loaded units/day

C.3 Estimation process

A logit model is used to estimate the pre-acquisition market shares (base case) and post-acquisition market shares, with the difference between post-acquisition minus the base case being the diversion estimate. Subtracting the diversions from the base case rather than from historical traffic volumes helps to eliminate biases in the model.

The coefficients for the logit model were calibrated using the STB 2019 Carload Waybill Sample.[38] Coefficients were calculated for intermodal, automotive, and all other by minimizing the sum of the square error (base case model prediction minus historical volumes). The coefficients are applied to the route impedance divided by the minimum impedance in the market and the route junction frequency plus one, divided by the minimum junction frequency in the market plus one.

The logit model is formulated as:

$$Share\ for\ route_i = \frac{probability\ shipper\ selects\ route_i}{sum\ of\ probabilities\ for\ all\ routes\ in\ market}$$

The model is run by comparing the route characteristics of:

- All historical routes in the market, where a route is defined as the railroad sequence used from the origin to the destination
- The route that was added or changed (i.e., CN with Springfield Line)
- Other routes that may not have historical share, but are potentially competitive in the market

As an example, for intermodal traffic moving from Detroit to Kansas City, there are three possible single-line competitors:

- NS, which historically has moved traffic in this lane
- CN with the Springfield Line as a new competitor
- CP, which has not historically moved intermodal traffic, since it does not have an intermodal terminal in Kansas City. However, a CPKC route is added with zero historical share, since it would be a competitor post-merger and post-acquisition of the Springfield Line by CN.

[38] Oliver Wyman work papers HC-R2R_IM_Calibration.xlsx, HC-R2R_Auto_Calibration.xlsx, and HC-R2R_Other_Calibration.xlsx.

C.4 Review and adjustment

The final step was to review the diversion results internally and with CN to assess the findings. The reviews involved an explanation of the model assumptions and a review of diverted traffic, with market totals and diversion percentages removed to protect confidential data. Based on the review feedback, adjustments were made to the markets eligible for diversions and the model rerun and reviewed again.

Exhibit 12B

Verified Statement of Keith Reardon

PUBLIC VERSION

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 36500 (SUB-NO. 1)

ILLINOIS CENTRAL RAILROAD COMPANY – ACQUISITION OF A LINE OF RAILROAD BETWEEN KANSAS CITY, MO, AND SPRINGFIELD AND EAST ST. LOUIS, IL – KANSAS CITY SOUTHERN RAILWAY COMPANY

STB FINANCE DOCKET NO. 36500 (SUB-NO. 2)

ILLINOIS CENTRAL RAILROAD COMPANY – TRACKAGE RIGHTS BETWEEN AIRLINE JUNCTION, MO, AND GRANDVIEW, MO – KANSAS CITY SOUTHERN RAILWAY COMPANY

STB FINANCE DOCKET NO. 36500 (SUB-NO. 3)

CANADIAN NATIONAL RAILWAY COMPANY AND ILLINOIS CENTRAL RAILROAD COMPANY – CONTROL – GATEWAY EASTERN RAILWAY COMPANY

STB FINANCE DOCKET NO. 36500 (SUB-NO. 4)

ILLINOIS CENTRAL RAILROAD COMPANY – ASSIGNMENT OF KCS TRACKAGE RIGHTS BETWEEN ROCK CREEK JUNCTION, MO, AND AIRLINE JUNCTION, MO – UNION PACIFIC RAILROAD COMPANY

VERIFIED STATEMENT OF KEITH REARDON

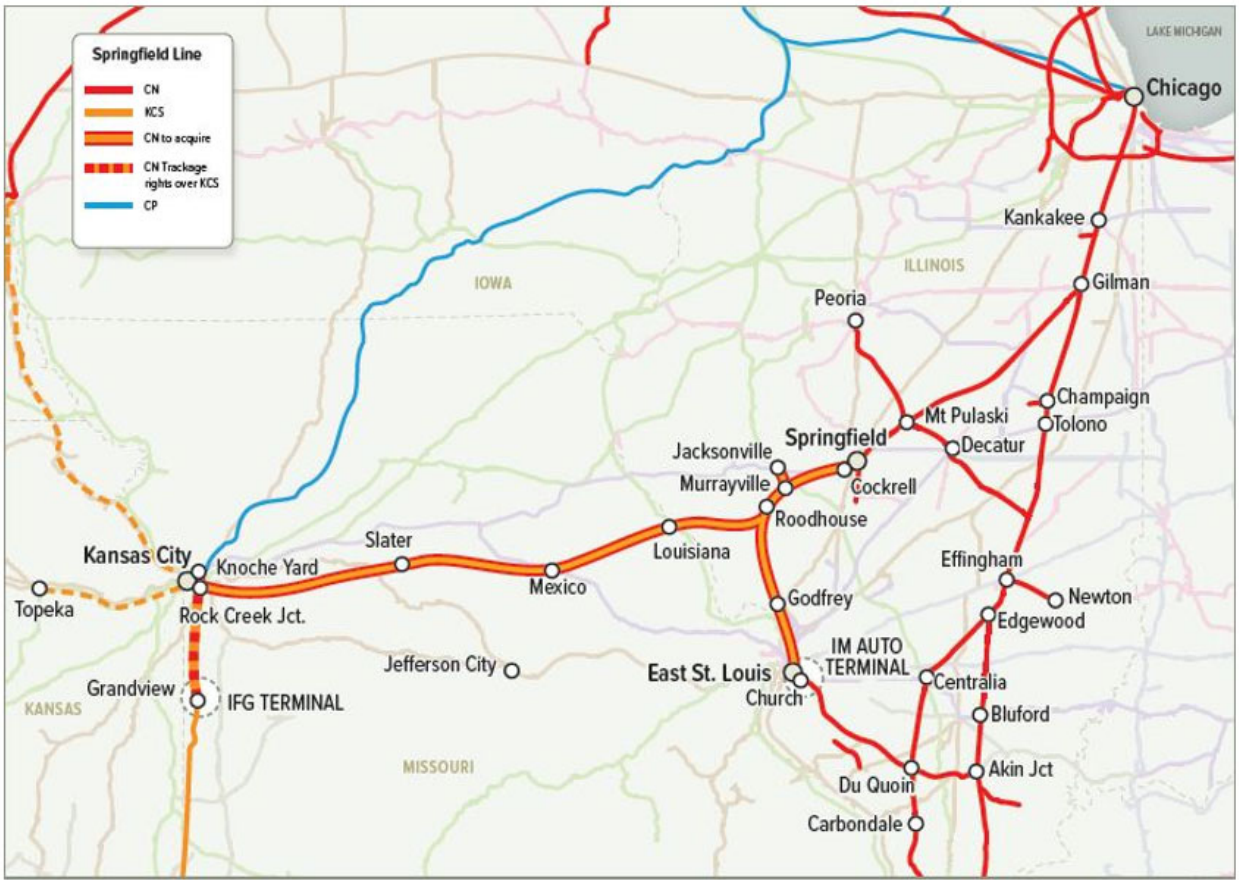
My name is Keith Reardon. I currently serve as Senior Vice-President, Consumer Product Supply Chain Growth, for CN, a role I assumed in 2018. I am responsible for the execution and expansion of CN's intermodal and automotive

businesses, leading the commercial and non-rail operations in my supply chains, and adapting last-mile services for customers. I also oversee all aspects of the Company's domestic and international intermodal and automotive activities, and CN's Supply Chain Sales groups, corporate revenue planning, and business development.

Prior to my appointment as Senior Vice-President, Consumer Product Supply Chain Growth, my positions at CN have included Vice-President of Intermodal and Automotive from 2017 to 2018; Vice-President of Intermodal Services from 2012 to 2017; and Vice-President of Supply Chain Solutions from 2009 to 2012, where I was responsible for, among other things, CN's non-rail transportation services, including transloading, freight forwarding, and warehousing. I have also directed many supply chain and business development initiatives for CN, working closely with CN customers and partners. I have more than 25 years of experience in the field of logistics. I hold a Bachelor of Arts degree in Marketing and an MBA from the University of North Florida.

Given my current role and experience, I am knowledgeable about the CN's vision for the Springfield Line as shown in Figure 1 below if the Board orders divestiture of the line to CN. As shown in Figure 1 below, CP and KCS own parallel tracks in this corridor. The merger, however, will diminish the incentive of CP-KCS to efficiently utilize the Springfield Line because that would threaten to divert traffic from CP.

Figure 1: The Springfield Line Divestiture to CN



If CN acquires the Springfield Line, CN is committed to invest $250 million in the Springfield Line as well as the adjacent CN Gilman Subdivision in Illinois. CN's investment would have substantial benefits for intermodal and automotive customers. CN would also add new automotive and intermodal terminal facilities in East St. Louis yard and in the International Freight Gateway (IFG) outside of Kansas City. Ownership of the line will enable CN to invest to address current inadequate facilities on the Springfield Line near Cockrell, expand existing sidings in Illinois and Missouri, and add a new siding. These investments benefit local and overhead customers who rely on the line. As a responsible steward for the Springfield Line, CN

will create substantial benefits for intermodal and automotive rail customers from new terminal service offerings, increased service, reduced transit times, and increased resilience from supply chain disruptions. This is responsive to current needs of customers, who have moved from just-in-time inventory management to a just-in-case approach in the last two years.

The benefits of the Springfield divestiture extend beyond our rail customers. CN's diversion analysis performed by David Hunt concludes that CN can take more than 80,000 long-haul trucks off the highways annually that have been traveling hundreds of miles. This benefits communities by reducing congestion on highways and benefits the environment by reducing carbon emissions. It also furthers the Board's and the Biden Administration's sustainability and conservation goals. Without divestiture of the Springfield Line to CN, these benefits would be permanently foreclosed by a CP-KCS merger. These benefits will not be achieved without divestiture of the Springfield Line.

CP-KCS will not be harmed by divestiture of the KCS line, as they will continue to own the CP line between Kansas City and Chicago, and I understand that their Application has focused their investment plans solely on that parallel CP line. Nor would local customers on the Springfield Line lose their ability to reach points on the KCS (and if the Board approves the combination, points on the CP-KCS) because CN is proposing a haulage agreement for the merged CP-KCS under which CN would provide service on the line. CP-KCS would have ratemaking authority for local customers on the line. Nor would a merged CP-KCS lose the ability to interchange

with other railroads in East St. Louis, which would be permitted under the haulage agreement.

I. DIVESTITURE OF THE SPRINGFIELD LINE WILL ENSURE THAT A UNIQUE RAIL ASSET IS EFFICIENTLY UTILIZED.

The Springfield Line has been a competitive route for rail customers between Kansas City and Chicago for more than 100 years. That line served as a direct connection between Kansas City and Chicago until 1989, when it became owned by two railroads instead of one. In the period since, the Springfield Line has continued as a competitive commercial routing option in the Kansas City to Chicago corridor. The combination of CP and KCS would sever the Springfield Line's connection to Chicago that has been in place for more than 140 years.

As early as 1878, the Springfield Line was under common ownership with a line to Chicago. The Springfield Line came into control by the Alton Railroad in 1878 and connected Chicago to Kansas City, Missouri and East St. Louis, Illinois. The Alton Railroad merged with the Gulf, Mobile and Ohio Railroad, which in 1972 merged with the Illinois Central Railroad and formed the Illinois Central Gulf Railroad (ICG). ICG sold the Chicago to Kansas City/East St. Louis route, including the Springfield Line, in 1987 to the Chicago, Missouri and Western Railway (CM&W). CM&W could not service its debt with revenues and declared bankruptcy. A bankruptcy trustee in 1989 sold the CM&W lines to two separate railroads. The Southern Pacific subsidiary known as SPCSL Corp. (now part of Union Pacific) purchased the Chicago to East St. Louis line in 1989. Gateway Western subsequently

purchased the remaining portion from the CM&W Trustee out of bankruptcy in 1990. KCS purchased Gateway Western in 1997.

When the ownership of the segment to Chicago was severed in the bankruptcy proceeding, the railroads and the Board's predecessor took steps to ensure the Springfield Line would have access to Chicago with the owner of the Springfield Line having ratemaking authority between Kansas City and Chicago. This included a haulage agreement with the SPCSL Corp., a subsidiary of Southern Pacific Transportation Company, as well as unrestricted trackage rights for Illinois Central Railroad Company that allow interchange with KCS at Cockrell (near Springfield, Illinois). SPSCL then merged with Union Pacific as part of the UP-SP merger. At the time of the UP-SP merger in 1996, railroads acted to maintain the Springfield Line's connection to Chicago. Gateway Western negotiated with UP-SP so that traffic could move between Kansas City and Chicago via Springfield and Illinois Central's line to Chicago. That interchange at Springfield between KCS and CN has been in place since then. As Daniel Bresolin explains in his verified statement, CN has worked with KCS to use the Springfield Line as a connection to Chicago via CN. Those efforts include an alliance agreement with KCS, which was developed as part of the CN-IC merger, that sought to move intermodal and other traffic via the Springfield Gateway between Kansas City and CN's midwestern network, including Chicago.

To be sure, KCS' Springfield Line is currently underutilized despite its ability to connect Kansas City and Chicago. I understand KCS previously recognized the enormous potential of this line by upgrading it to a "Speedway" that would provide

superior service to CP's parallel line.[1] But a merged CP-KCS would not have the incentive to preserve and improve the Springfield Line. I understand Applicants do not plan any merger-related investment in the Springfield Line. I likewise understand that they are not adding new intermodal and automotive terminal facilities in East St. Louis. Nor do they intend to expand the yard track and sidings on the line. This is not surprising because CP has a parallel track between Kansas City and Chicago, and any investment in the Springfield Line threatens its parallel route. There is no reason for CP to steal from Peter to pay Paul.

Favoring the CP parallel routing and starving the Springfield Line of capacity improvements would deprive customers of a competitive rail option between Chicago and Kansas City, as well as a means of efficiently getting to East St. Louis. Ultimately, allowing a merged CP-KCS to maintain control of the Springfield Line would reduce customers' competitive options between Kansas City and Chicago (and beyond to Detroit and Eastern Canada). The Springfield Line would remain underutilized. This would harm not only customers who would use the Springfield Line, but also customers throughout the U.S. and North American rail network, who need resiliency and optionality in their supply chains. Allowing a crucial vein of the U.S. rail network between Kansas City and Chicago to remain underutilized negatively impacts the resiliency, capacity, and efficiency of the entire rail network

[1] *See*, *e.g.*, Exhibit 14, June 3, 2021 CN-KCS Presentation Slides, Bernstein's 37th Annual Strategic Decisions Conference ("Bernstein Slides"), at 5 (touting the "Kansas City Speedway – connecting CN's Midwest foothold and the KC region").

in a moment in history when more—and not less—supply chain solutions are sorely needed.

By contrast, if the Springfield Line were divested, CN would ensure it is utilized efficiently. In particular, CN would invest $250 million in the Springfield Line and CN's adjacent Gilman Subdivision within three years of the transaction in order to unlock the value of the Line for the benefit of customers and communities. The Springfield Line would offer faster, safer, more efficient rail service between the key gateways of Kansas City, East St. Louis, Chicago, Detroit, and beyond to Eastern Canada. The extensive capital projects CN would undertake are explained in detail in our responsive application.

II. DIVESTING THE SPRINGFIELD LINE TO CN WOULD BENEFIT INTERMODAL AND AUTOMOTIVE CUSTOMERS.

With the Springfield Line running parallel to CP's mainline between Kansas City and Chicago, a CN-owned Springfield Line would renew important, alternative single-line routing options for traffic moving between Kansas City and Chicago. It would also establish single-line routing options to other points on CN's network and Kansas City. CN—by growing the Springfield Line–would compete directly with trucks, and other railroads, including a combined CP-KCS single-line route.

Divestiture of the Springfield Line would particularly benefit intermodal and automotive customers who ship to or from Detroit and Toronto. As explained in more detail in the Verified Statement of Sarah Slazinski, CN serves numerous auto plants and associated businesses in the Detroit and Toronto area. CN's route to move intermodal and automotive traffic between Detroit and Kansas City is shown in

Figure 2, its route between Toronto and Kansas City is shown in Figure 3, and its route between Montreal and Kansas City is shown in Figure 4. The new CN route will be a direct and efficient way of connecting these areas to Kansas City. CN's new route will particularly benefit intermodal and automotive customers because CN's ability to serve those customers is limited by its trackage rights and tunnel height restrictions at the U.S./Canada border. As such, CN's new single-line access between Toronto and Detroit to Kansas City and East St. Louis would lower costs, offer access to new destination automotive markets near Kansas City, and increase the supply chain resiliency for finished autos and auto parts.

Figure 2: CN Route Between Detroit and Kansas City via Springfield Line

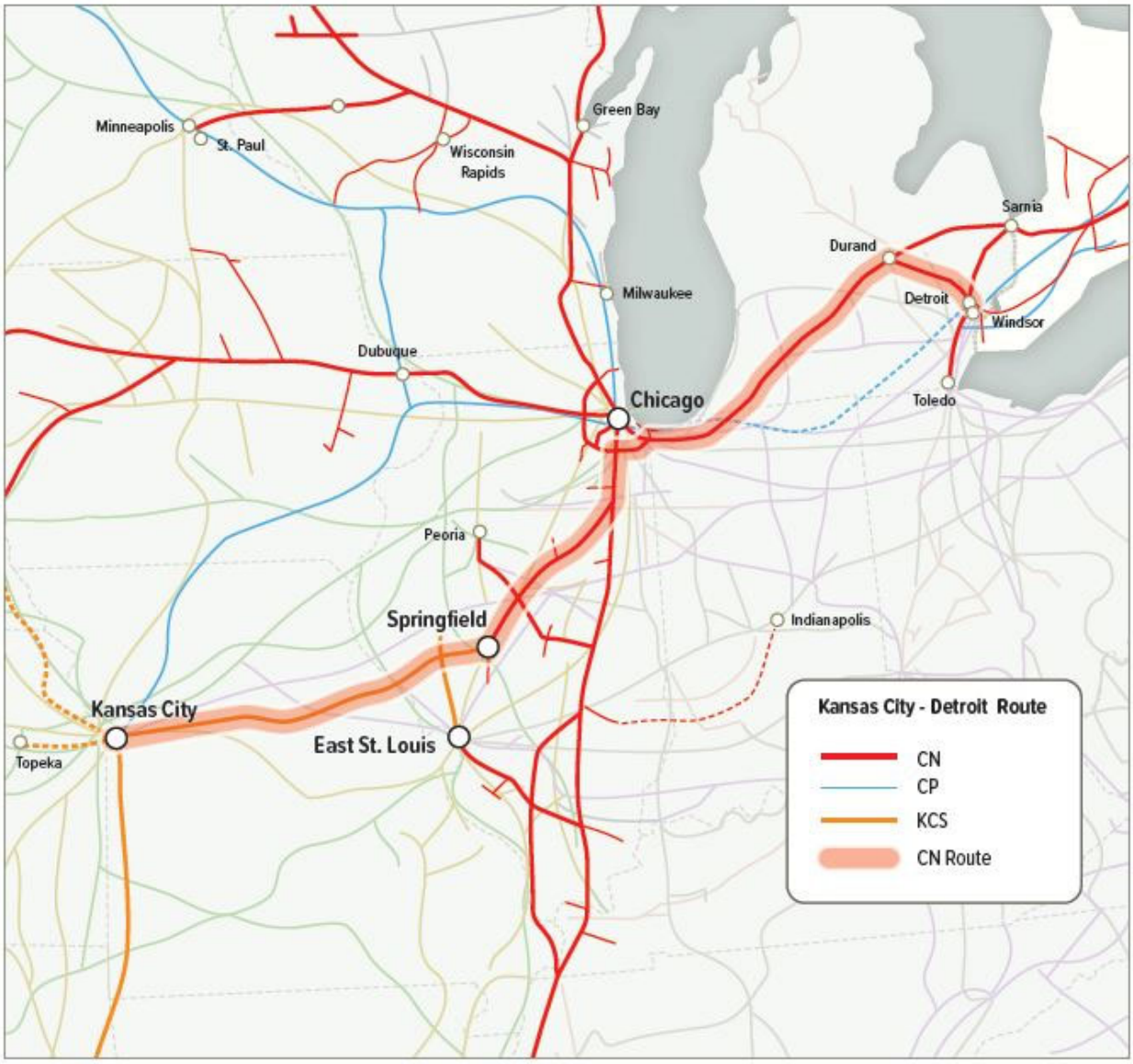


Figure 3: Springfield Divestiture to CN Increases Rail Options Between Toronto and Kansas City

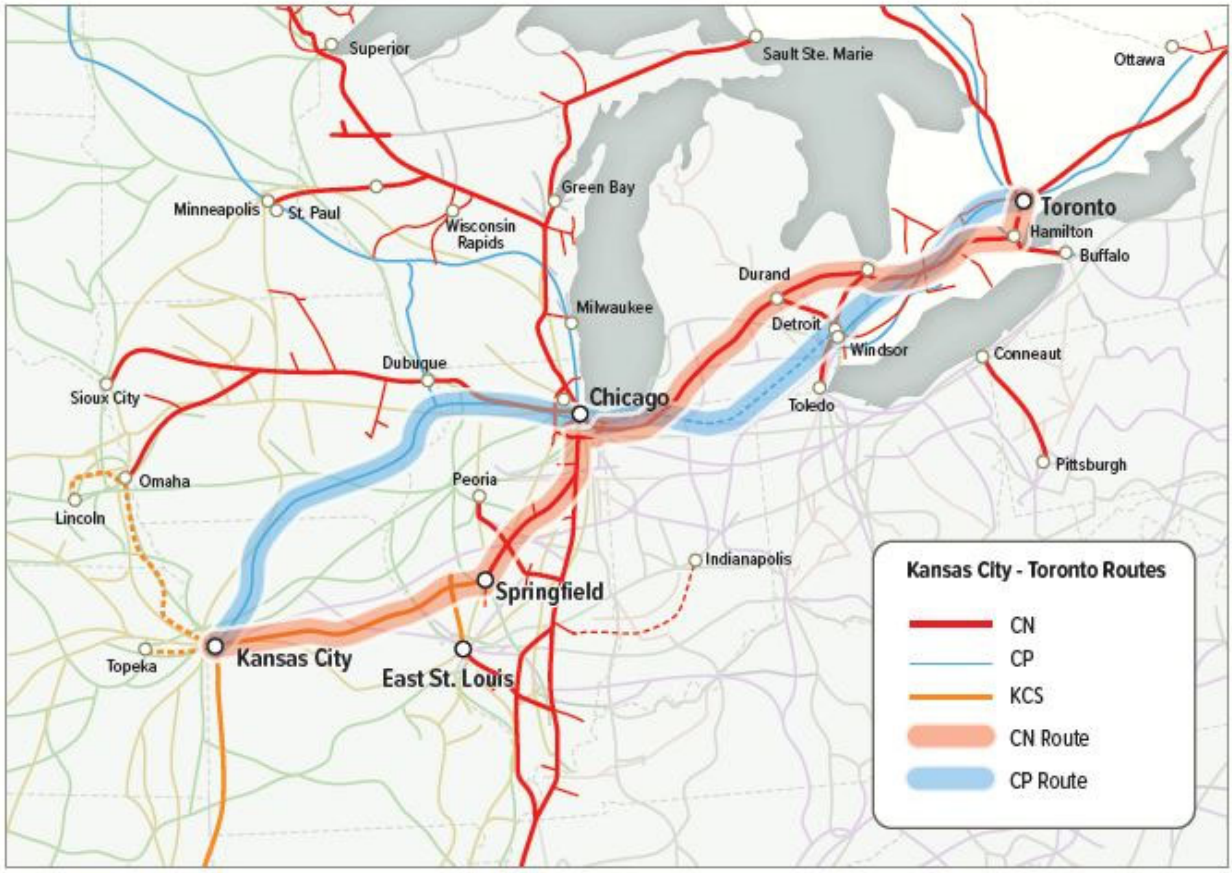
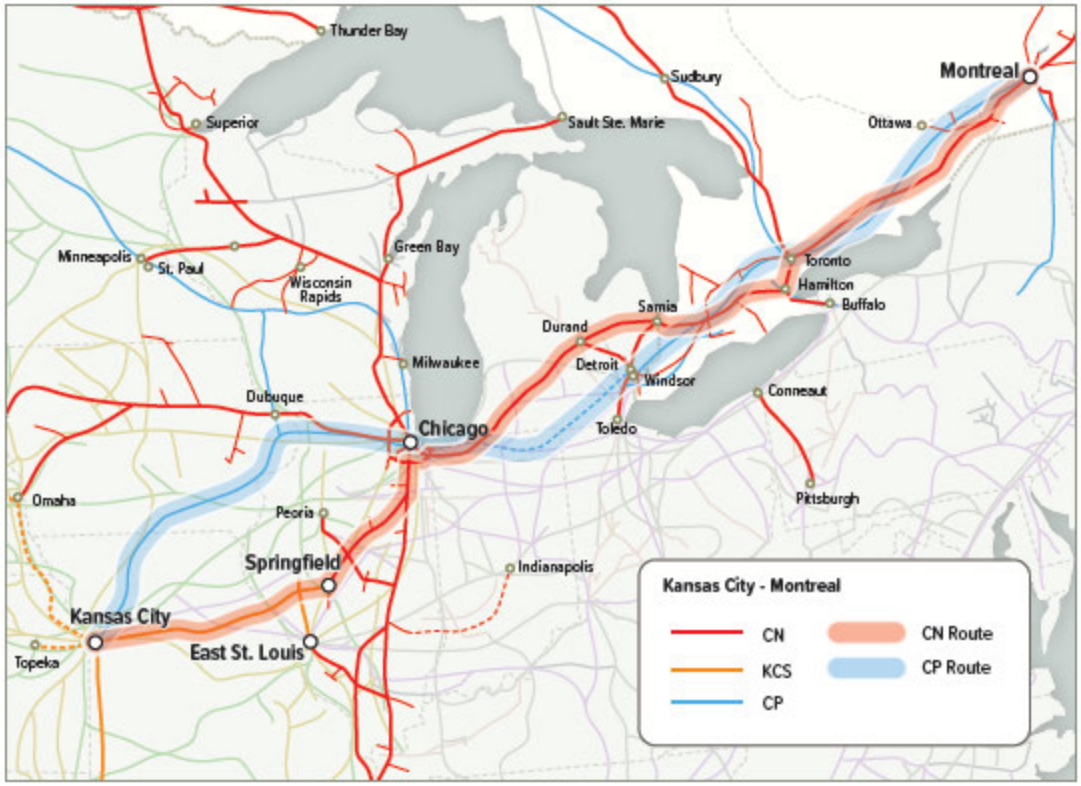


Figure 4: Springfield Divestiture to CN Increases Rail Options Between Montreal and Kansas City



Importantly, CN's proposal for the Springfield Line divestiture would only *increase* the transportation choices of all of KCS' current customers on the Springfield Line. This is because CN would give CP-KCS haulage rights to continue to commercially access customers on the Springfield Line, while CN would provide service to customers on the line. In this way, all customers on the Springfield Line would gain an option, and no local customer would lose a rail option. In addition, CN would give the merged CP-KCS overhead haulage rights to interchange with other carriers, including CSX Transportation, Inc., in the East St. Louis terminal.

III. DIVESTING THE SPRINGFIELD LINE TO CN WOULD OFFER SIGNIFICANT BENEFITS TO U.S. RAIL CUSTOMERS, COMMUNITIES, AND THE ENVIRONMENT.

Beyond the benefit to automotive customers, divestiture of the Springfield Line to CN—given CN's commitment to invest $250 million—would generally improve transportation options for customers, better utilize the U.S. rail network, increase rail-to-rail competition, and take more than 80,000 long-haul trucks off the road annually through increased truck-to-rail competition, among many other benefits. Many customers, including intermodal and automotive, would particularly benefit, as would any customers who rely on the corridors between Kansas City and Chicago, Detroit, and Eastern Canada.

By increasing average train speeds on the Line, as CN's investment would accomplish, traffic will flow more efficiently over it, reducing transit times and increasing capacity. CN expects to add approximately two trains per day to the CN network between CN's automotive and intermodal facilities near Chicago (in Hazel Crest and Harvey, Illinois) and Kansas City once the Line investments are completed as expected in year 3. These investments will, in turn, stimulate more business, more jobs, and more market opportunities for customers and communities along the Springfield Line. As Derek Taylor explains, Illinois Central will be hiring to staff the Springfield Line and will offer priority hiring consideration to active employees on the Springfield Line for IC's open positions. Illinois Central projects to hire more than 125 union employees, including conductors, engineers, and maintenance of way personnel. Illinois Central also expects to hire more than 10 managers. These jobs are in addition to labor needs for CN's construction activity for the capital

investments in the Springfield Line, as well as jobs that will be added locally as a result of CN's new intermodal and automotive terminal facilities in Kansas City and East St. Louis. For example, I would expect that the new single-line route between Kansas City and Chicago would attract new businesses to locate along the Springfield Line, offering communities additional new employment opportunities.

A CN-owned Springfield Line would not only give customers the benefits of increased rail-to-rail and truck-to-rail competition, it would also renew single-line service between Kansas City and Chicago and open up new single-line service to origin and destination markets beyond. This offers enhanced optionality and competitive advantage to customers. The verified statements of Daniel Bresolin, Sarah Slazinski, and David Przednowek discuss the benefits for intermodal, automotive, and grain customers, respectively. A CN-owned Springfield Line would give more customers access to CN's innovative product offerings, which would particularly benefit intermodal customers, including CN's industry-leading temperature-protected product offerings that are needed in Kansas City, where many producers of refrigerated products are located, as Daniel Bresolin explains. Integrating the Springfield Line into CN's three-coast network would connect customers in Kansas City to the value offered by CN's network, which reaches key domestic gateways through the U.S. heartland, as well as international ports on the East, West, and Gulf coasts. CN is a supply-chain enabler with strong relationships with international port authorities and all of the major ocean carriers.

Finally, CN's plan to invest in the Springfield Line would benefit local communities and the environment by taking 80,000 long-haul trucks off the road annually, particularly along I-94 in Michigan and Indiana, I-55 in Illinois, and I-72 in Missouri. Daniel Bresolin discusses lanes between Kansas City and Chicago, Detroit, and Eastern Canada where trucks are moving intermodal containers. That traffic could be converted to rail. Overall, a CN-owned Springfield Line would generate a larger reduction in truck traffic than what CP and KCS have projected to achieve for their entire merger.

I am excited about the potential opportunities to bring value and better service to customers by integrating the Springfield Line into CN's network. Allowing CN to invest in the underutilized Springfield Line to build a safer, faster line is good for customers to help them grow and reach markets for their products. There is no reason to allow the CP-KCS merger to move forward without ensuring that customers' competitive options are undiminished, and without ensuring the parallel KCS Springfield Line that competes directly with the northern alternative CP route may be utilized to its full potential. Only divesting the Springfield Line to CN will prevent harm to customers, accomplish these critical goals, and achieve the corresponding substantial benefits.

PUBLIC VERSION

VERIFICATION

I, Keith Reardon, declare under penalty of perjury under the laws of the United States that the foregoing information is true and correct. Further, I certify that I am qualified and authorized to file this statement.

Executed on this 28th day of February, 2022.



Keith Reardon

Exhibit 12C

Verified Statement of
Daniel R. Bresolin

PUBLIC VERSION

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 36500 (SUB-NO. 1)

ILLINOIS CENTRAL RAILROAD COMPANY – ACQUISITION OF A LINE OF RAILROAD BETWEEN KANSAS CITY, MO, AND SPRINGFIELD AND EAST ST. LOUIS, IL – KANSAS CITY SOUTHERN RAILWAY COMPANY

STB FINANCE DOCKET NO. 36500 (SUB-NO. 2)

ILLINOIS CENTRAL RAILROAD COMPANY – TRACKAGE RIGHTS BETWEEN AIRLINE JUNCTION, MO, AND GRANDVIEW, MO – KANSAS CITY SOUTHERN RAILWAY COMPANY

STB FINANCE DOCKET NO. 36500 (SUB-NO. 3)

CANADIAN NATIONAL RAILWAY COMPANY AND ILLINOIS CENTRAL RAILROAD COMPANY – CONTROL – GATEWAY EASTERN RAILWAY COMPANY

STB FINANCE DOCKET NO. 36500 (SUB-NO. 4)

ILLINOIS CENTRAL RAILROAD COMPANY – ASSIGNMENT OF KCS TRACKAGE RIGHTS BETWEEN ROCK CREEK JUNCTION, MO, AND AIRLINE JUNCTION, MO – UNION PACIFIC RAILROAD COMPANY

VERIFIED STATEMENT OF DANIEL R. BRESOLIN

My name is Daniel R. Bresolin. I currently serve as Vice-President, Intermodal, for Canadian National ("CN"), a role I assumed in 2020. I joined CN in 1999 and have taken on increasing responsibilities through my various prior roles as

Assistant Vice-President Intermodal, Assistant Vice-President International Intermodal, Director of Marketing, Intermodal International and Director of Sales of both Strategic Sales and Domestic Intermodal. In my current role, I focus on driving growth in both domestic and international intermodal traffic, and I am responsible for all components of CN's international and domestic intermodal portfolios, including regional sales, marketing, customs brokerage, and CN supply chain logistics services. As a former Rail Conductor and Intermodal Crane Operator, I take great pride in my knowledge and experience in rail operations and in helping add value for CN's intermodal customers.

Given my current role and experience, I am intimately familiar with CN's current intermodal business, and its successful track record of investing in and growing domestic and international intermodal traffic to help our customers. In this statement, I describe the ways in which U.S. intermodal customers would benefit from CN's ownership of, and investment in, the Springfield Line. These benefits include unlocking the full potential of the Springfield Line, increasing competition, increasing overhead and local service, and reducing transit time on the line.

I. CN IS THE RAIL INDUSTRY LEADER IN INTERMODAL GROWTH AND SERVICE OFFERINGS FOR OUR CUSTOMERS.

CN is proud to be the industry leader in intermodal growth and service offerings. CN is committed to growing *with* its intermodal customers and is skilled at providing tailored supply-chain solutions that help our intermodal customers access markets in their supply chains. CN's future-oriented planning, customer-minded investments, and innovative product offerings have resulted in incredible growth in

our intermodal traffic. Since 2010, CN has grown its intermodal business {Redacted}} by volume.

CN's growth in the intermodal sector is directly linked to CN seeing ourselves as a partner with our customers. CN understands the importance of its role in the supply chain. CN's intermodal investment strategy thus focuses on offering new and innovative business solutions to our intermodal customers to help them move their goods to fulfill consumer demand. As a result, shippers are choosing us: CN has the fastest growing intermodal traffic in the industry by volume, and intermodal is the fastest growing segment within CN's total book of rail business.

This vibrant intermodal growth reflects CN's commitment to its intermodal customers. CN offers the widest range of intermodal products and service offerings of all Class I railroads. To offer even more supply-chain solutions to our intermodal customers, in 2019, CN added TransX, a refrigerated specialist, which has a leased network of 11 distribution centers and owns or leases approximately 1,400 temperature-controlled containers. CN combines these robust and flexible service offerings with a North American intermodal network that accesses three coasts: East, West, and Gulf. As a result, CN's intermodal network has the reach and capacity to bring value and optionality to our international and domestic intermodal customers.

In addition to the TransX network, CN's core intermodal network includes 23 intermodal terminals, including the Chicago Intermodal Terminal and Memphis Intermodal Terminal; a state-of-the-art logistics park in Calgary, Alberta; and partnerships or supply chain agreements with 7 port authorities and 15 ocean

terminal operators, including the Ports of New Orleans and Mobile, and access to the ports of New York and Philadelphia via a partnership with CSX.

CN also offers unparalleled equipment and infrastructure options to tailor our intermodal service offerings to meet our customers' needs. In particular, the CN family offers a fleet of more than {{Redacted}} containers and {{Redacted}} chassis, a centralized dispatch group, its own trucking division (CNTL, one of Canada's largest trucking companies), a logistics management team, and an {{Redacted

}}. CN also has numerous products, including heated, refrigerated, and dry containers, and access to CN's domestic wholesale partnership fleet.

In fact, CN offers one of the largest fleets of refrigerated containers and is the first railroad to introduce a refrigerated program operating in Canada, the United States, and Mexico with traceability and post-audit capability. This program, CargoCool®, provides a cost-competitive and eco-friendly approach to moving temperature-sensitive goods. CN's temperature-controlled domestic and overseas intermodal service is the Canadian industry leader with recent and successful expansion into the U.S. Gulf region. We offer innovative food safety compliance processes and state of the art equipment and technology. CN's temperature-protected fleet includes {{Redacted}} CN-owned or leased temperature-controlled domestic containers ({{Redacted}} refrigerated units and {{Redacted}} heated units, {{Redacted}}

genset/powerpacks (each of which power up to 17 containers, a vastly greener option when compared to refrigerated trucking, which requires one powerpack for each truck container) with {{Redacted }} and {{Redacted}} nosemount gensets. CN's CargoCool® facilitates the intermodal movement of produce, fruits, processed foods, and animal proteins (*e.g.*, beef, pork, poultry).

I am proud that CN's three-coast network, wide array of intermodal services, and industry-leading infrastructure and equipment options make it possible for CN's intermodal customers to reach as many markets as possible, as quickly, economically, and safely as possible. If the market has a need, CN responds. CN helps meet the needs of our customers by putting together innovative solutions. For example, in 2021, in response to the congestion and delays in vessel unloading at ports on the U.S. West coast, CN offered a new priority train service between the Port of Prince Rupert and Chicago, which helped expedite sorely needed consumer products that would have otherwise been delayed in transit in the water waiting for the vessel to dock and unload during the supply-chain disruption. CN's solution to connect customers using the Port of Prince Rupert with a priority train service offered customers a faster option to reach Chicago, and helped relieve congestion in West coast ports of Los Angeles and Long Beach.

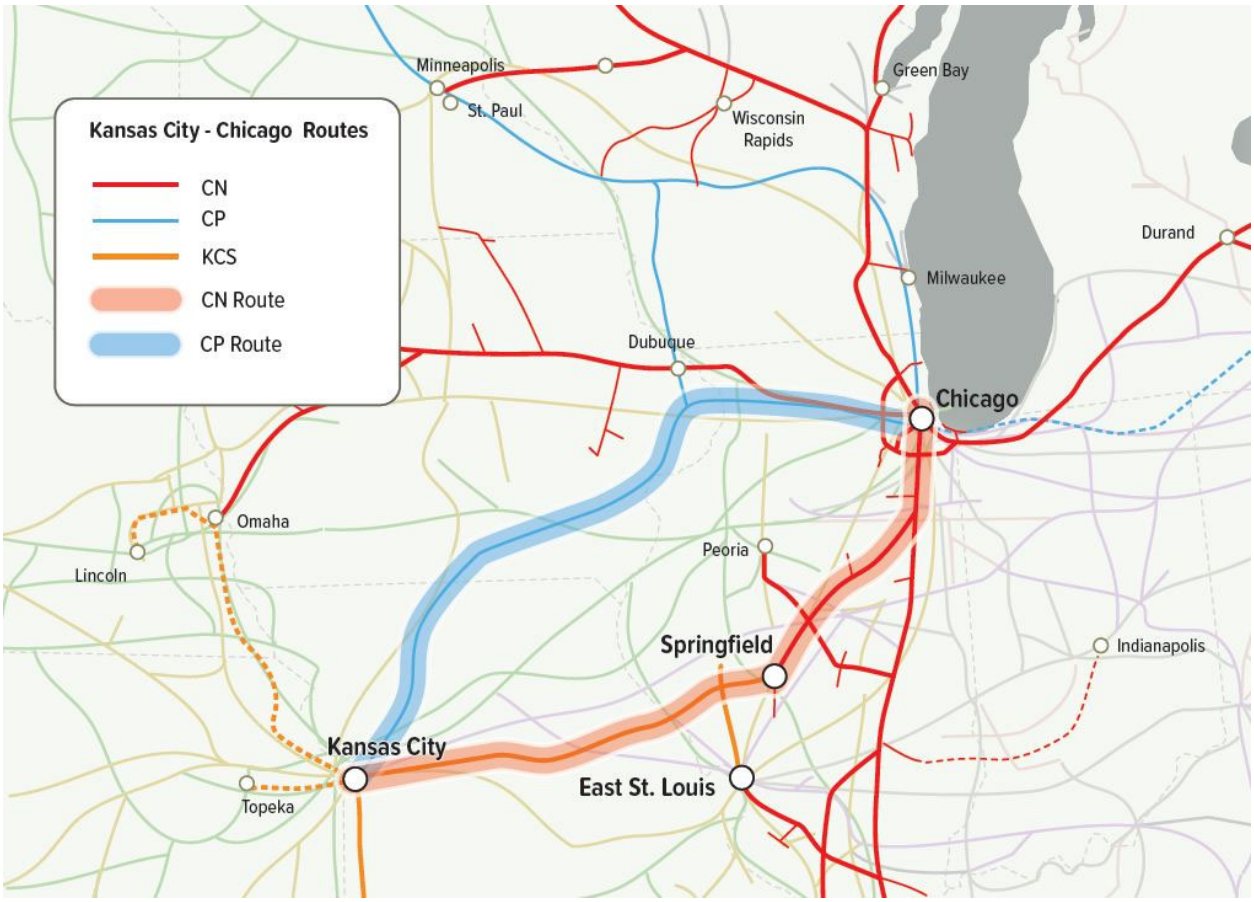
I am excited about the possibility of offering industry-leading services to more intermodal customers if the Board grants CN's condition to divest the Springfield Line to CN. This will enable CN to invest in the Springfield Line to rehabilitate the line, increase service, and reduce transit times for customers. With CN's planned

investment, CN would build the Springfield Line into a single-line rail option for customers to help take trucks off the road, including in Illinois, Indiana, Michigan, Louisiana, Missouri, Mississippi, Tennessee, Alabama, and the provinces of Ontario and Quebec.

II. DIVESTITURE OF THE SPRINGFIELD LINE TO CN IS NECESSARY TO ENSURE EFFICIENT UTILIZATION OF AN IMPORTANT RAIL ASSET.

The Springfield Line was previously a part of the Illinois Central Railroad Company. For more than 100 years, the Springfield Line has served as a competitive rail option between Kansas City and Chicago. Today the Springfield Line is owned by KCS, and it is parallel to CP's own line in the Kansas City to Chicago corridor as shown in Figure 1.

Figure 1: CP and KCS have Parallel Lines in the Kansas City to Chicago Corridor



A. Intermodal Customers Are Eager For More Competitive Rail Transportation Options Between Chicago and Kansas City.

Divestiture of the Springfield Line is necessary so that a merged CP-KCS does not own two parallel lines between Kansas City and Chicago. A merged CP-KCS would have little incentive to improve the Springfield Line and partner with other railroads to provide service to reach Chicago. Instead, the merged CP-KCS would favor the parallel CP line, investing in that northern route and investing no capital resources in the parallel Springfield Line. The merged parties would understand that any traffic on the Springfield Line would potentially come at the expense of CP's line.

While understandable that CP-KCS would want to maximize their bottom line, that would be bad for customers.

Intermodal customers are eager for more competitive rail transportation options between Chicago and Kansas City. Customers have in the past, and continue to have, a strong interest in moving intermodal shipments between those two critical U.S. gateways. As shown below in Figure 2, intermodal containers are moving by truck on highways between Chicago and Kansas City and their vicinities. These intermodal lanes are from David Hunt's analysis using 2019 IHS Markit Transearch data.[1] Divestiture of the Springfield Line would enable CN to compete for these truck moves to convert containers to rail.

Figure 2: Intermodal Containers Moving By Truck Between Kansas City and Chicago and Their Vicinities

Origin BEA	Destination BEA	Average Miles
Chicago, IL	Columbia, MO	383.5
Chicago, IL	Joplin, MO	590.2
Chicago, IL	Kansas City, MO	499.9
Chicago, IL	Springfield, MO	510.2
Detroit, MI	Columbia, MO	630.3
Detroit, MI	Joplin, MO	824.7
Detroit, MI	Kansas City, MO	757.0
Detroit, MI	Springfield, MO	754.2
Detroit, MI	St. Louis, MO	560.0
Detroit, MI	Springfield, IL	505.3
Kansas City, MO	Chicago, IL	497.7
Kansas City, MO	Detroit, MI	768.4
Springfield, MO	Detroit, MI	735.8

[1] Workpapers of David Hunt, "TransearchTruckDistances.xlsx."

Ensuring the Springfield Line is an alternative to CP is also important because it preserves optionality for customers given congestion in Chicago. For example, in summer 2021, supply chain disruptions resulted in two Class I railroads embargoing their intermodal rail yards in Chicago to reduce congestion. This example emphasizes the need for preserving alternate rail options and preventing the loss of rail capacity on the corridor between Chicago and Kansas City.

The CP-KCS merger eliminates KCS's incentive to use the Springfield Line as a competing alternative to the parallel CP line between Kansas City and Chicago and work with other carriers. This is underscored by the CP-KCS Application. I understand that the three-year plan set out in the Application does not include any improvements on the Springfield Line, and virtually no transaction-related traffic growth by overhead customers or local customers on that line.

B. CN is Committed To Investing In the Springfield Line To Preserve the Corridor for Seamless Transit To Chicago and Beyond.

Keith Reardon explains that CN is committed to investing $250 million in the Springfield Line and CN's adjacent Gilman Subdivision. CN plans to grow the capacity of the Springfield Line to accommodate 10,000-foot intermodal and automotive trains. CN will add a new siding at Cockrell to address currently inadequate facilities at that location. CN also plans to add a new yard track at Roodhouse and extend the siding at Roodhouse. CN will invest to expand other sidings along the Springfield Line in Illinois and Missouri as Derek Taylor explains.

CN will add new intermodal and automotive facilities in the East St. Louis Yard that are not currently available in that yard. CN does not have any intermodal

facilities in East St. Louis. CN will also add its own intermodal and automotive facilities in the International Freight Gateway (IFG) Yard, which is a 356-acre facility outside of Kansas City in Grandview, Missouri. These new facilities will give intermodal customers shipping to and from Kansas City more options to reach markets.

This divestiture would not undermine any investment planned by CP-KCS. I understand that they do not plan to increase the intermodal capacity at the IFG location and instead plan to use the existing facility. Nor does CP-KCS plan to add intermodal and automotive facilities to KCS' East St. Louis Yard.

C. CN Has a Proven Track Record of Investing in New Opportunities to Bring Value to Its Intermodal Customers.

CN invests to bring value to its intermodal customers and would take this same approach with the Springfield Line. With the Springfield Line integrated into CN's network, intermodal customers will enjoy better service—faster, safer, and with more optionality and new innovative service offerings (*e.g.*, CargoCool®). CN's $250 million in investments in the Springfield Line would renew the line to support increased average train speeds between Roodhouse and Springfield. This change for customers along this portion of the Springfield Line would be like going from a slow, two-lane country road to a high-speed multiple-lane highway. As a result, these customers will be able to better compete and create more business, and offer more jobs to local communities along the Springfield Line. With more speed and more traffic, more businesses will be drawn to locate themselves near the Springfield Line. With CN's

$250 million investment, the Springfield Line will become the best of what it could be.

CN's recent partnership with CSX in the U.S. Northeast is a great example of how CN turns its investments into value for its intermodal customers (as well as the surrounding communities). In late 2019, CN invested in a partnership with CSX that allowed CN to access the New York, New Jersey, and Philadelphia ports. This was a highly competitive market; yet, within a little over a year, CN began successfully winning traffic and took {{Redacted}} trucks off the road in 2021 alone. CN is moving imports, exports, and refrigerated containers to Toronto and Montreal, and its traffic from this partnership has grown by {{Redacted}} year over year.

This example highlights how CN invests and coordinates with interline partners to drive its intermodal customers' growth while also benefitting ports and the surrounding communities by taking trucks off the local roads. If CN acquires the Springfield Line, CN would do the same.

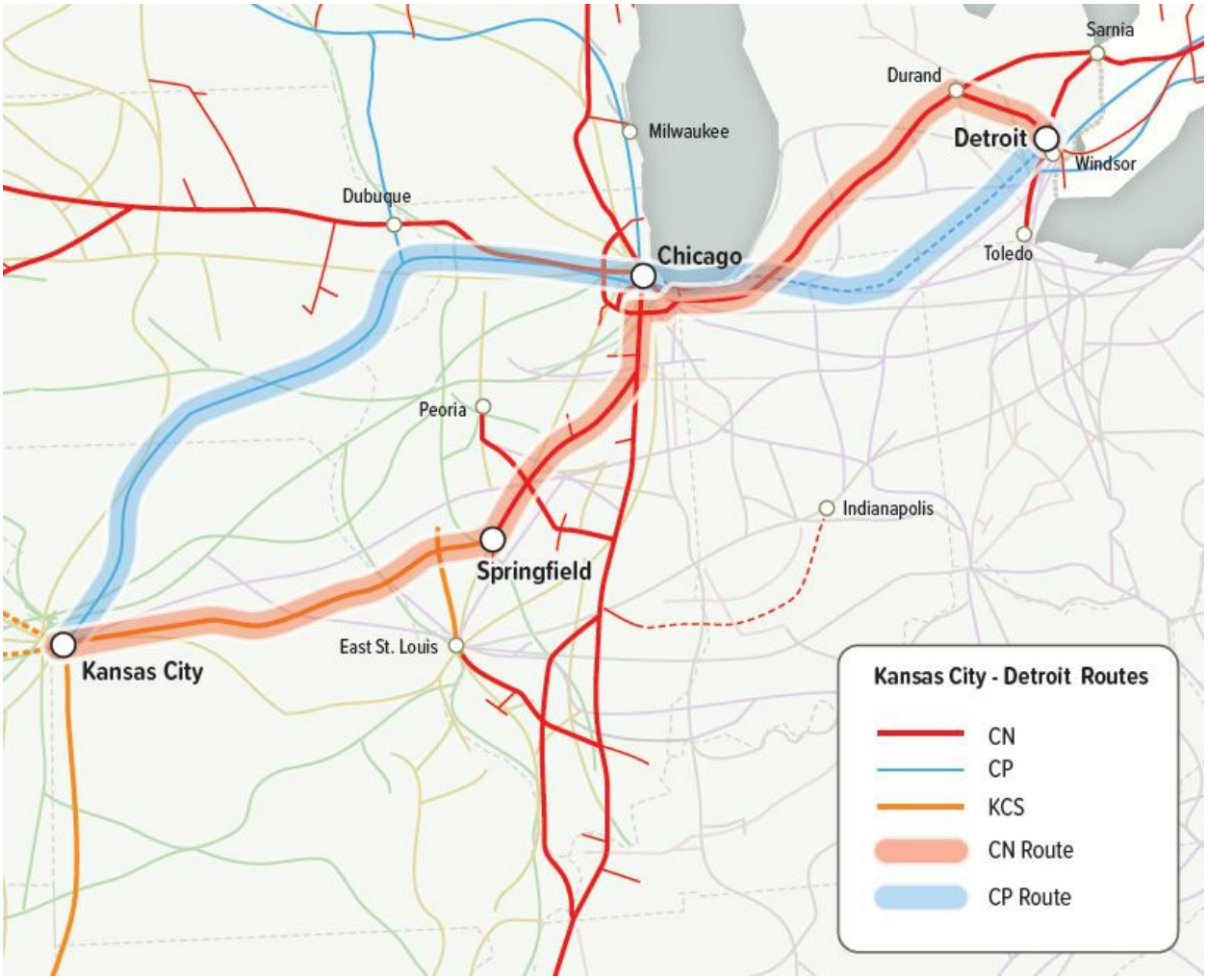
III. DIVESTITURE OF THE SPRINGFIELD LINE TO CN WILL UNLOCK NEW SINGLE-LINE OPPORTUNITIES TO COMPETE FOR INTERMODAL TRAFFIC.

A. The Springfield Line Would Intensify Transportation Competition for Intermodal Traffic.

By planning to build a new intermodal terminal at East St. Louis and CN's own intermodal facilities in Kansas City, CN's investment in the Springfield Line would create new single-line rail service from Detroit and Eastern Canada to Kansas City, a more efficient route to East St. Louis, and new single-line rail service from the Southeast to Kansas City. Figure 3 shows as an example the new single-line service

between Detroit and Kansas City. These new routes would intensify competition with CP, other railroads, as well as with trucks, for lanes throughout the Midwest and Southeast. CN would be able to tie the Springfield Line into CN's access to ports on three coasts, including the ports of New Orleans and Mobile, so that customers could have options through the multiple port access.

Figure 3: New CN Single-Line Service Via the Springfield Line From Detroit to Kansas City



CN's unique and industry-leading intermodal product offerings combined with these new routes would divert more than 80,000 trucks off highways annually,

particularly in Michigan, Indiana, Illinois, and Missouri, to the benefit of local communities and the environment. CN could also compete to take trucks off the road that are traveling between Eastern Canada and the Kansas City and St. Louis markets. Figure 4 below includes truck lanes from David Hunt's Transearch analysis between Kansas City and East St. Louis markets and Eastern Canada.

Figure 4: Intermodal Containers Moving By Truck Between Kansas City/St. Louis and Eastern Canada

Origin BEA	Destination BEA
Kansas City, MO	Hamilton, ON
Kansas City, MO	Kitchener, ON
Kansas City, MO	London, ON
Kansas City, MO	Oshawa, ON
Kansas City, MO	St. Catharines, ON
Kansas City, MO	Toronto, ON
Kansas City, MO	Windsor, ON
St. Louis, MO	Hamilton, ON
St. Louis, MO	Kitchener, ON
St. Louis, MO	London, ON
St. Louis, MO	Oshawa, ON
St. Louis, MO	St. Catharines, ON
St. Louis, MO	Toronto, ON
St. Louis, MO	Windsor, ON
Hamilton, ON	Kansas City, MO
Kitchener, ON	Kansas City, MO
London, ON	Kansas City, MO
Oshawa, ON	Kansas City, MO
St. Catharines, ON	Kansas City, MO
Toronto, ON	Kansas City, MO
Windsor, ON	Kansas City, MO
Hamilton, ON	St. Louis, MO
Kitchener, ON	St. Louis, MO

Origin BEA	Destination BEA
London, ON	St. Louis, MO
Oshawa, ON	St. Louis, MO
St. Catharines, ON	St. Louis, MO
Toronto, ON	St. Louis, MO
Windsor, ON	St. Louis, MO

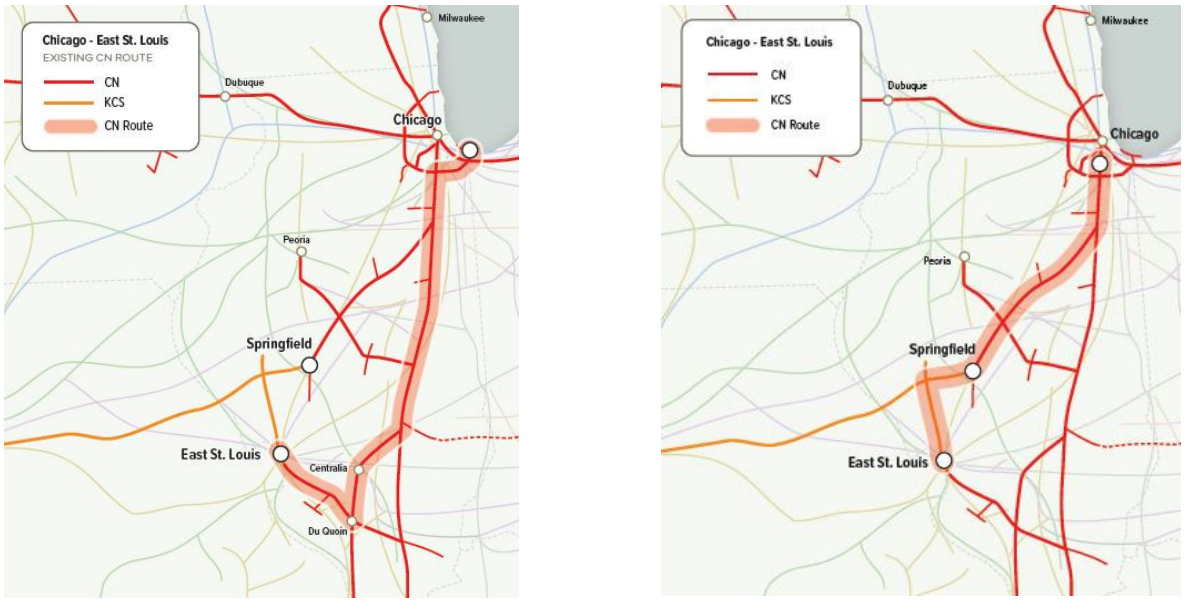
Intermodal customers will also enjoy lower costs on CN's network when compared to trucking options, particularly for businesses who ship temperature-protected products and have been limited to trucking capacity and pricing.

B. The Springfield Line Would Add Capacity to the Growing Intermodal Supply Chain Network.

Opening up the Springfield Line to intermodal traffic would also offer additional capacity for the growing intermodal industry. CN's new routes via the Springfield Line, as well as its planned intermodal terminal at East St. Louis, would offer a new "valve" in the network that could relieve pressure when demand skyrockets or when severe weather or a global pandemic disrupts supply chains. For example, this new intermodal terminal in East St. Louis is expected to divert trucks from Ontario, where many trucks travel to and from the United States over the highly congested Ambassador Bridge between Detroit and Windsor. CN would also be able to offer faster transit times from the North to East St. Louis, and a shorter and faster routing option for intermodal trains moving from the Midwest south to East St. Louis. CN's current route for that traffic takes it south past East St. Louis in order to reach Du Quoin, Illinois, and then doubles back up again to reach East St. Louis. With the Springfield Line, intermodal customers would enjoy a much shorter (by over 100

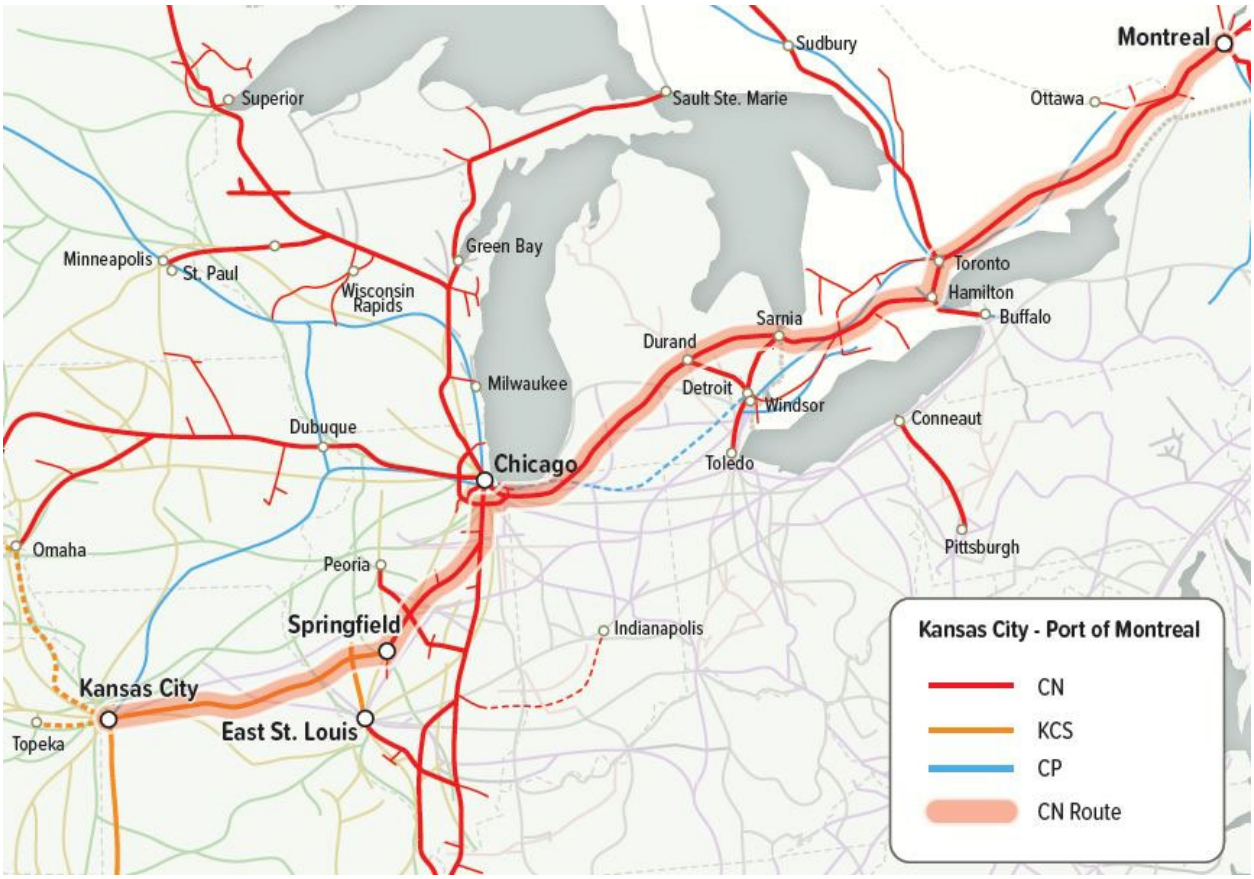
miles per round trip) routing option via Gilman, Illinois, that would lower costs and transit time, as shown in Figure 5.

Figure 5: New Shorter Route From the North Via the Springfield Line to East St. Louis



In addition, the Springfield Line would offer greater capacity for international intermodal traffic by opening up new East Coast port options, including the Port of Montreal, which would reduce port congestion and give intermodal shippers increased optionality and flexibility. This new single-line route is shown in Figure 6.

Figure 6: New Single-Line Service Via the Springfield Line From Port of Montreal to Kansas City



C. The Springfield Line Would Offer New Competitive Advantages and Market Options for Intermodal Shippers.

Under CN's ownership, the Springfield Line would also unlock new value and market options for intermodal shippers in the United States. For example, CN's customers who move intermodal shipments from Eastern Canada today would be able to access the Kansas City market, opening up new end-markets, gateways, and international ports to these customers. In addition, the Springfield Line would offer intermodal shippers in the United States new access to CN's industry-leading intermodal offerings, which are designed to add value and competitive advantages to our customers' businesses.

For example, the Springfield Line is surrounded by animal protein producers that require temperature-protected transport, but no Class I in the United States offers temperature-controlled service to these producers. If CN acquired the Springfield Line, these customers would have access to CN's industry-leading fleet of temperature-controlled containers and CN's suite of innovate CargoCool® product offerings. More cost-efficient temperature-controlled shipping solutions are pivotal to these industries, particularly in the Kansas City and Omaha area, which are currently paying higher prices for refrigerated trucking.

These benefits would extend to customers beyond the Springfield Line as well. Refrigerated intermodal products are trucked between the U.S. Midwest and Mexico (and into Canada) at 10–20% higher costs to consumers and, on average, 75% more GHG emissions. With the Springfield Line in its network, CN would be able to compete with trucks to offer a lower-cost, innovative product offering for this market. As a result, CN would be able to take more than 80,000 trucks off the road annually with the Springfield Line. CN's product offerings have enabled Canadian exporters to create a robust chilled and frozen supply chains. With the Springfield Line, CN would be able to offer the same to U.S. exporters. CN already has the assets to provide a tailored product to these U.S. customers, and are prepared to invest if future demand arises to replicate what we already do in Canada and in parts of the United States. No other Class I in the U.S. can do this, and it is a product sorely needed in the U.S. market.

D. The Springfield Line Would Increase Optionality and Resiliency for International Intermodal Traffic.

Finally, the Springfield Line would offer additional optionality for international intermodal products, reduce congestion at ports, and increase the resiliency of U.S. import and export supply chains. In particular, thousands of containers unloaded today at East Coast ports and moved to Kansas City or East St. Louis could be diverted to the Port of Montreal to take advantage of CN's new single-line service via the Springfield Line. In addition, many export commodities from the U.S. Heartland along CN's route and near the Springfield Line would enjoy new gateway options and market expansion opportunities. Export commodities from these markets include agriculture, DDGs, beef, pork, and poultry—all products highly sought-after in the export market.

CN is a leader in facilitating the movement of exports, including temperature-protected product, grain, and auto parts—all of which would rely upon the Springfield Line, either to East St. Louis or to Kansas City. CN's three-coast network handles 54 vessel services to ports around the world, including the ports of New Orleans and Mobile. CN has strong relationships with all of the world's largest steamship lines and can offer a breadth of experience and innovative supply-chain solutions and optionality for U.S. businesses looking to export their products. Several of these steamship lines are among the numerous intermodal parties who have offered their support for the divestiture of the Springfield Line to CN. With the Springfield Line, CN would be able to offer its robust import/export resources and product offerings to

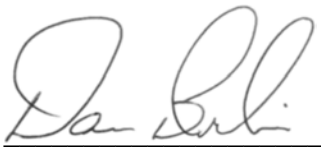
more U.S. markets and add resiliency to the supply chain by opening up a new single-line route between the Port of Montreal to Kansas City, and East St. Louis.

PUBLIC VERSION

VERIFICATION

I, Daniel Bresolin, declare under penalty of perjury under the laws of the United States that the foregoing information is true and correct. Further, I certify that I am qualified and authorized to file this statement.

Executed on this 28th day of February, 2022.



Daniel Bresolin

Exhibit 12D

Verified Statement
of Sarah Slazinski

PUBLIC VERSION

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 36500 (SUB-NO. 1)

ILLINOIS CENTRAL RAILROAD COMPANY – ACQUISITION OF A LINE OF RAILROAD BETWEEN KANSAS CITY, MO, AND SPRINGFIELD AND EAST ST. LOUIS, IL – KANSAS CITY SOUTHERN RAILWAY COMPANY

STB FINANCE DOCKET NO. 36500 (SUB-NO. 2)

ILLINOIS CENTRAL RAILROAD COMPANY – TRACKAGE RIGHTS BETWEEN AIRLINE JUNCTION, MO, AND GRANDVIEW, MO – KANSAS CITY SOUTHERN RAILWAY COMPANY

STB FINANCE DOCKET NO. 36500 (SUB-NO. 3)

CANADIAN NATIONAL RAILWAY COMPANY AND ILLINOIS CENTRAL RAILROAD COMPANY – CONTROL – GATEWAY EASTERN RAILWAY COMPANY

STB FINANCE DOCKET NO. 36500 (SUB-NO. 4)

ILLINOIS CENTRAL RAILROAD COMPANY – ASSIGNMENT OF KCS TRACKAGE RIGHTS BETWEEN ROCK CREEK JUNCTION, MO, AND AIRLINE JUNCTION, MO – UNION PACIFIC RAILROAD COMPANY

VERIFIED STATEMENT OF SARAH SLAZINSKI

My name is Sarah Slazinski. I currently serve as Assistant Vice-President Automotive for CN in Troy, Michigan. I assumed this role in March 2021. Immediately prior to my current position at CN, I served as Director of Marketing,

Director of Sales, and as an Account Manager for Automotive and have been with CN for over 10 years. Prior to joining CN, I worked for another Class I railroad for six years as an automotive account manager, and also have five years of experience working directly for a large US automotive manufacturer purchasing vehicle transportation. I earned a Bachelor of Arts in Supply Chain Management from Michigan State University and a Master of Business Administration with an emphasis on Marketing from Oakland University in Michigan. My current role at CN is to serve our customers, {{

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Given my role and experience, I am familiar with CN's important role in the automotive supply chain, our work with automotive vehicle production and parts suppliers, and the general North American and global automotive market—including how CN's acquisition of the Springfield Line would increase transportation competition and unlock significant benefits for the automotive industry in North America that would not be achieved but for that acquisition.

I. CN CONNECTS THE NORTH AMERICAN AUTOMOTIVE MARKET.

CN is proud to connect the North American automotive market by serving 13 vehicle assembly plants and 18 automotive facilities. CN handles more than 2 million finished vehicles annually and is a strategic supply chain provider to our customers. CN's network reach allows us to transport finished vehicles and auto parts to major population centers in Canada, the Midwest, and Gulf region in the United States. CN's extensive North American network allows our railroad to compete and offer flexibility, enhancing supply chains while our customers import and export raw materials, production parts, and finished vehicles around the globe.

CN values all our vehicle automotive customers, and we directly serve vehicle assembly and part plants for {

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CN currently contributes {{ }} multilevels that are used to transport finished vehicles. In addition, CN has a fleet of boxcars and supporting frame flats. {

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Over the years, CN has worked with our automotive customers to add capacity and support their growth. For example, in March 2021, CN completed and invested over { }} million to open a new automotive and intermodal terminal in New Richmond, Wisconsin, to service Minneapolis and the surrounding area.

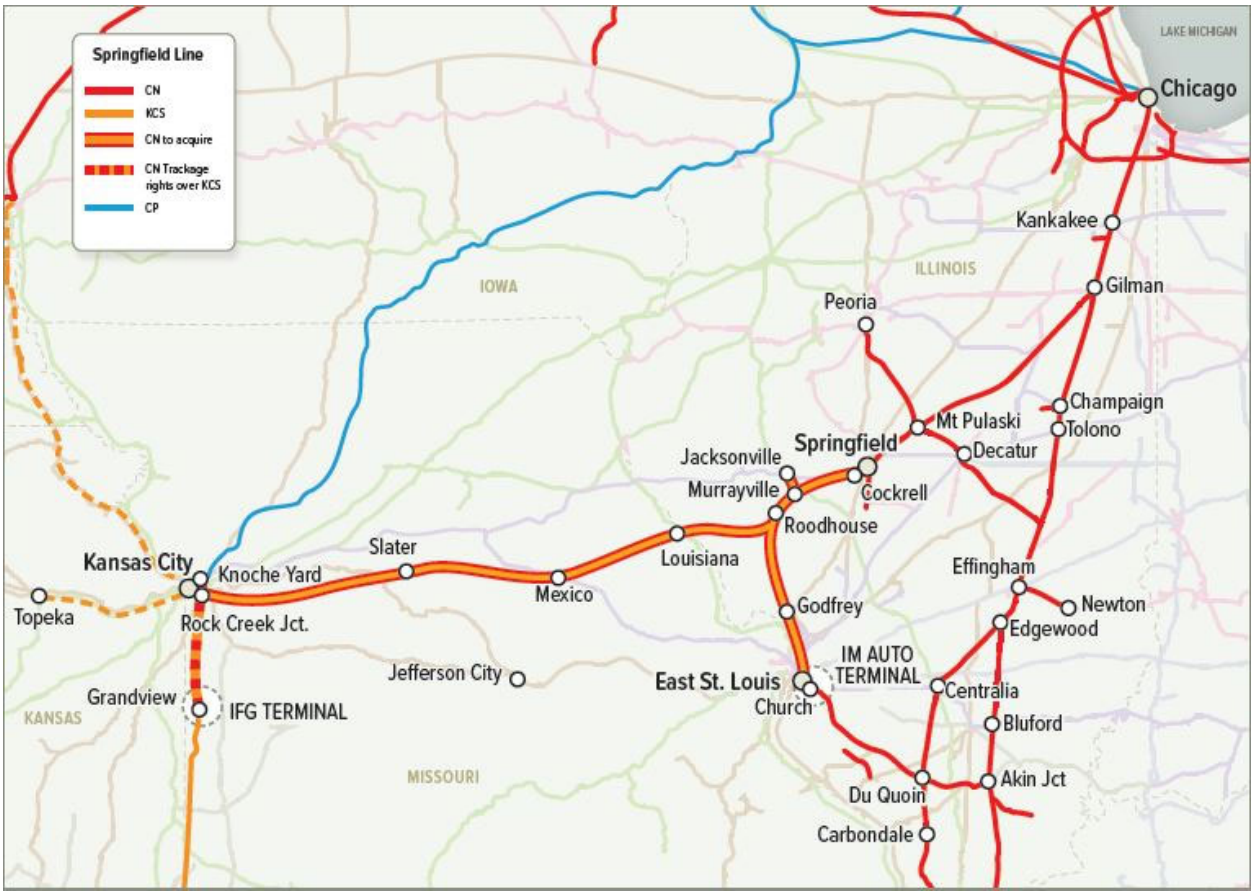
As a critical part of the supply-chain, CN works collaboratively with our customers to offer solutions and capacity tailored to our customers' needs for future, new model vehicle and part launches. CN is also a go-to carrier when supply chains are disrupted, including those disruptions associated with the past two years of the pandemic, extreme weather events, part shortages, and the recent Ambassador

Bridge disruption. CN recognizes the importance of time-sensitive, high-value freight, and offers dedicated customer service via CN's Auto Desk.

II. DIVESTITURE OF THE SPRINGFIELD LINE TO CN WILL INCREASE COMPETITION AND OPTIONS TO AND FROM THE KANSAS CITY AUTOMOTIVE MARKET AND GATEWAY CONNECTING THE EAST, WEST, NORTH, AND SOUTH.

CN's automotive customers want more transportation options, capacity, and competition. Given future sustainability objectives, driver shortages, and ongoing global network disruptions, it is our duty to build better mouse traps and resiliency into the North American market and critical to maintain options rather than reducing them. This is especially true given the importance of the Springfield Line connecting CN to the greater Missouri market and beyond. *See* Figure 2.

Figure 2: The Springfield Line



A. CP's control of the Springfield Line limits competition for Kansas City automotive traffic and stifles the ability for another Class I to compete in single-line service and access a viable alternative gateway for interchange service, adding resiliency and options over and above Chicago.

The CP-KCS merger gives CP single-line access to KCS' automotive terminal in Kansas City known as the International Freight Gateway (IFG) in Grandview, Missouri. Pre-merger, a neutral KCS had a strong incentive to grow its auto business. Indeed, the KCS reports that it doubled the number of finished vehicles moved in 2021 to more than 80,000 at the IFG.[1] After the combination, CP-KCS will be the only

[1] U.S. Intermodal Ramps, Kansas City Southern (Feb. 2022), at 3, https://www.kcsouthern.com/en-us/pdf/kcsr-intermodal-ramps/kcsr-us-intermodal-ramps.pdf.

option for automotive customers in Canada to reach Kansas City in single-line service.

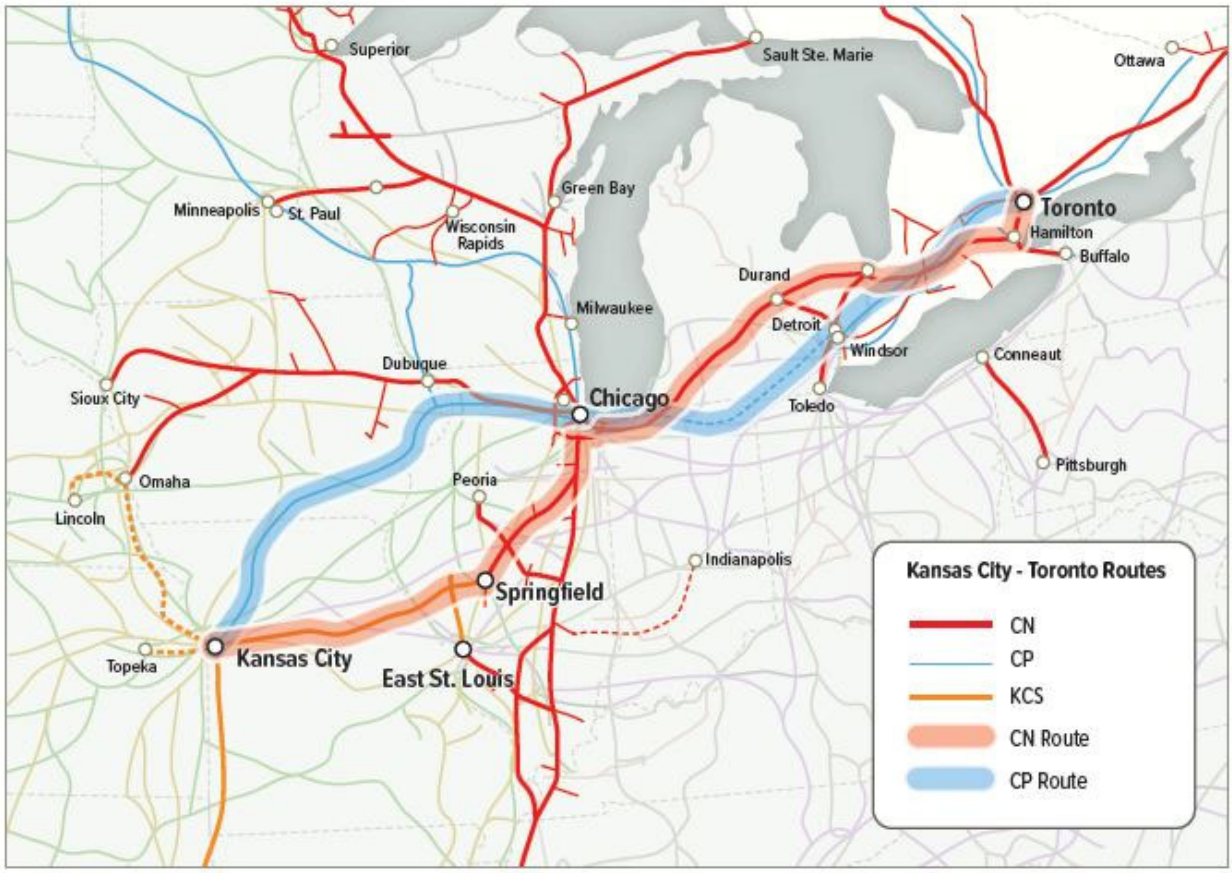
This is a problem because CP-KCS would control the parallel lines between Kansas City and Chicago. The merged CP-KCS would not have an incentive to work with CN to ship automotive traffic over the Springfield Line to the detriment of CP's parallel line. Nor would CP-KCS be willing to make the necessary investments in the Springfield Line track or facilities to accommodate 10,000-foot intermodal and automotive trains, which are necessary for a competitive, quality product offering for customers. This would be a significant lost opportunity to increase capacity, improve competition, and build resiliency and is bad for automotive customers.

B. CN's ownership of the Springfield Line would increase competition by adding both CN's single-line automotive service to the greater Missouri Market and create a more efficient Kansas City automotive interchange service for the future.

Both {{ }} have automotive vehicle assembly plants in the Kansas City area. A CN-owned Springfield Line would ensure that it could be used as a second single-line rail option for automotive traffic between Kansas City and Canada, as well as an additional single-line option between Kansas City and Michigan. CN can only make the investment necessary to ensure that the Line will be used to offer fast, uninterrupted, quality service, if it owns the Line. With CN's investment in the Springfield Line, automotive customers will have more competitive options connecting the Kansas City market with another single-line service option into and out of Canada and Michigan, as well as the addition of another Class I to the existing Kansas City rail gateway. Figure 3 shows an example of the competing single-service

route for CP (with the KCS) and CN (with the Springfield Line) between Kansas City, Michigan and Eastern Canada.

Figure 3: Divestiture of the Springfield Line Increases Competition With CN Single-Line Service Between Kansas City, Detroit/Michigan and Eastern Canada



Divestiture to CN will not limit CP. Divesting the Springfield Line to CN does not hinder CP-KCS' ability to compete to move auto parts or finished vehicles. A merged CP-KCS would retain the parallel line between Kansas City via Chicago to Eastern Canada to move such automotive traffic. Indeed, I understand the CP-KCS Application confirms they have concentrated all of their investment plans in CP's line between Kansas City and Chicago to the detriment of the Springfield Line.

Divestiture of the Springfield Line will reduce congestion in Chicago. Connecting CN to Kansas City in single-line service would further develop Kansas City into an additional hub for CN as an alternate to connecting with other Class I railroads in Chicago. Without the Springfield Line, to serve the greater Missouri market and beyond, CN would short haul automotive freight to Chicago and must interchange with other carriers in Chicago (adding congestion to Chicago with interchange activity between carriers) versus CN also having the ability to offer direct single-line service to Missouri market destinations or to interchange with another railroad for furtherance. Stopping in Chicago adds time and expense and unnecessarily wastes capacity in Chicago, and capacity in Chicago should not be wasted. Automotive safety and quality are required to compete globally, and efficient interchanges and railcar handling greatly improves the quality service that rail is able to offer to the consumer. Like Chicago, Kansas City is centrally located, and adding CN to an existing major rail hub benefits customers by further increasing customer shipping options and adding resiliency into the nation's rail infrastructure. Without single-line access to/from Kansas City on an improved and efficient Springfield Line, Canadian automotive customers will only have one single-line option.

III. DIVESTITURE OF THE SPRINGFIELD LINE TO CN HAS CONCRETE BENEFITS FOR THE AUTOMOTIVE SUPPLY CHAIN.

Divestiture of the Springfield Line to CN is beneficial for all participants in the automotive supply chain, opening up an additional single-line, competitive service option to the Heartland supporting Kansas City and St. Louis {

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C. CN Has Committed to Invest to Create New and Improved Service Offerings for Automotive Customers in Kansas City and East St. Louis.

Benefits of investment. CN knows the demands of automotive just-in-time parts and we demonstrate our capabilities daily out of our Detroit, Chicago, and Memphis intermodal terminals in addition to the ports we serve. CN would be a good steward of the Springfield Line. CN has committed to invest $250 million in the Springfield Line and CN's adjacent Gilman Subdivision. This investment includes building new facilities to benefit customers shipping finished autos and containerized auto parts in Kansas City and East St. Louis, similar to our most recent investments in New Richmond, Wisconsin. CN's investment in new automotive and intermodal facilities would include the following new service offerings:

- **East St. Louis:** CN plans to invest in the existing East St. Louis Yard to create new facilities for finished vehicles, as well as containerized parts that ship on intermodal trains. CN's planned investments include unloading, storage tracks and pavement.
- **Kansas City:** CN plans to invest in our own vehicle and intermodal facilities on 64 acres at IFG outside of Kansas City, which could increase capacity to support the transportation needs of the automotive supply chain.

Single-Line Service. CN's new capacity at IFG would unlock yet another competitive single-line rail service between Kansas City, Michigan, and Canada for the automotive supply chain. It will help decongest Chicago and create future solutions and opportunities for possibilities that have yet to be revealed.

Unleashing the Springfield Line's potential. CN's upgrades and investment to benefit automotive customers contrast starkly with CP-KCS' plans. KCS' East St. Louis Yard does not have automotive or intermodal facilities, and I

understand there are no plans laid out in the Application for CP-KCS to add such facilities. I further understand that CP-KCS are not planning to expand capacity at IFG for finished vehicles and automotive traffic. Instead, I understand that CP-KCS plan to use IFG's existing capacity as well as increase block swaps at the yard for their carload manifest traffic. Divestiture to CN is important to ensure that the Springfield Line is efficiently utilized given its connection to Kansas City.

D. A CN-Owned Springfield Line Will Help Raw Materials, Parts Suppliers, and Automotive Customers Build Resiliency In Their Supply Chains and Future Growth.

Benefits of resiliency. The CN-owned Springfield Line would help build resiliency for the automotive industry by offering another option in their supply chain to help them source raw materials and parts needed as well as distribute finished vehicles. CN's new single-line option over the Springfield Line to reach Kansas City offers a long-term, viable, competitive option as well as an available work around during times of disruption in supply chains.

Helping customers to minimize impact of supply chain disruptions. The recent experience with the Ambassador Bridge blockade is illustrative of CN's creativity in helping our automotive customers solve supply chain problems as they arise. In response to an inquiry from an automobile manufacturer, who had an urgent need for product during the disruption, {

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Building resiliency to accommodate growth {{

}} The Springfield Line in CN's network would also support the expanding electric vehicle manufacturing throughout the United States {

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With the electric car market expected to grow dramatically over the next decade, a CN-owned Springfield Line will support carload and intermodal growth for this exciting new market that will further the Biden Administration's commitment to encourage the development of the electric vehicle industry, including its recent announcement to help rural communities build electric vehicles charging infrastructure and funding $7.5 billion to build a nationwide network of 500,000 electric vehicle chargers.[3]

E. With the Springfield Line, CN Will Reduce Rail Transit Times for Automotive Traffic.

Benefits of reduced transit time. The Kansas City interchange will allow CN to offer a competitive alternative, allowing us to reduce transit time, bypass Chicago, and connect with the West at a new gateway. Reduced transit time means improved multilevel fleet cycle times because the railcars arrive faster to destination and more fluid interchange options. This uses the fleet more efficiently and potentially allows us to move more vehicles with the same amount of multilevels. Automotive customers will also benefit from more options in the future that improves capacity on the network: {

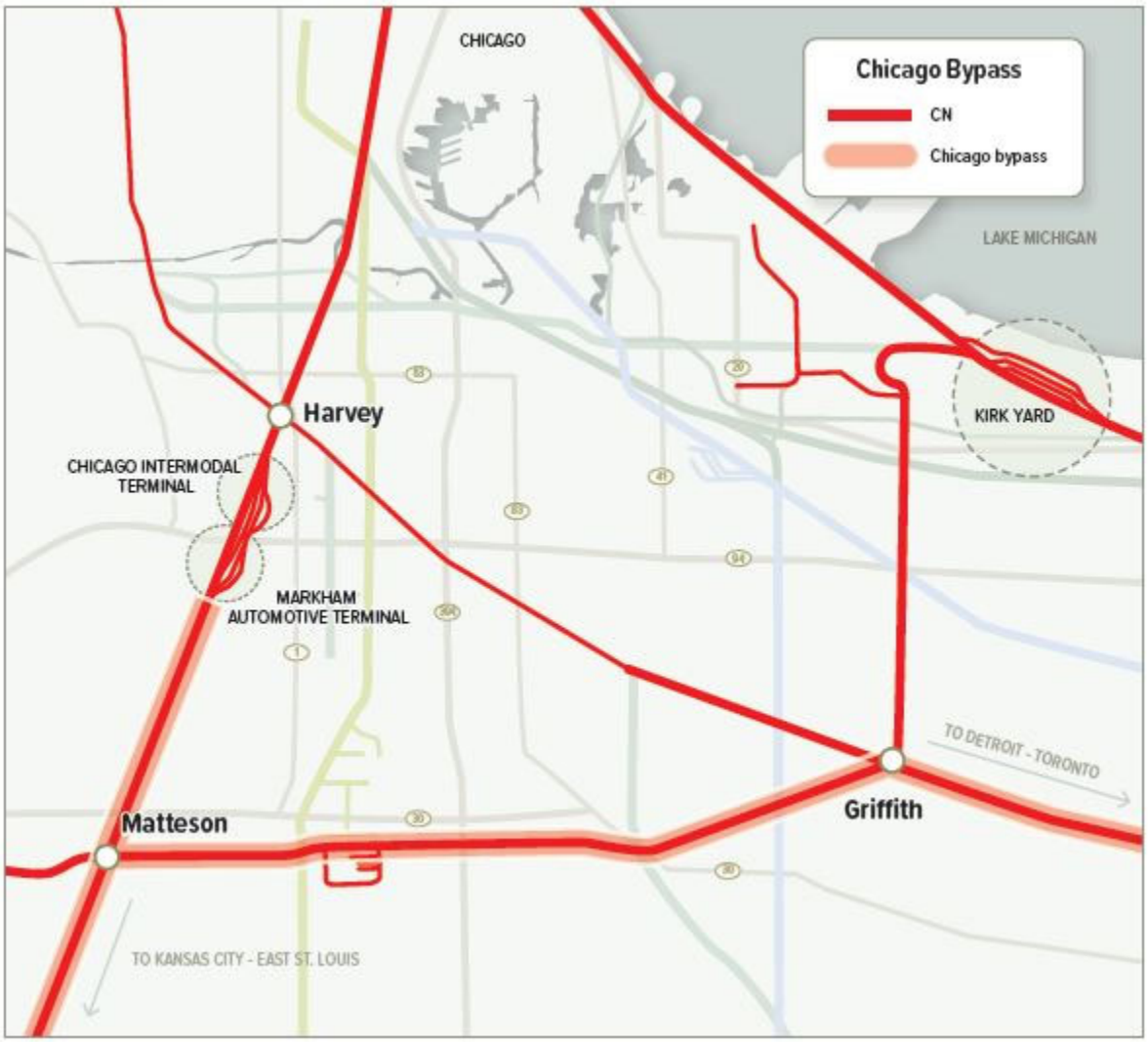
}}. Reduced transit time would improve speed to market and enable customers to reduce inventory carrying costs. Ultimately, more competitive options for single-line service, and more interline gateways for the customers, will

[3] President Joseph R. Biden, Jr., *U.S. Department of Transportation Releases Toolkit to Help Rural Communities Build Out Electric Vehicle Charging Infrastructure* (Feb. 2, 2022), https://www.transportation.gov/briefing-room/president-biden-us-department-transportation-releases-toolkit-help-rural-communities.

further build resiliency in the just-in-time automotive supply chain should disruptions occur, benefiting the automotive supply chain and the consumer.

Reduced transit time near Chicago. Automotive customers also would save transit time around Chicago. As Derek Taylor explains in the Operating Plan, CN's route between Eastern Canada/Detroit and the Springfield Line bypasses the City of Chicago as shown below in Figure 6. With single-line service to Kansas City, CN could bypass the Chicago interchange, saving customers an average of 24–36 hours.

Figure 6: CN Chicago Bypass and Markham Automotive Terminal



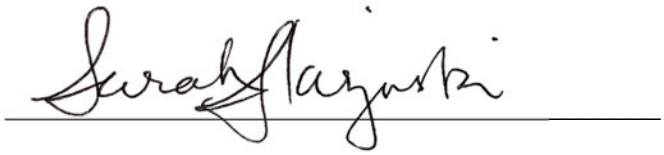
Reduced transit time on Springfield Line and Gilman Subdivision. CN is planning improvements to reduce transit time, including upgrading the portions of the Springfield Line between Roodhouse and Cockrell and CN's Gilman Subdivision as needed to support increased average speeds. CN plans to increase the length of sidings along the Springfield Line in Illinois and Missouri to 10,000 feet to facilitate efficient movement of automotive trains without creating congestion on the line.

PUBLIC VERSION

VERIFICATION

I, Sarah Slazinski, declare under penalty of perjury under the laws of the United States that the foregoing information is true and correct. Further, I certify that I am qualified and authorized to file this statement.

Executed on this 28th day of February, 2022.



Sarah Slazinski

Exhibit 12E

Verified Statement of David Przednowek

PUBLIC VERSION

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 36500 (SUB-NO. 1)

ILLINOIS CENTRAL RAILROAD COMPANY – ACQUISITION OF A LINE OF RAILROAD BETWEEN KANSAS CITY, MO, AND SPRINGFIELD AND EAST ST. LOUIS, IL – KANSAS CITY SOUTHERN RAILWAY COMPANY

STB FINANCE DOCKET NO. 36500 (SUB-NO. 2)

ILLINOIS CENTRAL RAILROAD COMPANY – TRACKAGE RIGHTS BETWEEN AIRLINE JUNCTION, MO, AND GRANDVIEW, MO – KANSAS CITY SOUTHERN RAILWAY COMPANY

STB FINANCE DOCKET NO. 36500 (SUB-NO. 3)

CANADIAN NATIONAL RAILWAY COMPANY AND ILLINOIS CENTRAL RAILROAD COMPANY – CONTROL – GATEWAY EASTERN RAILWAY COMPANY

STB FINANCE DOCKET NO. 36500 (SUB-NO. 4)

ILLINOIS CENTRAL RAILROAD COMPANY – ASSIGNMENT OF KCS TRACKAGE RIGHTS BETWEEN ROCK CREEK JUNCTION, MO, AND AIRLINE JUNCTION, MO – UNION PACIFIC RAILROAD COMPANY

VERIFIED STATEMENT OF DAVID PRZEDNOWEK

My name is David Przednowek. I currently serve as Assistant Vice President - Grain for Canadian National Railway Company ("CN"), a role I assumed in October 2021. Immediately prior to my current position, I served for nearly three years as

Director, Sales & Marketing, and I have been with CN since October 2014. I hold a Master of Science Degree and a Bachelor of Science (Agriculture) Degree from the University of Manitoba, specializing in agricultural sciences. In my current role at CN, I lead the marketing-related activities for the carload movement of grain and processed grain products across the CN network. My sales account director responsibilities are focused on US-based agricultural customers involved in grain trading, grain processing, and renewable fuels production. Prior to joining CN, I was directly involved in the grain industry for 17 years, including grain trading, derivatives trading, marine and rail logistics, vessel chartering, financial analysis and accounting, market analysis, and trade execution and management.

Given my current role and experience, I am very familiar with grain traffic flows (both within North America and globally), CN's grain customers, as well as the ways in which adding the Springfield Line to CN's network would benefit grain customers, both from an origin and destination/end-user perspective.

I. CN INVESTS IN ITS GRAIN CUSTOMERS' SUCCESS.

The core of CN's direct origination network for grain traffic in the U.S. is primarily in Illinois, Iowa and Wisconsin. CN extends its network reach with shortline railroads and Class 2 railroad partners in these states along with states such as Michigan, Indiana, and Tennessee. CN's grain traffic, which includes commodities such as corn, soybeans, wheat, soybean meal and oil, ethanol and distillers dried grains (DDGs), and renewable fuel feedstock, moves to domestic end-users and to international markets. The traffic destined to domestic end-users

includes the movement of feed ingredients such as corn and soybean meal to Mississippi, the Midwest, and eastern Canada; ethanol shipments to destinations in Canada and the US; and bulk grain to corn, soybean, wheat, oat, and barley processing facilities. Traffic destined primarily for overseas markets moves to grain terminals in the New Orleans and Mobile area. In addition to rail shipments moving direct to grain export terminals in the US Gulf region, CN accesses multiple barge loading locations along the inland waterways system, with locations stretching from southern Illinois to northeastern Iowa and northwestern Illinois.

CN is committed to investing in network infrastructure and equipment to help grow CN's customers' businesses and enhance the capacity of CN's network. CN's capital investments in the U.S. alone amounted to over US$550 million per year in both 2020 and 2021. Those capital investments included replacement of rail, installation of new ties, rebuilding road crossing surfaces, and maintenance work on bridges, culverts, signal systems, and other track infrastructure. In November 2020, CN completed the re-construction of the Bonnet Carré-McComb Spillway Bridge near New Orleans. This 2.2 mile-long bridge provides a critical U.S. transportation corridor for both freight and passenger service across the Bonnet Carré Spillway, which alleviates excess water from the Mississippi River, protecting New Orleans and other communities from flooding. This $90 million dollar project adds to the safety, reliability, and fluidity of CN's network, and ensures that CN's direct rail traffic to the Gulf can move efficiently.

CN is also in the process of a major multi-year hopper car fleet renewal plan that will replace aging equipment and help to meet the growing needs of our grain customers. In May 2021, CN announced it was acquiring 1,000 new generation, high-capacity grain hopper cars. This purchase was part of a multi-year 3,500 hopper car fleet renewal program. Building on CN's on-going grain hopper car fleet renewal program that began in 2018, CN's new generation hopper car fleet is expected to grow to 6,000 hopper cars.

II. ADDING THE SPRINGFIELD LINE TO CN'S NETWORK WOULD INCREASE COMPETITION AND OPTIONALITY FOR U.S. GRAIN SHIPPERS.

CN's acquisition of the Springfield Line would offer several benefits to U.S. grain shippers. First, a CN-owned Springfield Line would increase transportation competition for grain customers on CN's lines in the Midwest by offering a revived competitive option to the East St. Louis barge market. This market is valuable to grain shippers because East St. Louis represents the single largest concentration of barge loading facilities along the Mississippi River.

A CN-owned Springfield Line would reduce transportation costs for CN's Midwest grain shippers and provide increased optionality and market arbitrage opportunity. Currently, CN moves some bulk grain and processed grain products from the Midwest to the East St. Louis market, including DDGs, soybeans, and wheat. However, for example, to reach East St. Louis today from points in northern Illinois, Iowa, and Wisconsin, CN must route all the way to southern Illinois, past East St. Louis to Du Quoin, Illinois, and then route back up again to East St. Louis. This

routing adds an extra 50 miles in each direction for a total of 100 miles to the route (compared to using the Springfield Line), which means extra costs to Midwest grain shippers, recognizing that the cost of transportation service is primarily a function of distance. With the Springfield Line in CN's network and upgraded with much-needed investments to support increased average train speeds, CN could, in the future, simply take a right-hand turn at Gilman, Illinois to get unit train traffic from northern Illinois, Iowa, and Wisconsin to East St. Louis. Those 100 extra total miles would disappear, as would the accompanying extra costs to customers.

Second, grain customers on the Springfield Line would enjoy their current competitive options via haulage rights on KCS, but would also enjoy new direct single-linehaul routing via CN to the U.S. Gulf for export, multiple barge loading facilities along the inland waterways system, and numerous feed mills in the Mid-South and elsewhere, along with other grain processing facilities.

Third, for feed mills and other grain processing facilities, both on the Springfield Line and along the CN network, the acquisition of the Springfield Line will increase origination reach. Grain processors will be able to spread out their product origination risk across a broader geography in the event of a poor crop in their traditional product origination region. Increasing the number of origination options also means more sellers offering product for purchase, improving the competitive position of these processing facilities.

Fourth, the increased optionality afforded to KCS-served customers along the Springfield Line, along with CN-served customers in the Midwest, will offer new

arbitrage opportunities as well as increased market liquidity and a more dynamic rail freight market for these shippers, allowing them to spread their commercial risk across a larger network. For example, for bulk grain customers along the Springfield Line today, where emphasis on the shipment of corn, soybeans, and wheat is primarily to the Mexico market, a combined CP-KCS will likely result in a significant increase in competition from other origin shippers wanting to access the Mexico market. Having additional CN destination markets to trade grain and processed grain products into will increase market optionality.

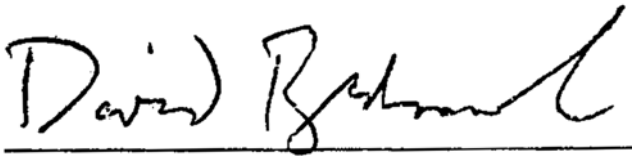
Furthermore, allowing CN to acquire and invest in the Springfield Line will ensure that CN's Midwest grain customers have more competitive options for selling and exporting their products by connecting them more directly to the East St. Louis market, helping CN's grain customers remain resilient and competitive.

PUBLIC VERSION

VERIFICATION

I, David Przednowek, declare under penalty of perjury under the laws of the United States that the foregoing information is true and correct. Further, I certify that I am qualified and authorized to file this statement.

Executed on this 28th day of February, 2022.



David Przednowek

Exhibit 13

Operating Plan

PUBLIC VERSION

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 36500 (SUB-NO. 1)

ILLINOIS CENTRAL RAILROAD COMPANY – ACQUISITION OF A LINE OF RAILROAD BETWEEN KANSAS CITY, MO, AND SPRINGFIELD AND EAST ST. LOUIS, IL – KANSAS CITY SOUTHERN RAILWAY COMPANY

STB FINANCE DOCKET NO. 36500 (SUB-NO. 2)

ILLINOIS CENTRAL RAILROAD COMPANY – TRACKAGE RIGHTS BETWEEN AIRLINE JUNCTION, MO, AND GRANDVIEW, MO – KANSAS CITY SOUTHERN RAILWAY COMPANY

STB FINANCE DOCKET NO. 36500 (SUB-NO. 3)

CANADIAN NATIONAL RAILWAY COMPANY AND ILLINOIS CENTRAL RAILROAD COMPANY – CONTROL – GATEWAY EASTERN RAILWAY COMPANY

STB FINANCE DOCKET NO. 36500 (SUB-NO. 4)

ILLINOIS CENTRAL RAILROAD COMPANY – ASSIGNMENT OF KCS TRACKAGE RIGHTS BETWEEN ROCK CREEK JUNCTION, MO, AND AIRLINE JUNCTION, MO – UNION PACIFIC RAILROAD COMPANY

EXHIBIT 13

OPERATING PLAN FOR SPRINGFIELD DIVESTITURE

VERIFIED BY CARL VAN DYKE AND DEREK TAYLOR

OPERATING PLAN FOR SPRINGFIELD DIVESTITURE

Verified by Carl Van Dyke and Derek Taylor

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I. Introduction

Canadian National Railway Company and its U.S. subsidiary, Illinois Central Railroad Company ("ICRR") (referred to collectively herein as "CN"), submits this responsive application to ask the Board to condition any approval of the proposed CP and KCS merger on the divestiture to ICRR of the KCS rail lines between Springfield, Illinois and East St. Louis, Illinois on the one hand, and Kansas City, MO, on the other hand (as more particularly described in the Asset Purchase Agreement submitted as Exhibit 2A to the Responsive Application) (the "Springfield Line"), pursuant to the Board's statutory authority to order "the divestiture of parallel tracks" as a merger condition. Divestiture of the Springfield Line will restore and preserve KCS's former competitive route between Kansas City, MO and Chicago, Illinois, will transform what would otherwise become a relatively underused and neglected segment of the combined CPKC network, and create a new single line route for traffic moving between Kansas City and points beyond, on the one hand, and Chicago, Detroit, Eastern Canada, and south towards Memphis, on the other. The proposed divestiture does not present any operational challenges – indeed the Springfield Line was once a part of ICRR's rail system.

The traffic diversion analysis included with this Responsive Application estimates that ICRR would attract more than 49,500 rail cars and rail intermodal units, as well as more than 80,000 automotive and intermodal truck units to the Springfield Line annually.[1] Moreover, 12,500 containers that are currently routed

[1] *See* Verified Statement of David Hunt.

via congested east coast ports would shift to the Port of Montreal and move to points in the United States via ICRR's Springfield Line. The majority of the diverted shipments would be intermodal traffic, with more than 19,000 assembled auto multilevel cars diverted as well. The anticipated traffic diversions are detailed in Figure 1 and described more fully in the Verified Statement of David Hunt.

Figure 1
Diversions Analysis

	Rail-to-Rail	Truck-to-Rail	Port of Montreal	Total Units
Intermodal Units	31,006	77,771	12,500	121,277
Automobiles	17,903	1,479	-	19,382
Grain	604	-	-	604
Other	-	890	-	890
Totals	49,513	80,140	12,500	142,153

ICRR's acquisition of the Springfield Line will reduce greenhouse gas emissions by shifting more than 80,000 truckloads off the highway to more environmentally friendly rail service. Although the volume of traffic on the Springfield Line will increase, there will be no adverse impact on operations across the broader network as the projected increase represents only two new daily through trains in each direction—for automotive and intermodal traffic between CN's Markham Yard in Harvey, Illinois and KCS's International Freight Gateway terminal in Grandview, MO ("IFG" or "IFG Terminal"), with connecting service to/from East St. Louis via Roodhouse, IL—and increased local service. Pursuant to a proposed haulage agreement (Responsive Application, Exhibit 2C), existing KCS unit trains would move on the Springfield Line via haulage.

Figure 2
Map of Transaction-Related Train Increases on the Springfield Line

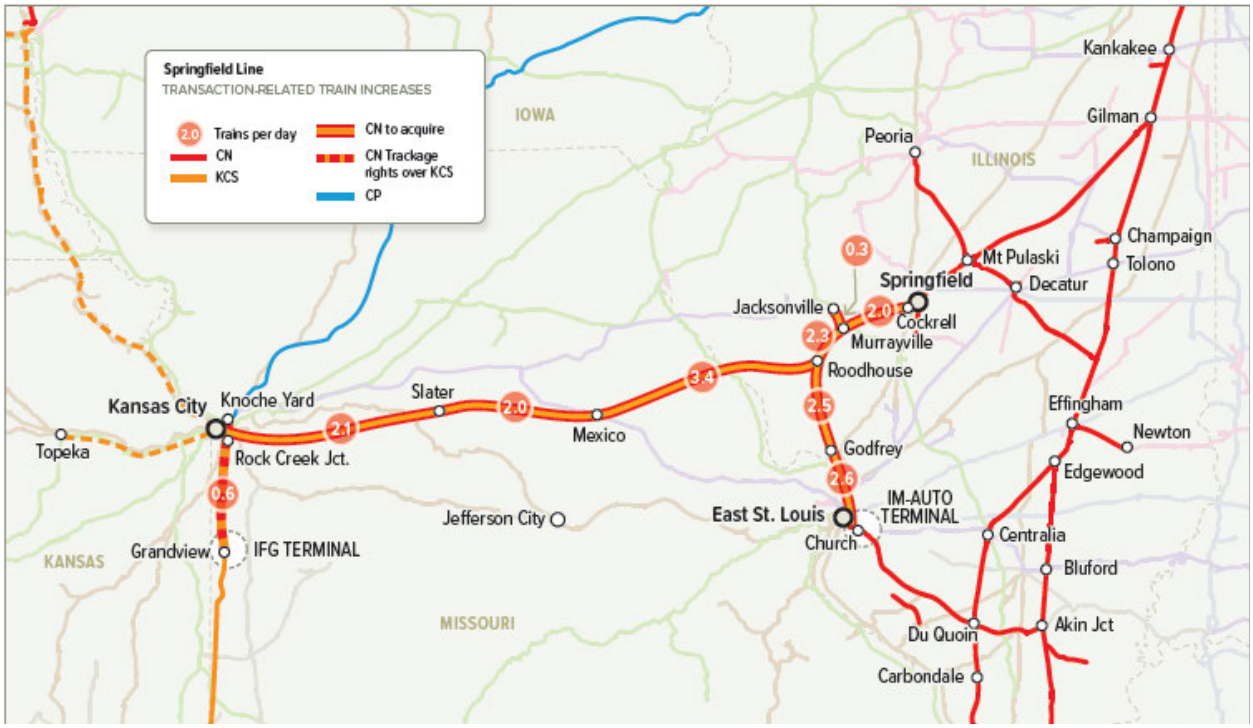


Figure 3
Map of Transaction-Related Train Increases on the Gilman Subdivision



Figure 4
Map of Transaction-Related Train Increases at Memphis Terminal



To handle the increased traffic on an acquired Springfield Line, CN is prepared to make approximately $250 million in capital investments on the Springfield Line and ICRR's adjacent Gilman Subdivision. These capital improvements will include track improvements to increase operating speeds, new and extended sidings, and the construction of new intermodal and automotive facilities in the existing East St. Louis Yard and at the IFG Terminal.

ICRR will access the Springfield Line via its existing trackage rights over Norfolk Southern ("NS")-owned track as a subtenant of Union Pacific Railroad Company ("UP") as it can today for interchange with KCS.[2] ICRR and KCS currently connect directly in the East St. Louis area at Church, IL.

ICRR proposes to enter into a haulage agreement with KCS that will enable KCS to continue to access all current and future customers on the Springfield Line and to interchange with other railroads at East St. Louis, IL (except for access to CN's new intermodal or automotive facilities at the IFG Terminal and East St. Louis). The proposed transaction also contemplates an assignment of KCS's existing trackage rights over UP between Rock Creek Junction and Airline Junction, MO, so that CN can reach KCS's Knoche and Mill Street Yard (Responsive Application, Exhibit 2D, Docket No. FD 3560 (Sub No. 4)), and a trackage rights agreement pursuant to which ICRR would obtain overhead rights on KCS beyond Airline Junction to reach the IFG Terminal at Grandview, MO (Responsive Application, Exhibit 2B, Docket No. FD 35600 (Sub. No. 2)).[3]

As explained elsewhere in the Responsive Application, CN believes that the proposed divestiture transaction should properly be classified as a "minor" transaction, because the transaction "clearly will not have any anticompetitive

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[2] ICRR obtained these rights pursuant to an October 1, 1994 agreement between a predecessor of UP and NS's predecessor, Norfolk & Western Railway Company. That arrangement was discussed by the Board in *Canadian National Ry. Co. – Control – Illinois Central R. Co.*, 4 S.T.B. 122 at 175, 190-199 (1999).

[3] ICRR would acquire a 50% ownership interest in the IFG Terminal, and would make a capital investment in additional capacity at that facility.

effects."[4] This Responsive Application, however, provides all of the information required under the Board's regulations governing "significant" applications, in the event that the Board prefers to evaluate the proposed divestiture condition as a significant transaction.

This Exhibit 13 complies with the requirements for an operating plan set forth in in 49 C.F.R. § 1180.8 (2000). Specifically, it includes

> a summary of the proposed operating plan changes, based on the impact analyses, that will result from the transaction, and their anticipated timing, allowing for any time required to complete rehabilitation, upgrading, yard construction, or other major operational changes following consummation of the proposed transaction.

The plan also "make[s] clear the gains in service, operating efficiencies, and other benefits anticipated."[5] Those requirements specifically enumerated in Section 1180.8 are set forth below.

II. Qualifications and Background

This Operating Plan (Exhibit 13) is sponsored by Carl Van Dyke of Oliver Wyman and Derek Taylor, Vice-President, Operational Excellence, for CN. In preparing the Operating Plan, those individuals consulted and worked closely with each other and with marketing and operating personnel at CN. They used publicly-available KCS data—as well as data in the CP/KC application and materials produced in discovery—to create both the pre-transaction and post-transaction

[4] 49 C.F.R. § 1180.2(b)(1).

[5] 49 C.F.R. § 1180.8.

Operating Plans. As described further below, Messrs. Van Dyke and Taylor utilized Oliver Wyman's MultiRail Network Planning Software ("MultiRail") to develop robust post-transaction blocking and train service plans for the post-transaction CN system.

A. Carl Van Dyke

My name is Carl Van Dyke. I am a retired Partner of Oliver Wyman, a global management consulting firm. I have more than 40 years of consulting experience with the application of computer programs to transportation planning and operations issues, with particular emphasis on railroad network modeling, service design, train scheduling, line capacity analysis, and equipment management.

Prior to joining Oliver Wyman in 2006, I founded MultiModal Applied Systems in 1992, a software development company that designed and built the initial versions of the MultiRail software. During the 14 years I served as President of MultiModal Applied Systems, MultiRail was installed and used by every major North American railroad, as well as many other railways around the world. In 2006, MultiModal was acquired by Oliver Wyman.

Prior to founding MultiModal, I worked for ALK Associates, a railway-focused transportation consulting firm, for more than 6 years, including 4 years as a Vice-President.

As a Partner at Oliver Wyman, I was responsible for the marketing and implementation, including detailed operations planning, of MultiRail to major railways around the world.

Under my leadership, Oliver Wyman-MultiModal was involved in the redesign of the operating plans of every major North American railroad and similar operating plan redesign projects in Europe, Africa and the Commonwealth of Independent States. We also assisted in developing the operating plans supporting the STB applications for the following transactions: Union Pacific/Southern Pacific, Canadian National/Illinois Central, Norfolk Southern/Conrail, and (proposed) Burlington Northern Santa Fe/Canadian National mergers. In addition, we performed similar operating analyses in connection with the privatization of the Mexican railways. This interaction with various railway systems has given me a deep knowledge of the inner workings of the real-world operations control systems utilized by railroads in North America, Europe, the CIS and South Africa.

I earned a Master of Science Degree in Civil Engineering/Transportation from Massachusetts Institute of Technology and a Bachelor of Science in Engineering in Mechanical Engineering, summa cum laude, from the University of Pennsylvania.

A copy of my CV is attached hereto.

I am sponsoring elements of the Operating Plan that relate to ICRR's proposed operations over the Springfield Line.

B. Derek Taylor

My name is Derek Taylor. I was appointed Vice-President, Operational Excellence, for CN in September 2021. In this role, I am responsible for driving continuous improvement across CN's key operating metrics. I am a proven and experienced railroad operator with over 20 years of experience at CN.

I joined the Company as Management Trainee in Winnipeg in 2000 and moved to progressively more senior roles. Prior to my current role, I served as Vice-President, Eastern Region (2019-2021), Vice-President, Southern Region (2018-2019), General Manager of the Regional Operations Center, Southern Region (2016-2018), General Manager, Midwest Division (2012-2016), General Superintendent of BC South and the Greater Vancouver Terminal (2009-2012), and Superintendent for the Memphis Zone (2005-2009). Most of my 20 plus years of railroading experience with CN has been spent on the ICRR main line between Chicago and New Orleans, which branches to Springfield, IL And East St. Louis, IL, where it connects with the KCS Springfield Line.

I earned a Bachelor of Arts degree at DePauw University in Indiana.

I am sponsoring elements of the Operating Plan that relate to CN's current and proposed future operations and CN's capital and labor plans for the Springfield Line.

I have previously testified before the STB on *Oversight Hearing on Demurrage and Accessorial Charges*, STB Ex Parte No. 754 (2019).

III. Data Sources and Methodologies

The CN Operating Plan for the Springfield Line was developed by a team of experienced CN operating employees, under the supervision of Derek Taylor, in conjunction with railroad operations experts at Oliver Wyman. This "Operating Plan team" focused on blocking, train scheduling, network capacity and capability, yard and terminal operations, and existing plant and facilities, as well as capital improvements necessary to execute the Operating Plan and maintain fluid train

service. CN's current standards for train operations, maintenance, and equipment utilization were applied in developing the Operating Plan for the Springfield Line. The data sources used and methodology applied to develop the plan are described below.[6]

A. Traffic Data Sources

To develop Base Year 2019 carload volumes, we analyzed the 2019 full-year CN waybill data and the 2019 waybill data for CP and KCS. The CPKC data was provided by Applicants' consultants, in exchange for provision of the CN 2019 waybill data to them. Additional CP and KCS waybill data were obtained from the Applicants' work papers.[7] In the case of CN, we used the full system 2019 traffic data to represent the entire CN network and pre-transaction operating plan. For the proposed CPKC, we used only the traffic expected to traverse the Springfield Line.

To determine changes in post-transaction traffic for CN, we utilized the results of the CN Springfield Line traffic diversion study,[8] adding this traffic to the KCS Base Year traffic on the Springfield Line in 2019. For CPKC, we identified the

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[6] *See also* "HC - Springfield Line Network and Traffic Development for MultiRail – Methodology.pdf" in the workpapers for more technical details and associated data inputs and outputs.

[7] *See* FD 36500 – Work Paper, "HC – 2019_CONSOLIDATED_CPKCS_DATA_MASTER.txt."

[8] *See* Verified Statement of David Hunt.

traffic projected to use the Springfield Line in the CPKC traffic studies,[9] and added this traffic to the Base Year traffic. We also added an allowance for organic growth to the CPKC traffic volumes in order to assure sufficient capacity to handle all of the traffic likely to traverse the Springfield Line post-divestiture. The organic growth factor we used was the CP/KC application assumed {{ }} rate, although there are significant concerns as to the achievability of that figure.[10]

B. Operating Data Sources

The Operating Plan team used the 2019 density maps and tables as published in the CP/KC Application[11] as a cross-check against the traffic data for CPKC and have included this data in the Responsive Application. We also obtained the historic line density data for CN for the years 2019 through 2021.[12] The 2019 density data provided the base values for the line density information in this responsive application for the lines currently operated by CN. Other resources

[9] Source: Diversion traffic from CP/KC Application workpapers: "HC - 1.Proposed Final FTI Rail to Rail Diversion Results for Merger Application 10_21_20 UPDAT_TRUK_REV"; "HC - 8 - Diversion Identification.xlsx;" "HC – 10b - Grain Diversion Worksheet.xlsx"; "HC – 10a - Lumber Diversion Worksheet.xlsx."

[10] *See* "HC - Review of Growth Factors in CPKC Application.pdf."

[11] CPKC filing, App Vol 2, p.461, Exhibit 14 Density Chart, Exhibit 14, p.505 Density Maps.

[12] *See* Density Charts in Appendices.

included KCS and CN timetables,[13] Google Maps, and internal knowledge of KCS operations based on our experience in the industry.

A summary of the KCS train plan for the Springfield Line, as well as for the Kansas City and East St Louis areas, was produced by KCS late in the discovery process, well after we had to commence development of the Springfield Line Operating Plan to comply with the procedural schedule in this proceeding. We reviewed the late-produced information and aligned our base Operating Plan to be consistent with that information to the extent possible given the time constraints.

The Operating Plan for the full CN network is based on a combination of a partial loading of the 2021 CN Operating Plan from the CN production system and extensive manual review and refinement to match that plan to the 2019 full-year traffic data. This base Operating Plan is complete with respect to all aspects of CN's operations, including local trains, manifest trains, intermodal trains, and unit trains. Oliver Wyman validated that this plan produced aggregate statistics for car-miles, gross-ton-miles ("GTMs"), and train-miles to within +/- 5 percent of historic values from 2019.

C. Methodology

The CN pre-transaction base plan was extended by adding in elements of the KCS network associated with the Springfield Line, along with the KCS traffic

[13] *See* "CN Timetables.zip" and "KCS Timetable No. 15_Highly_Confidential_June 9 2020.pdf."

associated with this line.[14] Using MultiRail, a pre-transaction Operating Plan for the KCS Springfield traffic was created based on our general understanding of KCS's current operating strategy for the line, augmented by a more detailed description of the trains operated by KCS that was obtained in discovery. The pre-transaction Operating Plan was then adjusted as necessary to create a post-transaction Operating Plan incorporating the new post-merger CPKC and CN traffic, and the assumption of operating control for the Springfield Line by CN.

1. MultiRail

In developing the pre- and post-transaction Operating Plans, the Operating Plan team used the software application MultiRail to develop local, carload, and intermodal blocking and train service plans for the Springfield Line, as well as a set of dedicated unit trains to handle the unit grain movements that originate/terminate on the Springfield Line. As the Board has observed:

> "MultiRail computer software is a modeling tool that generates car classification and blocking service plans for a selected traffic group, based upon the characteristics of the traffic, the railroad's network configuration, and customer service requirements. Operating experts can develop the costs for such blocking and train service plans without the assistance of software, but the use of software like MultiRail can be used to facilitate this process. MultiRail is used to help develop a comprehensive blocking and train service plan, which then establishes

[14] *See* "HC - Springfield Line Network and Traffic Development for MultiRail – Methodology.pdf" for MultiRail process.

> the requirements for the network of yards and other facilities necessary to serve the selected traffic."[15]

MultiRail is commercially available software developed and owned by Oliver Wyman. All the North American Class I railroads have used MultiRail for various network planning and service design purposes over the past 30 years. Blocking plans and train schedules based on MultiRail have been presented in a variety of prior Board proceedings.[16] The use of MultiRail in railroad merger proceedings is well established and recognized by the Board, as the program has been used to develop operating evidence in the NS-Conrail, Union Pacific-Southern Pacific, and Canadian National-Illinois Central merger proceedings.[17]

2. Base Year 2019 Traffic

The year 2019 was selected as the pre-transaction Base Year, consistent with the Base Year used by CP and KCS in their application. STB waybill data, TransSearch data, and Freight Analysis Framework truck and rail data are all available for 2019. In addition, 2019 data reflects the most recent year of "normal"

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[15] *E.I. DuPont de Nemours and Co. v. Norfolk Southern Ry.*, Docket No. 42125, at 31 (STB served Mar. 24, 2014) (internal footnote omitted).

[16] *Id.* ("The Board has allowed the use of MultiRail to create blocking plans in other types of proceedings, and we conclude that its use here is permissible.") (internal footnote omitted).

[17] *See* Finance Docket No. 33556, Railroad Control Application, Surface Transportation Board, July 1998, Volume 2, pp. 5-6 (CN-IC merger) and Finance Docket No. 33388, Railroad Control Application, Surface Transportation Board, June 1997, Volume 3B, p. 7 (Conrail merger).

pre-pandemic rail traffic, as the traffic and operations of all rail carriers including CN and KCS, were significantly impacted by the COVID-19 pandemic in 2020.

As discussed above, 100 percent of CN full-year 2019 waybill data for loaded movements was used to develop Base Year traffic flows for the pre-transaction CN Operating Plan. Base Year CN empty flows were generated based on historic empty return ratios for CN, by reverse routing each loaded flow and using the appropriate empty/loaded ratio to adjust the reverse routed movement's car volume. Loaded unit train movements were reverse routed using an assumed 100 percent empty return ratio.

Historic CN slot utilization data and intermodal railcar tare weights and lengths were used to estimate the proportion of each railcar's length and weight that should be assigned to each intermodal container shipment. Thus, our intermodal movement unit counts are expressed in containers, while the associated gross weight represents the container plus its share of the associated railcar. Likewise, the railcar length for each container is based on the share of each railcar associated with a container (*e.g.*, a typical railcar length of 35-36 feet is associated with each container).

For the pre-transaction KCS traffic, we used the 100 percent CP and KCS 2019 full year waybills for both loaded and empty movements as our starting point. This data had been at least partially cleaned and adjusted by CP and KCS to eliminate duplicate records for shipments that moved on more than one of the CP

and KCS merging railroads.[18] These data were examined, and all movements that originated, terminated, or interchanged at a point on the Springfield Line were identified. This subset of traffic became the 2019 base traffic set for the pre-transaction Operating Plan.

Intermodal volumes for CP and KCS are expressed in containers to be consistent with the representation of the CN Base Year traffic. We applied the same statistical standards used by CP and KCS for intermodal shipments in their Application, which included a railcar length per container of {{ }} feet, and a railcar tare weight per container of {{ }} tons, and an aggregate tare weight of { }} tons for railcar plus container.[19]

3. Pre-Transaction Operating Plan

The pre-transaction traffic database was loaded into MultiRail. We did not attempt to merge movements that interchanged between CN and KCS at Springfield or East St Louis, so that these moves were left as two separate moves on their respective railroads, with the end of one move being the same location as the start of the other move. This was estimated to affect approximately three cars per day.

To model the pre-transaction operations for each railroad in MultiRail, we also needed to develop a "digital rail network" for CN and the KCS Springfield Line.

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[18] *See* "HC - Springfield Line Network and Traffic Development for MultiRail – Methodology.pdf."

[19] *See* "HC - Intermodal to Railcar Conversion Factor Source Compilation.pdf."

CN provided the Operating Plan team with a MultiRail network previously prepared by CN. That network was augmented by manually encoding the Springfield Line network, plus selected additional stations in the Kansas City area, such as IFG and Knoche Yard, yielding the entire network that was relevant for purposes of developing the Springfield Line Operating Plan.

Oliver Wyman, supported by planning experts at CN, then carried out the detailed task of matching, at the Freight Station Accounting Code ("FSAC") level, the traffic data for each carrier with the MultiRail network.[20] Mismatches were resolved so that the origin and destination of all traffic movements in the pre-transaction traffic database could be assigned to a MultiRail location.

Based on our review of the CP/KC Application and associated work papers, the CP/KC traffic for the Springfield Line, our knowledge of current KCS operations on the Springfield Line gained from experience in the industry, and a description of the current KCS train service for the Springfield Line, Kansas City area, and East St. Louis area produced by KCS, we developed our best estimate of the current KCS blocking and train services for the Springfield Line.[21] This included both local and manifest scheduled trains, and a set of (unscheduled) unit trains primarily to serve grain and other bulk customers located on the Springfield Line. We attempted to

[20] *See* "HC - Springfield Line Network and Traffic Development for MultiRail – Methodology.pdf" for technical details.

[21] *See* workpapers and documents related to generating Operating Plan metrics from MultiRail: "HC - Operating Metrics – Estimation of Line Density and Train Counts Methodology.pdf" and "HC - Operating Metrics – Estimation of Yard Activity.pdf."

cross-check the results of this effort to the gross tons and trains per day reported by KCS, with the foreknowledge that the CP/KC values might be less than reliable.[22] We believe that, based on our knowledge of this line and associated traffic, our Base Year Operating Plan fairly represents the actual KCS operations that took place on the Springfield Line in 2019.

We used the algorithms and diagnostic capabilities in MultiRail to ensure that all of the pre-transaction traffic using the Springfield Line was being moved in a logical and efficient manner, and that no traffic was stranded because of gaps in the Operating Plan. MultiRail diagnostics included identification of out-of-route or circuitous movements, blocks not assigned to trains, and traffic unable to depart its origin. Train sizes in terms of weights and lengths were also checked to ensure that they were within expected ranges. Yard volumes were inspected and were consistent with expectations.

Output reports from this final version of the "pre-transaction" MultiRail Operating Plan included switching volumes for each yard, unit loadings for each intermodal terminal, train movements/counts, train-miles, and GTMs for each line-of-road corridor.

4. Post-Transaction Traffic and Operating Plan

The post-transaction Operating Plan reflects the third year of combined operations (2025), which is the expected year of fully implemented post-transaction

[22] Concerns with the methodology used by CP and KCS are described in Appendix A of the Operating Plan.

operations. To develop the traffic base for Year 3 post-transaction operations, a separate process was followed for the CN and CPKC components of the traffic.

No organic growth factor was applied to the CN traffic on the Springfield Line. Instead, we expect CN to develop the new market opportunities arising from the Springfield Line over several years. Thus, our post-acquisition traffic for CN represents the projected transaction related full phase-in of the traffic identified in CN witness Hunt's traffic diversions study.[23]

To take this traffic into account, each new traffic movement identified in the CN traffic study was examined, and the starting and ending location of each movement on the CN network was identified. Based on this information, the traffic movement was added to the pre-transaction 2019 traffic already in MultiRail. The vast majority of the post-transaction diverted traffic is intermodal and automotive, with some smaller volumes of carload traffic, primarily grain.

Because the new traffic identified by Mr. Hunt only represents loads, a corresponding set of empty movements was generated. For multilevel traffic, we applied CN's historical system average 2019 empty/loaded mileage ratio of {{ }} percent. Based on this value, we created a reverse route movement for every loaded movement that had {{ }} percent of the loaded movement's volume. For intermodal traffic, we looked at the total number of intermodal containers originating and terminating on the line and, based on the net difference, determined a backhaul

[23] The methodology employed and result of CN's traffic diversion study are detailed in the Verified Statement of CN witness David Hunt in support of this Responsive Application. *See* STB Finance Docket No. 36500 (Sub-No. 1).

percentage of 30%,[24] which was used to create reverse route empty movements in one direction only. For all other traffic, we created reverse routed empty movements using a 100 percent empty/loaded ratio. Car gross weights and lengths were based on statistical averages by shipment type.[25]

For CPKC traffic that would move under the proposed haulage agreement, we took two actions to represent post-acquisition traffic volumes. First, for existing traffic, both loaded and empty, we increased the CPKC 2019 base traffic volumes by {{ }} percent, based on the organic growth rate assumed by CPKC and set forth in the CPKC System Model for 2025.[26] CPKC's projected organic growth traffic was included to demonstrate that the Springfield Line will have sufficient capacity to accommodate CPKC's assumed organic growth.

Next, we identified the small amount of traffic from the CP/KC traffic diversion study that would use the Springfield Line, and added those movements to the 2019 KCS base traffic. Because the traffic in CPKC's traffic study was loads only, we also created a set of empty movements using a simple 100 percent reverse route approach. The gross weights and car lengths for the CPKC traffic are based on

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[24] *See* "HC - Springfield Line Network and Traffic Development for MultiRail – Methodology.pdf."

[25] *Id.*

[26] CN does not believe the {{ }} organic growth rate is appropriate or realistic given historic organic growth numbers. However, for consistency with the CP/KC Application, CN has used it here. *See* "CN-WP-HC Review of Growth Factors in CPKC Application.pdf."

a mix of MultiRail sample data provided in the CP/KC Application workpapers and CN's full 2019 Waybill file.[27]

Using the 2019 KCS traffic on the Springfield Line as the starting point, we developed a post-transaction traffic file incorporating (1) forecasted CPKC organic growth and (2) likely diversions from trucks and other rail carriers for CPKC and CN. Then, we proceeded to construct a post-transaction Operating Plan that would transport that traffic safely and efficiently. In doing so, the Operating Plan team generally followed the same methodology as was used in preparing the pre-transaction Operating Plan.

Specifically, the post-transaction traffic file was run through MultiRail's planning algorithms, using the pre-transaction blocking and train plans for each railroad already loaded in the MultiRail model. Based on the outputs of this initial iteration, we identified which elements of the existing KCS Springfield Line plan could be retained and which would need to be adapted to fit into CN's Operating Plan, and where additional train service would be justified.

For example, we retained all the existing KCS unit trains, on the assumption that these would continue to be operated by ICRR under the haulage agreement using KCS locomotives and equipment, while moving on the Springfield Line. We also retained the concept of a pair of daily trains between Kansas City/IFG and East St. Louis, although we converted these trains to purely manifest trains going to

[27] *See* "HC - Springfield Line Network and Traffic Development for MultiRail – Methodology.pdf" for more details on data sources and processes used.

Kansas City, not the IFG Terminal, as KCS does today. We introduced a pair of new through trains for automotive and intermodal traffic from CIT to IFG Terminal (and in reverse), with connecting service to/from East St. Louis via Roodhouse, IL. Various other adjustments were made to improve service between points on the CN network and East St. Louis/Kansas City, and ensure that all local customers would be appropriately served.

Throughout this design process, we carefully checked the expected sizes of trains to ensure they would be within the anticipated limits for length and weight, that the blocking plan was feasible, and that increased yard volumes could be accommodated. The changes in GTMs, car-miles, location-based volumes, train schedules, and other operating plan attributes were used by the teams examining capital needs and labor impacts. A summary of labor impacts and equipment impacts, as well as the post transaction capital investments in the physical plant that CN proposes to make to the Springfield Line and ICRR's adjacent Gilman Subdivision, are all described herein.

5. Post-Transaction Operating Plan Implementation

The post-transaction Operating Plan for the Springfield Line would not be fully implemented on "Day One" after approval of the transaction. As noted above, the post-transaction Operating Plan depicts the anticipated operations of the combined CN network and ICRR-Springfield Line in the third year of combined operations (*i.e.*, 2025, assuming approval of the Responsive Application in 2022). As

such, it reflects the projected year of fully implemented post-transaction operations, following completion of planned capital improvements.

The Operating Plan assumes full realization of projected CN traffic gains by 2025 and also reflects the impact of phased gains in operating efficiency over the three-year implementation period from merged train operations (*e.g.*, more run-through, single-line trains; more bypass blocking; more block passing).[28]

IV. Pre-Transaction Line and Operations

A. KCS Springfield Line

1. Line Description

The Springfield Line consists of approximately 400 route miles of rail lines from Kansas City, MO, to Springfield, IL and East St. Louis.[29] It includes approximately 355 route-miles owned by KCS and approximately 43 trackage rights route-miles in Illinois and Missouri. Specifically, it consists of the following lines of the former Gateway Western Railway and Gateway Eastern Railway:

- The line from Milepost 192.4 at Cockrell (Springfield), IL through Milepost 482.0 at Rock Creek Jct. (Kansas City), MO (milepost equation at Murrayville, IL where Milepost 221.7=Milepost 226.7).

- The line from Milepost 68.2 at Roodhouse, IL (Milepost 237.2 on the first segment) through Milepost 287.2 at Church (East St. Louis), IL, including KCS's interest in the UP/KCS Joint Facility between Godfrey, IL, and Church, IL (milepost equation at Godfrey, IL where Milepost 28.0= Milepost

[28] Some anticipated efficiencies could not be immediately realized in Year 1 because of a variety of factors, including the time required to complete certain infrastructure improvements, negotiate implementing agreements, and implement operating initiatives.

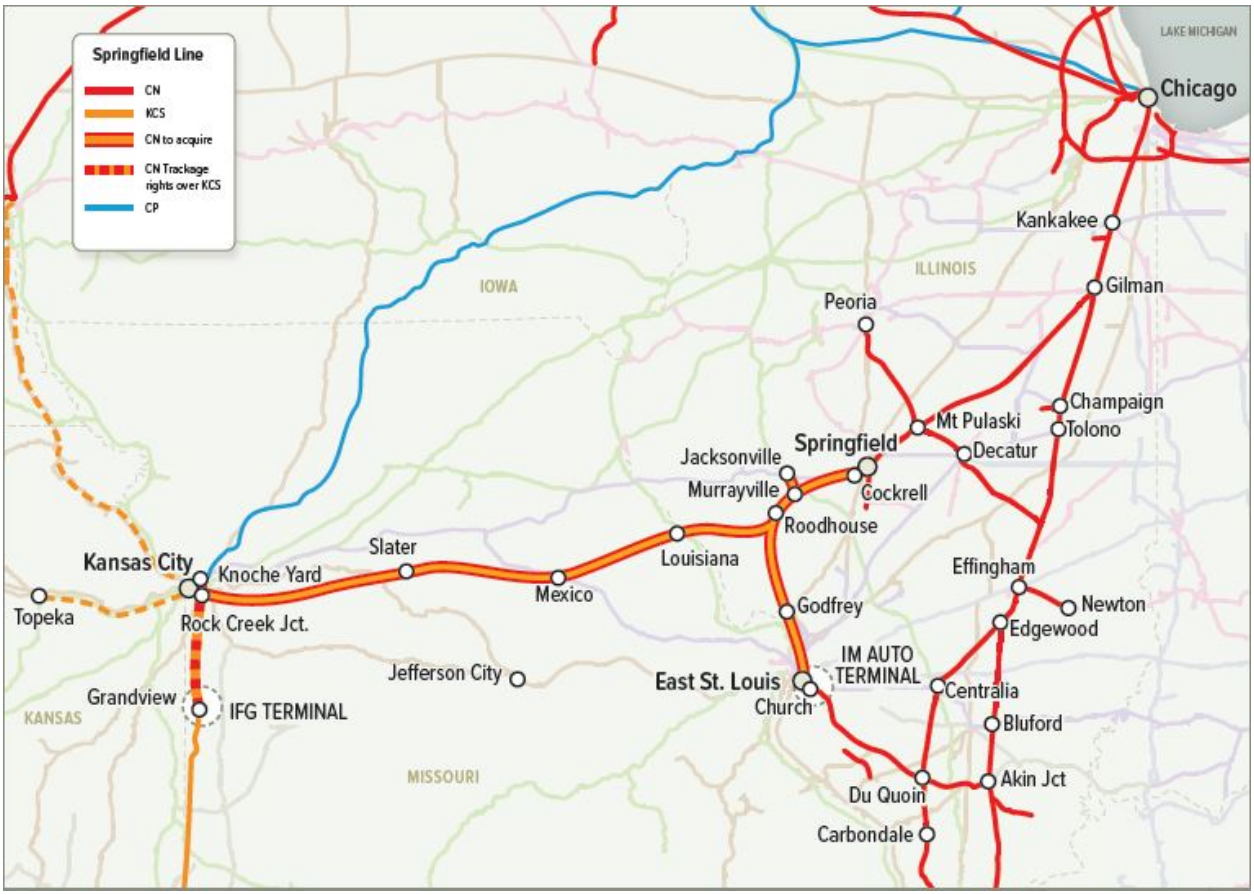
[29] All mileage and Milepost numbers on the Springfield Line and other affected KCS lines were sourced from a publicly available KCS timetable ("KCS Timetable").

252.1); Wann, IL, where Milepost 259.53= Milepost 262.00 and Q Tower, IL where Milepost 280.49= Milepost 280.70.

- The Jacksonville Branch from Milepost 226.7 at Murrayville, IL to Milepost 216.3 at Jacksonville, IL

- KCS's interest in the Fulton Branch from Milepost 0.0 to Milepost 3.0 at Mexico, MO, which is leased to and operated by Ozark Valley Railroad, Inc.[30] The Springfield Line is depicted in Figure 5.

Figure 5
The Springfield Line



[30] *Ozark Valley R.R.—Acquisition and Operation Exemption—The Kansas City S. Ry. Co.*, STB Fin. Docket No. 34989 (served June 8, 2007).

At Kansas City, the Springfield Line connects directly with the Kansas City Terminal Railway ("KCT").[31] A track connection in East St. Louis allows for the potential direct interchange with other Class I railroads, described further below, including CSXT, NS, UP/Alton & Southern Railway, and CN, as well as the Terminal Railroad Association ("TRRA") (which reaches BNSF and Missouri Eastern Railroad).[32] At Springfield, interchange is available with UP, NS, IMRR, and CN via ICRR trackage rights over NS as UP's subtenant.[33]

The Springfield Line is part of KCS' current North Division and comprises the following subdivisions, from west to east and north to south:[34]

- Mexico
- Roodhouse
- Fulton Branch (under long-term lease to the Ozark Valley Railroad)
- Jacksonville
- Springfield
- Godfrey
- East St. Louis Terminal
- Gateway Eastern Branch

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[31] *See* KCS Timetable.

[32] Determined in consultation with CN operating experts.

[33] *See Canadian National Ry. Co. – Control – Illinois Cent. R. Co.*, 4 S.T.B. 122, 175, 190-199 (1999).

[34] KCS Timetable.

In connection with the proposed divestiture, and to efficiently and safely operate the line, the responsive application also seeks from CP and KCS:

- Acquisition of an 8.33% ownership share of the KCT, whose Mill St. Yard is where ICRR plans to handle its manifest traffic in addition to Knoche Yard in Kansas City.

- A 50% interest in KCS's IFG Terminal, which is located 24 miles south of Kansas City at Grandview, MO. The interest is necessary to handle the make-up/break-up of CN's new daily intermodal train operating between Kansas City and Harvey, IL with connecting service to Detroit (with drayage to Cleveland), Toronto, and the Port of Montreal. As described further below, CN will also make a capital investment in the IFG Terminal to handle additional automotive and intermodal traffic.

- Overhead trackage rights on KCS's Pittsburg Subdivision to reach the IFG terminal, extending from approximately Milepost 5.6 at Airline Junction[35] in Kansas City, MO, to Milepost 29.5 near Grandview, MO, as well as assignment of KCS's rights to operate between Rock Creek Junction and Airline Junction in Kansas City.

- KCS's interest in the Gateway Eastern Railway Company ("GWER"), a KCS subsidiary which owns trackage in the East St. Louis terminal.[36]

KCS has implemented Positive Train Control ("PTC") on all required segments of the Springfield Line. Certain trackage in Springfield, Jacksonville, and East St. Louis have not been equipped with PTC, as permitted by Federal Railroad Administration ("FRA") regulations.[37] KCS's PTC-equipped track on the Springfield Subdivision is in track-warrant-controlled "dark territory."

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[35] Airline Junction and Southwest Junction are geographically close to each other and on some maps, are listed with the same milepost. For simplicity, the Operating Plan refers to this area as Airline Junction.

[36] *Id.*

[37] Kansas City Southern, *Positive Train Control*, https://www.kcsouthern.com/en-us/ship-with-us/safety-security/ptc (last accessed February 10, 2022).

Figure 6
Springfield Line Required PTC In Operation[38]



2. Existing Yards and Other Facilities

The most significant yard and terminal facilities along the Springfield Line operated by KCS are located at East St. Louis, IL, Kansas City, MO (joint agency at Knoche Yard), and the IFG Terminal. There is also a smaller yard at Roodhouse, IL.[39] Pre-transaction yard volumes are shown in Figure 7 below. The existing volume at Knoche Yard presented is based on the volumes reported in the CP/KC Application and have not been independently verified. It is believed to exclude unit traffic volumes. The Knoche Yard volumes also contain traffic that is unrelated to the Springfield Line and, thus, has a higher volume than would be reported if only

[38] *Id.* (Green is PTC operational; Blue is PTC not required).

[39] Determined in consultation with CN operating experts.

Springfield Line related volumes were identifiable and listed. The IFG Terminal also contains non-Springfield Line traffic in its totals.

Figure 7
Pre-transaction Yard Volumes[40]

Location	Base Total Equivalent Cars Handled
East St. Louis	{{ }}
International Freight Gateway	{{ }}
Kansas City/Knoche Yard	581.5
Roodhouse, IL	{{ }}

3. Existing Customers, Traffic, and Operations

Existing customers: There are existing shippers on the Springfield Line that generate originating, terminating, and interchange traffic. The top five customers—by volume—of the {{ }} carloads on the Springfield Line during 2019 are shown in Figure 8 for grain shippers and Figure 9 for non-grain carload shippers, below with their location provided.[41]

[40] *See* "HC – Operating Metrics – Estimation of Yard Activity.pdf" and associated analysis workpapers. Yard volume for "Kansas City/Knoche Yard" is based on Appendix B, CPKC merger application, Vol. 2, page 371.

[41] Source: "2019 CPKC 100% Waybills (FD 36500 – Work Paper – HC – 2019_CONSOLIDATED_CPKCS_DATA_MASTER.txt."

Figure 8
2019 Springfield Line Grain Shippers[42]

{{

}}

Figure 9
2019 Springfield Line (Non-Grain) Carload Shippers[43]

{{

}}

The top five shippers of the {{ }} intermodal containers that moved on the Springfield Line during 2019 are shown in Figure 10 by location.[44]

[42] Source: 2019 CPKC 100% Waybills (FD 36500 – Work Paper – HC – 2019_CONSOLIDATED_CPKCS_DATA_MASTER.txt) provided as part of CP/KC Application. *See* "HC – KCS Springfield Current Customers.xlsx."

[43] Source: 2019 CPKC 100% Waybills (FD 36500 – Work Paper – HC – 2019_CONSOLIDATED_CPKCS_DATA_MASTER.txt) provided as part of CP/KC Application. *See* "HC –KCS Springfield Current Customers.xlsx."

[44] *Id.*

Figure 10
2019 Springfield Line Intermodal Shippers[45]

{{

}}

Existing Train Operations on the Springfield Line: KCS currently operates the following road trains, local trains, and yard assignments on the Springfield Line. Assignments operate { } days per week.[46] A detailed listing of all trains operated is included in Appendix B. Many of the assignments in the Kansas City area primarily serve traffic not associated with the Springfield Line. ICRR does not expect to operate local trains in the Kansas City area post-transaction.

Scheduled Assignments[47]

- {{ }} foreign railroad transfers of interchange cars between Knoche Yard and the foreign railroad's yard in Kansas City.

[45] Source: 2019 CPKC 100% Waybills (FD 36500 – Work Paper – HC – 2019_CONSOLIDATED_CPKCS_DATA_MASTER.txt) provided as part of CP/KC Application. *See* "KCS Springfield Current Customers.xlsx."

[46] *See* "21.2.16 - KCSR-HC-00020863.xlsx" produced in discovery.

[47] *See id.*

- {{ }} operating from/to various locations on the Springfield Line, with destinations varying by day of the week[48]
- { }} operating between Kansas City and East St. Louis
- { }} in East St. Louis, with varying destinations depending on the day of the week
- { }} at the IFG Terminal
- { }} in Kansas City, with varying destinations depending on the day of the week.

Unscheduled Trains[49]

KCS operates an average of {{ }} unit grain trains per week (loaded and empty) from points along the Springfield Line to multiple destinations on the KCS and KCSM network.

These trains, locals, and yard assignments provide the following services:

- Through trains M-KCVN and M-VNKC run between Kansas City and East St. Louis four days per week.
- {

}[50]

[48] Local and unit train discussions are designated Highly Confidential because KCS's existing local and unit train service on the Springfield Line was derived from their Highly Confidential production. Other trains were available from publicly available sources. As a result, CN's planned local and unit train service were redacted to avoid any disclosure of KCS's current, apparently Highly Confidential local and unit train service.

[49] *See* "21.2.16 - KCSR-HC-00020860.xlsx", "21.2.16 - KCSR-HC-00020862.xlsx" produced in discovery.

[50] *See* "KCSR-HC-00020863.xlsx."

- {

}}[52]

- {

}[55]

Existing KCS operations in St. Louis: {

[51] *Id.*

[52] *Id.*

[53] *Id.*

[54] *Id.*

[55] *Id.*

[56] Source: "FD 36500 – Work Paper – HC – 2019_CONSOLIDATED_CPKCS_DATA_MASTER.txt" provided as part of CP/KC Application workpapers. *See* "KCS Springfield Interchange Volumes Analysis.xlsx" for analysis performed.

}}[57]

4. Existing Locomotive and Car Support Facilities

Locomotives: KCS maintains locomotive service tracks in both Kansas City, MO,[58] and East St. Louis, IL. Only the East St. Louis service track would be converted to ICRR as part of the proposed divestiture transaction. Locomotive service tracks can perform minor running repairs and servicing such as fueling, sanding, daily inspections, and locomotive derailment response. In addition,

}

Cars: For railcar maintenance and repair, KCS has mechanical facilities and personnel at both Kansas City, MO, and East St. Louis, IL. Again, only the East St. Louis facilities would be converted to ICRR in connection with the proposed transaction. {

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[57] *See* "KCSR-HC-00020863.xlsx."

[58] {

} (Source: Kansas City Southern, Mechanical – Locomotive Executive Report, 15 July 2021, 21.1.10 - KCSR-C-00020869 to KCSR-C-00020871.pdf).

[59] Kansas City Southern, Mechanical – Locomotive Executive Report, 15 July 2021, 21.1.10 - KCSR-C-00020869 to KCSR-C-00020871.pdf.

}

In addition to railcar maintenance and repair, KCS mechanical personnel perform other duties. In Kansas City, {

}[62]

These KCS personnel also handle work attributable to other parts of the KCS network.

Between Kansas City and East St. Louis, trainmen generally handle all required air brake tests and railcar inspections (except for 1,500-mile extended haul tests, as trainmen are not considered qualified mechanical inspectors by FRA) when making pickups and set outs at industries or other sidings. KCS also has identified locations between Kansas City and East St. Louis where train crews can perform intermediate terminal air brake tests. Those locations are {

}.[63]

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[60] *See* "21.1.11 - KCSR-C-00020872 to KCSR-C-00020874.pdf."

[61] *Id.*

[62] *Id.*

[63] *Id.*

5. Existing Track Condition

On February 11, 2022, CN received through a discovery production certain track and bridge inspection reports and pictures of track condition from KCS, including a June, 2021, Bridge Inspection Report of the KCS Bridge over the Mississippi River at Louisiana, MO, prepared by Modjeski and Masters, Inc, an engineering firm. On February 21, 2022, CN received through a discovery production video footage related to the Springfield Line. Both productions came late in the process of assembling the Responsive Application.[64]

CN has requested access to the Springfield Line from Kansas City to Cockrell/East St. Louis to perform a hi-rail or other physical inspection. As of the data of this Responsive Application, such access has not been granted.

It is not clear that any of the pictures produced by Applicants depict the line segment between Roodhouse, Ill., and Springfield, Ill. However, based on CN's existing knowledge, the line in some sections may be Class I or FRA excepted. Except for track restricted to {{ }} mph from {

}}, the KCS timetable (2020 edition)[65] does not show any conditions on the line from Kansas City to St. Louis and Springfield to be anything other than Class {{ }}. Physical inspection of the full Springfield Line would be required to confirm track conditions, as well as the condition of the bridges.

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[64] Track condition pictures and video and bridge inspection reports were produced by KCS in files in the range from "21.1.13 KCSR-C-00020876 to KCSR-C-00020887.pdf" to "21.1.220 KCSR-C-00027148-KCSR-C-00027148.pdf."

[65] A copy of the 2020 KCS timetable was produced through discovery.

6. Existing Dispatch

CN assumes that the Springfield Line is currently dispatched from a regional desk in the Kansas City Network Operations Center located in Kansas City, MO[66]

7. Existing Labor

According to the CP/KC Application and accompanying materials,[67] KCS currently employs 92 people on the Springfield Line, including 72 Agreement employees (Engineering – 20; Mechanical – 1; and Transportation – 49) and 20 Engineering, Mechanical, and Transportation Non-Agreement supervisory employees.[68] The location of these employees are shown in Figure 11. A complete list of employees by craft is provided in Appendix E.

[66] Source: Determined in consultation with CN operating experts.

[67] KCS produced a list of purported list of Springfield Line employees, but that list attributed to the Springfield Line numerous employees who will, in fact, actually continue to work on the KCS main line extending south from Kansas City.

[68] *See* "CP-KCS - Summary of GWWR Employee Impacts - Revised.pdf;" CP/KC Application. Verified Statement of Myron W. Becker at 245 (shows Engineering, Transportation, and Mechanical employees).

Figure 11
Locations of Springfield Line Employees[69]

Location	Agreement	Non-Agreement	Total
E. St. Louis, IL	35	7	42
Kansas City, MO	23	0	23
Louisiana, MO	4	0	4
Mexico, MO	4	3	7
Odessa, MO	0	5	5
Roodhouse, IL	0	1	1
Slater, MO	6	4	10

The table of existing employees by location that work under agreements originally entered into with the former Gateway Western Railway Company,[70] a predecessor company of KCS, includes an estimate of the Kansas City-based T&E employees who work on the through Kansas City – East St. Louis train pair. All other employees are actually located on the Springfield Line (excluding bridge tenders at Pearl who will be replaced by a remote bridge operation pending a request made by KCS to the U.S. Coast Guard).

[69] Source: "CP-KCS - Summary of GWWR Employee Impacts - Revised.pdf."

[70] *See* "CP-KCS - Summary of GWWR Employee Impacts - Revised.pdf"; CP/KC Application. Verified Statement of Myron W. Becker at 245 (shows Engineering, Transportation and Mechanical employees).

8. Existing Short Lines

Figure 12 below provides a list of the short line carriers that can interchange traffic at points along the Springfield Line. Not all of these carriers actively receive traffic from, or deliver traffic to, KCS.

Figure 12
Existing Short Lines on the Springfield Line[71]

Mark	Name	Interchange
ALS	Alton & Southern	East. St. Louis and Madison, Illinois
CMR[72]	Central Midland	Madison, Illinois
IMRR	Illinois & Midland Railroad	Springfield, Illinois
KCTL	Kansas City Terminal	Kansas City, Missouri, and Kansas City, Kansas
OVRR	Ozark Valley Railroad	Mexico, Missouri
PHRR	Port Harbor Railroad	Granite City, Illinois
TPW	Toledo, Peoria & Western	Springfield, Illinois (via IMRR and TZPR)
TRRA	Terminal Railroad of St. Louis	East St. Louis and Madison, Illinois
TZPR	Tazewell & Peoria	Springfield, Illinois (via IMRR)

Volume by interchange in the Base Year is set forth in Figure 13 below.

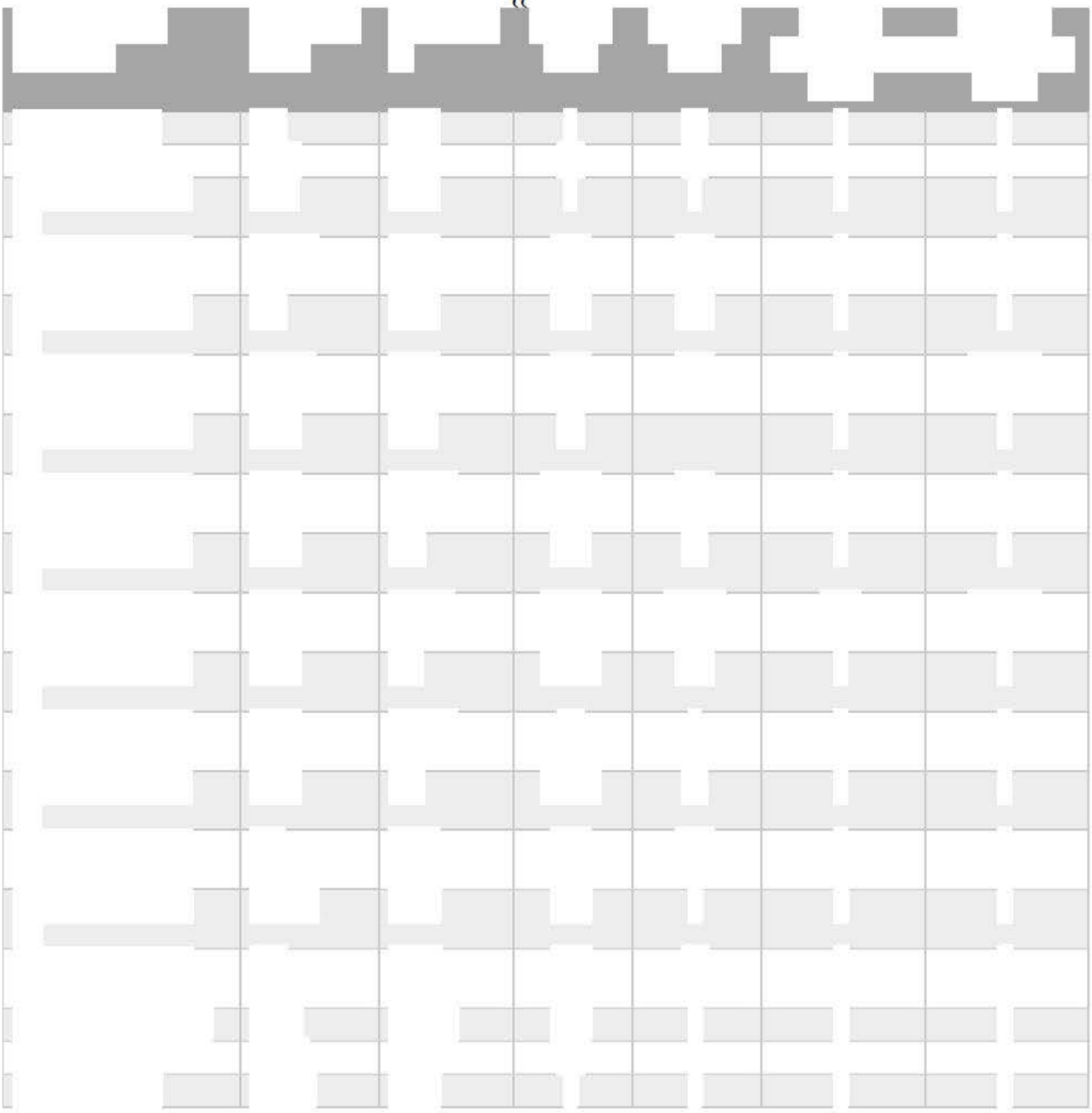
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[71] Source: KCS Network Map for Short Line connections (https://www.kcsouthern.com/en-us/work-with-us/partners/network-map). Actual interchange locations between KCS and Short Line were determined using Railinc: https://steelroads.railinc.com.

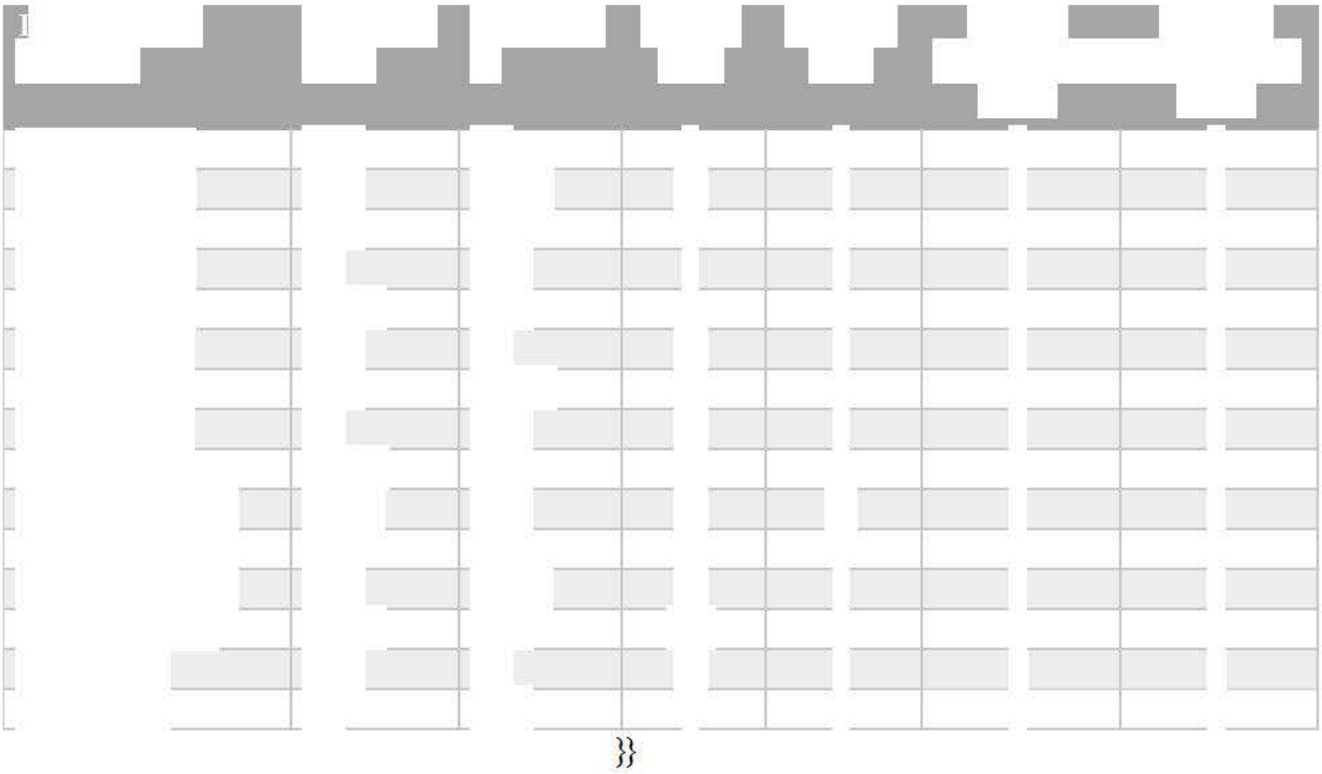
[72] Now Missouri Eastern Railroad (MER) as of November 2021.

Figure 13
Existing Short Lines & Class I Railroads: Interchanges & Traffic Volume (2019)[73]

{{



[73] Source: 100% CPKC Waybill data "FD 36500 – Work Paper – HC – 2019_CONSOLIDATED_CPKCS_DATA_MASTER.txt" provided as part of CP/KC Application workpapers. See "HC - KCS Springfield Interchange Volumes Analysis.xlsx" for analysis performed.



}}

9. Existing Passenger Service

a. Existing Intercity Service (Amtrak)

There are two segments of the Springfield Line over which Amtrak operates as a tenant of other railroads.

Near Kansas City: At Rock Creek Junction, MO, Amtrak arrives and departs Kansas City, crossing the existing Springfield Line for approximately 0.1 miles while moving from UP track to the KCT trackage.[74] Amtrak currently operates one daily Missouri state-supported Missouri River Runner train pair

[74] Amtrak, Illinois and Missouri Train Service Schedules, 23 March 2020; SPV, Comprehensive Railroad Atlas of North America, Prairies East and Ozarks, 2004.

between St. Louis and Kansas City (prior to 2022, the Amtrak operated two Missouri River Runner roundtrips per day).[75]

In addition, on occasion, Amtrak's daily long-distance Southwest Chief may be rerouted off the BNSF mainline at Congo, MO to take the ground-level route (as opposed to the Sheffield Flyover, which bridges Rock Creek Junction and other railroad grade crossings) through Rock Creek Junction. Amtrak trains rerouted in this manner share the line with KCS for approximately 0.1 miles. The Southwest Chief operates five days per week in both directions between Chicago, Kansas City, and Los Angeles, which is tentatively scheduled to end March 27, 2022, when the train is expected to go back to its daily schedule.[76]

Godfrey, IL and Q Tower, IL (East St. Louis): Between Godfrey, IL and Q Tower in East St. Louis, IL, Amtrak operates as part of a higher-speed Chicago to St. Louis Corridor. The Amtrak trains operating over this line include four daily Lincoln Service train pairs and one daily Texas Eagle train pair (currently operating five days per week due to the COVID-19 pandemic.[77] UP hosts these trains on the jointly owned segment between Godfrey and Q Tower. UP dispatches

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[75] KSHB, Amtrak to reduce Missouri service to 1 daily round trip, 1 January 2022.

[76] Amtrak, Southwest Chief Train Service Schedule, 8 March 2020; Railway Age, Omicron Forces Amtrak Service Cuts, 18 January 2022; SPV, Comprehensive Railroad Atlas of North America, Prairies East and Ozarks, 2004.

[77] Amtrak, Illinois and Missouri Train Service Schedules, 23 March 2020; Railway Age, Omicron Forces Amtrak Service Cuts, 18 January 2022.

the jointly owned segment. A subset of these Amtrak trains exit the segment after a shorter distance at WR Tower in Granite City, IL, for an alternative routing into St. Louis.

b. Existing Commuter Rail Service

The KCS Springfield Line does not currently host any commuter rail service.

B. CN's Current Operations

1. Line Description

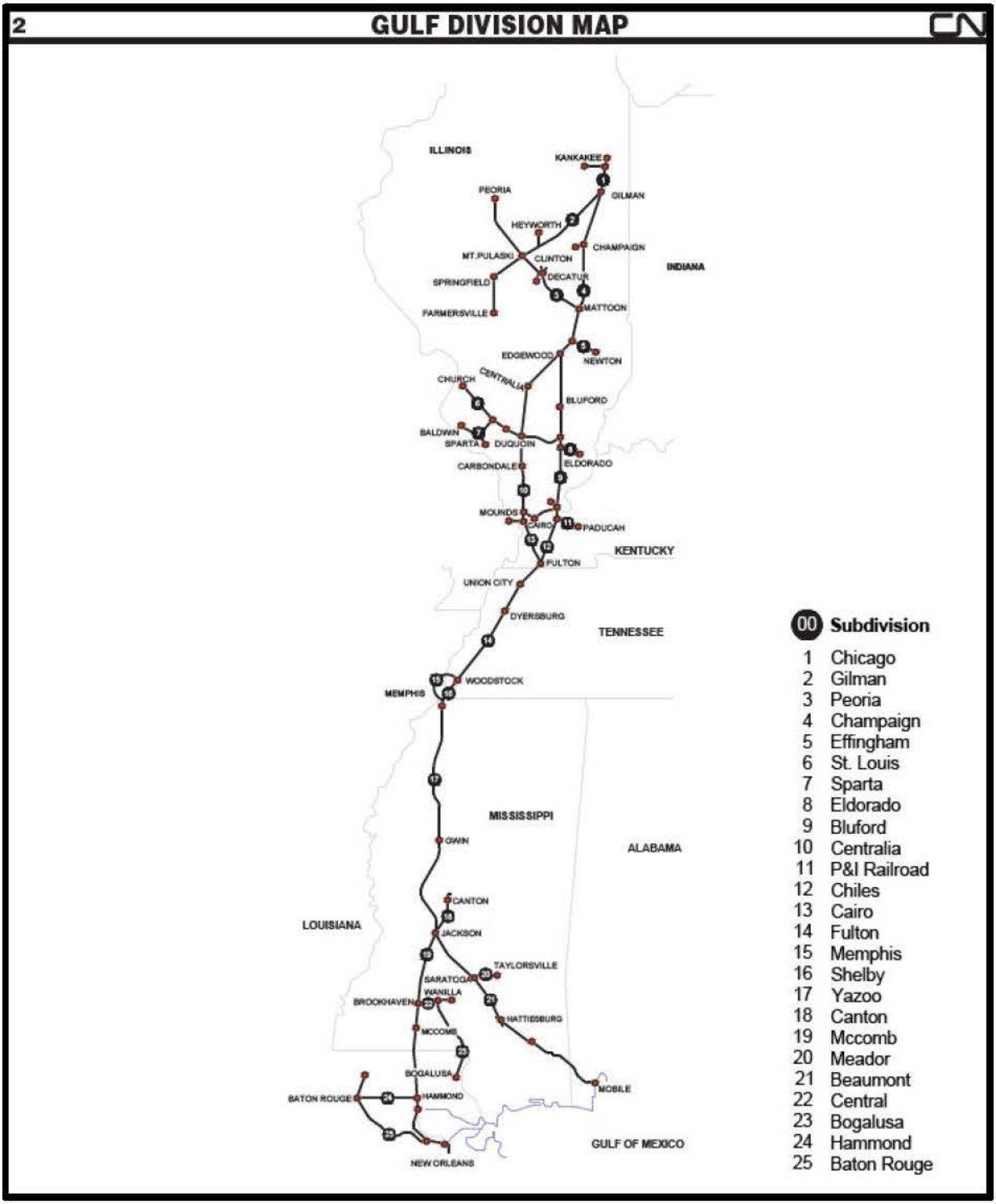
CN's current network spans approximately 18,619 route miles in 13 U.S. states and eight Canadian provinces, with 5,314 miles in the United States. CN has lines linking the Atlantic, Pacific, and Gulf Coasts of North America. CN has approximately 2,310 locomotives, 51,974 railcars, and 25,975 employees across its U.S. and Canadian system. CN currently operates an average of 479 freight trains per day (including 224 road trains and 255 local and switching assignments).

CN's network is organized into two regions: Western (Western Canada) and Eastern (Eastern Canada and the United States). In the United States, CN's network is organized into three divisions: Midwest, Central, and Gulf. For purposes of this Responsive Application, detail is provided about the portions of CN's network that will be most affected by ICRR's acquisition of the Springfield Line.

In Eastern Canada, some transaction-related impact will occur between Sarnia and Montreal, including Toronto because of increased volume of intermodal traffic to and from the Port of Montreal. In the United States, the increased traffic from the projected diversions will primarily affect CN's Central and Gulf Divisions. The additional trains and cars by segment are described further below.

CN's Gulf Division is depicted in Figure 14. The Gulf Division includes 25 subdivisions, running from Kankakee, IL through Illinois, Kentucky, and Tennessee to Memphis, TN, and south to Jackson, MS. At Jackson, CN's lines split with one line extending southeast to Mobile, AL and a second line running south to New Orleans, LA. An additional main line extends northwest from New Orleans to Baton Rouge, LA. In Illinois, CN lines extend to several western points.

Figure 14

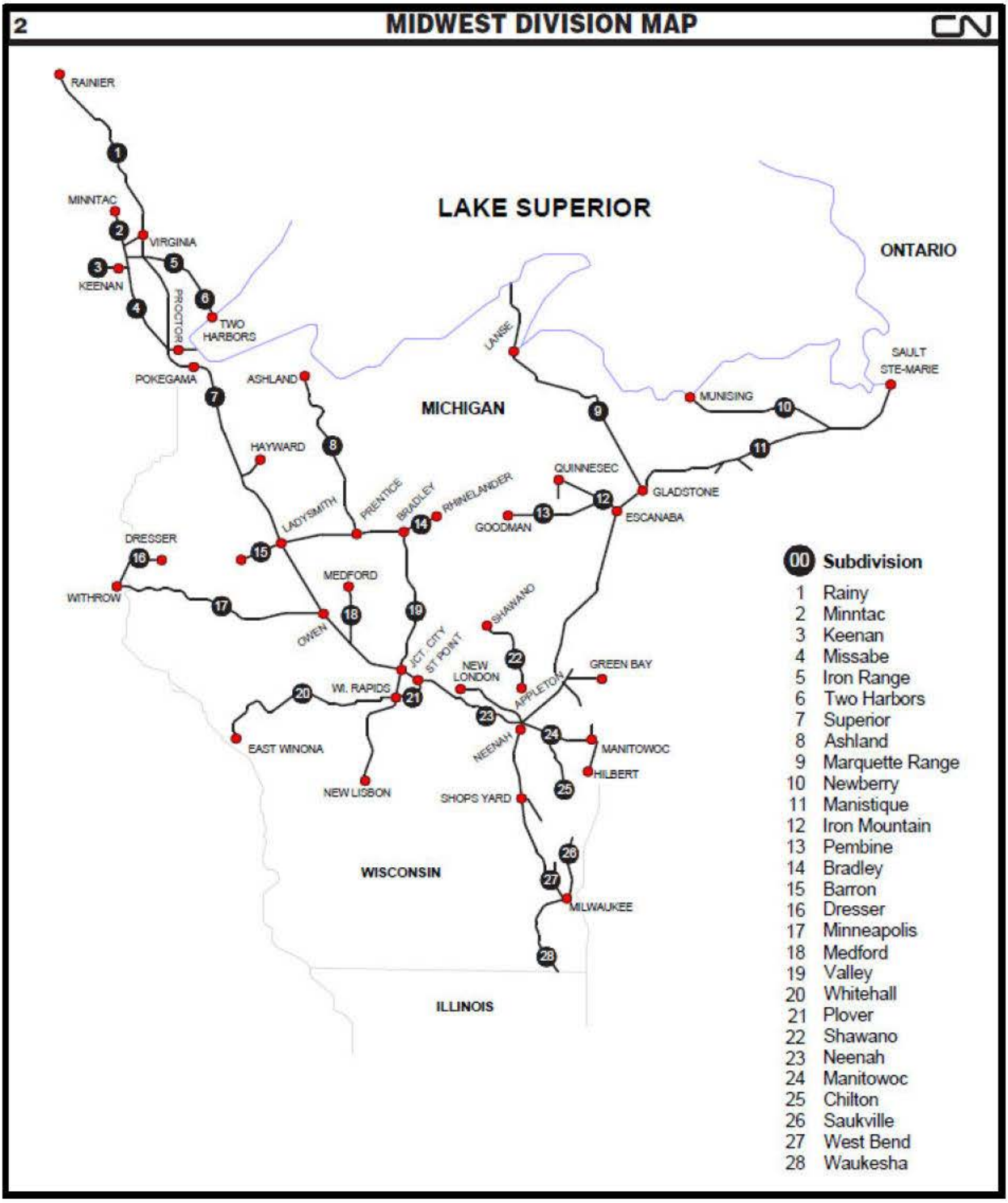

2
GULF DIVISION MAP
ILLINOIS
KANKAKEE
GILMAN
PEORIA
HEYWORTH
CHAMPAIGN
MT.PULASKI
CLINTON
DECATUR
INDIANA
SPRINGFIELD
MATTOON
FARMERSVILLE
EDGEWOOD
NEWTON
CHURCH
CENTRALIA
BLUFORD
BALDWIN
SPARTA
DUQUOIN
ELDORADO
CARBONDALE
MOUNDS
CAIRO
PADUCAH
KENTUCKY
FULTON
UNION CITY
DYERSBURG
TENNESSEE
WOODSTOCK
MEMPHIS
MISSISSIPPI
GWIN
ALABAMA
CANTON
LOUISIANA
JACKSON
TAYLORSVILLE
SARATOGA
WANILLA
BROOKHAVEN
HATTIESBURG
MCCOMB
BOGALUSA
MOBILE
BATON ROUGE
HAMMOND
GULF OF MEXICO
NEW ORLEANS
00 Subdivision
1 Chicago
2 Gilman
3 Peoria
4 Champaign
5 Effingham
6 St. Louis
7 Sparta
8 Eldorado
9 Bluford
10 Centralia
11 P&I Railroad
12 Chiles
13 Cairo
14 Fulton
15 Memphis
16 Shelby
17 Yazoo
18 Canton
19 Mccomb
20 Meador
21 Beaumont
22 Central
23 Bogalusa
24 Hammond
25 Baton Rouge

The Gulf Division operates in mid-America, serving several major natural resource and industrial traffic flows, including: chemicals from Louisiana and Mississippi to Chicago and other gateways; grain from Midwestern origins to processing plants in the Midwest, river barge facilities, and Gulf ports; and intermodal traffic, paper, forest products, metals, and bulk commodities. CN also provides premium north-south intermodal service from Chicago to New Orleans, LA, and points en route in Memphis, TN and Jackson, MS. CN's Gulf Division has rail connections with all major railroads in the United States and provides significant joint linehaul service in conjunction with other carriers. The Gulf Division provides access to the ports of New Orleans and Mobile on the Gulf of Mexico, and to various other port facilities on the Mississippi River. The Gulf Division includes the Gilman Subdivision, which runs from Springfield, IL to Gilman, IL.

CN's Midwest Division is depicted in Figure 15. The Midwest Division include 30 subdivisions and extends from Ranier, MN south to Milwaukee and Waukesha, WI.[78] Its western-most point is Withrow, MN, and its eastern-most point is Sault Ste-Marie, MI. To the south, it terminates at Antioch, IL

[78] Wisconsin Central consummated its transaction on January 28, 2022 with Watco, that involved the sale of certain lines in Wisconsin and Michigan. *See* STB Docket Nos. 36503, 36504, and 36505.

Figure 15


2
MIDWEST DIVISION MAP
CN
LAKE SUPERIOR
ONTARIO
MICHIGAN
WISCONSIN
ILLINOIS
RAINIER
MINNTAC
VIRGINIA
KEENAN
PROCTOR
TWO HARBORS
POKEGAMA
ASHLAND
HAYWARD
LADYSMITH
PRENTICE
BRADLEY
RHINELANDER
DRESSER
WITHROW
MEDFORD
OWEN
JCT. CITY
ST POINT
WI. RAPIDS
EAST WINONA
NEW LISBON
NEW LONDON
SHAWANO
GREEN BAY
APPLETON
NEENAH
MANITOWOC
HILBERT
SHOPS YARD
MILWAUKEE
LANSE
MUNISING
SAULT STE-MARIE
QUINNESEC
GLADSTONE
ESCANABA
GOODMAN
00 Subdivision
1 Rainy
2 Minntac
3 Keenan
4 Missabe
5 Iron Range
6 Two Harbors
7 Superior
8 Ashland
9 Marquette Range
10 Newberry
11 Manistique
12 Iron Mountain
13 Pembine
14 Bradley
15 Barron
16 Dresser
17 Minneapolis
18 Medford
19 Valley
20 Whitehall
21 Plover
22 Shawano
23 Neenah
24 Manitowoc
25 Chilton
26 Saukville
27 West Bend
28 Waukesha

CN's Central Division is depicted in Figures 16-18. The Central Division has 28 subdivisions. It includes CN's line between Conneaut, OH and Wallace Junction, PA to North Bessemer, PA. It runs south from Port Huron, MI to Toledo, OH, then also runs west from Port Huron, MI, through Battle Creek, MI, then onto Griffith, IN. The Central Divisions includes Detroit and runs west through and around Chicago and on through Illinois and Iowa to Omaha, NE.

Figure 16

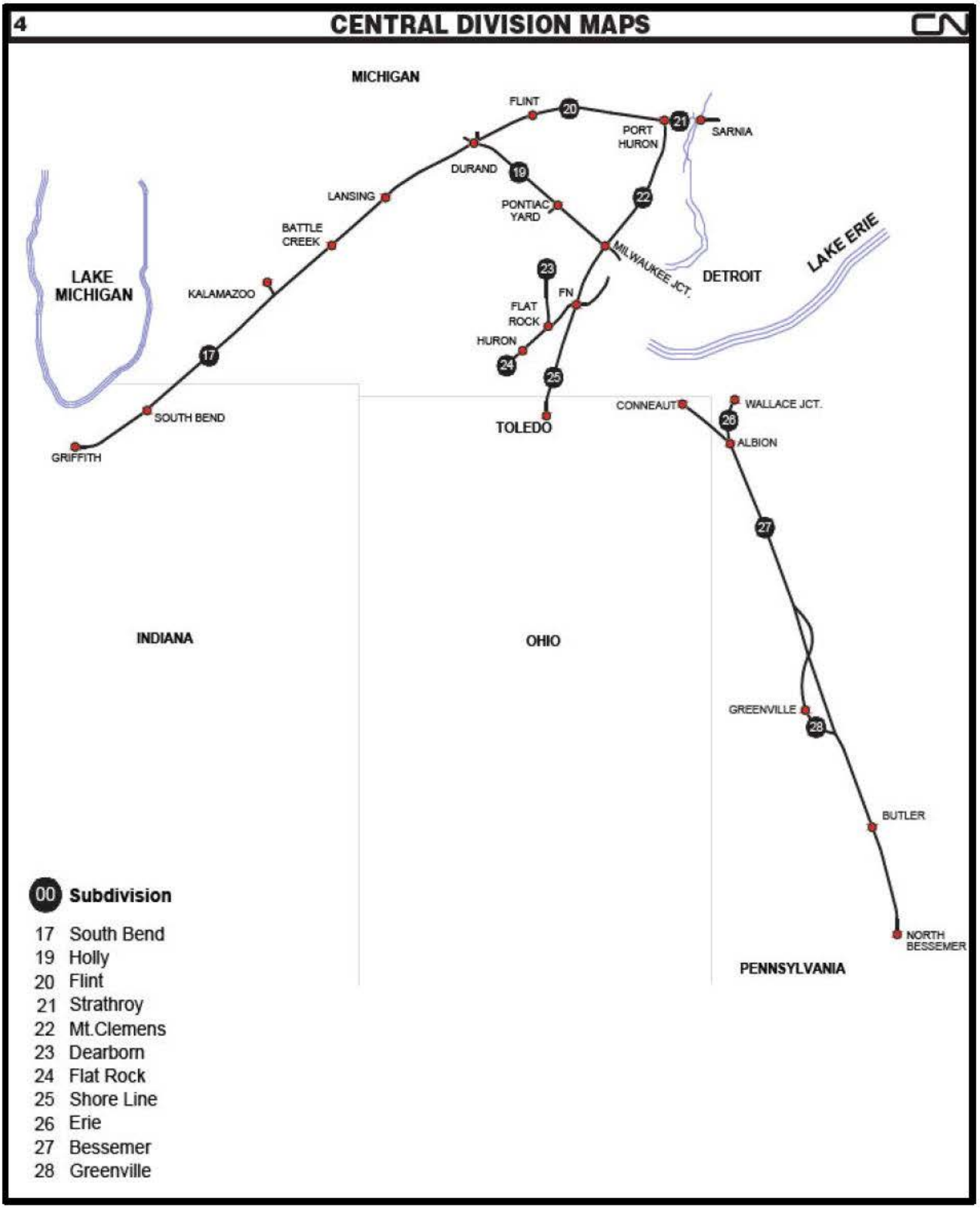

4
CENTRAL DIVISION MAPS
MICHIGAN
FLINT
20
21
SARNIA
PORT HURON
DURAND
19
LANSING
22
PONTIAC YARD
BATTLE CREEK
MILWAUKEE JCT.
LAKE MICHIGAN
KALAMAZOO
23
FN
DETROIT
LAKE ERIE
FLAT ROCK
HURON
24
25
17
SOUTH BEND
TOLEDO
CONNEAUT
WALLACE JCT.
26
ALBION
GRIFFITH
27
INDIANA
OHIO
GREENVILLE
28
BUTLER
NORTH BESSEMER
PENNSYLVANIA
00 Subdivision
17 South Bend
19 Holly
20 Flint
21 Strathroy
22 Mt.Clemens
23 Dearborn
24 Flat Rock
25 Shore Line
26 Erie
27 Bessemer
28 Greenville

Figure 17

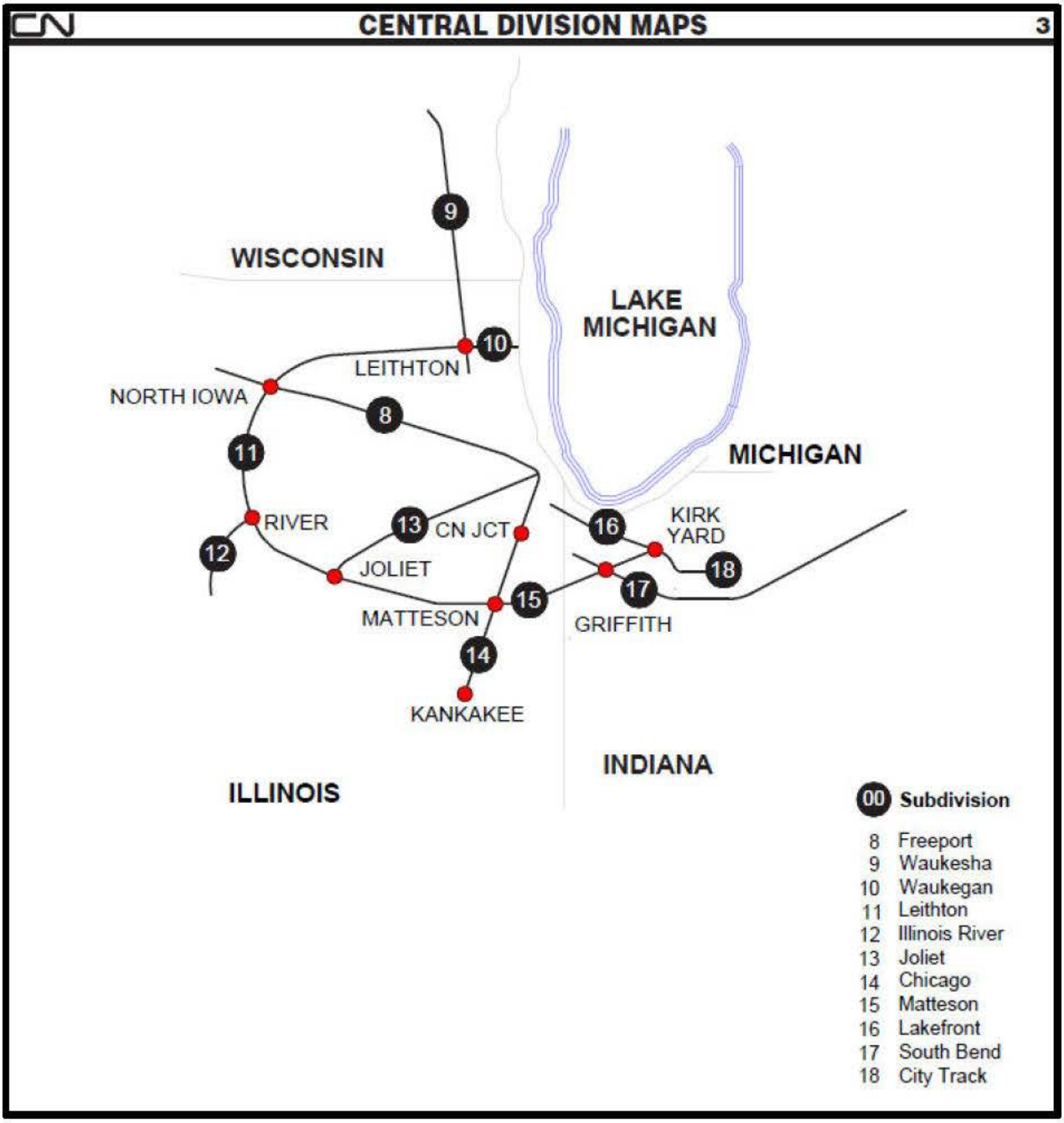
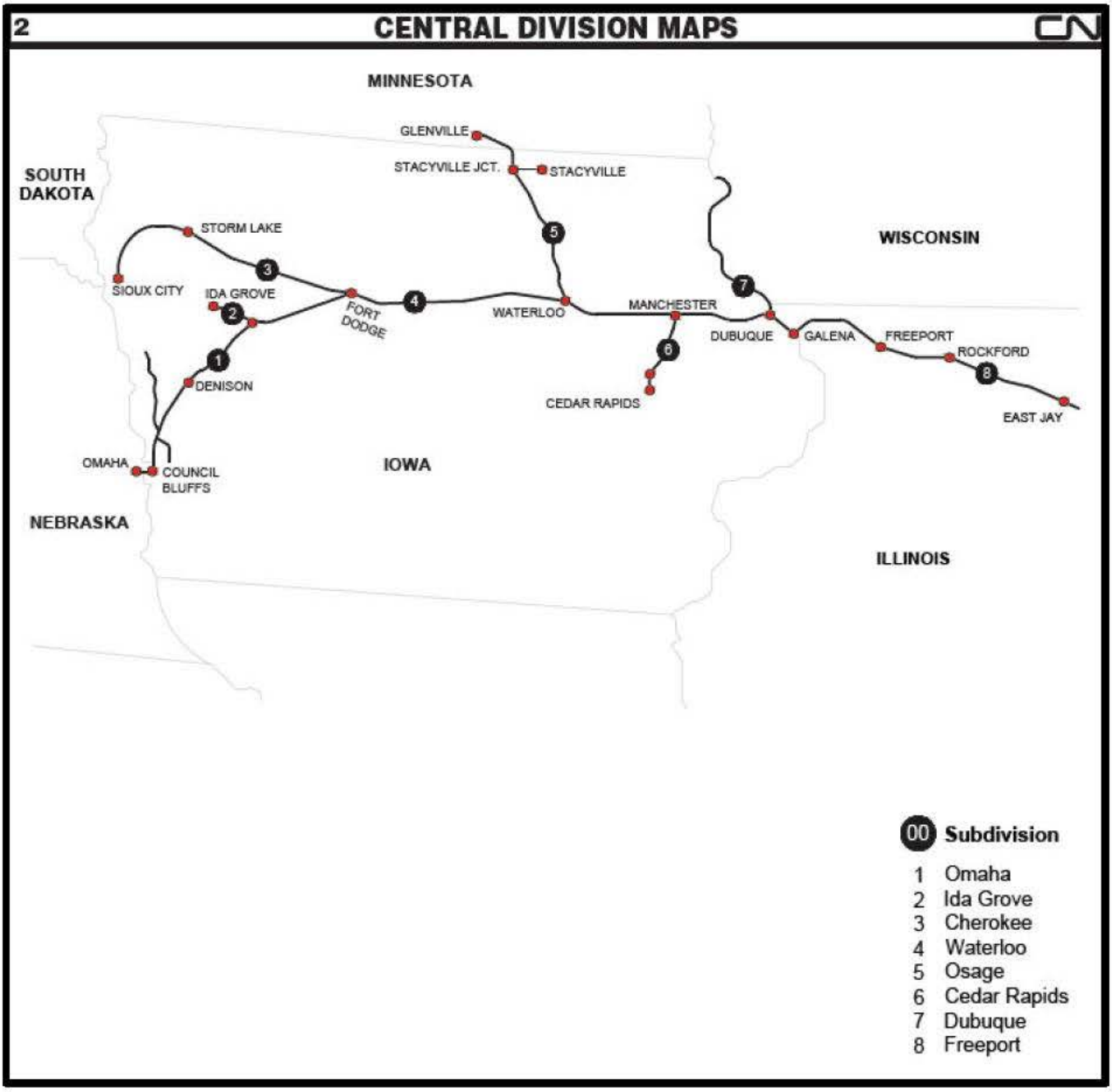

CN
CENTRAL DIVISION MAPS
3
WISCONSIN
LAKE MICHIGAN
MICHIGAN
INDIANA
ILLINOIS
9
10
LEITHTON
NORTH IOWA
8
11
RIVER
12
13
CN JCT
JOLIET
MATTESON
14
KANKAKEE
15
16
KIRK YARD
17
GRIFFITH
18
00 Subdivision
8 Freeport
9 Waukesha
10 Waukegan
11 Leithton
12 Illinois River
13 Joliet
14 Chicago
15 Matteson
16 Lakefront
17 South Bend
18 City Track

Figure 18

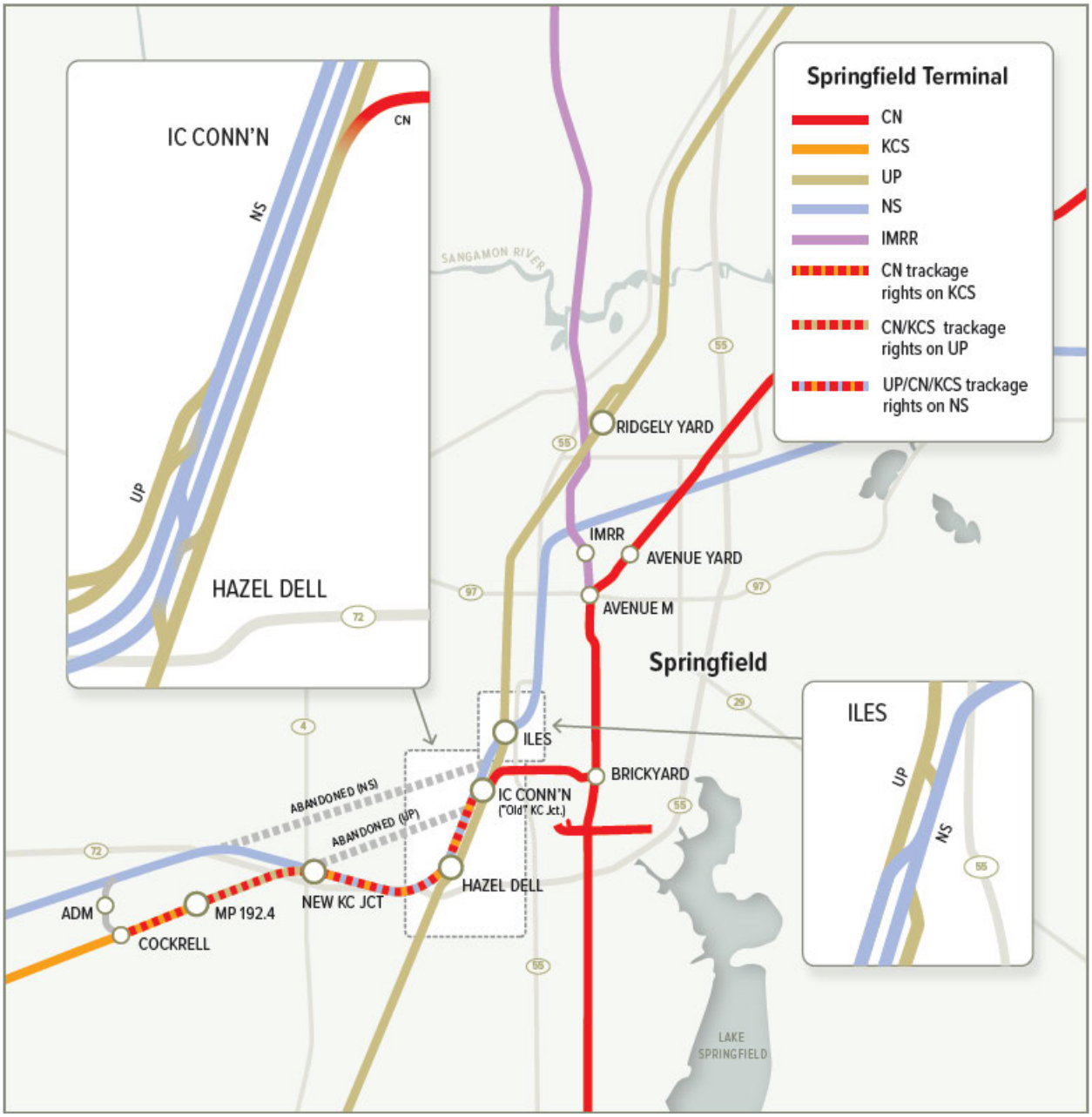


The junction of CN's existing network and the Springfield Line occurs in Springfield, IL, where CN trains move over trackage rights as a subtenant of UP. CN operates for 1.8 miles on the UP-owned Airline Industrial Lead and over the NS mainline for 2.6 miles (a line over which UP freight trains and Amtrak passenger

trains also operate over, under NS dispatcher authority),[79] using turnouts to get on and off to reach CN's Gilman District line of the Gulf Region; then 115.3 miles to reach Gilman, IL, where this line connects with CN's main north-south line toward Chicago. Figure 19 depicts the lines in the Springfield Terminal area.

[79] Union Pacific, St. Louis Area Timetable No. 6, 30 March 2020, p. 43.

Figure 19
Springfield Terminal



CN also connects with the Springfield Line in East St. Louis at Church. CN also, infrequently, interchanges unit trains with KCS in East St. Louis Yard. CN uses overhead trackage rights over KCS to reach TRRA's Madison Yard and CN

leases a portion of the KCS yard office in East St. Louis as a CN crew reporting location.

The new train services contemplated by the Operating Plan will operate between Kansas City and the CN Chicago Intermodal Terminal/Markham Yard ("CIT") and East St. Louis and Roodhouse, IL. The increased intermodal and automotive volumes attracted by CN's new single-line services will be added to existing CN trains for movement between CIT and Detroit/Toronto/Port of Montreal.

CN's Chicago Subdivision between Chicago, IL and Gilman, IL is CTC/PTC and permits operating speeds of 60 MPH and 79 MPH for passenger. It is a single-track railroad with passing sidings. Twelve freight trains and four passenger trains per day.

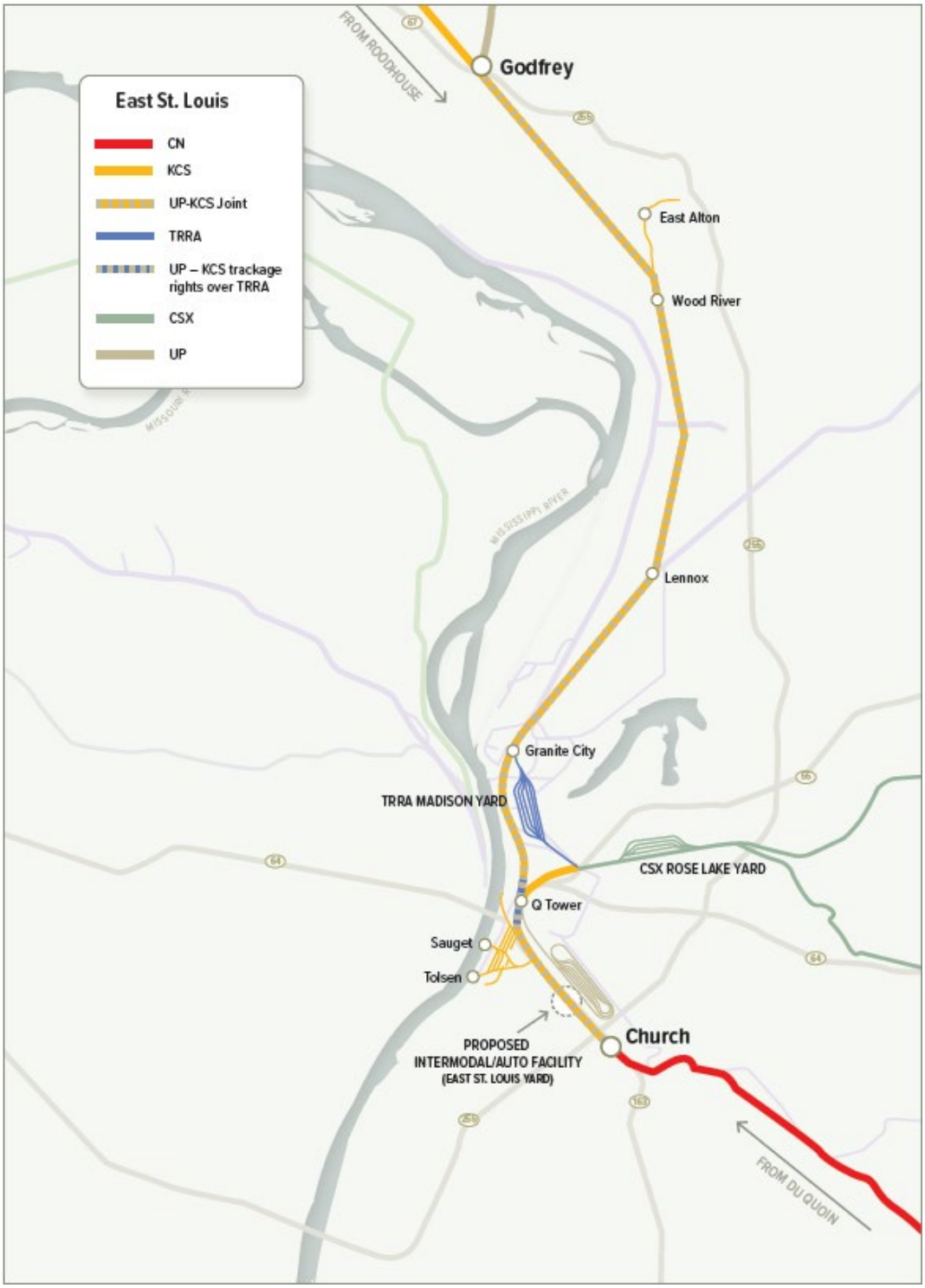
There are numerous points of interchanges along CN's lines between Memphis and Chicago. Non-unit train interchanges of significance include the interchange with CSXT at Effingham, IL (daily interchange); the Indiana Railroad ("INRD") at Effingham, IL (interchange six days per week); the UP at Salem, IL (daily interchange with 2-3 run through trains); TRRA at East St. Louis (six day turn local interchange); and the Paducah & Louisville Railway ("PAL") at Paducah, IL (six day turn local interchange). Smaller volume interchanges take place with NS at Decatur, IL; TZPR in Peoria, IL; and TPW at Gilman, IL. The 2019 interchange volumes for the five highest volume interchanges are shown in Figure 20 below.

Figure 20
2019 Interchange Volumes for Most Significant Interchanges Between Chicago and Gilman

Station	Foreign	Delivered	Received	Total
Effingham	CSXT	4,100	4,650	8,750
East St. Louis	TRRA	9,678	9,882	19,560
Newton/Indy Int	INRD	16,675	16,642	33,317
Paducah	PAL	17,468	17,521	34,989
Salem	UP	54,888	39,161	94,049
Grand Total		**102,811**	**87,856**	**190,667**

CN can enter KCS's East St. Louis Yard from the southeast. KCS enters from the northwest. Unit trains destined for Sauget on the Mississippi River are interchanged infrequently between CN and KCS at this point. East St. Louis Yard has a small transload terminal today. CN's plan is to add an automotive unloading terminal and an intermodal terminal to this underutilized facility. Today, CN operates a train six days per week between East St. Louis and its main north-south freight line at Du Quoin, IL. The traffic then transfers to manifest trains to/from St. Louis. CN has overhead trackage rights to reach TRRA's Madison Yard. All interchange of CN manifest traffic is done through TRRA, which provides such service six days per week.

Figure 21
East St. Louis



2. Existing Yards and Other Facilities

CN operates numerous yards and facilities throughout the United States. Relevant to this Responsive Application, there are five existing major CN yards that serve hump, intermodal, and automotive traffic in the vicinity of Chicago, IL and Memphis, TN. Traffic to and from the Springfield Line will generally transit one or more of these yards.

a. Greater Chicago Area

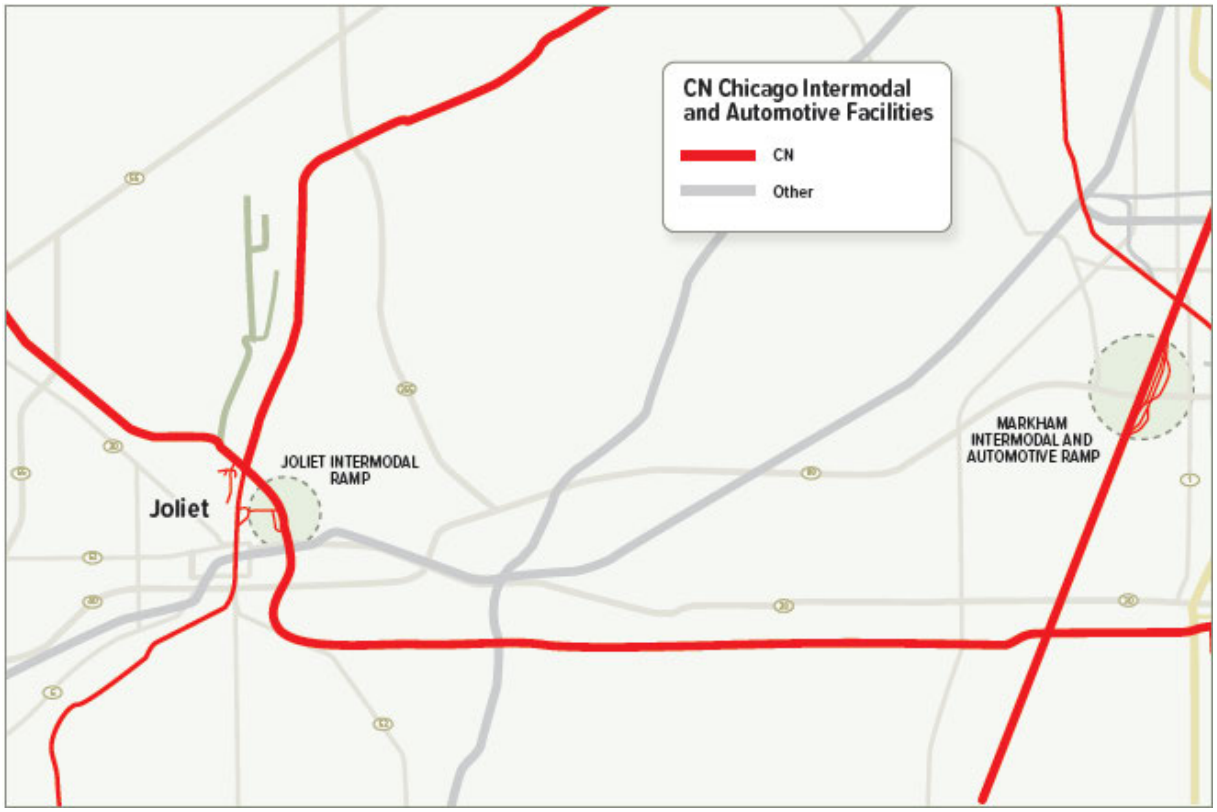
Kirk Yard is CN's hump yard in Gary, Ind., southeast of Chicago. The yard consistently processes 2,000–2,200 cars per day. The yard hosts 18 core train departures per day, three core train turn locals departure/arrivals per day, and 21–24 core train arrivals per day. Additional train movements include interchange with the Chicago South Shore & South Bend Railroad ("CSS") short line daily in and out, CSXT manifest trains daily in and out, CSXT unit coke trains, and a limited number of NS unit coke trains. The yard's fluid capacity is 3,500 cars, but it has the ability to accommodate up to 4,300 cars per day on a short term basis if required. Kirk Yard has eight receiving tracks, 11 departure tracks, and 53 classification tracks which allows it to classify numerous cars and trains at any given time.

Markham Automotive Yard in Hazel Crest, IL, south of Chicago, is CN's automotive yard. Markham Yard has two 1,300-foot unloading tracks. It hosts four automotive trains per day. NS, UP, and the Indiana Harbor Belt Railroad ("IHB") can interchange finished vehicles with CN at this location.

CN's Chicago Intermodal Terminal or CIT is in Harvey, IL, south of Chicago, is CN's intermodal yard.[80] The yard has two tracks of 7,200 feet, two tracks of 6,000 feet, and three tracks of 2500 feet, all with asphalt pad to accommodate chassis movements. The Harvey facility currently hosts 11 intermodal trains per day in and/or out, four automotive trains per day in and/or out, two switching jobs, and two industry jobs. NS, UP, CSXT, and the IHB can all interchange intermodal traffic with CN at Harvey. The yard can flat-switch about 300 cars per day. It also has a small, four-track support yard. CN has a dried distillers' grains ("DDG") transload facility that receives product from Iowa, where it is loaded into containers and shipped to Asia.

[80] CIT is within the broad footprint of what has historically been referred to as Markham Yard.

Figure 22
Markham Yard



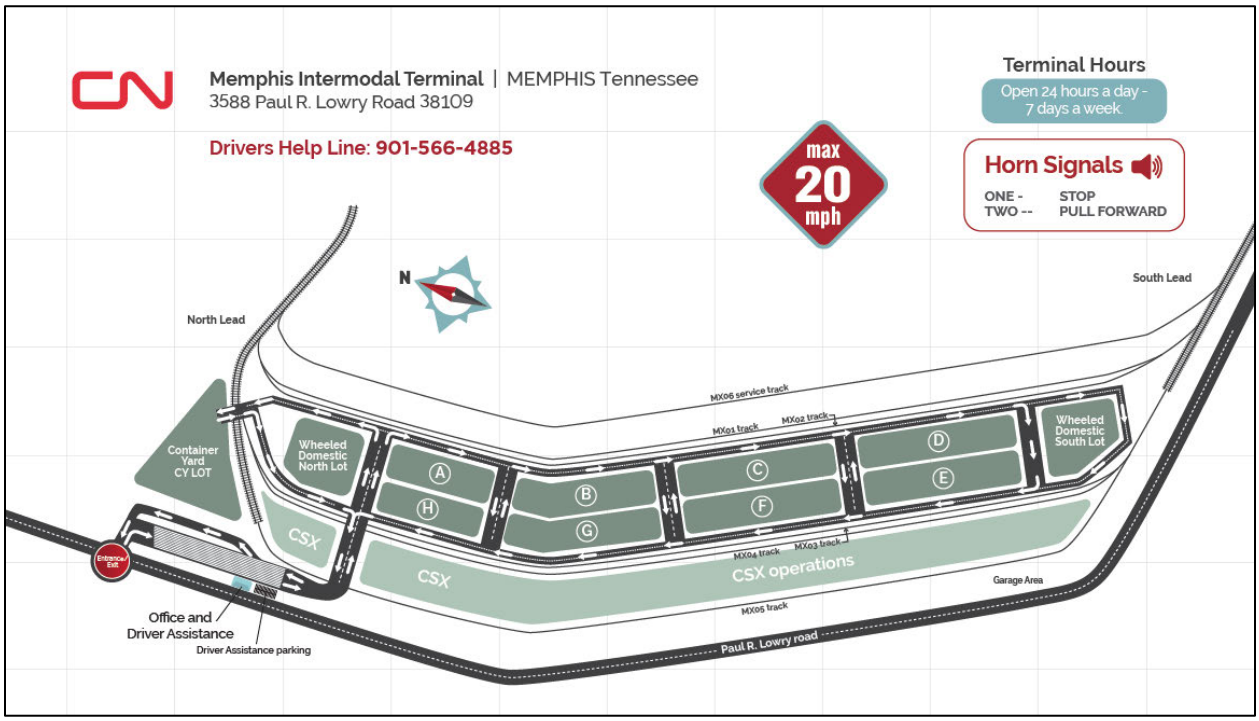
b. Memphis

Harrison Yard is CN's hump yard in Memphis, TN. The yard consists of eight receiving tracks, four departure tracks, 45 classification tracks and a single pull back on the single hump. The yard uses dowdy retarders and is not a traditional hump yard. The 45 classification tracks come off two separate long leads that are equal in length. Harrison Yard's fluid capacity is about 2,600 cars. The yard consistently processes 1,100–1,300 cars per day. The yard currently hosts 18 core train arrivals and departures daily, including interchange traffic; prior to the COVID-19 pandemic, the yard regularly hosted 22 core trains per day. The yard workload also includes 10–12 bulk trains per day (a number that increases during

peak grain harvest season) three transfers per day in and out, four hump assignments, five pull-down trim assignments, and two industry assignments. CN interchanges traffic daily with CSXT, UP, NS, BNSF, and the Grenada Railway short line at Harrison Yard.

CN's Memphis intermodal yard is co-located with CSXT with separated rail operations. CN has two pad tracks (about 6,200 feet each), and CSX has two pad tracks (about 5,500 feet each). Each railroad has an 8,000-foot running track without loading pad. Two CN intermodal trains operate daily out of the yard, with two more operating four days per week. CSXT operates a daily pair of trains from the facility. CN's Memphis automotive compound is located at a small satellite yard and has two 725-foot unloading tracks.

Figure 23
Memphis Intermodal Terminal



3. Existing Traffic and Customers

CN's existing traffic base systemwide is divided into seven commodity groups. Figure 24 shows the carload and revenue breakdown for each commodity group for the Base Year 2019. As noted previously, the most significant commodities for purposes of this Responsive Application are intermodal and automotive traffic.

Figure 24
CN 2019 Traffic Base

Commodity Group	Carloads
Intermodal	2,618,000
Automotive	269,000
Grain and Fertilizers	619,000
Metals and Minerals	1,008,000
Petroleum and Chemical	688,000
Forest Products	375,000
Coal	335,000
Total	**5,912,000**

a. Intermodal

CN's intermodal commodity business includes rail and trucking services and is comprised of two markets: domestic intermodal and international intermodal. Domestic intermodal transports consumer products and manufactured goods, serving retail, wholesale, and logistics-provider channels, both domestically in Canada and the United States, and cross-border shipments. International intermodal handles import and export container traffic to and from overseas markets, serving the major ports of Vancouver, Prince Rupert, Montreal, and Halifax in Canada, as well as the U.S. ports of New Orleans and Mobile. CN's

network of inland intermodal terminals, located near ports and large urban centers, connects customers to major markets in North America and overseas.

b. Automotive

CN's automotive commodity group moves both domestic finished vehicles and vehicle parts throughout North America, providing service to vehicle assembly plants in Ontario, Michigan, and Mississippi. CN also serves vehicle distribution facilities in Canada and the United States, as well as parts production facilities in Michigan and Ontario. CN also serves shippers of imported finished vehicles via the ports of Halifax and Vancouver, and through interchange with other railroads. CN's network of automotive facilities is used to distribute vehicles throughout Canada and the U.S. Midwest

c. Grain and Fertilizers

The grain and fertilizers commodity group primarily includes crops grown and fertilizers processed in Western Canada and the U.S. Midwest. Grain products transported by CN include wheat, oats, barley, flaxseed, rye, peas, lentils, corn, ethanol, dried distillers grain, canola seed and canola products, soybeans, and soybean products. The majority of the grain produced in Western Canada and moved by CN is exported via the ports of Vancouver, Prince Rupert, and Thunder Bay. Grain grown in the U.S. Midwest is both exported and transported to domestic processing facilities and feed markets. CN also serves major producers of potash in Canada, as well as producers of ammonium nitrate, urea, and other fertilizers across Canada and the United States.

d. Other Commodity Groups

The remaining commodity groups in CN's current traffic base include:

- Metals and Minerals, including steel, iron ore, non-ferrous base metals and ores, construction materials, machinery, railway equipment, and dimensional (large) loads.

- Petroleum and Chemical, which comprises a wide range of commodities, including chemicals and plastics, refined petroleum products, natural gas liquids, crude oil, and sulfur.

- Forest Products, which includes various types of lumber, panels, paper, wood pulp and other fibers such as logs, recycled paper, wood chips, and wood pellets.

- Coal, which consists of thermal grades of bituminous coal, metallurgical coal, and petroleum coke.

4. Existing Dispatch

In the United States, CN dispatches trains from a dispatching center at Homewood, IL This dispatching facility operates 24/7, 365 days per year with approximately 90 employees—predominantly Rail Traffic Controllers ("RTCs")—and dispatches all CN lines in the United States. Homewood uses Precision Dispatch System ("PDS") as its dispatch system. CN operates 13 dispatch desks at Homewood during the day shift, Monday through Friday, and 11 dispatch desks across the other shifts. The Homewood RTCs are responsible for dispatching an average of 108 trains per day across 83 subdivisions in the United States.

5. Existing Labor

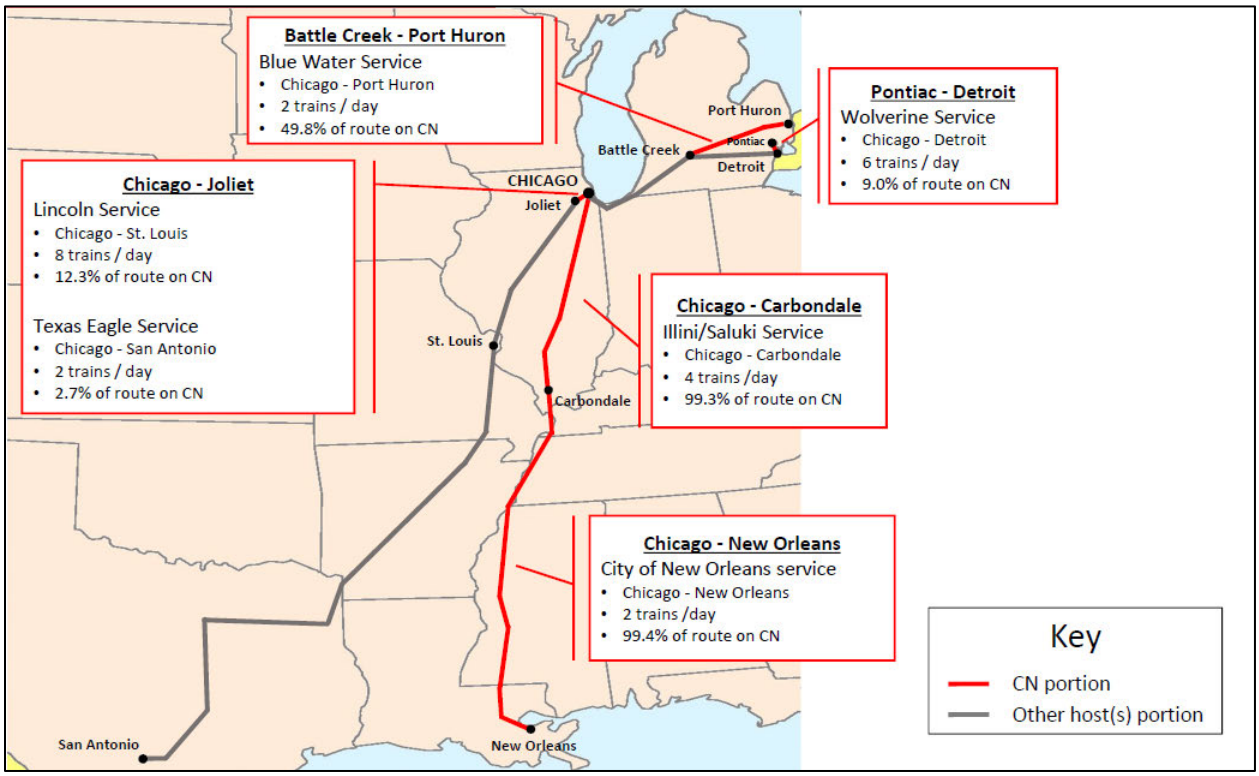
CN has approximately 25,975 employees across its U.S. and Canadian operations, representing all railroad crafts as well as management.

6. Existing Passenger Service

a. Existing Intercity Service (Amtrak)

There are a few segments of CN's existing network over which Amtrak operates that will see additional trains or cars as a result of the proposed divestiture transaction. As described in more detail below, only the Chicago, Gilman, and Memphis Subdivisions will see additional freight trains (two on each subdivision per day). On other CN subdivisions, the post-transaction increases in traffic can be accommodated on existing freight trains. Figure 25 is a visual representation of Amtrak routes on CN's current network

Figure 25
Amtrak Routes on CN



Michigan

As referenced above and described further below, the proposed divestiture transaction will not result in any additional freight trains on CN lines in Michigan. The below description identifies line segments where Amtrak operates on CN lines in Michigan that will see additional car volumes, but there will be no change to how Amtrak and host railroads operate.

Pontiac, Mich., to Moterm, Mich.: Amtrak's Wolverine service is a Michigan state-sponsored service that operates three daily train pairs between Pontiac, Detroit, and Chicago. The Wolverine service operates on CN lines for 15 miles between Pontiac and Moterm.[81]

Durand, Mich., and Battle Creek, Mich.: Amtrak's Blue Water service is another Michigan state-supported service with one daily train pair operating between Chicago and Port Huron, MI.[82] The Blue Water service utilizes CN trackage between Battle Creek and Port Huron, and also operates over other freight rail lines to reach Chicago.

Battle Creek, Mich.: In addition to the Blue Water service running on CN lines into Battle Creek, the Wolverine service operates on the CN mainline through Battle Creek between Baron and Gord, a distance of 1.2 miles.

Illinois

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[81] Amtrak, Michigan Service Train Schedules, 8 July 2019; Railway Age, Omicron Forces Amtrak Service Cuts, 18 January 2022.

[82] Amtrak, Michigan Service Train Schedules, 8 July 2019; Railway Age, Omicron Forces Amtrak Service Cuts, 18 January 2022.

As explained above and discussed in more detail below, CN's Chicago and Gilman Subdivisions will each see two additional freight trains per day. Those minimal increases will not interfere with Amtrak service, which his described below despite the lack of impact.

Chicago, IL, to Gilman, IL: Prior to the COVID-19 pandemic, Amtrak operated several pairs of trains over the length of this line segment in connection with its City of New Orleans, Illini, and Saluki services.[83] The City of New Orleans is a long-distance service operating between Chicago and New Orleans. Because of the ongoing COVID-19 pandemic, this train pair currently operates five days per week instead of daily.[84] The Illini and Saluki trains are Illinois state-supported services that operate between Chicago and Carbondale, IL. Currently, the Illini and Saluki services currently operate only one train each.[85] As shown on the map above, three train pairs per day of this service were operated prior to the pandemic.

Gilman, IL, to Cockrell, IL: At Springfield, IL, the line includes turnouts to access UP/Amtrak's higher-speed corridor between Chicago and St. Louis, as well as the NS mainline to KC. There is 0.6 miles of overlap between the Springfield Line and the point at which Amtrak trains exit the line. Amtrak currently schedules four daily Illinois-supported Lincoln Service train pairs and one daily long-distance train

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[83] Amtrak, City of New Orleans, Illini, and Saluki Train Service Schedules, 1 October 2019.

[84] Railway Age, Omicron Forces Amtrak Service Cuts, 18 January 2022.

[85] Railway Age, Omicron Forces Amtrak Service Cuts, 18 January 2022.

pair, the Texas Eagle, over the segment.[86] Lincoln Service trains operate from Chicago to St. Louis, while the Texas Eagle traverses the same corridor on its journey between Chicago and San Antonio, TX. Because of the COVID-19 pandemic, the Texas Eagle currently operates only five days per week.[87]

St. Louis to Memphis, TN: Between East St. Louis and Du Quoin, IL, CN's St. Louis Subdivision sees no passenger trains. The St. Louis Subdivision meets the Centralia Subdivision at Du Quoin. The Centralia Subdivision currently hosts two Amtrak train pairs, the long-distance City of New Orleans (five days per week) and the Illini corridor train (daily), all described above. As the Illini train turns at Carbondale, IL, the Cairo and Fulton Subdivisions see only Amtrak's City of New Orleans train pair on a five day a week basis. Beginning March 27, 2022, it is expected that the City of New Orleans will return to daily service and the Saluki corridor train pair will resume its daily schedule between Chicago and Carbondale.[88]

b. Existing Commuter Service

Metra, the commuter rail division of Chicago's Regional Transportation Authority, operates over several CN lines. Those lines are not implicated by this Responsive Application. The only Metra line that approaches any CN lines that are expected to experience increased trains as a result of this Responsive Application is

[86] Amtrak, Illinois and Missouri Train Service Schedules, 23 March 2020.

[87] Railway Age, Omicron Forces Amtrak Service Cuts, 18 January 2022.

[88] Railway Age, Omicron Forces Amtrak Service Cuts, 18 January 2022.

the Metra Electric line which runs near Markham Yard. In that area, however, Metra has dedicated tracks for commuter operations that are adjacent to CN's north-south main line. Trains on the Metra Electric Line do not operate over or cross at grade any of CN's adjacent freight tracks.

V. Post-Transaction Operations

The proposed post-transaction operations on the Springfield Line are straightforward. The transaction will add approximately 400 miles to CN's existing 5,300+ mile United States network. While CN believes that the Springfield Line can be an important and economically beneficial component of the national rail network, and that ICRR ownership of the line will preserve a competitive route between Kansas City and Chicago, the scope of the transaction is not operationally complex. The areas most affected by transaction-related traffic growth will be the Springfield Line and a few yards and terminals (East St. Louis and the IFG Terminal 24 miles south of Kansas City). As discussed below, CN plans to make substantial capital investments in the Springfield Line to ensure that the growth can be absorbed.

The proposed transaction will also result in increased intermodal and automotive traffic on CN's Gilman Subdivision and at certain CN yards including CN's Detroit Intermodal Yard and the CIT. Most of the transaction-related Springfield Line traffic will be added to existing trains already moving on CN. The proposed acquisition of the Springfield Line improves the single line service capabilities of the CN system, preserving and enhancing competition between Chicago and Kansas City. More than 80,000 trucks will be removed from the highways each year, producing public benefits, including reduced carbon emissions,

reduced highway congestion, and reduced public expenditures for highway maintenance. The more than 80,000 trucks that will be diverted to CN include approximately 77,800 dry vans and containers that will divert from highway to rail intermodal service, approximately 1,480 car transporters carrying assembled automobiles that will divert to multilevel railcars ("multilevels"), and 900 trucks with cargoes that can move via transload service (*i.e.*, bulk commodities such as plastic pellets and cement that use rail for linehaul and transfer to/from truck for first/last mile pickups and deliveries) that will divert to covered hoppers and other types of railcars.

A total of approximately 49,500 railcars will be diverted from other railroads due to the preservation of the Springfield Line as a competitive alternative between Kansas City and Chicago, the creation of new competitive rail routes from East St. Louis via the Springfield Line, and the new intermodal and automotive facilities that CN will construct in East St. Louis. The traffic diverted from other railroads includes approximately 31,000 intermodal containers, approximately 17,900 multilevel cars carrying finished automobiles, and approximately 600 carloads of grain.[89]

An additional 12,500 containers that currently movie via congested East Coast ports to/from Kansas City and East St. Louis by rail or truck are projected to be diverted to the Port of Montreal, leveraging CN's new single-line service via the Springfield Line and CN's proposed new intermodal terminal in East St. Louis.

[89] *See* Verified Statement of CN Witness David Hunt.

By acquiring the Springfield Line, CN will (1) preserve competition over the historic Gateway Western line over which KCS once provided service between Kansas City and Chicago; and (2) create new single-line rail automotive and intermodal service between Michigan/Eastern Canada and Kansas City. It also will establish a more direct route for traffic between Eastern Canada and the Midwest and East St. Louis, because traffic moving to East St. Louis via CN's current route from northern locations must move south of East St. Louis to Du Quoin, IL, before heading north for East St. Louis Yard; and traverses the same longer route on trips from East St. Louis to northern destinations.

CN plans to invest to build new automotive and intermodal facilities at the IFG Terminal and in East St. Louis. As discussed in detail in witness David Hunt's Verified Statement, it is anticipated that these routes and facilities will be widely used by the shipping community:

- The new ICCR intermodal facility at the IFG Terminal is projected to originate and terminate approximately 95,300 annual containers, with another approximately 26,000 annual containers moving through the new intermodal terminal in East St. Louis.
- Approximately 10,000 annual multilevel cars carrying assembled automobiles are projected to originate and terminate at the new IFG Terminal automotive facility, with an additional, approximately 9,750 multilevels originating at the new terminal in East St. Louis.

A. Improved Service for Customers and Operations on the Springfield Line

ICCR's purchase of the Springfield Line will provide shippers two primary benefits:

1) The new single-line CN service between Kansas City and destinations in Michigan, Ohio, and Eastern Canada, which will cross the "watershed" (a north-south area of the United States extending up to 300-400 miles east and west of the Mississippi River where trucks have an unusually high share of freight shipments),[90] offering shippers a new rail alternative. CN anticipates that this new service will attract more than 80,000 truckloads per year from busy highways to CN's new service.[91]

2) CN has committed to spend at least $250M to upgrade the Springfield Line and CN's adjacent line between Springfield and Gilman IL, where the new route will connect with CN's mainline to Markham, Kirk Yard and points beyond. This investment includes constructing new intermodal / automotive facilities south of Kansas City (IFG Terminal) and East St. Louis. These investments will enable CN to improve transit times, decrease car cycles, improve asset utilization, and realize operating synergies created by the new single-line service from fewer handlings due to single-line service and capital improvements.

To implement these new services, CN proposes to acquire a 50 percent interest in the IFG Terminal from KCS. The IFG Terminal has only 356 acres currently developed. As detailed below, CN will invest and estimated $56 million to

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[90] Railroads to the east (NS and CSXT) and the west (BNSF and UP) of the Mississippi River are not generally interested in traffic that may be short-haul to them but long-haul to railroads on the other side of the river. As a result, trucking has a very high share of freight crossing the "watershed."

[91] *See* Verified Statement of CN witness David Hunt for details.

construct new intermodal and automotive facilities to support post-transaction operations at the IFG Terminal Intermodal traffic and multilevel cars originating in East St. Louis will move from the new intermodal/auto terminal that CN plans to build in East St Louis to connect with the Kansas City eastbound train at Roodhouse, IL.

CN's proposed train operations will encompass several components: A six day per week train service will be operated from East St. Louis and terminating at the Knoche Joint Agency yard (shared by CP and KCS) in Kansas City for the carload traffic; and a daily (seven days per week) turn job would operate from Roodhouse, IL to East St. Louis to handle intermodal and automotive traffic between St. Louis (coming from CSXT, the new CN East St. Louis terminal facilities, and points south (Mobile, AL; Jackson, MS; New Orleans, LA; and Memphis, TN) and the IFG Terminal. CN will provide separate services to Knoche Yard and IFG, with manifest service six day per week, and the intermodal/automotive service seven days per week, from KCS's existing four day per week service. Existing and future customers will receive a superior level of service to what is currently provided by KCS, by eliminating the need to shuttles cars between Knoche and IFG, as ICRR will provide direct service to both terminals for CN and CSXT traffic. Traffic in KCS's account moving between Kansas City and points on the Springfield Line pursuant to the proposed haulage agreement will also move via those facilities.

Local operations in East St. Louis to the NS interchange, Wood River, and Godfrey would remain the same as KCS's current operations. Interchange with

CSXT and TRRA would be six days per week to match the through service. Interchange with CSXT could be increased to seven days per week if there is sufficient intermodal/automotive volume for the IFG Terminal. Other local service in the St. Louis area would remain { }} as it is today. As both CN and KCS currently interchange with the TRRA, the six day a week service provided by CN would be continued and replace the KCS { }} service.

Overall, this post-transaction train plan represents an increase in current service over the Springfield Line with daily service to IFG by CN, and effectively for CSXT, which interchanges to KCS at Rose Lake Yard. It also contemplates an increase in service of 50 percent from four days per week to six days per week. All local service would be at least five days per week and interchanges would be five or six days per week, based on future volumes.

KCS will be able to continue to serve its existing non-unit train customers as per a Haulage Agreement to be negotiated with CN, under which CN would provide the train service. For unit train traffic to KCS' existing grain customers, KCS would provide the cars and locomotives and CN would provide the T&E crews, under a Haulage Agreement to be negotiated between CN and KCS and described further below.

Service within the Kansas City terminal area will also change. Currently, the Springfield Line terminates at Rock Creek Junction, just east of Kansas City, MO At Rock Creek Junction, the Springfield Line connects with KCT's mainline west into Kansas City and with a UP line extending northwest toward Airline Junction

near the entrance to the KCS-CP Knoche Yard (also known as the "Joint Agency Yard"). KCS holds a 16.67% ownership share[92] and CP holds an 8.33% ownership share in KCT.[93] KCS has overhead trackage rights on UP's line between Rock Creek Junction and Airline Junction. As part of this Responsive Application, CN seeks to acquire (1) an 8.33% ownership share in KCT and (2) assignment to CN of KCS's trackage rights over the UP line segment. After the transaction, CPKC will own 16.67% ownership of KCT.

Upon reaching Rock Creek Junction, ICRR trains would operate via the UP trackage rights line to Airline Junction. Trains destined to the IFG Terminal would then turn south via trackage rights ono KCS's Pittsburg Subdivision for the final approximately 24-mile movement to IFG.[94]

CN's other daily planned through train on the Springfield Line would operate between Rock Creek Junction and Airline Junction over the UP trackage rights, and then on KCT trackage to Knoche Yard, where CPKC non-intermodal/automotive haulage traffic handled by CN on the Springfield Line would be physically interchanged with CPKC. When needed, that train would proceed to KCT's Mill Street Yard, where other manifest traffic would be interchanged with KCT for

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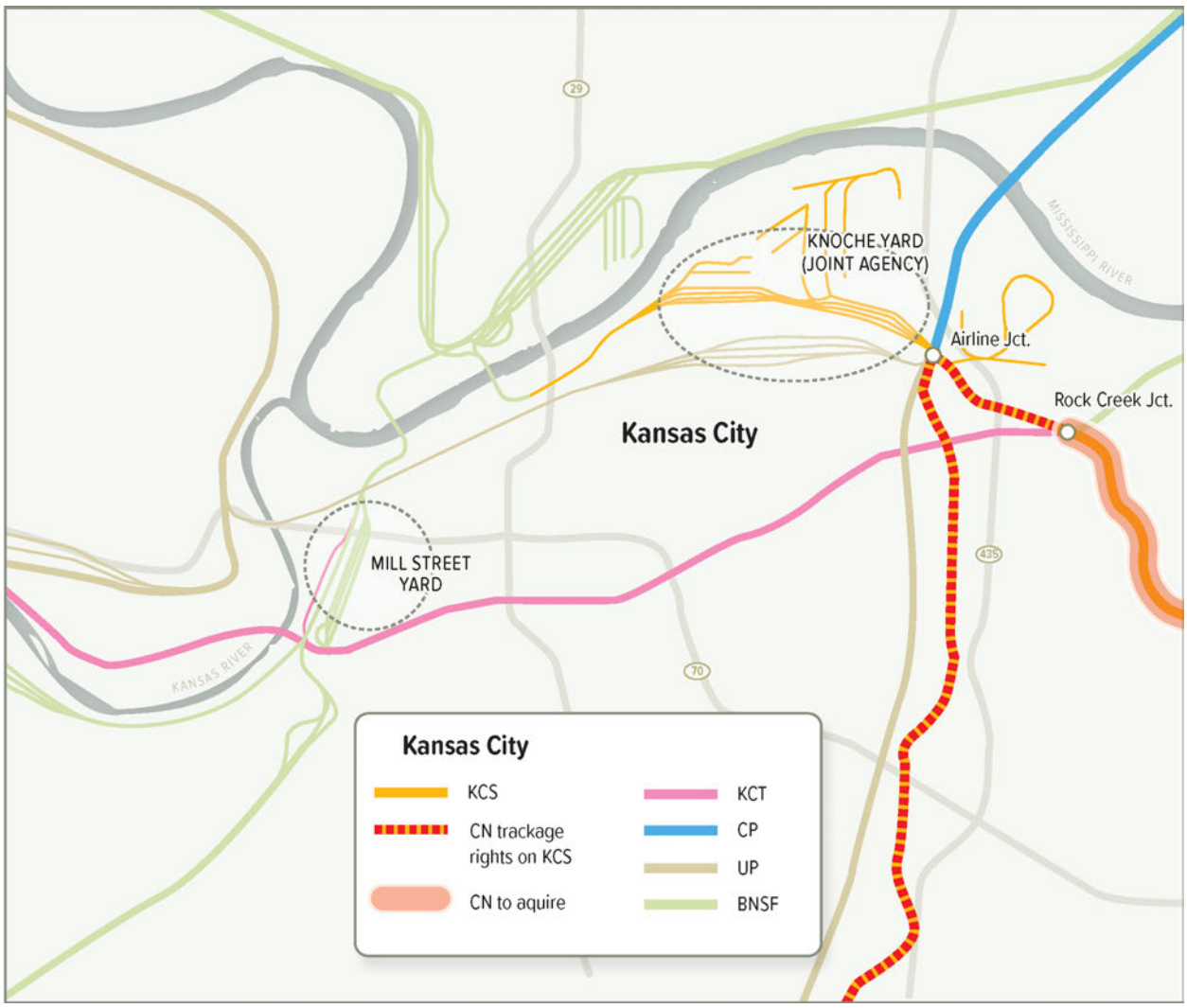
[92] See CP/KC Application, Vol. 1 Pg. 95.

[93] *Id.* at 93.

[94] As described more fully below, CN's Responsive Application in this proceeding includes a request for overhead trackage rights on KCS's Pittsburg Subdivision extending from approximately Milepost 5.6 at Airline Junction to approximately Milepost 29.5 near Grandview in order to reach the IFG terminal.

handling as required for further interchange or delivery in the Kansas City terminal. Alternatively, if conditions and traffic volumes warranted, ICRR trains could continue onto KCT's tracks at Rock Creek Junction to reach Mill Street Yard or another appropriate location on KCT's line in Kansas City for the exchange of manifest traffic directly with KCT.

Figure 26
Kansas City Map



1. Improvements For Existing Customers

Existing Customers. Existing customers on the Springfield Line will enjoy an improved level of service compared to the service that KCS provided.

A manifest train will operate six days per week in each direction between Kansas City and East St. Louis. These trains will pick-up and set-off cars along their route to support the Springfield Line's local train and yard assignments, an improvement in frequency from the current KCS service which operates only four days per week.

Combining the volumes from CN and the merged CPKC loadings (much of it to/from CSXT, which currently interchanges more than {{ }} intermodal units per year with KCS at Rose Lake Yard in East St. Louis) will provide the critical density to support increased service for all the carriers using this route between Kansas City and East St. Louis. It will also provide direct service for carload traffic to the Knoche Joint Agency Yard and to the IFG Terminal without having to transfer cars between those two terminals in Kansas City. This feature of CN's Operating Plan eliminates a current inefficient operation where KCS takes manifest traffic south to IFG before moving it north to Knoche Yard on westbound trains, and shuttles intermodal traffic to Knoche Yard for eastbound Kansas City–East St. Louis manifest trains.

A Roodhouse–East St. Louis turn assignment will transfer intermodal/auto loadings. Its schedule will be coordinated to provide rapid delivery of loadings for East St. Louis that are set-off in Roodhouse, IL, by the new westbound CIT-Kansas City train; and deliver intermodal/auto loads for the new eastbound Kansas City–

CIT train. This will be a new service offering for intermodal/auto shippers moving traffic between St. Louis and Toronto/Port of Montreal, as neither CN nor KCS currently have intermodal or automotive capacity in East. St. Louis. Detroit will be the largest source of new intermodal and multilevel traffic for the Springfield Line. The Roodhouse – E. St. Louis turn will also handle intermodal and automotive traffic coming from Mobile, Jackson, New Orleans, and Memphis (via Centralia) to the Chicago – Kansas City train at Roodhouse for delivery to IFG and vice versa for southbound traffic.

2. Improved Local Service

CN proposes to augment the existing KCS local service along the key corridor between Roodhouse, IL and Mexico, MO, by extending the current service to Laddonia, MO, west to Mexico, MO and changing the frequency from {{ }} days per week to {{ }} days per week, as volume warrants. Service to Jacksonville, IL would be increased from {{ }} days per week to {{ }} days per week. Cars would be picked up and setoff at Mexico, MO, for the Roodhouse local operations { }} days per week instead of the current {{ }} days per week. Service to Cockrell, IL; Springfield, IL, Jerseyville, IL and Carrollton, IL would remain unchanged.

The { }} would be discontinued. Customers west of { }} (currently totaling less than {{ }} per day) would be served by the six-day-a-week through train between East St. Louis and Kansas City, thus providing replacement service for these customers. The reduction in local operations at {{ }} would be offset by an increase in local service at { }}, which would provide a significant improvement in service to the key

existing and potential non-agricultural customers and the Ozark Valley Railroad on the lines between Jacksonville, IL and Mexico, MO.

3. KCS Grain Service

Under the proposed haulage agreement, KCS will have unit train access to its existing grain shippers, as described further below. That unit train traffic currently averages {{ }} grain trains per week (including empties). Under the haulage agreement, CN would perform this unit train service on KCS' behalf with cars supplied by KCS or the customer and locomotives supplied by KCS.

More competitive rail options will be available to shippers on the Springfield Line. All shippers will now have the choice of using CN or KCS for their rail shipments.

B. Comparison of Pre- and Post-Transaction Operating Statistics

1. Changes in Yard Volume

CN anticipates that the proposed divestiture transaction will enable ICRR to attract over 121,000 new intermodal units, 19,000 new automotive shipments and over 1,500 new manifest loads to its network by Year 3.[95] Yards that will experience an increase in volume of more than 25 cars per day or more than a 20 percent increase in volume compared to pre-transaction levels are shown in Figure 27 below.[96] Not surprisingly, the yards with the most significant volume increases are

[95] *See* Verified Statement of CN Witness David Hunt.

[96] *See* "Operating Metrics – Estimation of Yard Activity Methodology.pdf" for associated process and workpapers.

IFG ({{ }} increase); Roodhouse ({{ }} increase); and East St. Louis ({{ }} increase). The traffic diversion analysis and the Operating Plan reflecting these increases demonstrates the opportunities on the Springfield Line.

Figure 27
Pre- and Post-Transaction Yard Volumes[97]

LOCATION	Base Total Equivalent Cars Handled	Year 3 Total Equivalent Cars Handled	Change in Equivalent Cars Handled	Percent Change [98]	Base Block Swap Equivalent Cars	Year 3 Block Swap Equivalent Cars	Block Swap Difference
Centralia	343.2	336.5	-6.8	-2%	102.2	178.4	76.2
CIT	774.7	830.8	56.1	7%	330.2	424.3	94.1
Detroit IM Terminal	232.4	306.7	74.3	32%			
East St. Louis [99]	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}
Flat Rock	319.3	348.1	28.8	9%	84.9	84.9	0.0
Flint	89.9	92.1	2.2	2%	135.8	170.7	34.9
International Freight Gateway[100]	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}
Markham	524.2	558.7	34.5	7%	28.2	56.8	28.6
Memphis IM Terminal	306.1	341.8	35.7	12%	56.2	59.5	3.4
Mexico[101]	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}
Roodhouse	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}	{{ }}

[97] Intermodal units expressed in platforms assuming capacity of two containers per platform and a 94% slot utilization rate, which is the same as the CPKC slot utilization assumption. *See* "HC - Intermodal to Railcar Conversion Factor Source Compilation.pdf." "Year 3" volumes for CPKC originations and terminations were increased by {{ }} over the Base Year to reflect Applicants' organic growth assumptions for KCS as indicated in the "Cost Metrics" spreadsheet. *See* "HC - Review of Growth Factors in CPKC Application.pdf." Organic growth is included for the CPKC traffic using their presumed {{ }} factor. No organic growth factor was applied to CN traffic for Years 1-3, as all of such traffic would be newly diverted from trucks or other railroads. *See* "HC – Operating Metrics – Estimation of Yard Activity Methodology.pdf" for associated process and workpapers.

[98] The yard volume in this Responsive Application is calculated on an organic growth assumption for base CPKC traffic of {{ }} by Year 3. It differs from the tonnage density table provided for the Environmental Assessment, which included no organic growth in the primary comparison numbers for yard volumes.

[99] Base volumes at ESTLOUIS_IL, MEXICO_MO, and ROODHOUSE_IL were computed using full year 2019 waybills, and reflect intermodal volumes stated in platforms, and did not rely on CP/KC application yard volumes.

2. Changes In Trains Per Day by Segment

The projected increase in traffic volumes by Year 3 will result in an increase in trains per day on the Springfield Line, as shown in Figure 28.[102]

Figure 28
Trains Per Day: Springfield Line[103]

Segment	Pre-Transaction Trains Per Day	Post-Transaction Trains Per Day	Change in Trains Per Day
IFG to Kansas City	13.5	29.7	15.6
Kansas City to Slate	2.9	5.1	2.2
Slater to Mexico	2.5	4.6	2.1
Mexico to Roodhouse	2.5	6.0	3.5
Roodhouse to Godfrey	1.6	4.1	2.5
Godfrey to East St. Louis	2.9	5.6	2.6
Roodhouse to Murrayville	1.7	4.1	2.4
Murrayville to Jacksonville	1.4	1.8	0.4
Murrayville to Springfield	0.3	2.3	2.0
Venice to K Tower	2.9	2.9	-
Bridge Junction to Q Tower	2.9	2.9	-
Q Tower to Rose Lake Yard	0.2	0.2	0.0
Willows to East. St. Louis	1.4	1.7	0.3
M&O Junction to Tolson	1.5	1.5	0.0

[100] IFG includes CPKC activity counts for base period and "Year 3" periods based on CP/KC Application yard volume reports, and detailed review of CPKC 2019 waybill data and traffic studies. *See* "HC – Yard Volume Comparison for Pre- and Post-Transaction.xlsx" for details.

[101] The site is not technically a yard but is used as a block swap location in the Operating Plan.

[102] *See* "Operating Metrics – Estimation of Line Density And Train Count Methodology.pdf" and associated workpapers.

[103] Certain segments of the Springfield Line also have Amtrak trains described elsewhere in the Operating Plan. *See* "HC – Operating Metrics – Estimation of Line Density And Train Count Methodology.pdf".

Figure 29
Trains Per Day: Segments Neighboring the Springfield Line[104]

Subdivision	Segment	Pre-Transaction Trains Per Day	Post-Transaction Trains Per Day	Change in Trains Per Day	Passenger Trains Per Day
St. Louis	Du Quoin to Pinckneyville	5.1	5.1	-	-
St. Louis	Pinckneyville to Coulterville	5.1	5.1	-	-
St. Louis	Coulterville to Lenzburg	3.1	3.1	-	-
St. Louis	Lenzburg to Freeburg	1.7	1.7	-	-
St. Louis	Freeburg to Wilderman	1.7	1.7	-	-
St. Louis	Wilderman to East St. Louis	1.7	1.7	-	-
Gilman	Gilman to Gibson City	2.3	4.3	2.0	-
Gilman	Gibson City to Clinton	2.0	4.0	2.0	-
Gilman	Clinton to Mt. Pulaski	2.0	4.0	2.0	-
Gilman	Mt. Pulaski to Brickyard Junction	0.3	2.3	2.0	-

The Chicago and Gilman Subdivisions on CN's existing network will also have two additional trains per day, as shown in Figure 30. Other CN subdivisions will accommodate additional car volume in existing trains.

[104] The below train counts reflect the CP/KC Application's presumed {{ }} organic growth rate, which CN accepts only for purposes of the operating plan to match the CP/KC submission.

Figure 30
Other Segments Projected to Have Change in Trains Per Day[105]

Subdivision	Segment	Pre-Transaction Trains Per Day	Post-Transaction Trains Per Day	Change in Trains Per Day	Passenger Trains Per Day
Memphis	Memphis to West Junction	21.4	23.4	2.0	2.0
Memphis	West Junction to Memphis Intermodal Terminal	6.6	8.6	2.0	-
Chicago	Homewood to Stuenkel	25.6	27.6	2.0	6.0
Chicago	Stuenkel to Gilman	23.1	25.1	2.0	6.0
Chicago	Kensington to Homewood[106]	18.0	18.8	0.8	6.0
Elsdon	Harvey to CIT	11.1	13.1	2.0	-

3. Changes in GTMs by Line Segment

Figure 31 below shows the impact of post-transaction traffic growth projections on the Springfield Line by Gross Ton Miles by segment.

[105] The below train counts include the CP/KC applications' presumed { }} organic growth rate that CN is accepting only for purposes of the Operating Plan to match the CP/KC submission. *See* "HC - Operating Metrics – Estimation of Line Density And Train Count Methodology.pdf" for associated workpapers.

[106] Only 39% of the section Kensington to Homewood IL will have two new trains that operate between CIT and the IFG in Kansas City. This amounts to an increase of 0.78 trains per day for this section. These two trains are fully reported in subsequent sections such as the Homewood to Stuenkel IL section.

Figure 31
Post-transaction Growth Projections for Segments on Springfield Line[107]

Gross Tons (000s)[108]					
Segment	Distance	Base 2019 Tons	Post-transaction	Change in Gross Tons	% Change
IFG to Kansas City	23.24	51,259	91,173	39,914	78%
Kansas City to Slater	98.6	10,376	15,801	5,425	52%
Slater to Mexico	67.9	8,809	14,026	5,217	59%
Mexico to Roodhouse	88.4	6,656	12,605	5,949	89%
Roodhouse to Godfrey	48.1	3,816	6,871	3,055	80%
Godfrey to East St. Louis	32.9	7,288	10,403	3,115	43%
Roodhouse to Murrayville	15.6	3,090	7,970	4,880	158%
Murrayville to Jacksonville	10.4	3,054	3,468	414	14%
Murrayville to Springfield	18	43	4,506	4,463	10380%
Venice to K Tower	3.13	373	427	54	14%
Bridge Junction to Q Tower	0.78	373	427	54	14%
Q Tower to Rose Lake Yard	2.03	164	199	34	21%
Willows to East. St. Louis	5.14	1,505	1,831	326	22%
M&O Junction to Tolson	2.6	207	236	30	14%

Figure 32
Post-transaction Growth Projections Breakdown for Segment Between International Freight Gateway and Kansas City[109]

Gross Tons (000s)							
Segment	Distance	Base 2019 Tons	KCS Growth	KCS Diversion	CN Diversion	Post-transaction	% Change
IFG to Kansas City	23.3	51,259	7,381	29,137	3,395	91,172	78%

[107] *See* "HC - Operating Metrics – Estimation of Line Density And Train Count Methodology.pdf" and associated analysis workpapers for how the values were estimated.

[108] The tonnage density in this Responsive Application is calculated on an organic growth assumption for base CPKC traffic of { }} by Year 3. It differs from the tonnage density table provided for the Environmental Assessment, which included no organic growth in the primary comparison numbers, and an advisory column estimating potential Year 5 organic growth at the same rate as was experienced for the 2015-2019 period.

Figure 33
Post-transaction Growth Projections for Segments Neighboring the Springfield Line[110]

Gross Tons (000s)						
Subdivision	Segment	Distance	Base 2019 Tons	Post-transaction	Change in Gross Tons	% Change
St. Louis	Du Quoin to Pinckneyville	8.9	6,935	8,339	1,404	20%
St. Louis	Pinckneyville to Coulterville	14.6	6,872	8,276	1,404	20%
St. Louis	Coulterville to Lenzburg	19.6	6,687	8,092	1,405	21%
St. Louis	Lenzburg to Freeburg	11.4	1,598	3,008	1,410	88%
St. Louis	Freeburg to Wilderman	4.2	1,595	3,005	1,410	88%
St. Louis	Wilderman to East St. Louis	11.4	1,582	2,992	1,410	89%
Gilman	Gilman to Gibson City	29.05	1,690	6,132	4,442	263%
Gilman	Gibson City to Clinton	38.6	879	5,320	4,441	506%
Gilman	Clinton to Mt. Pulaski	21.7	885	5,308	4,423	500%
Gilman	Mt. Pulaski to Brickyard Junction	25	260	4,693	4,434	1706%

4. Changes in Intermodal Lifts by Terminal

The majority of the new traffic that CN expects to divert to the Springfield Line consists of intermodal loads currently moving either by truck or on other railroads. Figure 34 below shows the pre- and post-transaction difference in lifts at the largest intermodal facilities.

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[109] CN's post transaction plan adds an estimated {| }}); the { }} CN's expected diversions on this line is offset by the elimination of an out of route move for the carload traffic from the Springfield line destined to Knoche yard which currently moves via IFG. The post-transaction tonnage includes the KCS diversion amount stated in their CP/KC Application, based on the values from the "Pittsburg - Kansas City" segment.

[110] *See* "HC - Operating Metrics – Estimation of Line Density And Train Count Methodology.pdf" and associated analysis workpapers for how the values were estimated.

Figure 34
Intermodal Facilities with Largest Change in Units Handled[111]

Total Intermodal Units Originated and Terminated Loaded and Empty (Includes CPKC Organic Growth)				
Locations	Pre-Transaction	Post-Transaction	Difference	% Difference
International Freight Gateway	{{ }}	{{ }}	{{ }}	{{ }}
Detroit Intermodal Terminal	159,444	210,437	50,993	32%
CIT	491,663	521,751	30,088	6%
East St. Louis	0	29,739	29,739	
Montreal Wharf	93,828	107,391	13,563	14%
Indiana Intermodal Terminal	40,071	52,964	12,893	32%
May Yard	25,820	37,122	11,302	44%
All others	4,446,052	4,473,963	27,911	1%
Total	{{ }}	{{ }}	{{ }}	{{ }}

The largest increase is at the IFG Terminal. Figure 35 shows the pre- and post-transaction division of intermodal units at IFG by railroad. As described further below, CN is prepared to invest in the IFG Terminal so that the increase in units handled can be absorbed.

Figure 35
Breakdown of Changes in Intermodal Units Handled at International Freight Gateway by Railroad[112]

International Freight Gateway - Total Intermodal Units Originated and Terminated for Loaded and Empty (Includes CPKC Organic Growth)				
Railroad	Pre-Transaction	Post-Transaction	Difference	% Difference
CP-KCS related	{{ }}	}}	}}	}}
CN Related	0	113,303	113,303	-
Total	}}	}}	}}	}}

[111] *See* "HC - Change in Intermodal Containers and Mutilevels by Location - Base vs Post-Transaction – Methodology.pdf" and associated analysis workpapers.

[112] *See* "HC - Change in Intermodal Containers and Mutilevels by Location - Base vs Post-Transaction – Methodology.pdf" and associated analysis workpapers.

The second largest category of traffic that CN expects to attract to the Springfield Line is automotive traffic. Figure 36 shows the automotive facilities that CN projects will experience the largest changes in automotive units handled.

Figure 36
Automotive Locations With Largest Change in Cars Handled[113]

Total Multilevel Cars Originated and Terminated Loaded and Empty (Includes CPKC Organic Growth)				
Locations	Pre-Transaction	Post-Transaction	Difference	% Difference
International Freight Gateways	{{ }}	{{ }}	{{ }}	{{ }}
East St. Louis	{{ }}	{{ }}	{{ }}	{{ }}
Flat Rock, MI	10,066	19,764	9,698	96%
Markham, IL	92,443	98,070	5,627	6%
All others	541,202	552,220	11,018	2%
Total	{{ }}	{{ }}	{{ }}	{{ }}

Once again, the largest increase will occur at IFG. Figure 37 shows the breakdown by railroad at that facility.

Figure 37
Breakdown of Changes in Multilevel Cars Handled at International Freight Gateway by Railroad[114]

International Freight Gateway - Total Multilevel Cars Originated and Terminated for Loaded and Empty (Includes CPKC Organic Growth)				
Railroad	Pre-Transaction	Post-Transaction	Difference	% Difference
CP-KCS Related	{{ }}	{{ }}	{{ }}	{{ }}
CN Related	0	12,876	12,876	-
Total	{{ }}	{{ }}	{{ }}	{{ }}

[113] *See* "HC - Change in Intermodal Containers and Mutilevels by Location - Base vs Post-Transaction – Methodology.pdf" and associated analysis workpapers.

[114] *See* "HC - Change in Intermodal Containers and Multilevels by Location - Base vs Post-Transaction – Methodology.pdf" and associated analysis workpapers.

5. Trains Added, Dropped, or Changed

Figure 38 below shows the trains added on the Springfield Line between KCS' pre-transactions operations and CN's post-transaction operations. All but one train will run daily each week.

Figure 38
Springfield Line - Trains Added

Train Type	Symbol	Origin - Destination	Dist. (miles)	Runs per Week	Est. Transit Time (Hrs)	Notes
IMDL	I-CHKC	CHIINTTER_IL to INTFREGAT_MO	494	7	20.5	• New direct train from CIT to IFG • Mixed intermodal and automotive • Carries blocks from CIT for East St Louis and IFG • Picks-up blocks from Detroit Intermodal, Montreal, and Flatrock at CIT for East St. Louis and IFG from trains Z149, E261 and E271 • Picks up Blocks from Memphis, Indianapolis, CSXT at Rose Lake, and East St. Louis for IFG at Roodhouse connecting from train I-RHSL • Sets off East St. Louis blocks at Roodhouse for connection to train I-RHSL
IMDL	I-KCCH	INTFREGAT_MO to CHIINTTER_IL	494	7	20.5	• New direct train from IFG to CIT • Mixed intermodal and automotive • Carries blocks from IFG for CIT, Detroit Intermodal, Flat Rock and Montreal Also carries blocks for East St. Louis, CSX/Rose Lake, Indianapolis, and Memphis for connection to I-RHSL at Roodhouse

Train Type	Symbol	Origin - Destination	Dist. (miles)	Runs per Week	Est. Transit Time (Hrs)	Notes
						• Picks-up additional blocks for Chicago Intermodal, Markham, Detroit Intermodal, Flat Rock and Montreal at Roodhouse from I-RHSL • Detroit Intermodal, Flat Rock and Montreal blocks set off at Chicago for connection to trains Q116 and Z148
IMDL	I-RHSL	ROODHOUSE_IL (Turn)	146	7	5.8	• Turn train from Roodhouse to East St Louis shuttling blocks between East St. Louis and Roodhouse for connection to I-CHKC and I-KCCH • Carries blocks made at East St Louis, Indianapolis, CSX/Rose Lake, and Memphis for IFG from East St Louis to Roodhouse for connection to I-CHKC • Carries blocks made at East St Louis for CIT, Detroit, Flat Rock, and Montreal from East St Louis to Roodhouse for connection to I-KCCH • Carries blocks made at IFG for East St. Louis, CSX/Rose Lake, Indianapolis, and Memphis from Roodhouse to East St Louis from connection with I-KCCH • Carried blocks made at CIT, Detroit, Flat Rock, and Montreal for East St Louis from Roodhouse to East St. Louis from connection with CHKC • Carries local block from East St Louis to Roodhouse and reverse
LOCAL	LRH102	ROODHOUSE_IL (Turn)	177	5	10.1	• Roodhouse to Mexico local turn train serving all

Train Type	Symbol	Origin - Destination	Dist. (miles)	Runs per Week	Est. Transit Time (Hrs)	Notes
						points along line including Hillview, Pleasant Hill, Louisiana, Vandalia, Laddonia, and Mexico • Delivers cars to/from Kansas City for train M-VNKC at Mexico and picks up cars from M-KCVN for customers served out of Roodhouse • Traffic for points on CN connects to I-RHSL at Roodhouse

Figure 39 identifies the trains that will be discontinued following the transaction. As explained in the notes column, however, all of the services provided by these trains today would continue to be provided via different operations.

Figure 39
Trains Discontinued

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Figure 40 lists the trains currently operated by KCS on the Springfield Line that will be continued (in some cases with modifications) by ICRR. One local train

(YES305) will be unchanged but adjustments in service will be applied to each of the others.

Figure 40
Springfield Line Non-Local Trains Continued/Changed

Train Type	Symbol	Origin - Destination	Dist. (miles)	Runs per Week	Est. Transit Time (Hrs)	Notes
MANIFEST	M-KCVN	KANCITY_MO to ESTLOUIS_IL	321	6	14.5	• Handles local work (as needed) between Centralia, MO and Odessa, MO • Picks up and sets off at Mexico, MO instead of Roodhouse, IL and Slater, MO • Frequency increased from 4 days a week to 6 days a week • Intermodal/Automotive traffic for IFG handled on I-RHSL to/from I-CHKC and I-KCCH
MANIFEST	M-VNKC	ESTLOUIS_IL to KANCITY_MO	321	6	16.4	• Handles local work (as needed) between Centralia, MO and Odessa, MO • Picks up and sets off at Mexico, MO instead of Roodhouse, IL and Slater, MO • Frequency increased from 4 days a week to 6 days a week • Intermodal/automotive traffic for IFG handled on I-RHSL to/from I-CHKC and I-KCCH • Train terminates at Knoche instead of IFG

Figure 41
Springfield Line Local Trains Continued/Changed

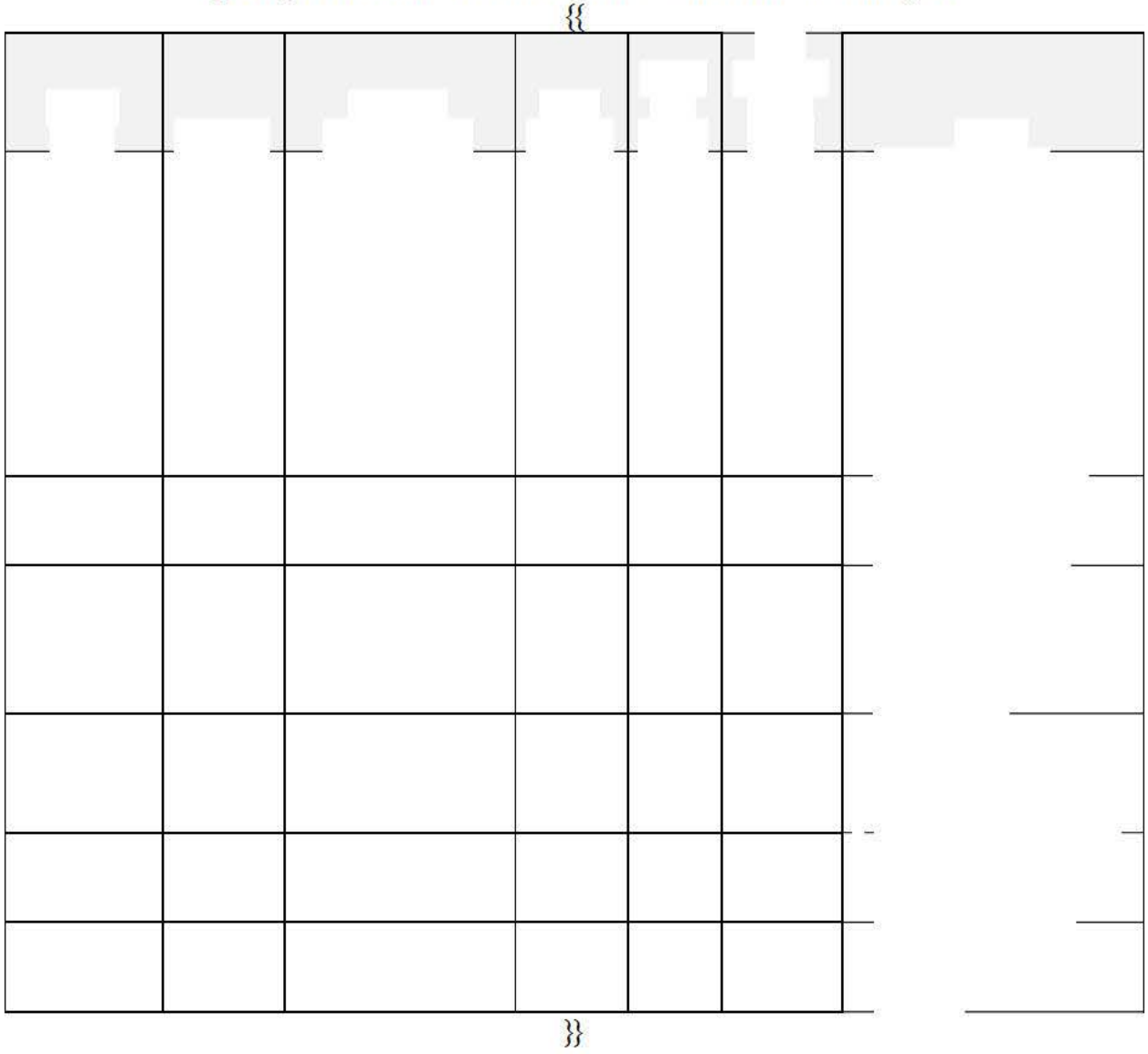


Figure 42 below illustrates the transaction-related train increases on the Springfield Line.

Figure 42
Transaction-Related Train Increases on the Springfield Line

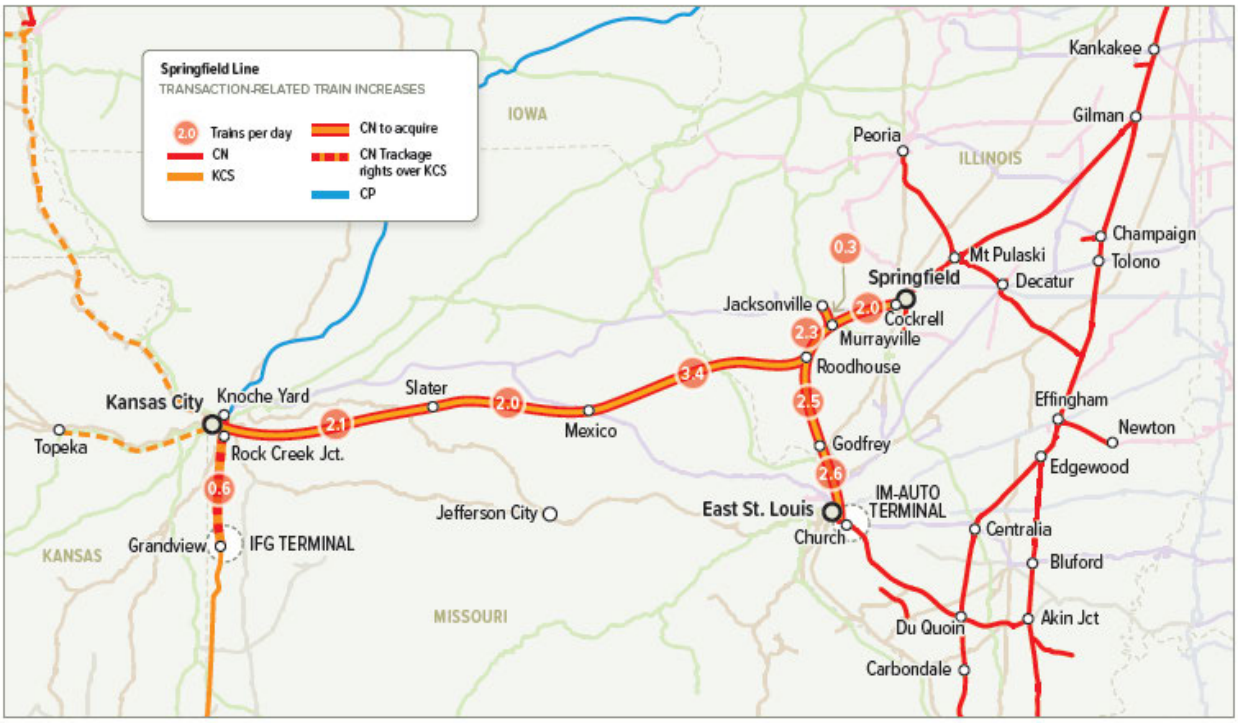


Figure 43 below describes the adjustments that will be made to trains operating elsewhere on the CN system to account for the new traffic from the Springfield Line.

Figure 43
Other CN System Train Changes

Train Type	Symbol	Origin - Destination	Dist. (miles)	Runs per Week	Est. Transit Time (Hrs)	Notes
IMDL	Q_1169	CHIINTTER_IL to FLAROCK_MI	328	7	16.2	• Added blocks and traffic from IFG and E. St. Louis to Detroit Intermodal (Moterm) and Flatrock connecting from I-KCCH
LOCAL	M-SLCE	ESTLOUIS_IL to CENTRALIA_IL	100	6	5.8	• Combined local L504 and L548 into a through train from E. St. Louis to Centralia still swapping crews at Coulterville, IL • Added intermodal and automotive blocks to Memphis from IFG and E. St. Louis connecting to train A432 • Added intermodal block to Indianapolis from IFG connecting to train A431
LOCAL	M-CESL	CENTRALIA_IL to ESTLOUIS_IL	100	6	4.8	• Combined local L504 and L548 into a through train from Centralia to E. St. Louis still swapping crews at Coulterville, IL • Added intermodal and automotive blocks from Memphis to IFG and E. St. Louis connecting to train A431 • Added intermodal block from Indianapolis to IFG connecting from train A432
IMDL	Z_1492	MONMONINT_PQ to CHIINTTER_IL	831	7	32.2	• Handles new intermodal blocks to great Chicago for IFG and E. St. Louis from Detroit and Montreal for connection to I-CHKC
AUTOS	E_2616	BATCREEK_MI to MARKHAM_IL	164	2	6.6	• Handles new automotive blocks to greater Chicago for IFG and E. St. Louis from Flat Rock connecting to I-CHKC
LOCAL	L_5146	FLINT_MI (Turn)	130	7	6.0	• Handles new intermodal blocks to Flint for IFG and E. St. Louis from Detroit for connect to train Z149

Train Type	Symbol	Origin - Destination	Dist. (miles)	Runs per Week	Est. Transit Time (Hrs)	Notes
MANIFEST	A_4329	DECATUR_IL to MEMPHIS_TN	400	7	22.3	• Picks up Intermodal block for IFG from Indianapolis at Effingham, IL to set off at Centralia to connect to M-CESL • Picks up Intermodal and automotive blocks from IFG and St. Louis at Centralia for Memphis
MANIFEST	A_4317	MEMPHIS_TN to DECATUR_IL	400	7	23.4	• Picks up Intermodal block from M-SLCE from IFG to Indianapolis at Centralia, IL to set off at Effingham • Picks up Intermodal and automotive blocks to IFG and St. Louis at Centralia from Memphis to connect to M-CESL • Picks up new E. St. Louis manifest block from Memphis for M-CESL
LOCAL	L_5339	EFFINGHAM_IL (Turn)	44	6	8.0	• Added new blocks between Indianapolis and IFG for connection at Effingham to A432 and from A431
HAULAGE	H_1769	NEWTON_IL (Turn)	305	7	12.2	• Added new blocks between Indianapolis and IFG for connection at Effingham to A432 and from A431
LOCAL	K_1492	MONVIATER_PQ to MONMONINT_PQ	13	7	15.0	• Handles new blocks for IFG and E. St. Louis from Port of Montreal to connect to Z149
AUTOS	E_2516	FLAROCK_MI to GIBSON_IN	321	7	19.0	• Handles new automotive blocks for IFG and E. St. Louis from Flat Rock to connect to trains E271 and E261 at Battle Creek
IMDL	Z_1489	CHIINTTER_IL to MONTASYAR_PQ	834	7	32.3	• Handles new intermodal blocks from IFG and E. St. Louis to the Port of Montreal connecting from I-KCCH
AUTO	E_2716	BATCREEK_MI to SALEM_IL	373	7	21.4	• Handles new automotive blocks for IFG and E. St. Louis from Flat Rock, MI off E251 from Battle Creek to Markham, IL
LOCAL	K_1482	MONTASYAR_PQ to MONVIATER_PQ	16	7	0.7	• Handles new block from IFG and E. St. Louis to the Port of Montreal from Z148

Figure 44 below illustrates the net transaction-related train changes (all increases) on a map of CN's Gilman and Chicago Subdivision. Following that, Figure 45 shows the increases in trains projected on the Memphis Subdivision. No other CN subdivisions will experience an increase in trains.

Figure 44
Map Showing Transaction-Related Train Increases on CN's Gilman and Chicago Subdivisions



Figure 45
Map Showing Transaction-Related Train Increases on CN's Memphis Subdivision



C. Operating Agreements

CN's Responsive Application includes several existing KCS agreements that will be needed to execute the Springfield Line Operating Plan. These agreements are summarized here.

1. KCS Haulage Rights on the Springfield Line

In order to allow customers on the Springfield Line to continue to ship via KCS—and to create an additional competitive option for most shippers located on the Line—CN proposes to grant to KCS haulage rights to serve all current and future customers on the Springfield Line. Attached as Exhibit 2B to this Responsive Application is a proposed form of Haulage Agreement, pursuant to which CN would handle railcars in the account of KCS originating or terminating at customers facilities, industry, team or house track, and intermodal and automotive facilities (other than those owned by ICRR). At any point on and along the Springfield Line, KCS will also have the right to interchange traffic with other railroads at any location where the lines of such railroad connect with the Springfield Line. CN would pick up and deliver haulage cars at the Joint Agency facility at Knoche Yard in Kansas City.

The proposed haulage agreement will allow KCS to continue to serve its existing customers on the Springfield Line and compete to for the business of new customers who locate in the line in the future. CN anticipates that the volume of KCS haulage traffic would be approximately 45,000 carloads and 23,000 intermodal units annually, which approximates its current local traffic on the Springfield Line.

2. KCS Trackage Rights Between Southwest Airline Junction and IFG Terminal (Docket No. FD 34500 Sub-No. 2)).

The Operating Plan contemplates that ICRR will acquire a 50% interest in KCS's IFG Terminal, which ICRR will utilize in connection with its intermodal and automotive service. Accordingly, CN is requesting that the Board require KCS to

divest a 50% ownership interest in the IFG Terminal. In order to reach the IFG Terminal from the terminus of the Springfield Line at Rock Creek Junction, MO – and to provide the haulage services to KCS contemplated by the Responsive Application, in FD 36500, (Sub-No 2), ICRR is seeking overhead trackage rights on approximately 24 miles of KCS track between Milepost 5.6 +/- at Airline Junction, MO, and Milepost 29.5 + at the entrance to the IFG Terminal. A form of proposed trackage rights agreement can be found at Exhibit 2C. CN requests that the Board approve those trackage rights, and require KCS to negotiate the terms of a trackage rights agreement, as a condition to any approval of the CPKC transaction.

The trackage rights would be used by ICRR for overhead operations only; ICRR does not seek the right to serve local customers on the trackage rights line. ICRR would negotiate with KCS an appropriate base charge (on a cents per car mile basis) which would be subject to annual adjustment pursuant to Table A, Annual Indices of Charge-Out Prices and Wage Rates (1977=100), Series RCR, included in "AAR Railroad Cost Indexes" and supplements thereto, issued by the Association of American Railroads (the "AAR"), an index that is frequently used by railroads in connection with such agreements. KCS would dispatch the line on a non-discriminatory, first-come first-served basis.

3. Assignment of KCS Trackage Rights Between Rock Creek Junction and Airline Junction (Docket No. FD 34500 (Sub-No. 4))

KCS currently reaches Knoche Yard from the Springfield Line via overhead trackage rights on UP's KC Metro Subdivision between Milepost 276.8+/- at Rock Creek Junction and Milepost 278.2+/- in the vicinity of Airline Junction in Kansas

City, MO, a distance of approximately 1.4 miles. KCS obtained those rights pursuant to an August 5, 1997 trackage rights agreement. In FD 36500, Sub-No. 4, as part of the Springfield Line transaction, ICRR seeks to have KCS to assign its existing overhead trackage rights. Access to that short segment is necessary for ICRR to access Knoche Yard and the proposed overhead trackage rights between Airline Junction and the IFG Terminal (discussed above).

4. East St. Louis Trackage Rights (Docket No. FD 34500 (Sub-No. 3))

In FD 36500 (Sub-No. 3), ICRR proposes to acquire KCS's 100% equity interest in GWER (which owns or leases certain trackage used by KCS in the vicinity of East St. Louis, IL). In order to enable ICRR to conduct in its own name the operations in and around East. St. Louis contemplated by this Operating Plan, ICRR plans to enter into an intra-corporate transaction with GWER to acquire trackage rights over GWER's trackage in the East St. Louis area. Specifically, ICRR would obtain rights to operate over GWER lines between (i) GWE's Milepost 238.7 at or near Q Tower and GWE's Milepost 236.8 at or near Willows in East St. Louis, IL; (ii) between GWER's Milepost 2.3 at or near Wann and GWER's Milepost 0.91 at or near Olin Brass in East Alton, IL; and (iii) from GWER's Milepost 265.01 at or near Roxana to the change in ownership in the track with Shell Oil Company in Wood River, IL.

It is anticipated that, upon consummation of the Springfield Line divestiture, ICRR will acquire intra-corporate overhead and local trackage rights allowing it to operate over that trackage. This is comparable to KCS's arrangement for operations

on those lines today. *See The Kansas City Southern Railway Company – Trackage Rights Exemption – Gateway Western Railway Company and Gateway Eastern Railway Company*, Docket No. FD 33780 (STB served Sep. 29, 1999).

D. Dispatching Changes

The train dispatching function is of central importance to both the efficiency and safety of rail operations. As explained above, CN's United States dispatching is centralized at Homewood, IL where it has 90 employees and 13 desks. CN would dispatch the Springfield Line from there. KCS dispatchers would continue to control train movements on the KCS line between Airline Junction and IFG (including ICRR CN trains arriving and departing the IFG Terminal). To the extent CN cannot dispatch trains on the Springfield Line with current staffing levels at Homewood, CN would add additional, trained RTCs to dispatch the line.

E. Labor Impact

ICRR anticipates hiring additional personnel to staff the Springfield Line, including employees in the train and engine crew, signals, and maintenance crafts.

Estimated post-transaction ICRR manpower needs include the following a T&E workforce for the Springfield Line that assumes conventional type assignments. The total T&E number, however, will not change if an assignment is run remote with two trainmen instead of a trainman and engineer. These employees would support the pair of intermodal/automotive trains, the pair of

manifest trains, the likely transfer that is required to get CN manifest traffic to and from KCS, the grain trains, and the General Extra Board.[115]

CN plans to hire the number of employees at the time CN acquires ownership that it needs to operate the line safely and effectively. Assuming they are qualified, existing employees working on the Springfield Line will be given priority consideration in the hiring process.

While CP and KCS have submitted somewhat conflicting information in the Application and work papers about current employment levels on the Springfield Line, no major changes in the current number of positions are anticipated on the Springfield Line, except for the elimination of the local train at {{ }}, which as explained elsewhere will see the service accounted for elsewhere. Roodhouse will be the hub and spoke of ICRR's local service plan; accordingly, ICRR might need to change the location of some Agreement employees. Also, some Non-Agreement jobs will be transferred to the IFG Terminal from other locations on the Springfield Line. ICRR does not anticipate the need to hire many employees for locations at which KCS (or CPKC) will still be the carrier primarily responsible for local operations, such as Knoche Yard. Also, ICRR will continue its typical practice—and the industry norm— of utilizing a third-party contractor to staff its new intermodal and automotive facilities at the IFG Terminal and in East St. Louis.

[115] Determined in consultation with CN operating experts. See attached Summary of Labor Impacts.

The proposed Asset Purchase Agreement provides that, in the event that ICRR hires any employees for the continued operation of the Springfield Line, it will offer priority hiring consideration to KCS employees (both craft and non-craft) currently working on the Springfield Line whose employment is impacted by the proposed divestiture transaction.[116]

A labor impact chart is printed in Appendix E, Exhibit E-3.

F. Passenger Rail Service Impact

The proposed divestiture transaction will have no impact on passenger rail service.

As explained above, there are only two areas on the Springfield Line itself that host Amtrak service. Those locations would see only minimal increases in daily trains: Roodhouse, IL to East St. Louis (one additional local train on the UP/Amtrak corridor between Godfrey, IL and Q Tower) and around Kansas City (two new trains per day where Amtrak crosses the Springfield Line for approximately 0.1 miles). These minimal increases will have no impact on Amtrak service; nevertheless, CN will commit to work with Amtrak to address any issues of concern.

There are portions of the existing CN lines in Michigan—described above—that will experience an increase in daily cars (but not trains), and which host the Amtrak Wolverine and Blue Water services. Because there will be no additional trains on those lines, there will be no impact on Amtrak service. To the extent any concern is raised about train length, CN will commit to work with Amtrak to

[116] *See* Responsive Application, Exhibit 2A, Section 7.13.

address any issues of concern. Points between St. Louis and Memphis on the Centralia, Cairo, and Fulton, subdivisions will likewise experience an increase in daily cars, but not trains,

Finally, there are sections of the existing CN network in Illinois that will see two new trains per day:

- Chicago, IL to Gilman, IL: This segment is used by Amtrak's City of New Orleans (currently five times per week) and Illini and Saluki services between Chicago and Carbondale, IL, which operate daily in each direction (currently only one pair of trains daily). The Chicago – Gilman line has ample capacity to handle two additional freight trains.

- Gilman, IL to Cockrell, IL: Turnouts on this line at Springfield are used to enter and exit UP/Amtrak's higher-speed corridor between Chicago and St. Louis, as well as the NS mainline to Kansas City. ICRR trains will share only 0.6 miles of track with Amtrak trains that are part of the Lincoln Service and Texas Eagle service before exiting the line. The addition of two trains per day should not create any issues on the UP and NS lines.

In summary, the anticipated increase in traffic and trains resulting from the proposed divestiture transaction is minimal, and is not likely to cause any disruption to Amtrak service, CN stands ready to work with Amtrak to ensure that is the case.

Finally, as explained above, the only area where the Metra commuter railroad approaches any CN line that will see an increase in traffic are segregated Metra lines that do not cross CN.

G. Discontinuances or Abandonments

No line abandonments or gateway closings are planned as a consequence of this transaction.

H. Requirements for additional locomotives, cars, and other equipment

To provide the services contemplated by this Operating Plan, ICRR will need additional cars and locomotives. The amount of additional equipment has been estimated for locomotives based on the percent increase in CN's systemwide post-transaction GTM's; and for intermodal platform and automotive multilevel cars based on the calculations described below, with results as follows:

- Locomotives: An estimated 16 additional high-horsepower road locomotives (including a bad order factor) will be required for (i) the new Chicago-Kansas City train pair, (ii) movement of the projected increase in intermodal and automotive traffic between Chicago and Detroit/Toronto/Port of Montreal on existing trains; (iii) for the movement of increased volumes on CN's existing manifest trains moving between Chicago and Memphis, on the one hand, and East St. Louis; and (iv) increased volumes on the manifest trains operating between St. Louis and Kansas City. In addition, nine mid/low horsepower units will be required for local assignments at Roodhouse and East St Louis. While CN may be able to provide these locomotives from its existing fleet, if doing so proves not to be feasible as traffic volumes on the Springfield Line increase, CN would acquire additional locomotives to support this service.

- Cars: CN will require the following additional intermodal and multilevel cars.[117]

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[117] The approach used to calculate the necessary cars is based in principle on CN's intermodal fleet planning process:

1) Calculate loading/unloading dwell per car at O/D, to determine dwell car days for the year. Assuming 1.3 days per load/unload.

2) Using route miles and cars, determine transit car days. Assume intermodal velocity is 360 MPD (East Region average), and that slot utilization is 90%. Assume Automotive Car velocity is 200 MPD (East region average).

3) To determine the required fleet, turn the annual total car days into daily average car days. The difference between the existing car fleet requirements and the new requirement is the additional cars required.

Figure 46
Car Needs

	Annual Units	Slot util	Loading days	Unloading days	Car Velocity	Platforms/ Cars Required
Intermodal	143,043	1	1	1	360	731
Multi-levels	26,251	1	1	1	200	354

Fueling, servicing and repairing of the road locomotives, intermodal cars and multilevel cars will take place at the IFG Terminal in Kansas City and at existing locations throughout CN's network. Yard switchers used on the Springfield Line will ordinarily be fueled and serviced at their normal assigned locations using truck fueling and light repair services. If for some reason that is not possible, units would be cycled to East St. Louis and back. Ninety-two-day inspections and other more labor-intensive items would be handled at CN's Woodcrest Light Repair Centers in Chicago or at East St. Louis.

The same types of Maintenance of Way equipment (and supporting manpower, for production gang rail and tie renewals) used on KCS's network will be deployed as needed to maintain and renew the track on the Springfield Line.

I. Capital Investment

CN proposes to make capital investments of approximately $250 million over three years following the transaction. As explained above, CN has not been granted physical access to the Springfield Line as of the date the Operating Plan was finalized and such physical inspection may result in adjustments to the capital investment program.

The capital investments described herein will improve transit times for customers who rely on the Springfield Line and add intermodal and automotive capacity at IFG Terminal and East St. Louis. To determine the necessary capital investment, CN evaluated the Springfield Line as well as the adjacent Gilman Subdivision based on the assumptions in the Operating Plan and an assumed track speed of 40 miles per hour.

CN will use its capital investment to integrate the Springfield Line's operations into its Operating Plan, expand intermodal and automotive capacity at the IFG Terminal and in East St. Louis, upgrade main line track as needed on the Springfield Line and Gilman Subdivision, add/extend eight sidings to expand the Springfield Line's capacity, expand the capacity of Roodhouse Yard (which will serve as a mini-hub for local train crews serving industries at the east end of the Springfield Line; and will be the home terminal for the Roodhouse-East St. Louis turn job, and add maintenance-of-way equipment required to maintain the line. With these investments, CN will increase train velocity and improve performance of trains and supporting yard activities on the Springfield Line. Going forward, CN will implement its standard asset replacement cycles.

Appendix F-1 sets forth the total capital investment plan for sidings, East St. Louis and IFG intermodal and automotive facilities, and other investments.

1. Tracks and Line Infrastructure Upgrades

CN's objective is for the entire Springfield Line mainline tracks between Kansas City and Gilman, IL be at Class 3 standards to allow for a minimum freight train speed of 40 MPH. Except for a four mile segment (Milepost 234-237) just east

of Roodhouse which is speed restricted to {{ }} mph,[118] the KCS Timetable indicates that the Springfield Line south of Cockrell already meets FRA Class {{ }} standards; if that is correct, most of the line may not require track upgrades. At Roodhouse, however, 5,000 feet of new yard track will be added between mileposts 235.6 and 236.6.

On the adjacent Gilman Subdivision, CN will install new ties, upgrade certain curves for increased speeds, remove rail defects in the existing track, upgrade the rail on the main line. install a full flange bearing diamond at Mt. Pulaski, and a make a few other improvements to achieve 40 MPH speeds on the entire subdivision.

2. Sidings

To handle the projected additional trains, CN will extend or modify seven sidings on the Springfield Line; and build an entirely new siding at Cockrell, IL. Each of those projects is described further below. The projected cost of the modified sidings is $92 million and the new siding is estimated to cost $14 million.

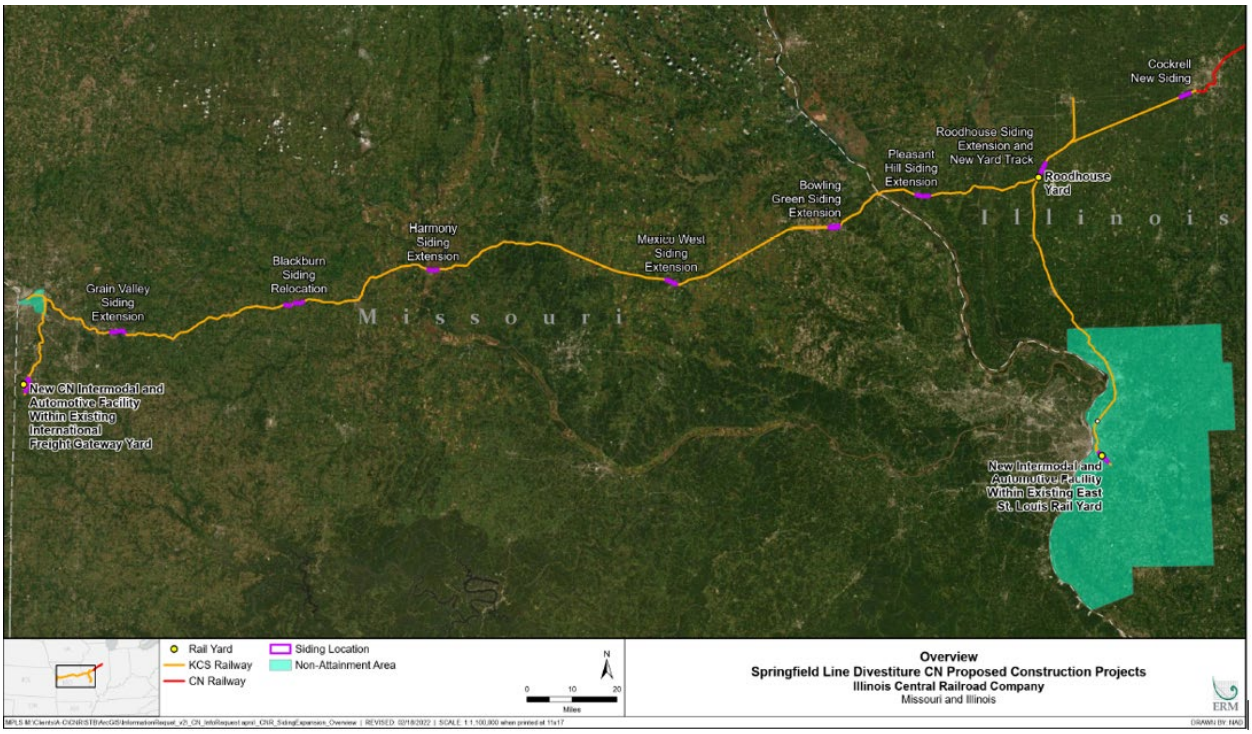
These sidings are important to enhance the overall fluidity of the line so trains can pass each other and move between lines at a higher speed. For example, trains cross both the Mississippi and Illinois Rivers on the Springfield Line (at Louisiana, MO and Pearl, IL, respectively), and at both locations the rivers are navigable and the bridge closes—halting river traffic—only when a train is approaching. This can lead to delays for trains on this segment, which CN took into

[118] KCS Timetable No. 15, 2020 edition.

account in designing its siding improvement plan. CN also carefully planned the location of new or extended sidings to minimize their impact on existing grade crossings.

The new and extended sidings will be built over a three-year period to accommodate the anticipated growth in traffic. A map of the siding projects on the Springfield Line itself is depicted in Figure 47.

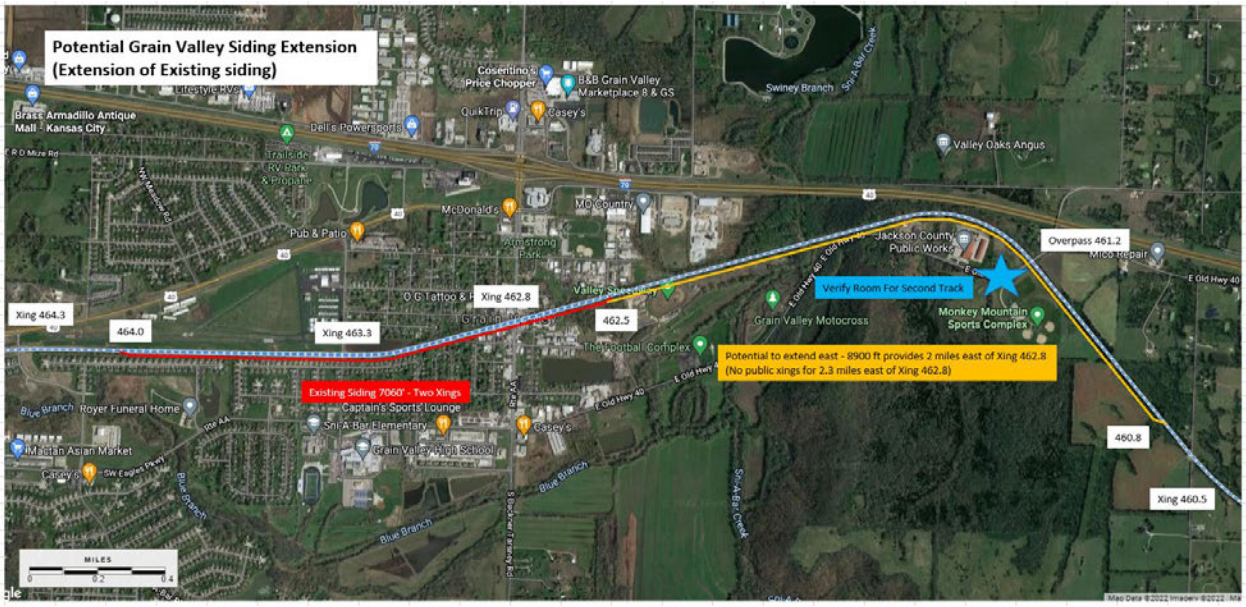
Figure 47
Springfield Line Siding Projects



The first planned siding investment on the Springfield Line is an extension of the existing siding at Grain Valley, MO on the KCS Mexico Subdivision. The extension will be located from Milepost 460.8 to Milepost 462.5 and would include a new span over the Sni-A-Bar Creek. The investment is depicted in Figure 48. There

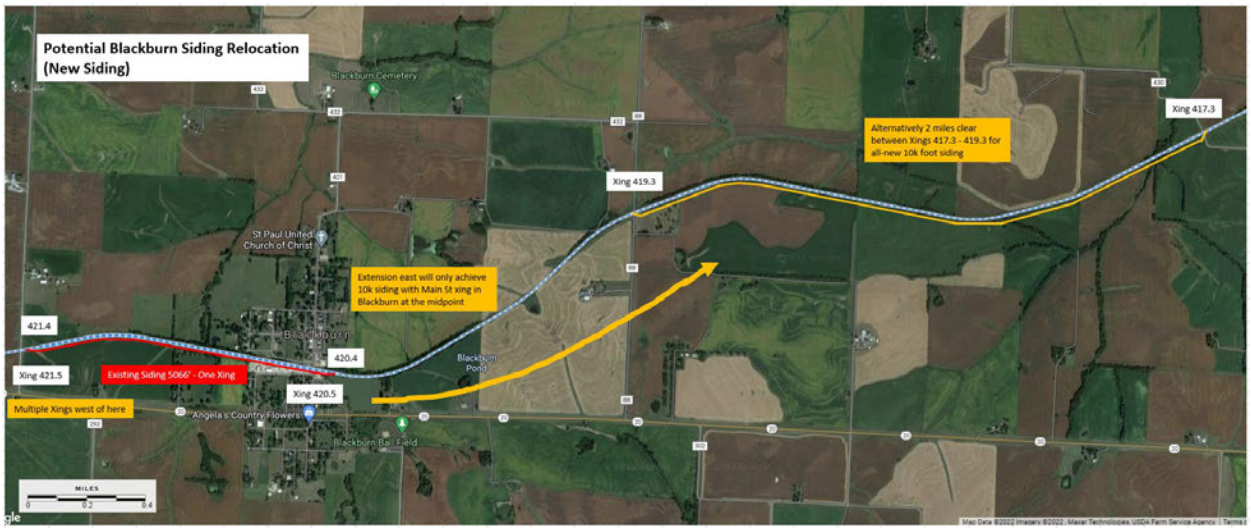
are two public grade crossings on the existing siding but no public grade crossings on the extension.

Figure 48
Grain Valley Siding Extension



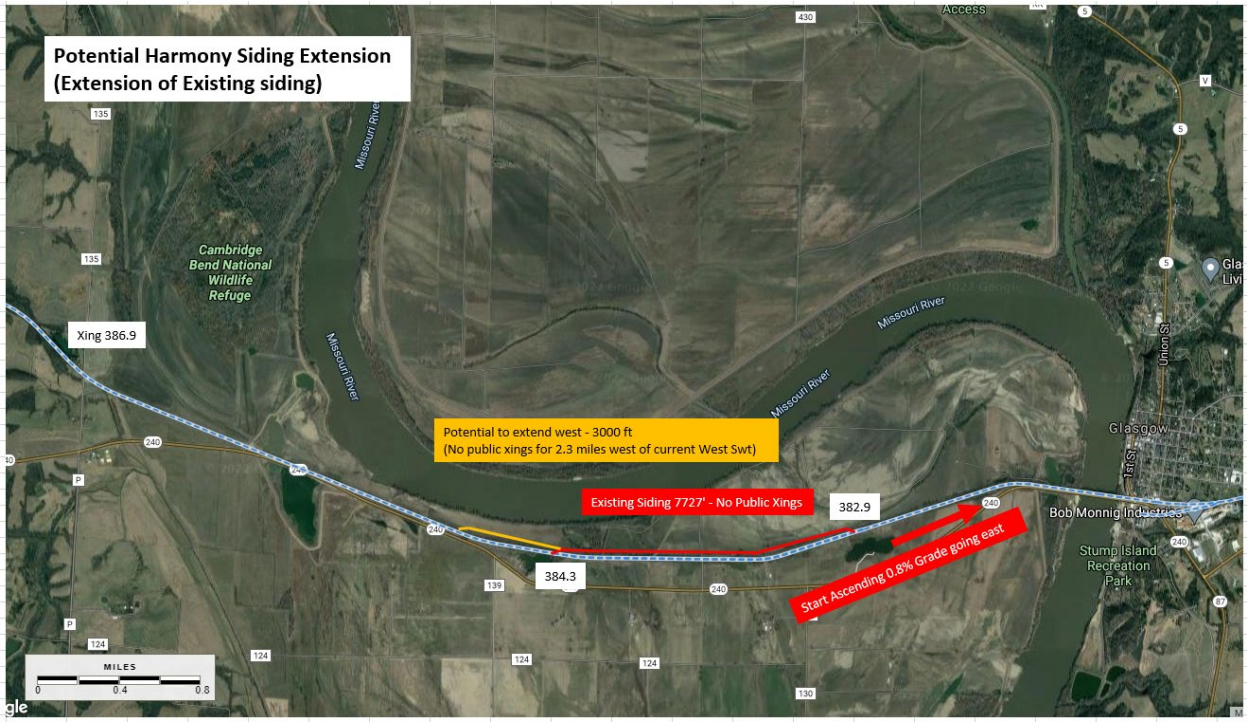
An existing siding on the KCS Mexico Subdivision at Blackburn, MO will be relocated between Milepost 417.3 and Milepost 419.3. This project is depicted in Figure 49. An extension of the existing siding at Blackburn would be less effective than a relocated new siding. Moreover, relocating the siding will avoid blocking any grade crossings.

Figure 49
Relocated Blackburn Siding



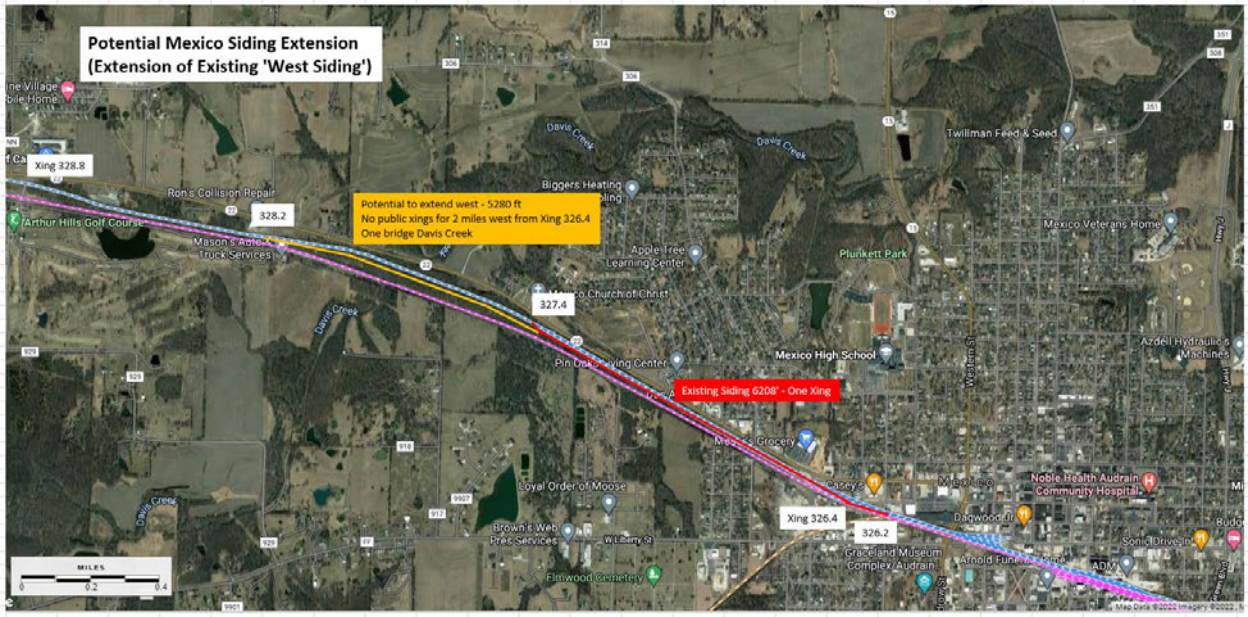
CN also proposes to extend the existing siding between Milepost 384.3 and Milepost 384.9 at Harmony, MO on the KCS Mexico Subdivision. That project is depicted in Figure 51. There are no grade crossings on either the existing siding or the proposed extension.

Figure 50
Extended Harmony Siding



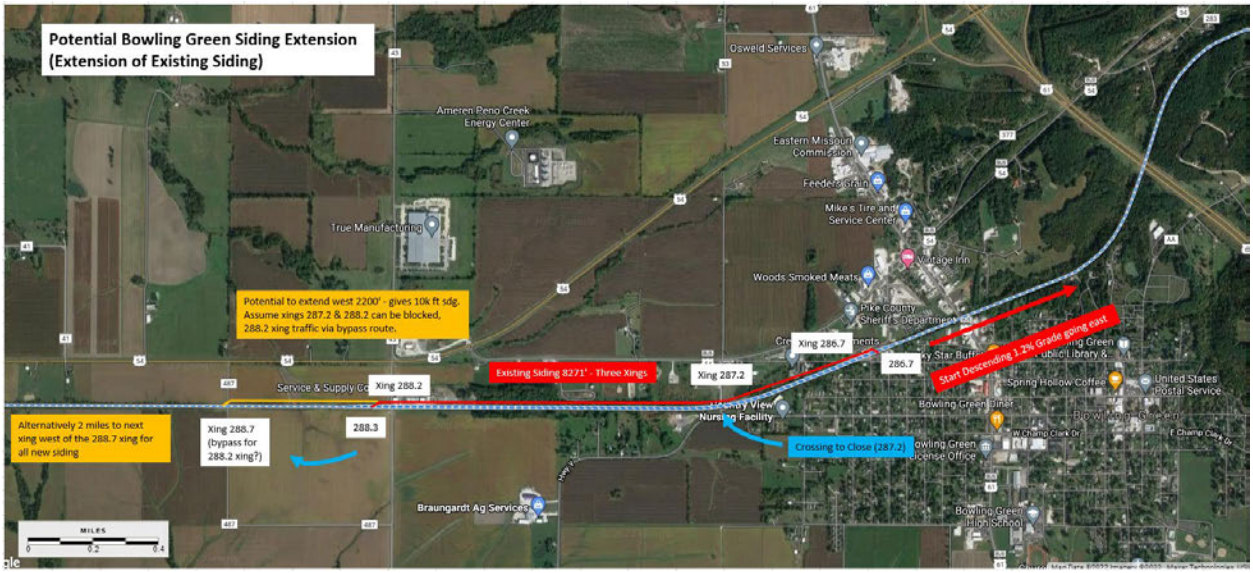
Finally on the Mexico Subdivision, the existing West Siding at Mexico, MO will be extended between Milepost 327.4 and Milepost 328.4, a project that will include a bridge over Davis Creek. The project is depicted in Figure 52. There is a grade crossing on the existing siding but not on the extension. Note that between Harmony and the West Siding, there is an existing siding at Clark, MO that is long enough to hold a unit grain train.

Figure 51
Extended West Siding



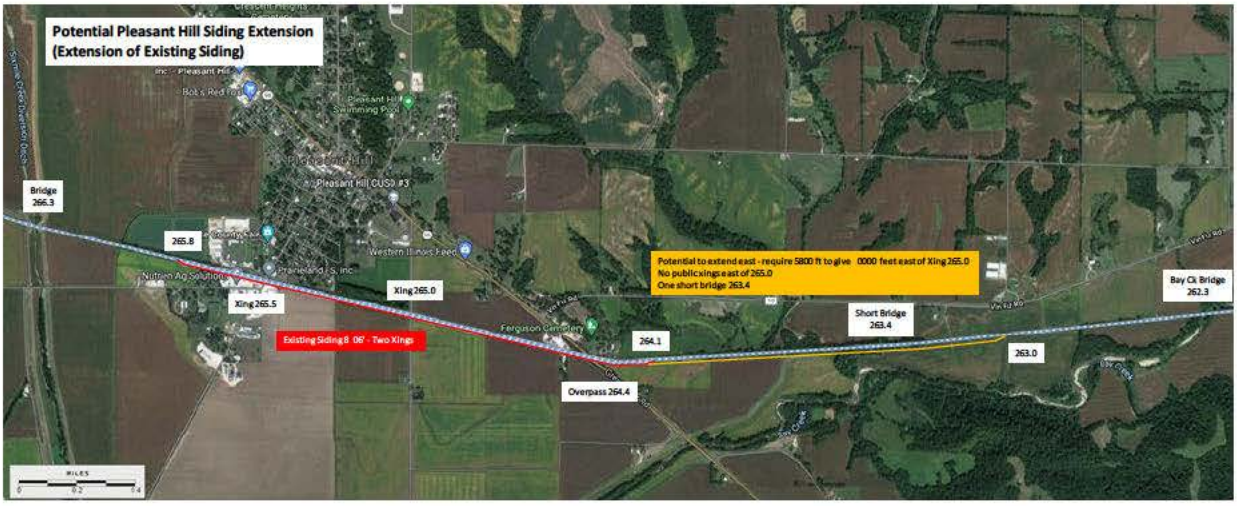
On the KCS Roodhouse Subdivision, the siding at Bowling Green, MO will be extended from Milepost 288.3 to Milepost 288.7. There are three grade crossings along the existing siding, two of which could be potentially closed or rerouted; there are no crossings on the extension.. Note that between the West Siding and Bowling Green, an existing siding at Laddonia, MO is long enough to hold a unit grain train. The project is depicted in Figure 52.

Figure 52
Extended Bowling Green Siding



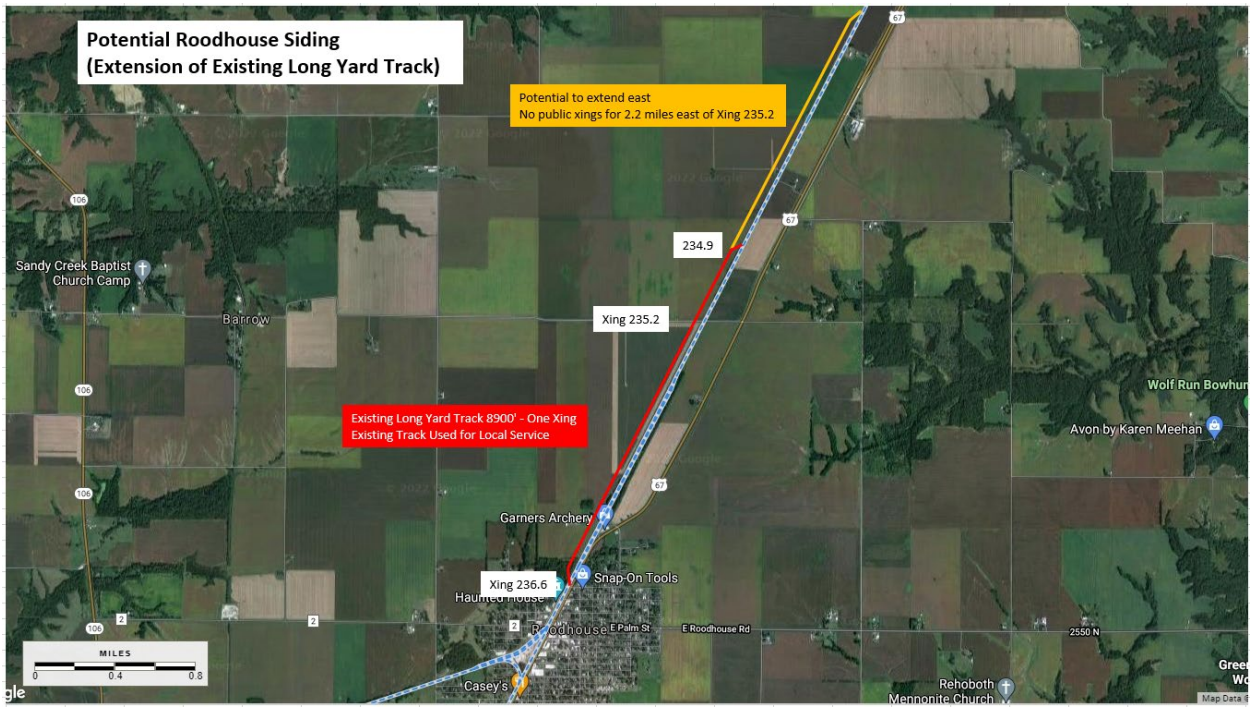
The existing siding at Pleasant Hill, IL on the KCS Roodhouse Subdivision will be extended from Milepost 263.0 to Milepost 264.1, including a short bridge over the Bay Creek. This siding will be located between the two moveable river bridges at Louisiana, MO and Pearl, IL and will mitigate any bridge delays that could disrupt line capacity. There are no grade crossings on the extension, although the existing siding has two grade crossings; the extended siding will provide space to hold a 10,000-foot train clear of any grade crossings. The project is depicted in Figure 53.

Figure 53
Extended Pleasant Hill Siding



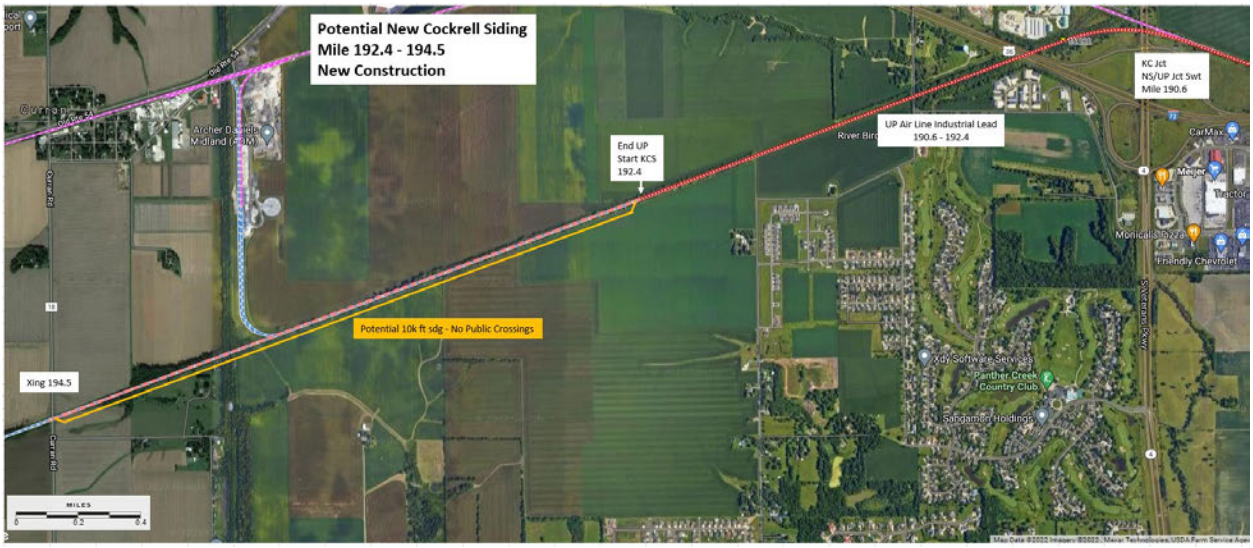
On the KCS Springfield Subdivision, at Roodhouse, IL the existing Long Yard Track will be extended from Milepost 233.2 to Milepost 234.9. The extension involves no public grade crossings, although there is a crossing on the existing siding. The project is depicted in Figure 54.

Figure 54
Extended Roodhouse Siding



At Cockrell, IL, on the KCS Roodhouse Subdivision, a new siding will be built between Milepost 192.4 and Milepost 194.5 and no public grade crossings are affected. The project is depicted in Figure 55.

Figure 55
New Cockrell Siding



Gilman Subdivision infrastructure documentation is located in Appendix F-2.

3. Yard and Terminal Capacity

Most of the anticipated increase in traffic can be absorbed by existing yards and facilities. As discussed above, investments will be made in East St. Louis and at the IFG Terminal south of Kansas City to handle intermodal units and automotive traffic. The IFG Terminal project will be constructed so as not to conflict with CPKC and its operations.

In East St. Louis, investments will be made to accommodate 44 outbound loaded intermodal units per day, 43 inbound loaded units per day, and 13 outbound empty units per day. That represents the expected level of new intermodal traffic in Year 3 of CN's Operating Plan. To accommodate that growth, CN will construct 6,000 track feet with intermodal pads and accompanying pavement. CN will also invest to accommodate 16 loaded outbound automobile multilevels, four empty

outbound multilevels, 13 inbound loaded multilevels, and seven empty multilevels daily at East St. Louis consistent with CN's Operating Plan. It will require the construction of 5,000 track feet for loading/unloading and car storage. In addition, approximately 25 acres will be developed with necessary roadways, parking, and truck areas.

At the IFG Terminal, facilities will be constructed to accommodate 180 loaded outbound intermodal units, 105 loaded inbound intermodal units, and 53 empty intermodal units per day, all consistent with CN's Operating Plan. The project requires 20,000 track feet (with pad) and storage, and the accompanying pavement. For automotive traffic, CN will construct sufficient capacity to accommodate 19 loaded inbound multilevels and four empty inbound multilevels, as well as 10 loaded inbound multilevels and 14 outbound empty multilevels, each daily. This project will require construction of 6,600 track feet including for loading/unloading and for storage. The accompanying work will include roadways and railhead parking and truck areas.

4. Bridges

There are a number of bridges on the Springfield Line. The three largest, from east to west, are:

- Lift bridge crossing the Illinois River at Pearl, IL with five fixed trusses west of the lift span.
- Swing span bridge crossing the Mississippi River at Louisiana, MO, with eight additional trusses.
- Missouri River bridge crossing at Glasgow, MO with six trusses and no moveable section.

CN has not been granted access to physically inspect these bridges prior to filing this Responsive Application. Post-transaction, CN will carefully inspect each of these bridges, to determine whether and what capital investments are needed.

J. Safety Impact

Nothing is more important to CN than operating safely. CN recognizes that safety is not a static "program"; it is a dynamic process focused on continuously improving its corporate safety culture. CN's culture is built on a fundamental commitment to safety that begins at the top. CN is dedicated to providing the leadership, training, organizational structure, technology, and resources necessary to support its goal of eliminating serious injuries and fatalities and becoming the safest Class I railroad in North America. CN's Safety Policy outlines its continual focus on: (1) A Strong Safety Culture; (2) A Safe Work Environment; and (3) Safe Work Practices and Training.[119]

CN is committed to integrating the Springfield Line in a manner that will not compromise safety. As stated above, the Springfield Line would be dispatched from Homewood, IL, like the rest of CN's United States network. To the extent employees who have not previously worked on the Springfield Line are assigned there, CN will comply with all applicable FRA regulations including those relating to territorial qualification. CN's investment in CTC on the new sidings will also enhance safety and efficiency because it will give the RTC the ability to control the signals and switches remotely from the dispatch center in Homewood, IL. That will eliminate

[119] Source: CN Safety Policy.

the need for trains to stop for crews to throw switches to enable trains to enter and exit those sidings.

CN's PTC technology is fully interoperable with KCS, so no significant change in PTC infrastructure would be required. CN will consult with FRA to update CN's system PTC Implementation Plan and PTC Safety Plan, as well as coordinate any necessary PTC testing or other FRA-required information. CN would work with FRA to ensure compliance with all requirements and PTC would continue to protect all PTC regulated track as it does today.

VI. Conclusion

The additional traffic (particularly truck traffic) that CN will divert to the Springfield Line, and the major investments that CN will make to handle that traffic safely and efficiently, will be a great benefit to both the national rail network and the environment. The proposed divestiture will provide shippers an alternate competitive rail route between Kansas City and Chicago, and will preserve and upgrade parallel lines that would have little significance to the CPKC network.

Appendix A: Methodology for Development of Line Densities for Springfield Line and Assessment of CPKC Provided Density Data

As part of preparing the proposed operating plan, Oliver Wyman undertook the process of identifying the base period (2019) tonnage on each line segment and the projected post-transaction growth in tonnage for each line segment. The actual process we followed was as follows:

1) As discussed in the methodology section of this verified statement in Section III, Data Sources and Methodologies, we developed two operating plans—one representing the pre-transaction plan (the "Base Plan") and one representing the post-transaction plan (the "Year 3 Plan"). The Base Plan used traffic derived from the full year 2019 waybill data obtained from CPKC, including the gross tons for each shipment. The Year 3 Plan used traffic that included the diversion traffic identified by the respective traffic studies undertaken by CPKC and CN, as well as an allowance for organic growth in the CPKC base traffic volumes.

2) Using the above operating plans, and corresponding traffic, we used functionality in MultiRail to determine the gross tons traversing each line segment of the Springfield Line, and all of the lines making up the CN system, for the Base Plan and Year 3 Plan.

3) We then computed the net change in tonnage on each line segment by taking the difference in tonnage values between the Year 3 Plan and the Base Plan.

4) We obtained the historic tonnage for each line segment. For the KCS controlled segments, we used the tonnages found in Appendix Q Exhibit 14 of Volume 2 of the CP/KC application for the year 2019, and for CN we used the "trailing" tonnages found in a historic tonnage table furnished by CN for the year 2019 (see Exhibit 14 of the Responsive Application). For a small number of short, local line segments where historic values could not be identified, we used the tonnage values produced by MultiRail from the Base Plan as a proxy for the historic tonnages.

5) We used these historic tonnage values as the tonnage numbers for our Base Plan in the line density tables. To these tonnages we added the net change in tonnage values we computed using MultiRail (step 3 above) to obtain the Year 3 Plan tonnage values. Because the tonnages for the Base Plan from MultiRail did not exactly match the historic values, and we wanted to be

> consistent with the historic metrics, we ensured this by only using the incremental values from the MultiRail analysis in our density tables. This is based on the concept that while there may be some differences between the absolute values produced by MultiRail relative to the historic values, the net change values produced by MultiRail, which are based on the projected traffic increases, should be reliable.

We believe that this deliberate and transparent process produced a fair and reliable representation of the expected pre-transaction and post-transaction tonnage values for each line segment. However, they differ from the post-transaction tonnages published in the CP/KC application. This is because CPKC did not follow a process that even remotely resembled the step-by-step approach set forth above. The basic issues with the CPKC tonnage values are discussed below. Also see the CN Verified Statement of Carl Van Dyke, CN Comments on Application (Finance Docket No. 36500, submitted February 28, 2022) for additional explanation of the errors in the CP/KC application.

CPKC Approach to Computing Line Densities

As described above, in a conventional operations planning process, all carload, intermodal, and bulk unit train traffic is flowed over the network/operating plan and is coded into the operations planning software (*i.e.*, MultiRail).[120] The software develops estimates of traffic density and train counts by line segment and car handlings by yard. CP and KCS did not follow such a simple and straightforward procedure. Instead, they employed an overly complex process to

[120] Finance Docket No. 33556, Railroad Control Application, Surface Transportation Board, July 1998, Volume 2, pp. 5-6 (CN-IC merger) and Finance Docket No. 33388, Railroad Control Application, Surface Transportation Board, June 1997, Volume 3B, p. 7 (Conrail merger).

compute line density values that used a combination of 1) train counts (without weight values) extracted from MultiRail for selected traffic and trains, 2) historic train weights from various time periods which were multiplied by the train counts to estimate tonnage (without reference to the tonnages computed by MultiRail), and 3) a separate manual process for estimating tons for existing and new unit trains.[121] The train counts from MultiRail were based on the use of traffic from October 2020, instead of the full year 2019 traffic one would expect to be used given that the base year adopted by CP and KCS for their application was 2019. Further, the unit train data was based on a single month sample of unit trains operated in October 2019. In addition to being based on inappropriate traffic data, including a purely statistical representation of organic growth-related changes in unit trains,[122] the Applicants' estimates exclude trains that failed to operate over an arbitrary amount of a line segment.[123] CP and KCS, furthermore, ignored the historic tonnage values in developing their post-merger, Year 3, tonnage values so that the Year 3 values cannot be matched to the actual tonnages from 2019.

This is evidenced by the assertions in a letter from CP and KCS to CN wherein they assert that CN was in error to use the 2019 historic tonnages found in the CP/KC application, and instead should have used the tonnages found in the

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[121] "FD 36500 - Work Paper - HC - Trains Per Day and Gross Ton Miles - 2021.10.22 - Working Copy with Haz Breakdown.xlsx."

[122] *See* CN Comments on Application (STB Finance Docket No. 36500) in the Verified Statement of Carl Van Dyke (February 28, 2022) for analysis of unit trains.

[123] Applicants note in "FD 36500 – Work Paper – HC – Trains Per Day – Methodology.pdf" that

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work paper that was apparently used to estimate their pre-merger and post-merger tonnage values.[124] The values in this work paper for the base period differ from the historic values by dramatic amounts, with the growth values in some cases exceeding 30% due to calculation errors as discussed below and in our work papers.[125]

As discussed above, CP and KCS chose to ignore tonnage values from MultiRail, and the historic values they provided in their application, and instead computed tonnage values using an aggregate tonnage spreadsheet model.[126] Any differences between the aggregate tonnage spreadsheet model and the aggregate tonnages CP and KCS projected for the overall system were eliminated by applying numerous unexplained "calibration factors" to the process.[127] These calibration factors had the effect of significantly distorting growth estimates in many cases, leading to further errors in density values. For example, while CP and KCS in the "system model" use an organic growth factor through Year 3 for KCS of approximately { }}, in computing the line densities, they instead apply the higher merged-system average growth rate of { }} for the KCS

[124] *See* Applicants' Reply to Canadian National's Description of Anticipated Responsive Application, Finance Docket No. 36500, January 28, 2022.
[125] *See* "HC - Oliver Wyman Springfield Line 30 Percent.pdf" for methodology and calculation.
[126] "FD 35600 – Work Paper – HC – 1.Proposed Final FTI Rail to Rail Diversion Results for Merger Application 10_21_20 Updat_Truk_Rev.xlsx."
[127] "FD 36500 – Work Paper – HC – Trains Per Day and Gross Ton Miles – 2021.10.22 – Working Copy with Haz Breakdown.xlsx." *See* "Oliver Wyman Springfield Line 30 Percent.pdf" for analysis process.

subdivisions.[128] They then compound this error through the use of "calibration factors" to cause the effective organic growth rate to exceed {{ }} on the Kansas City–Springfield line, over double the value of { }} in the CPKC work papers.[129] Applicants do not explain why they chose to use an untested process, requiring numerous adjustments, when the MultiRail software provides a much more transparent and integrated way to conduct the analysis thoroughly and accurately.

The Applicants' process produced line density (tonnage) results that are demonstrably incorrect on essentially every subdivision.[130]

Detailed View of Springfield Line CPKC Tonnages

CP and KCS's density maps for the Springfield Line (Kansas City to Springfield/East St. Louis) are shown in Exhibit 1, and the tonnages for the line segments are shown in Exhibit 2.

[128] *See* "HC - Review of Growth Factors in CPKC Application.pdf."
[129] *See* CN Comments on Application (STB Finance Docket No. 36500) in the Verified Statement of Carl Van Dyke (February 28, 2022). *See* "Review of Growth Factors in CPKC Application.pdf."
[130] *See* CN Comments on Application (STB Finance Docket No. 36500) in the Verified Statement of Carl Van Dyke (February 28, 2022)

Exhibit 1
Springfield Line Density Maps[131]

2019 Annual Gross Tons (Millions)



Year 3 Annual Gross Tons (Millions)



Exhibit 2
Springfield Line reported tonnage by line segment[132]

Line Segment	2019 Tonnage	Year 3 Tonnage	Difference	Percent Change (%)
Kansas City – Slater	10.38	7.56	-2.82	-27.2%
Slater – Mexico	8.81	4.85	-3.96	-44.9%
Mexico – Roodhouse	6.66	4.43	-2.23	-33.5%
Roodhouse – Godfrey	3.82	1.45	-2.37	-62.0%
Godfrey – East St. Louis	5.48	10.15	+4.67	+85.2%
Roodhouse - Murrayville	3.09	0.032	-3.06	-99.0%
Murrayville – Springfield	0.04	0.033	-0.01	-25.0%

The Applicants do not explain the projected decline in tonnage on most segments of the line between 2019 and Year 3 or the projected dramatic increase in tonnage on the segment between Godfrey and East St. Louis. Instead, CPKC in its reply to Canadian National's Description of Anticipated Responsive Application (STB Finance Docket No. 36500) of January 28, 2022, indicates that the 2019 tonnage values from its Application should not be used, and instead should be

[131] *See* Application Vol. 2, Exhibit 14 traffic density maps, pp. 512-513.
[132] Source: Application Vol. 2, Exhibit 14: Density Charts, pp. 461-504.

replaced by values from the work paper entitled "FD 36500 – Work Paper – HC – Trains Per Day and Gross Ton Miles - Working Copy with Haz Breakdown.xlsx." As shown in Exhibit 3 below, doing so significantly changes the 2019 tonnages – and presents a radically different picture.

Exhibit 3
Springfield Line Reported Tonnage by Line Segment Using Values from Work Paper[133]

Line Segment	Application 2019 Tonnage	Work Paper 2019 Tonnage	Work Paper Year 3 Tonnage[134]	2019 Tonnage Percent Difference (Application. vs. Workpaper)	Work Paper Percent Change between 2019 and Year 3
Kansas City – Slater	10.38	{{ }}	7.56	{{ }}	{{ }}
Slater – Mexico	8.81	{{ }}	4.85	{{ }}	{{ }}
Mexico – Roodhouse	6.66	{{ }}	4.43	{{ }}	{{ }}
Roodhouse – Godfrey	3.82	{{ }}	1.45	{{ }}	{{ }}
Godfrey – East St. Louis	5.48	{{ }}	10.15	{{ }}	{{ }}
Roodhouse – Murrayville	3.09	{{ }}	0.03	{{ }}	{{ }}
Murrayville – Springfield	0.04	{{ }}	0.03	{{ }}	{{ }}

First, the above table shows large differences between the values for 2019 published in the Application and those from the work papers, which implies that either the Application is wrong, or the work papers are wrong. Either way, it raises

[133] Application 2019 and Year 3 tonnages are based on values from Application Vol. 2, Exhibit 14: Density Charts, pp. 461-504. Work paper 2019 tonnage are based on values provided in the "FD 36500 – Work Paper – HC – Trains Per Day and Gross Ton Miles - Working Copy with Haz Breakdown.xlsx."

[134] Application Year 3 tonnages values for the below segments have the same values as the Year 3 tonnage numbers from the workpaper "FD 36500 – Work Paper – HC – Trains Per Day and Gross Ton Miles - Working Copy with Haz Breakdown.xlsx."

significant questions as to the credibility of the line density values not just on the Springfield Line but across the CPKC network. Second, the growth percentages in the work papers are large and greatly exceed any actual projections CP and KCS are making with respect to growth on this line. A review of the diversion studies reveals close to zero diversion traffic for this line, and an examination of the System Model/Cost Metrics model[135] reveals an expected organic growth rate for the KCS system of {{ }} through Year 3, with an overall combined CPKC growth rate of {{ }}.[136] As noted earlier, due to distortions from their calibration process, this {{ }} growth rate was transformed into a 30% growth rate in the case of the Springfield line.[137]

To cross-check the Applicants' traffic projections for the Springfield Line segments, we conducted a MultiRail analysis of tonnage on the line prior to development of the Base Plan detailed in this verified statement and the results are shown in Exhibit 4. The MultiRail analysis used only the CPKC traffic, where the 2019 values were based on the full year 2019 waybill data provided by CP and KCS, and the post-merger values incorporated the CPKC diversion traffic and CPKC system wide average organic growth rate of {{ }}.[138] We used the same methodology described above for our Base Plan and Year 3 Plan traffic density values. We found that the Applicants underestimate traffic on every line segment

[135] *See* "FD 36500 – Work Paper – HC – System Model - Methodology.pdf."
[136] *See* "HC - Review of Growth Factors in CPKC Application.pdf."
[137] *See* "HC - Oliver Wyman Springfield Line 30 Percent.pdf" for associated methodology and calculations
[138] *See* "HC - Review of Growth Factors in CPKC Application.pdf."

except Godfrey to East St. Louis by between {{ }} and {{ }}.

Between Godfrey and East St. Louis the Applicants' overestimate traffic by {{ }}.[139]

Exhibit 4
Springfield Line Tonnage Analysis[140]

Line Segment	Applicants 2019 Tonnage	Applicants Year 3 Tonnage	Estimated Year 3 Tonnage from Diversion[141]	Organic Growth @ {{ }}[142]	Revised Year 3 Estimated Tonnage[143]	Percent Error (%)
Kansas City – Slater	10.38	7.56	{{ }}	{{ }}	{{ }}	{{ }}
Slater – Mexico	8.81	4.85	{{ }}	{{ }}	{{ }}	{{ }}
Mexico – Roodhouse	6.66	4.43	{{ }}	{{ }}	{{ }}	{{ }}
Roodhouse – Godfrey	3.82	1.45	{{ }}	{{ }}	{{ }}	{{ }}
Godfrey – East St. Louis	5.48	10.15	{{ }}	{{ }}	{{ }}	{{ }}
Roodhouse – Murrayville	3.09	0.03	{{ }}	{{ }}	{{ }}	{{ }}
Murrayville – Springfield	0.04	0.03	{{ }}	{{ }}	{{ }}	{{ }}

[139] *See* "HC - MultiRail Corridor Volume, Tonnage and Length Estimates for Diversion Traffic – Methodology.pdf" for associated sources and output.
[140] Applicant's 2019 and Year 3 Tonnage values are based on values from Application Vol. 2, Exhibit 14: Density Charts, pp. 461-504.
[141] *See* "HC - MultiRail Corridor Volume, Tonnage and Length Estimates for Diversion Traffic – Methodology.pdf" for associated sources and output.
[142] *See* "HC - Review of Growth Factors in CPKC Application.pdf."

Appendix B: Listing of Trains, Locals, and Yard Assignments Currently Operated by KCS

Exhibit B-1: KCS Scheduled Trains (TSP Trains) Schedules for the Springfield Line

Train Type	Train Symbol	Origin Station	Dest. Station	Route	Departure Day	Departure Time	Days of Operation	Comments
A - Auto	A-KCITY	Kansas City, MO	Kansas City, MO	Kansas City, MO - International Freight Gateway (IFG), MO - Kansas City, MO	0	7:00	-M-W-F-	Forward industry cars from Kansas City to IFG and returns to Kansas City with auto loads for CPRS and East St. Louis
F - Foreign	F-KC101	Kansas City, MO	Kansas City, MO	Kansas City, MO - Kansas City industries - Kansas City, MO	0	8:00	SuMTuWThFSa	Morning Kansas City industry job
F - Foreign	F-KC202	Kansas City, MO	Kansas City, MO	Kansas City, MO - Kansas City industries - Kansas City, MO	0	20:00	SuMTuWThFSa	Evening Kansas City industry job
F - Foreign	F-KC320	Kansas City, MO	Kansas City, MO	Kansas City, MO - BNSF - Kansas City, MO	0	19:00	SuMTuWThFSa	BNSF interchange
F - Foreign	F-KC475	Kansas City, MO	Kansas City, MO	Kansas City, MO - CPRS - Kansas City, MO	0	21:00	SuMTuWThFSa	CPRS interchange
F - Foreign	F-KCNS	Kansas City, MO	Kansas City, MO	Kansas City, MO - NS - Kansas City, MO	0	10:00	SuMTu-ThFSa	NS interchange
F - Foreign	F-KCTL	Kansas City, MO	Kansas City, MO	Kansas City, MO - KCTL - Kansas City, MO	0	18:00	Su-Tu-Th--	KCTL interchange
F - Foreign	F-KCUP	Kansas City, MO	Kansas City, MO	Kansas City, MO - UP - Kansas City, MO	0	10:30	SuMTuWThFSa	UP interchange; also handles an industry block
{i								

Train Type	Train Symbol	Origin Station	Dest. Station	Route	Departure Day	Departure Time	Days of Operation	Comments
				Mayview, MO - Odessa, MO - Slater, MO				
								}}
M - Manifest	M-KCVN	Kansas City, MO	East St. Louis, IL	Kansas City, MO - East St. Louis, IL	0	12:00	SuM-W-F-	Linehaul train with pickups and setouts at Slater and Roodhouse
M - Manifest	M-VNKC	East St. Louis, IL	IFG, MO	East St. Louis, IL - IFG, MO	0	11:00	-MTu-Th-Sa	Linehaul train with pickups and setouts at Roodhouse and Slater, as well as a pickup at Mexico
Y - Yard	Y-ALS	East St. Louis, IL	East St. Louis, IL	East St. Louis, IL - ALS - East St. Louis, IL	0	17:00	Su-Tu-Th--	Interchange to ALS
Y - Yard	Y-CSXT	East St. Louis, IL	East St. Louis, IL	East St. Louis, IL - CSX - East St. Louis, IL	0	18:00	--TuWThFSa	Interchange to CSX
Y - Yard	Y-ES111	East St. Louis, IL	East St. Louis, IL	East St. Louis, IL - East St. Louis, IL	0	15:30	-M-----	Yard and industry job at East St. Louis
Y - Yard	Y-ES111	East St. Louis, IL	East St. Louis, IL	East St. Louis, IL - East St. Louis, IL	0	8:00	--Tu-ThF-	Yard job at East St. Louis
Y - Yard	Y-ES111	East St. Louis, IL	East St. Louis, IL	East St. Louis, IL - East St. Louis, IL	0	9:00	---W---	Yard and industry job at East St. Louis
Y - Yard	Y-ES212	East St. Louis, IL	East St. Louis, IL	East St. Louis, IL - Sauget, IL - East St. Louis, IL	0	18:00	--Tu-Th--	Yard and industry job serving industries between East St. Louis and Sauget
Y - Yard	Y-ES305	East St. Louis, IL	East St. Louis, IL	East St. Louis, IL - Sauget, IL - East St. Louis, IL	1	0:30	-MTuWThF-	Yard and industry job serving industries between East St. Louis and Sauget
Y - Yard	Y-ES312	East St. Louis, IL	East St. Louis, IL	East St. Louis, IL - East St. Louis, IL	0	23:00	--TuW---	Yard job at East St. Louis
Y - Yard	Y-ES312	East St. Louis, IL	East St. Louis, IL	East St. Louis, IL - East St. Louis, IL	0	8:00	Su-----Sa	Yard job at East St. Louis
Y - Yard	Y-ITSIFG	IFG, MO	IFG, MO	IFG, MO - IFG, MO	0	5:00	SuMTuWThFSa	Yard and industry job at IFG
Y - Yard	Y-ITSIFN	IFG, MO	IFG, MO	IFG, MO - IFG, MO	0	5:00	SuMTuWThFSa	Yard job at IFG
Y - Yard	Y-KC105	Kansas City, MO	Kansas City, MO	Kansas City, MO - Kansas City, MO	0	7:00	-M--Th-Sa	Yard and industry job at Kansas City
Y - Yard	Y-KC105	Kansas City, MO	Kansas City, MO	Kansas City, MO - Kansas City, MO	0	7:00	---W---	Yard and industry job at Kansas City
Y - Yard	Y-KC105	Kansas City, MO	Kansas City, MO	Kansas City, MO - Kansas City, MO	0	7:00	--Tu--F-	Yard and industry job at Kansas City
Y - Yard	Y-KC106	Kansas City, MO	Kansas City, MO	Kansas City, MO - Kansas City, MO	0	8:00	SuMTuWThFSa	Yard job at Kansas City
Y - Yard	Y-KC108	Kansas City, MO	Kansas City, MO	Kansas City, MO - Kansas City, MO	0	8:00	--Tu----	Yard job at Kansas City
Y - Yard	Y-KC224	Kansas City, MO	Kansas City, MO	Kansas City, MO - Kansas City, MO	0	16:00	SuMTuWThFSa	Yard and industry job at Kansas City
Y - Yard	Y-KC229	Kansas City, MO	Kansas City, MO	Kansas City, MO - Kansas City, MO	0	16:00	SuMTuWThFSa	Yard job at Kansas City
Y - Yard	Y-KC237	Kansas City, MO	Kansas City, MO	Kansas City, MO - Kansas City, MO	0	17:00	-M-W---	Yard and industry job at Kansas City
Y - Yard	Y-KC237	Kansas City, MO	Kansas City, MO	Kansas City, MO - CPRS - Kansas City, MO	0	15:00	Su-Tu-Th--	Industry job and transfer run to CPRS
Y - Yard	Y-KC342	Kansas City, MO	Kansas City, MO	Kansas City, MO - Kansas City, MO	0	22:30	SuMTuWThFSa	Industry job at Kansas City
Y - Yard	Y-KC348	Kansas City, MO	Kansas City, MO	Kansas City, MO - Kansas City, MO	1	2:00	hg	Yard and industry job at Kansas City

Train Type	Train Symbol	Origin Station	Dest. Station	Route	Departure Day	Departure Time	Days of Operation	Comments
Y - Yard	Y-KC348	Kansas City, MO	Kansas City, MO	Kansas City, MO - Grandview, MO - Kansas City, MO	1	2:00	--Tu----	Works Grandview industries
Y – Yard	Y-TRRA	East St. Louis, IL	East St. Louis, IL	East St. Louis, IL - Madison, IL - East St. Louis, IL	0	5:00	-MTuWThF-	Interchange to TRRA

Exhibit B-2: KCS Unscheduled Train (Non-TSP) Schedules for the Springfield Line

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Appendix C: Summary of CN Base Period Trains Used in MultiRail

Manifest, Intermodal, Automotive, and Haulage Trains Only (Excludes Locals and Unit Trains)

Train Type	Symbol	Origin	Destination	Runs Per Week	Distance	Transit Time(Hours)
General Manifest	A_4002	MONTASYAR_PQ	JOFFRE_PQ	7	157	4.9
General Manifest	A_4012	JOFFRE_PQ	MONTASYAR_PQ	7	157	6.6
General Manifest	A_4016	LANG_OH	LANG_OH	7	149	8.2
General Manifest	A_4022	JOFFRE_PQ	MTJOLI_PQ	5	199	7.5
General Manifest	A_4031	MTJOLI_PQ	JOFFRE_PQ	5	199	10.6
General Manifest	A_4054	WINSYMYAR_MB	EDMONTON_AB	7	814	47.7
General Manifest	A_4061	MONINTTER_NB	MONINTTER_NB	7	176	7.3
General Manifest	A_4064	SASKATOON_SK	WINSYMYAR_MB	7	474	24.8
General Manifest	A_4071	DARTMOUTH_NS	MONINTTER_NB	7	189	8.1
General Manifest	A_4079	CENTRALIA_IL	KIRYARD_IN	7	248	17.5
General Manifest	A_4081	MONINTTER_NB	DARTMOUTH_NS	7	189	7.8
General Manifest	A_4089	KIRYARD_IN	CENTRALIA_IL	7	248	16.2
General Manifest	A_4105	SCOTFORD_AB	WINSYMYAR_MB	7	806	50.3
General Manifest	A_4114	NBATTLEFO_SK	EDMONTON_AB	7	258	18.7
General Manifest	A_4125	VANTHOYAR_BC	EDMONTON_AB	7	737	45.0
General Manifest	A_4158	GREBAY_WI	STEPT_WI	5	97	4.5
General Manifest	A_4165	VANTHOYAR_BC	EDMONTON_AB	7	737	44.5
General Manifest	A_4168	STEPT_WI	GREBAY_WI	5	97	4.0
General Manifest	A_4175	EDMONTON_AB	VANTHOYAR_BC	7	740	44.8
General Manifest	A_4185	MCLENNAN_AB	EDMONTON_AB	7	264	15.5
General Manifest	A_4195	EDMONTON_AB	MCLENNAN_AB	7	264	15.8

Train Type	Symbol	Origin	Destination	Runs Per Week	Distance	Transit Time(Hours)
General Manifest	A_4197	MAYYARD_LA	MEMPHIS_TN	4	394	15.9
General Manifest	A_4197	JACKSON_MS	MEMPHIS_TN	3	217	8.3
General Manifest	A_4204	THEPAS_MB	MELVILLE_SK	2	238	12.5
General Manifest	A_4207	MEMPHIS_TN	JACKSON_MS	7	217	9.3
General Manifest	A_4213	TORMACYAR_ON	PTROBINSO_ON	7	101	7.0
General Manifest	A_4214	MELVILLE_SK	THEPAS_MB	2	238	16.5
General Manifest	A_4223	PTROBINSO_ON	TORMACYAR_ON	7	101	6.8
General Manifest	A_4224	MELVILLE_SK	REGINA_SK	6	95	6.5
General Manifest	A_4234	REGINA_SK	MELVILLE_SK	6	95	6.5
General Manifest	A_4292	BECANCOUR_PQ	STLAMBERT_PQ	5	107	6.1
General Manifest	A_4302	MONTASYAR_PQ	BECANCOUR_PQ	5	117	6.0
General Manifest	A_4317	MEMPHIS_TN	DECATUR_IL	7	400	23.1
General Manifest	A_4329	DECATUR_IL	MEMPHIS_TN	7	400	22.0
General Manifest	A_4343	LONEAST_ON	TORMACYAR_ON	7	126	8.8
General Manifest	A_4353	TORMACYAR_ON	LONEAST_ON	7	126	6.8
General Manifest	A_4364	FTFRANCES_ON	THUBAY_ON	7	220	8.8
General Manifest	A_4374	THUBAY_ON	WINSYMYAR_MB	7	419	18.3
General Manifest	A_4383	WINDSOR_ON	LONEAST_ON	3	109	4.6
General Manifest	A_4384	WINSYMYAR_MB	SUPERIOR_WI	7	360	16.5
General Manifest	A_4393	LONEAST_ON	WINDSOR_ON	3	109	4.2
General Manifest	A_4398	PROCTOR_MN	WINSYMYAR_MB	7	353	17.1
General Manifest	A_4409	KIRYARD_IN	ELKHART_IN	7	86	5.5
General Manifest	A_4425	EDMONTON_AB	CALLOGPAR_AB	7	212	11.8
General Manifest	A_4468	FONLAC_WI	CLEARING_IL	7	159	13.8

Train Type	Symbol	Origin	Destination	Runs Per Week	Distance	Transit Time(Hours)
General Manifest	A_4479	KIRYARD_IN	GREBAY_WI	7	288	18.8
General Manifest	A_4503	NBAY_ON	TORMACYAR_ON	4	207	8.2
General Manifest	A_4506	BATCREEK_MI	FLAROCK_MI	7	162	13.6
General Manifest	A_4508	SAUSTMARI_ON	GREBAY_WI	7	274	16.3
General Manifest	A_4513	TORMACYAR_ON	NBAY_ON	4	207	7.5
General Manifest	A_4518	GREBAY_WI	SAUSTMARI_ON	7	274	16.5
General Manifest	A_4585	SWALANDIN_AB	GRAPRAIRI_AB	7	232	17.0
General Manifest	A_4595	GRAPRAIRI_AB	SWALANDIN_AB	7	232	13.0
General Manifest	A_4605	TERRACE_BC	PRIGEORGE_BC	2	372	15.8
General Manifest	A_4632	SENNETERR_PQ	PARENT_PQ	6	138	4.5
General Manifest	A_4642	PARENT_PQ	SENNETERR_PQ	6	138	4.5
General Manifest	A_4652	PARENT_PQ	GARNEAU_PQ	6	191	8.8
General Manifest	A_4662	GARNEAU_PQ	PARENT_PQ	6	191	8.0
General Manifest	A_4682	MONTASYAR_PQ	CHAMBORD_PQ	7	264	18.5
General Manifest	A_4692	CHAMBORD_PQ	MONTASYAR_PQ	7	264	18.7
General Manifest	A_4725	CHETWYND_BC	PRIGEORGE_BC	7	196	8.4
General Manifest	A_4735	PRIGEORGE_BC	CHETWYND_BC	7	196	7.5
General Manifest	A_4785	FTNELSON_BC	FTSTJOHN_BC	1	251	23.3
General Manifest	A_4795	FTSTJOHN_BC	FTNELSON_BC	1	251	24.0
General Manifest	A_4826	LANG_OH	SARNIA_ON	7	109	7.2
General Manifest	A_4846	FLAROCK_MI	SARNIA_ON	7	80	4.6
General Manifest	A_4853	SARNIA_ON	FLAROCK_MI	7	80	5.3
General Manifest	A_4887	MEMPHIS_TN	MOBILE_AL	7	404	19.4
General Manifest	A_4897	MOBILE_AL	MEMPHIS_TN	7	404	18.8

Train Type	Symbol	Origin	Destination	Runs Per Week	Distance	Transit Time(Hours)
General Manifest	A_4908	STEPT_WI	KIRYARD_IN	7	315	17.7
General Manifest	A_4913	TORMACYAR_ON	KIRYARD_IN	7	495	25.7
General Manifest	A_4919	KIRYARD_IN	STEPT_WI	7	315	17.4
General Manifest	A_4929	KIRYARD_IN	TORMACYAR_ON	7	495	26.5
General Manifest	A_4945	HOUSTON_BC	PRIGEORGE_BC	5	199	15.0
General Manifest	A_4955	PRIGEORGE_BC	HOUSTON_BC	5	199	13.0
General Manifest	A_4967	MEMPHIS_TN	KIRYARD_IN	7	525	21.9
General Manifest	A_4979	KIRYARD_IN	MEMPHIS_TN	7	503	22.9
General Manifest	A_4999	KIRYARD_IN	MEMPHIS_TN	7	503	22.9
General Manifest	H_9065	FRASURIMP_BC	VANTHOYAR_BC	7	3	0.1
General Manifest	M_3015	EDMONTON_AB	VANTHOYAR_BC	7	737	29.5
General Manifest	M_3017	BATROUGE_LA	MEMPHIS_TN	7	394	16.5
General Manifest	M_3027	MEMPHIS_TN	BATROUGE_LA	7	394	17.0
General Manifest	M_3033	TORMACYAR_ON	WINSYMYAR_MB	7	1,183	40.9
General Manifest	M_3035	EDMONTON_AB	PRIGEORGE_BC	7	485	25.1
General Manifest	M_3045	PRIGEORGE_BC	WINSYMYAR_MB	7	1,286	71.3
General Manifest	M_3051	MONINTTER_NB	TORMACYAR_ON	7	897	31.8
General Manifest	M_3063	TORMACYAR_ON	MONINTTER_NB	7	897	37.9
General Manifest	M_3095	EDMONTON_AB	COQUITLAM_BC	7	744	38.7
General Manifest	M_3105	COQUITLAM_BC	EDMONTON_AB	7	734	40.9
General Manifest	M_3115	EDMONTON_AB	VANTHOYAR_BC	7	741	36.3
General Manifest	M_3125	EDMONTON_AB	WINSYMYAR_MB	7	797	40.4
General Manifest	M_3133	TORMACYAR_ON	WINSYMYAR_MB	7	1,183	50.3
General Manifest	M_3134	WINSYMYAR_MB	SCOTFORD_AB	7	817	43.6

Train Type	Symbol	Origin	Destination	Runs Per Week	Distance	Transit Time(Hours)
General Manifest	M_3144	WINSYMYAR_MB	TORMACYAR_ON	3	1,191	50.7
General Manifest	M_3154	WINSYMYAR_MB	CALLOGPAR_AB	7	996	51.3
General Manifest	M_3165	MIRROR_AB	WINSYMYAR_MB	4	880	48.3
General Manifest	M_3174	WINSYMYAR_MB	EDMONTON_AB	7	797	43.3
General Manifest	M_3184	WINSYMYAR_MB	TORMACYAR_ON	7	1,191	51.4
General Manifest	M_3185	EDMONTON_AB	WINSYMYAR_MB	7	797	47.3
General Manifest	M_3212	STLAMBERT_PQ	TORMACYAR_ON	7	338	14.9
General Manifest	M_3223	TORMACYAR_ON	STLAMBERT_PQ	7	338	10.9
General Manifest	M_3232	STALBANS_VT	RIVPRAIRI_PQ	3	86	6.8
General Manifest	M_3242	MONTASYAR_PQ	STALBANS_VT	3	75	4.5
General Manifest	M_3262	HUNTINGDO_PQ	MONTASYAR_PQ	6	53	2.9
General Manifest	M_3272	MONTASYAR_PQ	HUNTINGDO_PQ	6	53	3.7
General Manifest	M_3357	MEMPHIS_TN	KIRYARD_IN	7	525	21.9
General Manifest	M_3368	GREBAY_WI	KIRYARD_IN	7	288	18.5
General Manifest	M_3379	KIRYARD_IN	WATERLOO_IA	7	327	21.5
General Manifest	M_3389	WATERLOO_IA	KIRYARD_IN	7	327	25.5
General Manifest	M_3404	WINSYMYAR_MB	ELKHART_IN	7	954	49.4
General Manifest	M_3419	KIRYARD_IN	WINSYMYAR_MB	7	840	33.4
General Manifest	M_3424	WINSYMYAR_MB	KIRYARD_IN	7	888	42.6
General Manifest	M_3439	KIRYARD_IN	WINSYMYAR_MB	7	840	33.4
General Manifest	M_3444	WINSYMYAR_MB	STEPT_WI	7	574	25.8
General Manifest	M_3458	STEPT_WI	WINSYMYAR_MB	7	574	24.6
General Manifest	M_3479	KIRYARD_IN	PRIGEORGE_BC	7	2,171	123.1
General Manifest	M_3485	PRIGEORGE_BC	EDMONTON_AB	7	489	28.0

Train Type	Symbol	Origin	Destination	Runs Per Week	Distance	Transit Time(Hours)
General Manifest	M_3545	VANTHOYAR_BC	PRIGEORGE_BC	7	628	29.9
General Manifest	M_3555	PRIGEORGE_BC	VANTHOYAR_BC	7	631	28.9
General Manifest	M_3564	WINSYMYAR_MB	MARKHAM_IL	7	872	39.7
General Manifest	M_3683	TORMACYAR_ON	MONTASYAR_PQ	7	328	12.7
General Manifest	M_3692	MONTASYAR_PQ	TORMACYAR_ON	7	328	10.6
General Manifest	M_3732	MONTASYAR_PQ	TORMACYAR_ON	7	328	8.8
General Manifest	M_3763	TORMACYAR_ON	MONTASYAR_PQ	7	328	9.1
General Manifest	M_3772	MONTASYAR_PQ	TORMACYAR_ON	7	328	8.8
General Manifest	M_3823	SARNIA_ON	TORMACYAR_ON	7	185	7.0
General Manifest	M_3833	TORMACYAR_ON	LANG_OH	7	293	16.3
General Manifest	M_3949	KIRYARD_IN	TORMACYAR_ON	7	495	22.8
General Manifest	M_3969	CHAMPAIGN_IL	TORMACYAR_ON	7	598	26.7
General Manifest	M_3973	TORMACYAR_ON	KIRYARD_IN	7	495	20.9
General Manifest	M_3993	TORMACYAR_ON	SALEM_IL	7	707	31.0
General Manifest	M-KCVN	KANCITY_MO	ESTLOUIS_IL	4	321	14.0
General Manifest	M-VNKC	ESTLOUIS_IL	INTFREGAT_MO	4	342	14.9
Intermodal	K_1044	WINSYMYAR_MB	TRANSCONA_MB	7	3	0.8
Intermodal	K_1205	FRASURIMP_BC	FRASURIMP_BC	7	7	0.3
Intermodal	K_1225	VANCENPIE_BC	VANCENPIE_BC	7	35	1.4
Intermodal	K_1245	VANVANTER_BC	VANVANTER_BC	7	37	1.5
Intermodal	K_1344	REGINA_SK	REGINA_SK	7	20	0.8
Intermodal	Q_1013	BRAINTTER_ON	TRANSCONA_MB	7	1,186	39.7
Intermodal	Q_1014	TRANSCONA_MB	ROBBANK_BC	7	1,569	73.8
Intermodal	Q_1025	ROBBANK_BC	BRAINTTER_ON	5	2,758	126.3
Intermodal	Q_1052	MONTASYAR_PQ	VANTHOYAR_BC	7	3,030	132.1
Intermodal	Q_1065	ROBBANK_BC	MONTASYAR_PQ	3	3,066	135.3
Intermodal	Q_1084	WINSYMYAR_MB	MONTASYAR_PQ	7	1,506	53.2
Intermodal	Q_1165	ROBBANK_BC	CHIINTTER_IL	7	2,440	126.4
Intermodal	Q_1169	CHIINTTER_IL	FLAROCK_MI	7	328	16.3
Intermodal	Q_1179	CHIINTTER_IL	VANTHOYAR_BC	7	2,424	120.2

Train Type	Symbol	Origin	Destination	Runs Per Week	Distance	Transit Time(Hours)
Intermodal	Q_1185	VANTHOYAR_BC	CHIINTTER_IL	7	2,410	127.0
Intermodal	Q_1199	CHIINTTER_IL	ROBBANK_BC	7	2,454	117.7
Intermodal	Q_1265	ROBBANK_BC	CHIINTTER_IL	1	2,440	116.1
Intermodal	Q_1475	CALLOGPAR_AB	VANTHOYAR_BC	7	953	49.9
Intermodal	Q_1805	PRIRUPTER_BC	BRAINTTER_ON	4	2,945	136.3
Intermodal	Q_1833	BRAINTTER_ON	PRIRUPTER_BC	7	2,935	120.5
Intermodal	Q_1925	PRIRUPTER_BC	CHIINTTER_IL	7	2,627	109.9
Intermodal	Q_1965	PRIRUPTER_BC	MEMINTTER_TN	3	3,104	146.3
Intermodal	Q_1977	MEMINTTER_TN	PRIRUPTER_BC	5	3,133	138.4
Intermodal	Q_1985	PRIRUPTER_BC	CHIINTTER_IL	7	2,628	128.1
Intermodal	Q_1999	CHIINTTER_IL	PRIRUPTER_BC	7	2,629	124.4
Intermodal	Z_1113	BRAINTTER_ON	VANTHOYAR_BC	7	2,722	94.3
Intermodal	Z_1125	VANINTTER_BC	BRAINTTER_ON	7	2,718	121.4
Intermodal	Z_1144	WINSYMYAR_MB	BRAINTTER_ON	7	1,198	51.4
Intermodal	Z_1145	CALLOGPAR_AB	WINSYMYAR_MB	7	998	50.4
Intermodal	Z_1153	BRAINTTER_ON	CALLOGPAR_AB	7	2,181	69.5
Intermodal	Z_1203	BRAINTTER_ON	ROCKINGHA_NS	7	1,090	35.6
Intermodal	Z_1211	ROCKINGHA_NS	BRAINTTER_ON	7	1,090	36.8
Intermodal	Z_1489	CHIINTTER_IL	MONTASYAR_PQ	7	834	32.3
Intermodal	Z_1492	MONMONINT_PQ	CHIINTTER_IL	7	831	32.2
Intermodal	Z_1949	CHIINTTER_IL	MAYYARD_LA	7	883	29.5
Intermodal	Z_1957	MAYYARD_LA	CHIINTTER_IL	3	909	31.1
Intermodal	Z_1957	JACKSON_MS	CHIINTTER_IL	3	732	23.8
Intermodal	Z_1957	MEMINTTER_TN	CHIINTTER_IL	1	520	15.5
Multi-levels	E_2516	FLAROCK_MI	GIBSON_IN	7	321	19.0
Multi-levels	E_2609	MARKHAM_IL	FLINT_MI	2	255	11.3
Multi-levels	E_2616	BATCREEK_MI	MARKHAM_IL	2	164	6.6
Multi-levels	E_2716	BATCREEK_MI	SALEM_IL	7	373	21.4
Multi-levels	E_2749	MARKHAM_IL	MONTASYAR_PQ	7	834	35.0
Multi-levels	E_2753	TORMACYAR_ON	MARKHAM_IL	7	501	25.7
Multi-levels	M_3565	VANTHOYAR_BC	WINSYMYAR_MB	7	1,535	86.8
Multi-levels	M_3579	MARKHAM_IL	EDMONTON_AB	7	1,665	72.8
On-line Haulage	H_1769	NEWTON_IL	NEWTON_IL	7	305	12.2
On-line Haulage	H_2609	WCHICAGO_IL	MARKHAM_IL	7	52	2.1
On-line Haulage	H_3095	COQUITLAM_BC	COQUITLAM_BC	7	38	1.5
On-line Haulage	H_3932	STROSJCT_PQ	STLAMBERT_PQ	5	29	1.5

Train Type	Symbol	Origin	Destination	Runs Per Week	Distance	Transit Time(Hours)
On-line Haulage	H_3942	STLAMBERT_PQ	STROSJCT_PQ	5	29	1.5
On-line Haulage	H_9006	BUTLER_PA	SENECA_NY	7	246	9.9
On-line Haulage	H_9016	SENECA_NY	BUTLER_PA	7	246	9.9
On-line Haulage	H_9025	TILBURY_BC	TILBURY_BC	7	5	0.2
On-line Haulage	H_9029	KIRYARD_IN	GOFF_IN	5	7	4.6
On-line Haulage	H_9035	CAMROSE_AB	CAMROSE_AB	7	16	0.7
On-line Haulage	H_9038	SLINGER_WI	SLINGER_WI	7	29	1.2
On-line Haulage	H_9044	WINSYMYAR_MB	WINSYMYAR_MB	7	16	0.7
On-line Haulage	T_7469	SPAULDING_IL	KIRYARD_IN	1	84	5.2

Appendix D: CN Segments in the United States with No Changes in Trains Per Day Not Adjacent to the Springfield Line[144]

Subdivision	Segment	Pre-Transaction Trains Per Day	Post-Transaction Trains Per Day	Change in Trains Per Day	Passenger Trains Per Day
BATON ROUGE	RESERVE_LA - KENNER_LA	9.8	9.8	-	0.1
BEAUMONT	BAYSHOJCT_AL - MOBILE_AL	2.5	2.5	-	-
BEAUMONT	BELJCT_AL - BAYSHOJCT_AL	2.5	2.5	-	-
BEAUMONT	HATTIESBU_MS - BELJCT_AL	4	4	-	-
BEAUMONT	JACKSON_MS - STAR_MS	3.2	3.2	-	-
BEAUMONT	SARATOGA_MS - HATTIESBU_MS	5.6	5.6	-	-
BEAUMONT	STAR_MS - SARATOGA_MS	4.1	4.1	-	-
CAIRO	BUDA_KY - FULTON_KY	12.3	12.3	-	2
CAIRO	CAIRO_IL - WICKLIFFE_KY	12.3	12.3	-	2
CAIRO	WICKLIFFE_KY - BUDA_KY	12.1	12.1	-	2
CENTRALIA	BOIS_IL - TAMAROA_IL	19.4	19.4	-	6
CENTRALIA	CARBONDAL_IL - COBDEN_IL	10.7	10.7	-	2
CENTRALIA	CENTRALIA_IL - IRVINGTON_IL	19.4	19.4	-	6
CENTRALIA	COBDEN_IL - MOUNDS_IL	10.7	10.7	-	2
CENTRALIA	DESOTO_IL - CARBONDAL_IL	14.7	14.7	-	6
CENTRALIA	DOWELL_IL - ELKVILLE_IL	14.7	14.7	-	6
CENTRALIA	ELKVILLE_IL - CARBONDAL_IL	14.7	14.7	-	6
CENTRALIA	IRVINGTON_IL - RICHVIEW_IL	19.4	19.4	-	6
CENTRALIA	MOUNDS_IL - CAIRO_IL	12.3	12.3	-	2
CENTRALIA	MOUNDS_IL - PULASKI_IL	10.7	10.7	-	2
CENTRALIA	RICHVIEW_IL - BOIS_IL	19.4	19.4	-	6
CENTRALIA	TAMAROA_IL - DOWELL_IL	18.2	18.2	-	6
CENTRALIA	TAMAROA_IL - DUQUOIN_IL	19.4	19.4	-	6
CHAMPAIGN	ARCOLA_IL - HUMBOLDT_IL	22.5	22.5	-	6
CHAMPAIGN	DORANS_IL - MATTOON_IL	22.5	22.5	-	6
CHAMPAIGN	EFFINGHAM_IL - WATSON_IL	27	27	-	6
CHAMPAIGN	HUMBOLDT_IL - DORANS_IL	22.5	22.5	-	6
CHAMPAIGN	LEVJCT_IL - TOLONO_IL	22	22	-	6
CHAMPAIGN	MATTOON_IL - NEOGA_IL	24.9	24.9	-	6
CHAMPAIGN	NEOGA_IL - EFFINGHAM_IL	26	26	-	6
CHAMPAIGN	PESOTUM_IL - TUSCOLA_IL	21.6	21.6	-	6
CHAMPAIGN	SANJCT_IL - CENTRALIA_IL	16.7	16.7	-	6
CHAMPAIGN	TOLONO_IL - PESOTUM_IL	21.6	21.6	-	6

[144] *See* "HC - Operating Metrics – Estimation of Line Density And Train Count Methodology.pdf" for estimation process and associated workpapers.

Subdivision	Segment	Pre-Transaction Trains Per Day	Post-Transaction Trains Per Day	Change in Trains Per Day	Passenger Trains Per Day
CHAMPAIGN	TUSCOLA_IL - ARCOLA_IL	22.5	22.5	-	6
CHAMPAIGN	WATSON_IL - SANJCT_IL	19.8	19.8	-	6
CHICAGO	DELREY_IL - LODA_IL	23.2	23.2	-	6
CHICAGO	GILMAN_IL - DELREY_IL	23.2	23.2	-	6
CHICAGO	LODA_IL - LEVJCT_IL	23.2	23.2	-	6
DEARBORN	FORDHAVEN_MI - WOODHAVEN_MI	14.1	14.1	-	-
EFFINGHAM	EFFYD_IL - NEWTON_IL	2.4	2.4	-	-
ELSDON	HARVEY_IL - THOJCT_IL	5.4	5.4	-	-
ELSDON	THOJCT_IL - GRIFFITH_IN	6.4	6.4	-	-
FLAT ROCK	FLAROCK_MI - FORDHAVEN_MI	13.1	13.1	-	-
FLAT ROCK	FN_MI - FLAROCK_MI	7.4	7.4	-	-
FLAT ROCK	FN_MI - FORDHAVEN_MI	1	1	-	-
FLINT	BATCREEK_MI - OLIVET_MI	18.3	18.3	-	2
FLINT	DAVISON_MI - EMMETT_MI	12.9	12.9	-	2
FLINT	DURAND_MI - FLINT_MI	17	17	-	2
FLINT	EMMETT_MI - TAPPAN_MI	13	13	-	2
FLINT	FLINT_MI - DAVISON_MI	12.7	12.7	-	2
FLINT	LANSING_MI - MORRICE_MI	19.9	19.9	-	2
FLINT	MORRICE_MI - DURAND_MI	18.2	18.2	-	2
FLINT	OLIVET_MI - POTTERVIL_MI	19.1	19.1	-	2
FLINT	POTTERVIL_MI - LANSING_MI	20	20	-	2
FLINT	PTHURON_MI - SARNIA_ON	14.7	14.7	-	-
FLINT	TAPPAN_MI - PTHURON_MI	19	19	-	2
FULTON	CURVE_TN - MILLINGTO_TN	18.2	18.2	-	2
FULTON	FULTON_KY - RIVES_TN	19.3	19.3	-	2
FULTON	MILLINGTO_TN - WOODSTOCK_TN	17.9	17.9	-	2
FULTON	NEWBERN_TN - CURVE_TN	18.8	18.8	-	2
FULTON	RIVES_TN - NEWBERN_TN	19.3	19.3	-	2
FULTON	WOODSTOCK_TN - MEMPHIS_TN	20.1	20.1	-	2
GRENADA	CANTON_MS - JACKSON_MS	2	2	-	-
HOLLY	DURAND_MI - WATERFORD_MI	5	5	-	-
HOLLY	PONTIAC_MI - DETINTTER_MI	15.1	15.1	-	6
HOLLY	WATERFORD_MI - PONTIAC_MI	5.3	5.3	-	-
KEENAN	IROJCT_MN - HIBBING_MN	3.9	3.9	-	-
LAKEFRONT	BUFFINGTO_IN - INDHARBOR_IN	4.5	4.5	-	-
LAKEFRONT	BUFFINGTO_IN - STOCKTON_IN	4.5	4.5	-	-
LAKEFRONT	HAMLAKFRO_IN - SCHICAGO_IL	4.3	4.3	-	-
LAKEFRONT	INDHARBOR_IN - HAMLAKFRO_IN	4.3	4.3	-	-
LAKEFRONT	KIRYARD_IN - BUFFINGTO_IN	39.8	39.8	-	-

Subdivision	Segment	Pre-Transaction Trains Per Day	Post-Transaction Trains Per Day	Change in Trains Per Day	Passenger Trains Per Day
LEITHTON	EOLA_IL - RIVER_IL	24.1	24.1	-	-
LEITHTON	LEITHTON_IL - SPAULDING_IL	18.8	18.8	-	-
LEITHTON	MUNGER_IL - WCHICAGO_IL	22	22	-	-
LEITHTON	RIVER_IL - WBRIJCT_IL	28.2	28.2	-	-
LEITHTON	SPAULDING_IL - MUNGER_IL	21	21	-	-
LEITHTON	WBRIJCT_IL - EBRIJCT_IL	28.2	28.2	-	-
LEITHTON	WBRIJCT_IL - WROMEO_IL	12.1	12.1	-	-
LEITHTON	WCHICAGO_IL - EOLA_IL	21.5	21.5	-	-
MATTESON	CAVANAUGH_IN - STOCKTON_IN	28.2	28.2	-	-
MATTESON	CHIHEIGHT_IL - GRIFFITH_IN	30.8	30.8	-	-
MATTESON	EBRIJCT_IL - JOLYARD_IL	30.1	30.1	-	-
MATTESON	GRIFFITH_IN - IVANHOE_IN	28.8	28.8	-	-
MATTESON	IVANHOE_IN - CAVANAUGH_IN	29	29	-	-
MATTESON	JOLYARD_IL - MATTESON_IL	23.3	23.3	-	-
MATTESON	KIRYARD_IN - BUFFINGTO_IN	39.8	39.8	-	-
MATTESON	MATTESON_IL - CHIHEIGHT_IL	30.8	30.8	-	-
MATTESON	STOCKTON_IN - KIRYARD_IN	35.3	35.3	-	-
MCCOMB	CENJCA_MS - SUMMIT_MS	13.1	13.1	-	2
MCCOMB	CRYSPRING_MS - WESSON_MS	14.3	14.3	-	2
MCCOMB	ELTON_MS - CRYSPRING_MS	13.3	13.3	-	2
MCCOMB	FERNWOOD_MS - FRENIER_LA	11.1	11.1	-	2
MCCOMB	FRENIER_LA - ORLJCT_LA	7.9	7.9	-	2
MCCOMB	JACKSON_MS - ELTON_MS	15.1	15.1	-	2
MCCOMB	KENNER_LA - MAYYARD_LA	8.3	8.3	-	2
MCCOMB	ORLJCT_LA - KENNER_LA	8	8	-	2
MCCOMB	SUMMIT_MS - FERNWOOD_MS	13.8	13.8	-	2
MCCOMB	WESSON_MS - CENJCA_MS	14.5	14.5	-	2
MEMPHIS	MEMINTTER_TN - LAKEVIEW_MS	2.6	2.6	-	-
MISSABE	ADOLPH_MN - FAIRLANE_MN	15.4	15.4	-	-
MISSABE	DULUTH_MN - ADOLPH_MN	17.3	17.3	-	-
MISSABE	FAIRLANE_MN - KEENAN_MN	18.2	18.2	-	-
MISSABE	IROJCT_MN - WOLF_MN	28.2	28.2	-	-
MISSABE	KEENAN_MN - IROJCT_MN	17.6	17.6	-	-
MISSABE	WOLF_MN - SHEJCT_MN	22.5	22.5	-	-
NEENAH	BLAWOLF_WI - NEENAH_WI	26.5	26.5	-	-
NEENAH	FONLAC_WI - VANDYNE_WI	25.2	25.2	-	-
NEENAH	NEENAH_WI - STOCKTON_WI	26.2	26.2	-	-
NEENAH	VANDYNE_WI - BLAWOLF_WI	25.2	25.2	-	-
RAINY	ASHLAKE_MN - ORR_MN	27.6	27.6	-	-
RAINY	GLENDALE_MN - HALEY_MN	27.6	27.6	-	-

Subdivision	Segment	Pre-Transaction Trains Per Day	Post-Transaction Trains Per Day	Change in Trains Per Day	Passenger Trains Per Day
RAINY	HALEY_MN - VIRGINIA_MN	27.6	27.6	-	-
RAINY	ORR_MN - GLENDALE_MN	27.6	27.6	-	-
RAINY	PEARY_MN - MELRUDE_MN	20.1	20.1	-	-
RAINY	PEARY_MN - SIMAR_MN	20.1	20.1	-	-
RAINY	RANIER_MN - ASHLAKE_MN	27.6	27.6	-	-
RAINY	VIRGINIA_MN - PEARY_MN	22.5	22.5	-	-
SAUKVILLE	BRODEER_WI - SAUKVILLE_WI	0.9	0.9	-	-
SAUKVILLE	MILWAUKEE_WI - BRODEER_WI	0.4	0.4	-	-
SHORE LINE	COOLIDGE_MI - ECORSE_MI	9	9	-	-
SHORE LINE	COOLIDGE_MI - VINEWOOD_MI	9	9	-	-
SHORE LINE	ECORSE_MI - FN_MI	13	13	-	-
SHORE LINE	FN_MI - LANG_OH	5.3	5.3	-	-
SHORE LINE	FN_MI - WYANDOTTE_MI	12.5	12.5	-	-
SHORE LINE	MILJCT_MI - VINEWOOD_MI	15	15	-	6
SOUTH BEND	CASSOPOLI_MI - SCHOOLCRA_MI	15.7	15.7	-	-
SOUTH BEND	GRIFFITH_IN - SEDLEY_IN	17.8	17.8	-	-
SOUTH BEND	PAVILION_MI - BATCREEK_MI	18.4	18.4	-	0.6
SOUTH BEND	SBEND_IN - MARCELLUS_MI	15.7	15.7	-	-
SOUTH BEND	SCHOOLCRA_MI - PAVILION_MI	15.7	15.7	-	-
SOUTH BEND	SEDLEY_IN - VALPARAIS_IN	17.8	17.8	-	-
SOUTH BEND	STILLWELL_IN - SBEND_IN	19.5	19.5	-	-
SOUTH BEND	VALPARAIS_IN - STILLWELL_IN	18	18	-	-
STRATHROY	SARNIA_ON - PTHURON_MI	14.7	14.7	-	-
SUPERIOR	HAYJCT_WI - SITASCA_WI	23.1	23.1	-	-
SUPERIOR	JCTCITY_WI - SPENCER_WI	26.3	26.3	-	-
SUPERIOR	LADYSMITH_WI - HAYJCT_WI	24.8	24.8	-	-
SUPERIOR	NOPJCT_MN - ADOLPH_MN	8.4	8.4	-	-
SUPERIOR	OWEN_WI - LADYSMITH_WI	23.5	23.5	-	-
SUPERIOR	SAUNDERS_WI - STEELTON_MN	28.6	28.6	-	-
SUPERIOR	SITASCA_WI - SAUNDERS_WI	20.6	20.6	-	-
SUPERIOR	SITASCA_WI - SUPERIOR_WI	26.4	26.4	-	-
SUPERIOR	SPENCER_WI - OWEN_WI	26.6	26.6	-	-
SUPERIOR	STEELTON_MN - NOPJCT_MN	28.6	28.6	-	-
SUPERIOR	STEPT_WI - JCTCITY_WI	27.9	27.9	-	-
WAUKESHA	BYRON_WI - FONLAC_WI	28.2	28.2	-	-
WAUKESHA	DESPLAINE_IL - LEITHTON_IL	20.3	20.3	-	13.6
WAUKESHA	DUPLAINVI_WI - SUSSEX_WI	29.6	29.6	-	-
WAUKESHA	FORPARK_IL - ROSEMONT_IL	10.8	10.8	-	6.4
WAUKESHA	GRALAKE_IL - LAKVILLA_IL	41.3	41.3	-	14.3
WAUKESHA	LAKVILLA_IL - DUPLAINVI_WI	26.9	26.9	-	0.7

Subdivision	Segment	Pre-Transaction Trains Per Day	Post-Transaction Trains Per Day	Change in Trains Per Day	Passenger Trains Per Day
WAUKESHA	LEITHTON_IL - MUNDELEIN_IL	40.6	40.6	-	13.6
WAUKESHA	LOMIRA_WI - BYRON_WI	28.2	28.2	-	-
WAUKESHA	LOMIRA_WI - FONLAC_WI	28.2	28.2	-	-
WAUKESHA	MUNDELEIN_IL - GRALAKE_IL	40.6	40.6	-	13.6
WAUKESHA	ROSEMONT_IL - DESPLAINE_IL	20.3	20.3	-	13.6
WAUKESHA	RUGJCT_WI - LOMIRA_WI	27.4	27.4	-	-
WAUKESHA	SUSSEX_WI - RUGJCT_WI	28.4	28.4	-	-
YAZOO	BANKS_MS - LAKEVIEW_MS	17.1	17.1	-	2
YAZOO	JACKSON_MS - YAZCITY_MS	16.9	16.9	-	2
YAZOO	LAKEVIEW_MS - WJCT_TN	14.2	14.2	-	2
YAZOO	MARKS_MS - BANKS_MS	17.4	17.4	-	2
YAZOO	SWALAKE_MS - MARKS_MS	18.4	18.4	-	2
YAZOO	YAZCITY_MS - SWALAKE_MS	17.9	17.9	-	2

Appendix E: Springfield Line Employees

Exhibit E-1: Current KCS Agreement Employees on the Springfield Line[145]

Department	Position	East Saint Louis, IL	Kansas City, MO	Louisiana, MO	Mexico, MO	Slater, MO	Total
Engineering	Track Maintenance	4	4	3	3	4	18
Engineering	Signalman	1	1	1	1	0	4
Engineering	**Subtotal**	**5**	**5**	**4**	**4**	**4**	**22**
Mechanical	Carmen	1	0	0	0	0	1
Mechanical	**Subtotal**	**1**	**0**	**0**	**0**	**0**	**1**
Transportation	Conductor	21	11	0	0	1	33
Transportation	Engineer	8	7	0	0	1	16
Transportation	**Subtotal**	**29**	**18**	**0**	**0**	**2**	**49**
Grand Total		**35**	**23**	**4**	**4**	**6**	**72**

Exhibit E-2: Current Non-Agreement Employees on the Springfield Line[146]

Position	East Saint Louis, IL	Mexico, MO	Odessa, MO	Roodhouse, IL	Slater, MO	Total
Non-agreement personnel	7	3	5	1	4	20

[145] CP-KCS Control Application, Vol. 2, p. 252.

[146] CP-KCS Control Application, Vol. 1, pp. 399-400.

Exhibit E-3: Summary of Anticipated Labor Impacts

Illinois Central Railroad Company (ICRR)	
Craft or Class	**Anticipated Jobs Created**
BLET Locomotive Engineers	23
BMWED Engineering and Track Maintenance	55
BRS Signalmen	11
SMART-TD Conductors	36
IBEW Electrician	1
IAM Machinist	1
BRC Car Mechanic	2
Craft Total	129
Management	**Anticipated Jobs Created**
Management-Transportation	5
Management-Engineering	6
Management Total	11
GRAND TOTAL	**140**

Appendix F: Capital Improvements

Appendix F-1: Capital Improvements

Investment	Estimated Cost	Assumptions
Upgrade track speed to 40 mph on KCS Springfield Line between Cockrell and Roodhouse	{{ }}	{{ }}
6 siding extensions on KCS lines (1 in IL and 5 in MO) and siding relocation	{{ }}	{{ }}
Cockrell, IL: new 10,000-foot siding	{{ }}	{{ }}
Improve KCS East St. Louis Yard to add automotive/ intermodal facility to existing yard	{{ }}	{{ }}
5,000-foot clear yard track at Roodhouse	{{ }}	{{ }}
Track department trucks and equipment	{{ }}	{{ }}
Signal department trucks and equipment	{{ }}	{{ }}
Automotive/Intermodal Facility (IFG)	{{ }}	{{ }}
Mt. Pulaski siding reconfiguration on Gilman Subdivision	{{ }}	{{ }}
Gilman replace diamond with crossover on Gilman Subdivision	{{ }}	{{ }
Gilman subdivision - upgrade track to 40 miles per hour	{{ }}	{{ }}
PTC subdivision file for PTC-equipped track on the Springfield Line to add the subdivisions to CN's Precision Dispatch System (PDS)	{{ }}	{{ }}

Investment	Estimated Cost	Assumptions
Miscellaneous and Contingency	{{ }}	{{ }}
Total cost for KCS upgrades	$250,802,480	

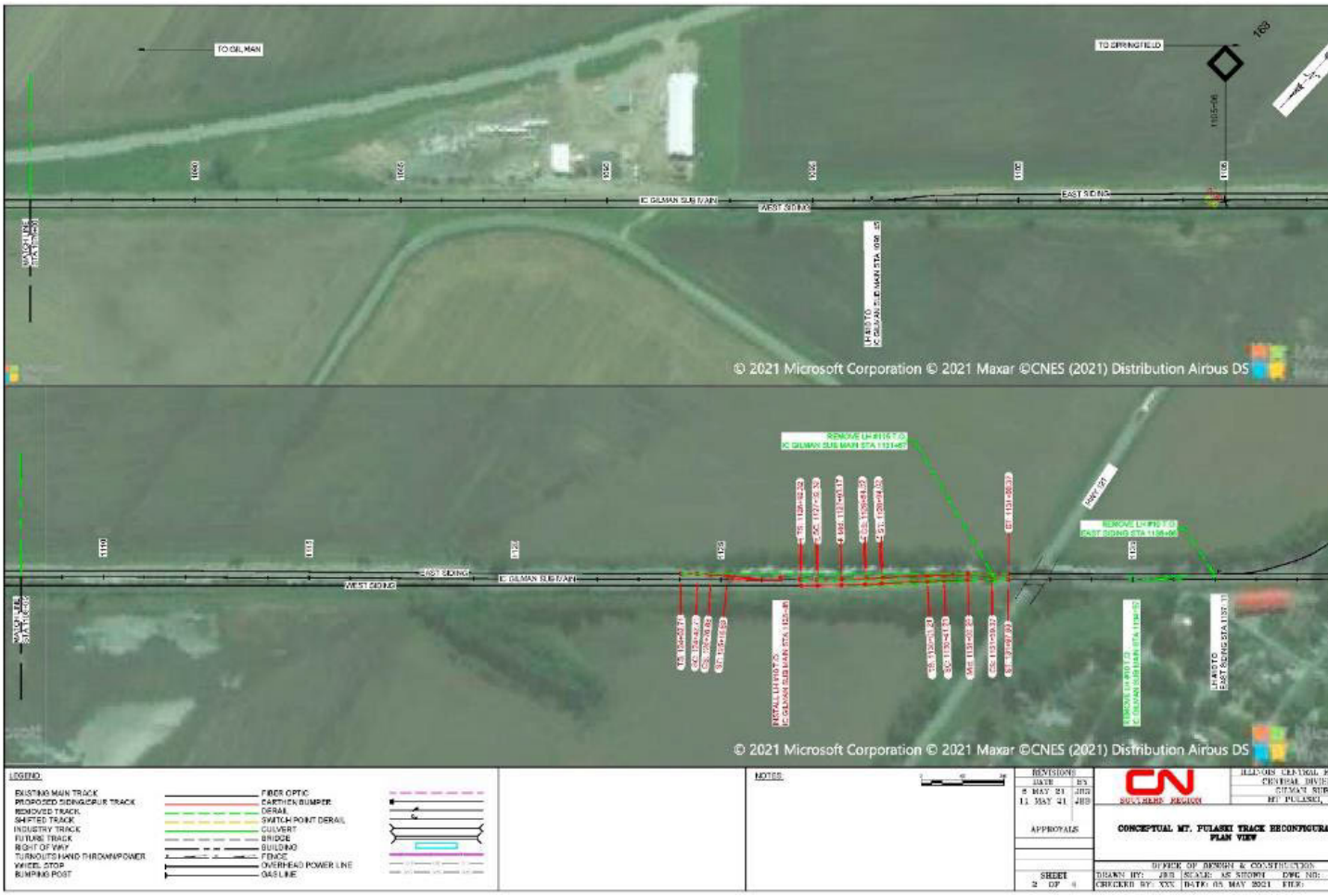
Appendix F-2: Gilman Subdivision Improvements

Mt. Pulaski Siding (1 of 4)[147]



[147] "Mt Pulaski.pdf."

Mt. Pulaski Siding (2 of 4)[148]



[148] "Mt Pulaski.pdf."

Mt. Pulaski Siding (3 of 4)[149]



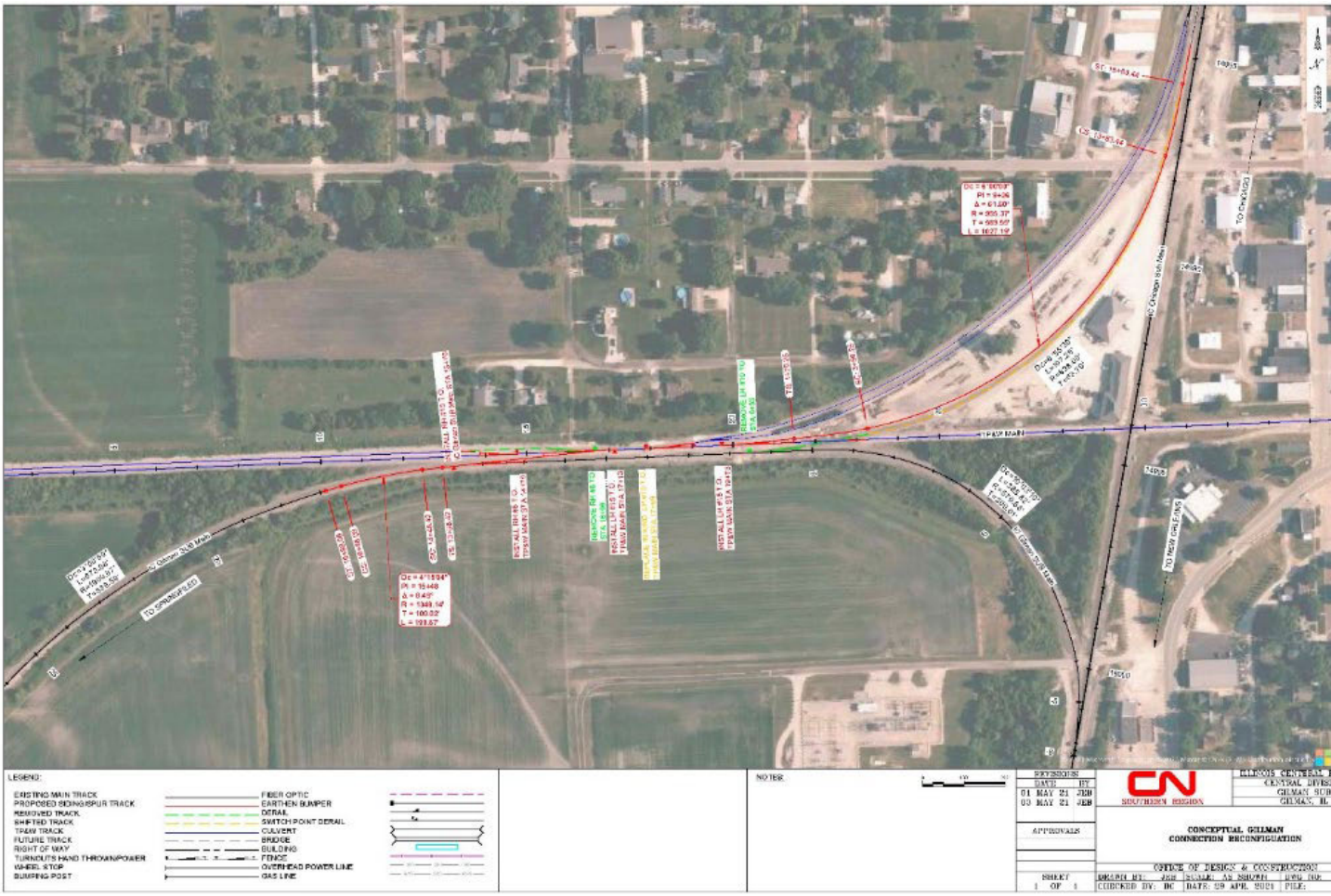
[149] "Mt Pulaski.pdf."

Mt. Pulaski Siding (4 of 4)[150]



[150] "Mt Pulaski.pdf."

Connection at Gilman Conex to IC Line[151]



[151] "2021053 Gilman Reconfiguration.pdf."

Verifications

VERIFICATION

I, Carl Van Dyke, declare under penalty of perjury that the foregoing information is true and correct. Further, I certify that I am qualified and authorized to file this statement.

Executed on this 28th day of February, 2022.



Carl Van Dyke

Résumé of Carl Van Dyke

Mr. Van Dyke is Managing Director of TransNetOpt, a consultancy focused on the use of computers to address transportation network planning and design issues. He is a retired Partner in the Surface Transportation Practice of Oliver Wyman, with a focus on improving the operations and general performance of transportation companies, and railroads in particular. He continues to undertake engagements on behalf of Oliver Wyman in the role of Senior Advisor. Mr. Van Dyke has spent over 40 years focused on the application of computers to transportation planning and operations issues, with particular emphasis on railroad network modeling, service design, train scheduling, line capacity analysis, and equipment management. In 1992, he founded MultiModal Applied Systems, which became part of Oliver Wyman in 2006.

He is best known for leading the design, creation and application of the MultiRail planning products, including both the MultiRail-Passenger Edition and MultiRail-Freight Edition. The Freight Edition has been used by major freight railroads around the world, and has become the tool of choice for special studies such as mergers, privatization studies, operating plan redesigns, and routing/yard investment analysis. Over the past decade, Oliver Wyman-MultiModal has had a hand in the redesign of the operating plans of every major North American railroad, and is now pursuing a similar role in Europe, Africa, and the CIS.

Mr. Van Dyke has designed and implemented over a dozen freight rail, passenger rail, trucking, and container line operations planning models, many of which significantly advanced the state-of-the-art through the use of innovative

algorithms and user interfaces. He also has played a key role in the adoption of algorithm-based methods for the real-time control of car routing and classification at a major North American carrier, and has led the development of a similar system which became the MultiRail-Enterprise Edition. Over the course of his career, he has provided technical assistance to dozens of railroads for the in-house use of MultiRail and other models, including all of the major North American carriers, and a number of commuter operators. The "scheduled railroad" operating plans currently employed by five of the six Class I's were developed using MultiRail and Oliver Wyman-MultiModal's consulting services. Work with CP resulted in winning the 2003 Franz Edelman Prize in Operations Research from the Institute for Operations Research and Management Science (INFORMS).

An integral part of the modeling work undertaken by Mr. Van Dyke has been the analysis of traffic and operating plans related to mergers and reconfigurations of railroads. He first started undertaking this work by participating in the processing of the STB Waybill Sample and full waybill databases from individual railroads while at ALK Associates in the late 1980s. This work included traffic database processing, network traffic flow modeling, and diversion analysis. He went on to fill leading roles in traffic modeling and operating plan development efforts for the UP-SP, NS-Conrail, IC-CN, and CN-BNSF merger filings, as well as developing traffic models for the break-up of the Mexican railroads. Deep experience processing full-year proprietary railroad waybill databases was also gained through numerous projects including operating plan development efforts at Class I's in North America,

and at a variety of railroads in countries such as Sweden, Switzerland, Italy, France, Kazakhstan, Germany, and South Africa.

Over the course of his career, Mr. Van Dyke has become very familiar with the computer systems that drive the operations and planning aspects of numerous railroads in both North America and many other countries around the world. He has worked extensively with the IT departments at many of these railroads in the design and development of a wide variety of systems, and through this process has become familiar with the IT practices and organizations at these railroads. Examples include assistance to Class I's in the design of current production systems, development of roadmaps for systems improvement, and design and development of numerous planning systems.

Mr. Van Dyke's background in equipment management includes directing the design and development of a real-time, intermodal equipment management system for the rail industry, and adapting this model for use by a major steamship line. He also worked on the development of locomotive planning tools that have been applied to a number of major railways worldwide. While at ALK Associates, Mr. Van Dyke also served as President of Fleet Management, Inc., a company providing central management of railway car fleets. Mr. Van Dyke's other areas of expertise include the design and implementation of optimization and heuristic algorithms, logistics and market analysis, network rationalization, traffic analysis, and geographic information systems.

Mr. Van Dyke received an MS degree in civil engineering from MIT, with a concentration in transportation. He graduated *summa cum laude* from the University of Pennsylvania with a BSE in mechanical engineering. He has served on the National Council of the Transportation Research Forum, various Transportation Research Board committees, and was a charter member and former Chairman of the Rail Applications Special Interest Group of INFORMS. MultiRail, based on its impact on the rail industry, was named "technology of the decade" by *Trains Magazine* in November 2010. He is a co-author of a book on the use of operations research in the rail industry, which was published by Springer Verlag in 2015. He makes presentations and writes articles on a regular basis on various transportation analysis topics.

VERIFICATION

I, Derek Taylor, declare under penalty of perjury that the foregoing information is true and correct. Further, I certify that I am qualified and authorized to file this statement.

Executed on this 28th day of February, 2022.



Derek Taylor

Exhibit 14

Density Charts

PUBLIC VERSION

Exhibit 14: Density Tables

Exhibit 14-A: Post-Transaction Growth Projections for CN Segments In The United States Not On Or Adjacent to the Springfield Line[1]

Gross Tons (000s)						
Subdivision	Segment	Distance	Base 2019 Tons	Post Transaction	Change in Gross Tons	% Change
BATON ROUGE	RESERVE_LA - KENNER_LA	21.2	23,762	23,782	20	0%
BEAUMONT	BAYSHOJCT_AL - MOBILE_AL	2	4,209	4,279	70	2%
BEAUMONT	BELJCT_AL - BAYSHOJCT_AL	2.4	4,209	4,279	70	2%
BEAUMONT	HATTIESBU_MS - BELJCT_AL	99.8	5,389	5,461	72	1%
BEAUMONT	JACKSON_MS - STAR_MS	18.88	9,217	9,302	85	1%
BEAUMONT	SARATOGA_MS - HATTIESBU_MS	37.4	8,450	8,535	85	1%
BEAUMONT	STAR_MS - SARATOGA_MS	29.5	9,414	9,500	85	1%
CAIRO	BUDA_KY - FULTON_KY	2.7	8,927	9,876	949	11%
CAIRO	CAIRO_IL - WICKLIFFE_KY	8.36	9,045	9,994	949	10%
CAIRO	WICKLIFFE_KY - BUDA_KY	33.04	17,831	18,781	949	5%
CENTRALIA	BOIS_IL - TAMAROA_IL	6	26,954	29,308	2,354	9%
CENTRALIA	CARBONDAL_IL - COBDEN_IL	15.3	20,080	21,030	950	5%
CENTRALIA	CENTRALIA_IL - IRVINGTON_IL	6.2	28,659	31,013	2,354	8%
CENTRALIA	COBDEN_IL - MOUNDS_IL	28.9	20,079	21,029	950	5%
CENTRALIA	DESOTO_IL - CARBONDAL_IL	3.2	10,040	10,990	950	9%
CENTRALIA	DOWELL_IL - ELKVILLE_IL	5.1	20,080	21,030	950	5%
CENTRALIA	ELKVILLE_IL - CARBONDAL_IL	9.4	20,080	21,030	950	5%
CENTRALIA	IRVINGTON_IL - RICHVIEW_IL	4.7	26,957	29,310	2,354	9%
CENTRALIA	MOUNDS_IL - CAIRO_IL	5.1	10,071	11,022	951	9%
CENTRALIA	MOUNDS_IL - PULASKI_IL	4	10,039	10,989	950	9%
CENTRALIA	RICHVIEW_IL - BOIS_IL	10.5	26,957	29,310	2,354	9%
CENTRALIA	TAMAROA_IL - DOWELL_IL	7.8	27,072	29,041	1,970	7%
CENTRALIA	TAMAROA_IL - DUQUOIN_IL	5.7	26,956	29,310	2,354	9%
CHAMPAIGN	ARCOLA_IL - HUMBOLDT_IL	5.7	48,413	48,547	134	0%
CHAMPAIGN	DORANS_IL - MATTOON_IL	5	48,398	48,532	134	0%
CHAMPAIGN	EFFINGHAM_IL - WATSON_IL	4.6	55,699	56,188	489	1%
CHAMPAIGN	HUMBOLDT_IL - DORANS_IL	3.8	48,416	48,549	134	0%
CHAMPAIGN	LEVJCT_IL - TOLONO_IL	13.15	47,808	47,942	133	0%
CHAMPAIGN	MATTOON_IL - NEOGA_IL	11.9	53,072	53,197	125	0%
CHAMPAIGN	NEOGA_IL - EFFINGHAM_IL	14.9	53,284	53,410	125	0%

[1] *See* "HC- Operating Metrics – Estimation of Line Density And Train Count Methodology.pdf" and associated analysis workpapers for how the values were estimated.

Gross Tons (000s)						
Subdivision	Segment	Distance	Base 2019 Tons	Post Transaction	Change in Gross Tons	% Change
CHAMPAIGN	PESOTUM_IL - TUSCOLA_IL	7.9	47,817	47,951	134	0%
CHAMPAIGN	SANJCT_IL - CENTRALIA_IL	5.2	12,380	12,842	462	4%
CHAMPAIGN	TOLONO_IL - PESOTUM_IL	4.8	47,817	47,951	134	0%
CHAMPAIGN	TUSCOLA_IL - ARCOLA_IL	8.1	48,417	48,551	134	0%
CHAMPAIGN	WATSON_IL - SANJCT_IL	41.7	34,133	34,601	468	1%
CHICAGO	DELREY_IL - LODA_IL	11	46,829	46,962	132	0%
CHICAGO	GILMAN_IL - DELREY_IL	6.15	23,417	23,550	132	1%
CHICAGO	HOMEWOOD_IL to STUENKEL_IL	7.8	49,788	55,424	5,636	11%
CHICAGO	KENSINGTO_IL to HOMEWOOD_IL	10.33	28,764	30,834	2,070	7%
CHICAGO	LODA_IL - LEVJCT_IL	25.3	47,467	47,599	132	0%
CHICAGO	STUENKEL_IL to GILMAN_IL	49.55	46,624	51,199	4,575	10%
DEARBORN	FORDHAVEN_MI - WOODHAVEN_MI	0.5	4,873	5,551	677	14%
EFFINGHAM	EFFYD_IL - NEWTON_IL	23.5	4,486	4,841	356	8%
ELSDON	HARVEY_IL - THOJCT_IL	2	13,175	14,557	1,382	10%
ELSDON	HARVEY_IL to CHIINTTER_IL	1.72	14,932	19,697	4,765	32%
ELSDON	THOJCT_IL - GRIFFITH_IN	11.2	14,569	15,951	1,382	9%
FLAT ROCK	FLAROCK_MI - FORDHAVEN_MI	2.3	12,243	12,618	375	3%
FLAT ROCK	FN_MI - FLAROCK_MI	6.1	12,355	12,742	387	3%
FLAT ROCK	FN_MI - FORDHAVEN_MI	5.5	2,435	2,738	303	12%
FLINT	BATCREEK_MI - OLIVET_MI	21.1	23,152	26,174	3,022	13%
FLINT	DAVISON_MI - EMMETT_MI	37.9	32,102	32,961	859	3%
FLINT	DURAND_MI - FLINT_MI	9.4	34,483	36,582	2,100	6%
FLINT	EMMETT_MI - TAPPAN_MI	14.2	32,089	32,948	859	3%
FLINT	FLINT_MI - DAVISON_MI	10	32,091	32,951	860	3%
FLINT	LANSING_MI - MORRICE_MI	25.4	22,368	25,390	3,022	14%
FLINT	MORRICE_MI - DURAND_MI	11.1	22,366	25,388	3,022	14%
FLINT	OLIVET_MI - POTTERVIL_MI	8.8	46,309	49,331	3,022	7%
FLINT	POTTERVIL_MI - LANSING_MI	8.1	23,155	26,177	3,022	13%
FLINT	PTHURON_MI - SARNIA_ON	0.1	23,185	24,048	862	4%
FLINT	TAPPAN_MI - PTHURON_MI	1.9	11,895	12,757	862	7%
FULTON	CURVE_TN - MILLINGTO_TN	43.9	51,490	52,453	963	2%
FULTON	FULTON_KY - RIVES_TN	1.5	52,274	53,237	963	2%
FULTON	MILLINGTO_TN - WOODSTOCK_TN	6.53	25,706	26,669	963	4%
FULTON	NEWBERN_TN - CURVE_TN	24.5	51,809	52,772	963	2%
FULTON	RIVES_TN - NEWBERN_TN	21.7	52,206	53,168	963	2%

Gross Tons (000s)						
Subdivision	**Segment**	**Distance**	**Base 2019 Tons**	**Post Transaction**	**Change in Gross Tons**	**% Change**
FULTON	WOODSTOCK_TN - MEMPHIS_TN	20.4	55,482	56,446	964	2%
GRENADA	CANTON_MS - JACKSON_MS	25.7	2,427	2,448	21	1%
Subdivision	**Segment**	**Distance**	**Base 2019 Tons**	**Post Transaction**	**Change in Gross Tons**	**% Change**
HOLLY	DURAND_MI - WATERFORD_MI	28.5	12,475	14,582	2,108	17%
HOLLY	PONTIAC_MI - DETINTTER_MI	22.5	9,415	11,522	2,107	22%
HOLLY	WATERFORD_MI - PONTIAC_MI	6.3	8,866	10,974	2,108	24%
KEENAN	IROJCT_MN - HIBBING_MN	16.7	116	120	4	4%
LAKEFRONT	BUFFINGTO_IN - INDHARBOR_IN	2.6	1,581	1,587	6	0%
LAKEFRONT	BUFFINGTO_IN - STOCKTON_IN	1.6	1,037	1,044	6	1%
LAKEFRONT	HAMLAKFRO_IN - SCHICAGO_IL	1.9	947	953	6	1%
LAKEFRONT	INDHARBOR_IN - HAMLAKFRO_IN	4.5	941	947	6	1%
LAKEFRONT	KIRYARD_IN - BUFFINGTO_IN	1	127,648	127,978	331	0%
LEITHTON	EOLA_IL - RIVER_IL	11.5	77,145	77,358	213	0%
LEITHTON	LEITHTON_IL - SPAULDING_IL	22.6	61,748	61,957	209	0%
LEITHTON	MUNGER_IL - WCHICAGO_IL	5.8	63,040	63,249	209	0%
LEITHTON	RIVER_IL - WBRIJCT_IL	7.35	79,569	79,797	229	0%
LEITHTON	SPAULDING_IL - MUNGER_IL	1.8	63,102	63,310	209	0%
LEITHTON	WBRIJCT_IL - EBRIJCT_IL	0.75	80,151	80,379	229	0%
LEITHTON	WBRIJCT_IL - WROMEO_IL	2.15	658	754	96	15%
LEITHTON	WCHICAGO_IL - EOLA_IL	8.4	67,043	67,253	210	0%
MATTESON	CAVANAUGH_IN - STOCKTON_IN	1.3	50,207	50,524	317	1%
MATTESON	CHIHEIGHT_IL - GRIFFITH_IN	9.7	47,261	49,177	1,916	4%
MATTESON	EBRIJCT_IL - JOLYARD_IL	1.7	80,334	80,563	229	0%
MATTESON	GRIFFITH_IN - IVANHOE_IN	6.4	49,978	50,298	320	1%
MATTESON	IVANHOE_IN - CAVANAUGH_IN	1.3	50,549	50,868	320	1%
MATTESON	JOLYARD_IL - MATTESON_IL	22.1	73,648	73,872	224	0%
MATTESON	KIRYARD_IN - BUFFINGTO_IN	2.5	127,648	127,978	331	0%
MATTESON	MATTESON_IL - CHIHEIGHT_IL	2.6	46,872	48,788	1,916	4%
MATTESON	STOCKTON_IN - KIRYARD_IN	2.1	53,167	53,491	324	1%
MCCOMB	CENJCA_MS - SUMMIT_MS	24.4	18,704	19,148	443	2%
MCCOMB	CRYSPRING_MS - WESSON_MS	22	33,437	33,880	443	1%
MCCOMB	ELTON_MS - CRYSPRING_MS	17.4	33,202	33,645	443	1%
MCCOMB	FERNWOOD_MS - FRENIER_LA	86.5	25,411	25,855	444	2%
MCCOMB	FRENIER_LA - ORLJCT_LA	2.2	9,508	9,951	443	5%

Gross Tons (000s)						
Subdivision	Segment	Distance	Base 2019 Tons	Post Transaction	Change in Gross Tons	% Change
MCCOMB	JACKSON_MS - ELTON_MS	8.8	16,887	17,330	443	3%
MCCOMB	KENNER_LA - MAYYARD_LA	2.6	11,200	11,644	444	4%
MCCOMB	ORLJCT_LA - KENNER_LA	1	9,464	9,908	444	5%
MCCOMB	SUMMIT_MS - FERNWOOD_MS	13.8	15,991	16,436	444	3%
MCCOMB	WESSON_MS - CENJCA_MS	7.9	16,730	17,174	443	3%
MEMPHIS	MEMINTTER_TN - LAKEVIEW_MS	6.36	6,174	6,794	621	10%
MEMPHIS	MEMPHIS_TN to WJCT_TN	1	55,508	56,372	864	2%
MEMPHIS	WJCT_TN to MEMINTTER_TN	3.44	8,547	9,323	775	9%
MISSABE	ADOLPH_MN - FAIRLANE_MN	48.2	51,428	51,467	39	0%
MISSABE	DULUTH_MN - ADOLPH_MN	10.7	19,939	19,988	49	0%
MISSABE	FAIRLANE_MN - KEENAN_MN	2	67,375	67,400	25	0%
MISSABE	IROJCT_MN - WOLF_MN	2.2	92,120	92,145	25	0%
MISSABE	KEENAN_MN - IROJCT_MN	2.5	66,866	66,891	25	0%
MISSABE	WOLF_MN - SHEJCT_MN	2.8	65,629	65,667	39	0%
NEENAH	BLAWOLF_WI - NEENAH_WI	17.6	72,665	72,878	212	0%
NEENAH	FONLAC_WI - VANDYNE_WI	4.3	72,429	72,641	212	0%
NEENAH	NEENAH_WI - STOCKTON_WI	60.9	68,472	68,680	208	0%
NEENAH	VANDYNE_WI - BLAWOLF_WI	5.6	36,214	36,427	212	1%
RAINY	ASHLAKE_MN - ORR_MN	7.6	77,974	78,182	208	0%
RAINY	GLENDALE_MN - HALEY_MN	10.4	78,040	78,247	208	0%
RAINY	HALEY_MN - VIRGINIA_MN	31	78,065	78,272	208	0%
RAINY	ORR_MN - GLENDALE_MN	1.4	77,974	78,182	208	0%
RAINY	PEARY_MN - MELRUDE_MN	10.2	43,517	43,686	169	0%
RAINY	PEARY_MN - SIMAR_MN	30.6	37,327	37,496	169	0%
RAINY	RANIER_MN - ASHLAKE_MN	36.9	77,968	78,175	208	0%
RAINY	VIRGINIA_MN - PEARY_MN	11.5	52,959	53,135	176	0%
SAUKVILLE	BRODEER_WI - SAUKVILLE_WI	15	210	211	1	0%
SAUKVILLE	MILWAUKEE_WI - BRODEER_WI	7.2	95	96	0	0%
SHORE LINE	COOLIDGE_MI - ECORSE_MI	2.7	20,220	20,922	703	3%
SHORE LINE	COOLIDGE_MI - VINEWOOD_MI	5.3	20,220	20,922	703	3%
SHORE LINE	ECORSE_MI - FN_MI	5.9	23,026	23,729	703	3%
SHORE LINE	FN_MI - LANG_OH	35.3	10,943	10,955	13	0%
SHORE LINE	FN_MI - WYANDOTTE_MI	10.1	8,483	9,186	703	8%
SHORE LINE	MILJCT_MI - VINEWOOD_MI	1.1	9,385	10,088	703	7%
SOUTH BEND	CASSOPOLI_MI - SCHOOLCRA_MI	14.6	45,815	48,892	3,077	7%

Gross Tons (000s)						
Subdivision	Segment	Distance	Base 2019 Tons	Post Transaction	Change in Gross Tons	% Change
SOUTH BEND	GRIFFITH_IN - SEDLEY_IN	14.3	28,393	31,470	3,077	11%
SOUTH BEND	PAVILION_MI - BATCREEK_MI	19.1	23,451	26,544	3,093	13%
SOUTH BEND	SBEND_IN - MARCELLUS_MI	32.1	22,925	26,002	3,077	13%
SOUTH BEND	SCHOOLCRA_MI - PAVILION_MI	10.4	22,922	25,999	3,077	13%
SOUTH BEND	SEDLEY_IN - VALPARAIS_IN	6.9	56,789	59,866	3,077	5%
SOUTH BEND	STILLWELL_IN - SBEND_IN	19	28,807	31,885	3,077	11%
SOUTH BEND	VALPARAIS_IN - STILLWELL_IN	23	28,485	31,562	3,077	11%
STRATHROY	SARNIA_ON - PTHURON_MI	0.2	23,185	24,048	862	4%
SUPERIOR	HAYJCT_WI - SITASCA_WI	54.4	70,933	71,162	229	0%
SUPERIOR	JCTCITY_WI - SPENCER_WI	29.4	75,341	75,552	211	0%
SUPERIOR	LADYSMITH_WI - HAYJCT_WI	47.2	71,850	72,058	208	0%
SUPERIOR	NOPJCT_MN - ADOLPH_MN	5.8	35,622	35,661	39	0%
SUPERIOR	OWEN_WI - LADYSMITH_WI	44.8	71,093	71,301	208	0%
SUPERIOR	SAUNDERS_WI - STEELTON_MN	4.7	74,437	74,645	208	0%
SUPERIOR	SITASCA_WI - SAUNDERS_WI	5.9	71,314	71,488	175	0%
SUPERIOR	SITASCA_WI - SUPERIOR_WI	2.8	2,931	3,186	255	9%
SUPERIOR	SPENCER_WI - OWEN_WI	19.1	74,796	75,006	211	0%
SUPERIOR	STEELTON_MN - NOPJCT_MN	2.2	79,591	79,799	208	0%
SUPERIOR	STEPT_WI - JCTCITY_WI	13	76,880	77,093	212	0%
WAUKESHA	BYRON_WI - FONLAC_WI	2	73,027	73,241	213	0%
WAUKESHA	DESPLAINE_IL - LEITHTON_IL	14.9	11,382	11,387	4	0%
WAUKESHA	DUPLAINVI_WI - SUSSEX_WI	4	73,017	73,231	214	0%
WAUKESHA	FORPARK_IL - ROSEMONT_IL	7.8	3,403	3,407	4	0%
WAUKESHA	GRALAKE_IL - LAKVILLA_IL	3.8	35,757	35,970	213	1%
WAUKESHA	LAKVILLA_IL - DUPLAINVI_WI	50.3	71,798	72,011	213	0%
WAUKESHA	LEITHTON_IL - MUNDELEIN_IL	2.6	35,793	36,006	213	1%
WAUKESHA	LOMIRA_WI - BYRON_WI	3.2	73,018	73,232	213	0%
WAUKESHA	LOMIRA_WI - FONLAC_WI	8.1	36,513	36,727	213	1%
WAUKESHA	MUNDELEIN_IL - GRALAKE_IL	8	71,519	71,732	213	0%
WAUKESHA	ROSEMONT_IL - DESPLAINE_IL	4.2	4,862	4,866	4	0%
WAUKESHA	RUGJCT_WI - LOMIRA_WI	25.1	72,426	72,639	214	0%
WAUKESHA	SUSSEX_WI - RUGJCT_WI	11.1	72,378	72,592	214	0%
YAZOO	BANKS_MS - LAKEVIEW_MS	12.76	51,503	52,209	706	1%
YAZOO	JACKSON_MS - YAZCITY_MS	44.4	49,011	49,715	704	1%
YAZOO	LAKEVIEW_MS - WJCT_TN	21.2	19,653	19,734	82	0%
YAZOO	MARKS_MS - BANKS_MS	41.6	51,602	52,310	707	1%
YAZOO	SWALAKE_MS - MARKS_MS	26.3	51,653	52,361	708	1%
YAZOO	YAZCITY_MS - SWALAKE_MS	80.9	51,139	51,845	705	1%

Exhibit 14-B: KCS 2019 Traffic Density for Segments on the Springfield Line[2]

Subdivision	Segment	Mileposts	2019 Gross tons per miles (000)		
			West/South	East/North	Total
MEXICO	INTFREGAT, MO – AIRLINE JCT, MO	3.7-128.2	37,069	14,190	51,259
MEXICO	AIRLINE JCT, MO - SLATER, MO	393.6-490.8	6,959	3,417	10,376
MEXICO	SLATER, MO - MEXICO,MO	325.7-393.6	4,251	4,558	8,809
ROODHOUSE	MEXICO,MO - ROODHOUSE, IL	237.3-325.7	4,167	2,489	6,656
SPRINGFIELD	ROODHOUSE,IL - MURRAYVILLE,IL	221.7-237.3	2,412	678	3,090
SPRINGFIELD	MURRAYVILLE,IL - SPRINGFIELD, IL	203.7-221.7	40	3	43
GODFREY	ROODHOUSE,IL-GODFREY,IL	28.1-68.2	1,631	2,185	3,816
EAST ST LOUIS TERMINAL	GODFREY,IL - EAST ST LOUIS, IL	252.1-285	2,596	2,884	5,480
JACKSON	JACKSONVILLE, IL - MURRAYVILLE, IL	216.3-226.7	2,376	678	3,054

Exhibit 14-C: KCS 2020 Traffic Density for Segments on the Springfield Line[3]

Subdivision	Segment	Mileposts	2020 Gross tons per miles (000)		
			West/South	East/North	Total
MEXICO	INTFREGAT, MO – AIRLINE JCT, MO	3.7-128.2	35,042	12,733	47,775
MEXICO	AIRLINE JCT, MO - SLATER, MO	393.6-490.8	5,595	2,778	8,373
MEXICO	SLATER, MO - MEXICO,MO	325.7-393.6	2,989	3,357	6,346
ROODHOUSE	MEXICO,MO - ROODHOUSE, IL	237.3-325.7	2,762	1,929	4,691
SPRINGFIELD	ROODHOUSE,IL - MURRAYVILLE,IL	221.7-237.3	1,521	445	1,966
SPRINGFIELD	MURRAYVILLE,IL - SPRINGFIELD, IL	203.7-221.7	34	2	36
GODFREY	ROODHOUSE,IL-GODFREY,IL	28.1-68.2	1,279	1,879	3,158
EAST ST LOUIS TERMINAL	GODFREY,IL - EAST ST LOUIS, IL	252.1-285	1,916	2,362	4,278
JACKSON	JACKSONVILLE, IL - MURRAYVILLE, IL	216.3-226.7	1,489	445	1,934

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[2] Density values obtained from CPKC Application, Vol 2, pp.494 – 496. Note the line density values for segment "INTER. FREIGHT GATEWAY, MO – AIRLINE JCT, MO" based on "PITTSBURG,KS - KANSAS CITY,MO" and "AIRLINE JCT, MO – SLATER,MO" values are based on "KANSAS CITY, MO – SLATER, MO" segments.

[3] Density values obtained from CPKC Application, Vol 2, 497 – 499. Note the line density values for segment "INTER. FREIGHT GATEWAY, MO – AIRLINE JCT, MO" based on "PITTSBURG,KS - KANSAS CITY,MO" and "AIRLINE JCT, MO – SLATER,MO" values are based on "KANSAS CITY, MO – SLATER, MO" segments.

Exhibit 14-D: CN Historic Traffic Density (2019 – 2021)[4]

Subdivision	Segment	Route miles	Gross tons per miles (000,000)		
			2019	2020	2021
ASHLAND	PRENTICE - MELLEN	67.7	0.10	0.09	0.10
BARRON	CAMERON - RICLAKE	14.6	2.71	1.14	2.57
BARRON	LADYSMITH - ALMENA	24.7	1.94	1.17	
BARRON	LADYSMITH - POSKIN	40.7			1.88
BATON ROUGE	BATON ROUGE J - UNIVERSITY	0.8	6.02	3.69	3.24
BATON ROUGE	GEISMAR - RESERVE	24.6	16.37	14.28	16.54
BATON ROUGE	RESERVE - KENNER	62.8	23.76	21.48	29.50
BATON ROUGE	UNIVERSITY - GEISMAR	43.7	13.45	11.61	11.94
BEAUMONT	BAY SHORE JCT - MOBILE	26.9	4.21	3.46	3.74
BEAUMONT	BELT JCT - BAY SHORE JCT	2.7	4.21	3.46	3.74
BEAUMONT	HATTIESBURG - BELT JCT	8	5.39	4.65	5.13
BEAUMONT	JACKSON - STAR	1.3	9.22	8.22	8.85
BEAUMONT	SARATOGA - HATTIESBURG	1.2	8.45	8.77	9.54
BEAUMONT	STAR - SARATOGA	13.7	9.41	8.42	9.13
BESSEMER	BRANCHTON - BUTLER	24.1	5.31	5.17	5.43
BESSEMER	BUTLER - N BESSEMER	49.7	5.10	5.08	5.38
BESSEMER	CONNEAUT - CONNEAUT JCT	6.8	5.07	5.09	5.35
BESSEMER	CONNEAUT JCT - SANDY JCT	78.6	5.07	5.09	5.35
BESSEMER	GROVE CITY - BRANCHTON	53.9	5.31	5.17	5.43
BESSEMER	KELSEY - GROVE CITY	6.4	5.30	5.16	5.42
BESSEMER	SANDY JCT - KELSEY	68.1	4.11	4.13	4.37
BLUFORD	AKIN JCT - METROPOLIS	57.4	24.31	20.02	22.72
BLUFORD	BLUFORD - DIANA	64.2	24.00	21.51	21.76
BLUFORD	DIANA - AKIN JCT	21.3	24.57	21.75	22.27
BLUFORD	EDGEWOOD - BLUFORD	38	24.02	21.46	21.73
BLUFORD	METROPOLIS - CHILES	30.3	34.59	27.21	31.32
BOGALUSA	MORGANTOWN - BOGALUSA	4	0.91	0.90	0.95
BOGALUSA	WANILLA - MORGANTOWN	5	1.06	1.04	1.10
BRADLEY	BRADLEY - ARGONNE	66.4	0.08	0.08	0.11
BRADLEY	LADYSMITH - PRENTICE	1.3	0.03	0.02	
BRADLEY	PRENTICE - BRADLEY	12.5	0.18	0.17	0.18
CAIRO	BUDA - FULTON	115	8.93	7.30	8.83
CAIRO	CAIRO - WICKLIFFE	14	9.05	7.17	8.67
CAIRO	WICKLIFFE - BUDA	1.6	17.83	14.50	17.53
CASO	WINDSOR - DETROIT	3.2	0.43		
CEDAR RAPIDS	MANCHESTER - MARION JCT	58.2	1.77	1.55	1.63
CEDAR RAPIDS	MARION JCT - MARION	6.1	1.77	1.80	1.63
CEDAR RAPIDS	MARION JCT - SHAVER	44.2	1.23	1.07	1.12
CENTRAL	SILVER CREEK - BROOKHAVEN	44.2	1.61	1.91	1.75
CENTRALIA	BOIS - TAMAROA	8.4	26.95	24.86	27.06
CENTRALIA	CARBONDALE - COBDEN	31.9	20.08	17.75	19.76
CENTRALIA	CENTRALIA - IRVINGTON	21.2	13.48	12.43	13.53
CENTRALIA	COBDEN - MOUNDS	20.4	20.08	17.75	19.75
CENTRALIA	DESOTO - CARBONDALE	28.3	10.04	8.88	9.88

[4] Historical CN line density from "2019 to 2021.xlsx" provided by CN, excluding segments that are within Canada.

Subdivision	Segment	Route miles	Gross tons per miles (000,000)		
			2019	2020	2021
CENTRALIA	DOWELL - ELKVILLE	5	20.08	17.75	19.76
CENTRALIA	ELKVILLE - CARBONDALE	3	20.08	17.75	19.76
CENTRALIA	IRVINGTON - RICHVIEW	6	26.96	24.87	27.07
CENTRALIA	MOUNDS - CAIRO	6	10.07	8.40	9.90
CENTRALIA	MOUNDS - PULASKI	2	10.04	8.88	9.87
CENTRALIA	RICHVIEW - BOIS	2.4	26.96	24.87	27.07
CENTRALIA	TAMAROA - DOWELL	99.8	7.20	6.51	7.15
CENTRALIA	TAMAROA - DU QUOIN	18.88	26.96	24.88	27.06
CHAMPAIGN	ARCOLA - HUMBOLDT	37.4	48.41	42.60	43.45
CHAMPAIGN	CHAMPAIGN - ANDERSONS	29.5	0.54	0.69	1.04
CHAMPAIGN	DORANS - MATTOON	10.6	48.40	42.62	43.52
CHAMPAIGN	EFFINGHAM - BRICKYARD JCT	12.9	5.15	4.66	4.96
CHAMPAIGN	EFFINGHAM - WATSON	28.4	55.70	51.20	53.22
CHAMPAIGN	HUMBOLDT - DORANS	10.8	48.42	42.60	43.47
CHAMPAIGN	LEVERETT JCT - TOLONO	5.5	47.81	42.02	42.88
CHAMPAIGN	MATTOON - NEOGA	19.8	53.07	47.71	48.47
CHAMPAIGN	NEOGA - EFFINGHAM	18.1	53.28	48.01	49.00
CHAMPAIGN	PESOTUM - TUSCOLA	35.4	47.82	41.93	42.82
CHAMPAIGN	SANDOVAL JCT - CENTRALIA	13.1	12.38	11.64	12.74
CHAMPAIGN	TOLONO - PESOTUM	33.9	47.82	41.93	42.82
CHAMPAIGN	TUSCOLA - ARCOLA	9	48.42	42.59	43.43
CHAMPAIGN	WATSON - SANDOVAL JCT	20.1	34.13	31.76	33.96
CHAMPAIGN TERM	CHAMPAIGN - SEYMOUR	10.9	0.07	0.38	0.36
CHEROKEE	ALTA - AURELIA	84.1	2.88	3.43	3.41
CHEROKEE	AURELIA - MARCUS	40	2.82	3.39	3.34
CHEROKEE	FONDA - NEWELL	79.23	3.01	3.69	3.42
CHEROKEE	LE MARS - SIOUX CITY	14.7	2.29	2.55	2.75
CHEROKEE	MANSON - FONDA	6.6	3.02	3.73	3.44
CHEROKEE	MARCUS - LE MARS	41.6	2.30	2.59	2.69
CHEROKEE	NEWELL - STORM LAKE	3.1	3.01	3.69	3.42
CHEROKEE	STORM LAKE - ALTA	44.1	3.01	3.69	3.42
CHEROKEE	TARA - MANSON	28	3.70	4.50	4.12
CHICAGO	CHGO 82ND ST - KENSINGTON	46.5	2.86	2.82	2.45
CHICAGO	DEL REY - LODA	40.6	46.83	41.30	42.09
CHICAGO	GILMAN - DEL REY	27.4	23.42	20.64	21.05
CHICAGO	HOMEWOOD - STUENKEL	53.31	24.58	23.50	22.64
CHICAGO	KENSINGTON - HOMEWOOD	54.6	8.11	7.93	7.30
CHICAGO	LODA - LEVERETT JCT	3	47.47	41.91	42.70
CHICAGO	STUENKEL - GILMAN	4.9	46.62	40.59	41.14
CHILES	CHILES - MAXON	5.1	32.95	27.02	30.71
CHILES	CR JUNCTION - MAXON	5.2	2.79	2.40	2.50
CHILES	MAXON - FULTON	2	35.73	29.42	33.21
CHILTON	KIEL - HILBERT JCT	0.4	0.13	0.17	0.10
DEARBORN	FORDHAVEN - WOODHAVEN	3.3	4.87	5.97	7.19
DUBUQUE	ARCCO - DUBUQUE JCT	51.1	13.37	13.67	12.32
DUBUQUE	DUBUQUE JCT - JULIEN	132.9	12.54	10.56	8.80
DUBUQUE	EAST JCT - WEST JUNCTION	2.7	6.60	6.90	5.77

Subdivision	Segment	Route miles	Gross tons per miles (000,000)		
			2019	2020	2021
DUBUQUE	JULIEN - MANCHESTER	8.36	12.76	13.41	11.87
DUBUQUE	MANCHESTER - WATERLOO	33.04	10.57	11.42	10.00
DUBUQUE	WEST JUNCTION - PORTAGE	1.7	13.20	13.50	11.75
EFFINGHAM	EFFINGHAM YD - NEWTON	46.5	4.49	4.03	4.37
ELDORADO	BENTON - AKIN JCT	6.21	0.22	0.26	0.03
ELDORADO	ELDJCT - CHRISTOPH	46.01	0.20	0.26	0.03
ELDORADO	FERBER - ELDORADO	57.7	0.07	0.07	0.03
ELDORADO	SESSER - BENTON	42.3	0.20	0.26	0.03
ELSDON	BLUE ISLAND - HARVEY	30.5	2.12	1.74	1.61
ELSDON	HARVEY - THORNTON JCT	112.2	5.14	3.96	3.26
ELSDON	HAYFORD - BLUE ISLAND	22.5	1.55	1.53	1.46
ELSDON	THORNTON JCT - GRIFFITH	9.7	5.41	4.33	3.54
ERIE	WALLACE JCT - CONNEAUT JCT	18.4	0.06	0.02	0.00
FLAT ROCK	FLAT ROCK - MAYBEE	17.8	4.20	0.66	0.02
FLAT ROCK	FN - FLAT ROCK	10.5	12.35	8.26	8.83
FLAT ROCK	MAYBEE - DIANN	26.2	4.20	0.66	0.02
FLINT	BATTLE CREEK - OLIVET	3.2	23.15	20.25	21.08
FLINT	DAVISON - EMMETT	39	32.10	30.40	32.45
FLINT	DURAND - FLINT	5.04	34.48	33.38	34.99
FLINT	DURAND - FLINT 2 TRK	5.2	17.24	16.69	17.50
FLINT	EMMETT - TAPPAN	26.2	32.09	30.40	32.45
FLINT	FLINT - DAVISON	14.9	32.09	30.38	32.46
FLINT	LANSING - MORRICE	22.2	22.37	19.61	20.40
FLINT	MORRICE - DURAND	6	22.37	19.61	20.40
FLINT	OLIVET - POTTERVILLE	15.3	46.31	40.50	42.16
FLINT	PORT HURON - SARNIA	6.2	23.19	21.53	22.99
FLINT	PORT HURON - SARNIA 1 TRK	28.9	46.37	43.07	45.98
FLINT	POTTERVILLE - LANSING	3.2	23.15	20.25	21.08
FLINT	TAPPAN - PORT HURON	5.1	11.89	10.92	11.61
FLINT	TAPPAN - PT HURON 2TRK	9.4	23.79	21.83	23.23
FOX RIVER	APPLETON - GREEN BAY	4.7	9.50	9.11	10.27
FOX RIVER	GREEN BAY - DENMARK	5.1	0.18	0.20	0.19
FOX RIVER	GREEN BAY - LUXEMBURG	4	0.18	0.12	0.11
FOX RIVER	NEENAH WI - APPLETON	10.5	10.61	10.17	11.31
FREEPORT	BROADVIEW - MUNGER	7.8	13.19	13.66	11.45
FREEPORT	HAWTHORNE - BROADVIEW	5.7	6.18	6.40	5.84
FREEPORT	MUNGER - ROCKFORD	5.7	13.23	13.81	11.53
FREEPORT	PARKWAY - BROADVIEW	0.2	4.44	4.58	3.68
FREEPORT	ROCKFORD - EAST JCT	5	13.36	13.90	11.64
FULTON	AULON - EAST JCT	3	46.27	44.39	51.64
FULTON	CURVE - MILLINGTON	4.6	51.49	43.42	50.16
FULTON	MEM HOL YARD - AULON	3.8	46.25	42.96	49.78
FULTON	MILLINGTON - WOODSTOCK	13.15	25.71	21.70	25.07
FULTON	NEWBERN - CURVE	11.9	51.81	43.69	50.35
FULTON	ONARGA SPUR - RIVES	14.9	52.27	44.27	51.15
FULTON	RIVES - NEWBERN	7.9	52.21	44.08	50.78
FULTON	WOODSTOCK - MEM HOL YARD	5.2	45.80	41.54	48.20

Subdivision	Segment	Route miles	Gross tons per miles (000,000)		
			2019	2020	2021
FULTON	WOODSTOCK - MEMPHIS	4.8	4.56	2.33	2.25
GILMAN	BRICKYARD JCT - CROWN 3	8.1	0.08		
GILMAN	CLINTON - MT PULASKI	41.7	0.89	1.23	1.24
GILMAN	GIBSON CITY - CLINTON	7.1	0.88	1.01	0.96
GILMAN	GILMAN - GIBSON CITY	56	1.69	1.35	1.95
GILMAN	MT PULASKI - BRICKYARD JCT	13.1	0.26	0.19	0.17
GREENVILLE	KELSEY - SHENANGO	8	0.26	0.11	0.07
GREENVILLE	SHENANGO - OSGOOD	16.6	0.03	0.01	0.00
GRENADA	CANTON - JACKSON	47	2.43	1.88	1.90
HAMMOND	HAMMOND - BATON ROUGE J	1	11.23	6.84	6.60
HOLLY	DETINTTER - MILWAUKEE JCT	6.4	2.04	1.48	1.69
HOLLY	DURAND - WATERFORD	20.7	12.47	10.22	10.55
HOLLY	MILWAUKEE JCT - WINDSOR	27.4	0.22		
HOLLY	PONTIAC - DETINTTER	7.4	3.73	2.92	2.94
HOLLY	WATERFORD - PONTIAC	24.5	5.30	4.20	4.31
IDA GROVE	IDA GROVE JCT - IDA GROVE	8.1	1.57	1.67	1.53
ILLINOIS RIVER	BEVEN - DIVINE	23.9	1.36	1.17	0.39
ILLINOIS RIVER	BEVEN - EMORRIS	16.2	3.18	2.63	1.61
ILLINOIS RIVER	RIVER - BEVEN	18.8	2.33	2.00	1.29
IRON MOUNTAIN	HERMANSVILLE - QUINNESEC	10.5	1.81	1.62	1.48
IRON MOUNTAIN	QUINNESEC - ANTOINE	5.6			0.00
IRON RANGE	MESABA - EMCO	12.56	0.60	0.43	0.41
IRON RANGE	TWO HARBORS - WALDO	73.6	20.76	18.25	19.37
IRON RANGE	WALDO - IRON JCT	41.8	24.60	21.54	22.88
IRON RANGE	WALES - JORDAN	25.7	0.47	0.27	0.28
JOLIET	BRIDGEPOR - BRIPARK	34.4	2.26	2.44	2.27
JOLIET	JOLIET - PLAINES	30.1	1.65	1.36	1.00
JOLIET	LEMOYNE - SUMMIT	8.04	3.93	4.25	4.27
JOLIET	SUMMIT - JOLIET	11	0.74	1.18	0.76
KEENAN	IRON JCT - HIBBING	6.15	0.12	0.10	0.20
LAKEFRONT	BUFFINGTO - INDHARBOR	7.8	1.58	1.49	1.25
LAKEFRONT	BUFFINGTO - STOCKTON	10.33	1.04	0.83	3.02
LAKEFRONT	HAMLAKFRO - SCHICAGO	25.3	0.95	0.78	0.96
LAKEFRONT	INDHARBOR - HAMLAKFRO	49.55	0.94	0.78	0.95
LAKEFRONT	KIRYARD - BUFFINGTO	2	0.55	0.64	0.61
LANSE	BARAGA - CHAMPION	0.05	0.15	0.14	0.15
LEITHTON	EOLA - RIVER	40.2	77.15	67.73	68.73
LEITHTON	LEITHTON - SPAULDING	18.1	61.75	55.66	58.86
LEITHTON	MUNGER - WCHICAGO	4.1	63.04	55.56	58.74
LEITHTON	PHOENIX - EBRIJCT	1.1	0.33	0.37	0.37
LEITHTON	RIVER - WBRIJCT	6.9	79.57	69.96	70.32
LEITHTON	RONDOUT - LEITHTON	3.6	0.11	0.14	0.13
LEITHTON	SPAULDING - MUNGER	20	63.10	55.78	58.93
LEITHTON	WAUKEGAN - RONDOUT	6.2	0.07	0.08	0.07
LEITHTON	WBRIJCT - EBRIJCT	2.7	80.15	70.14	70.83
LEITHTON	WBRIJCT - PHOENIX	89.5			0.00
LEITHTON	WBRIJCT - WROMEO	5.3	0.66	0.18	0.56
LEITHTON	WCHICAGO - EOLA	15	67.04	59.02	61.87

Subdivision	Segment	Route miles	Gross tons per miles (000,000)		
			2019	2020	2021
LEITHTON	WROMEO - EBRIJCT	35	0.15	0.16	0.08
LETELLIER	EMERSON JCT - NOYES	82.3	4.89	3.35	3.93
MANISTIQUE	GLADSTONE - MANISTIQUE	133.7	5.63	5.28	5.75
MANISTIQUE	MANISTIQUE - TROUT LAKE	47	5.38	5.12	5.57
MANISTIQUE	S STE MARI ON - ODENA	52.8	1.52	0.57	0.09
MANISTIQUE	S STE MARI WI - S STE MARI ON	28.8	4.89	4.68	5.18
MANISTIQUE	TROUT LAKE - S STE MARI WI	6.1	4.95	4.74	5.24
MANITOWOC	CLEVELAND - MANITOWOC	9.9	0.01	0.01	0.01
MANITOWOC	HILBERT JCT - NEENAH	2.4	0.76	0.79	0.73
MANITOWOC	MANITOWOC - HILBERT JCT	57.3	0.55	0.53	0.56
MARINETTE	ESCANABA - GLADSTONE	0.5	9.19	10.72	11.51
MARINETTE	GREEN BAY - MENOMINEE	6.5	6.44	6.24	7.32
MARINETTE	MENOMINEE - POWERS	4.9	6.44	6.35	7.18
MARINETTE	POWERS - ESCANABA	1.9	5.97	7.62	8.09
MATTESON	CAVANAUGH - STOCKTON	84.2	50.21	51.63	51.32
MATTESON	CAVANAUGH - WHITING	1.5	0.68	0.99	1.65
MATTESON	CHIHEIGHT - GRIFFITH	25.9	47.26	46.43	48.41
MATTESON	EBRIJCT - JOLYARD	0.7	80.33	70.39	71.17
MATTESON	GRIFFITH - IVANHOE	37.7	49.98	51.55	51.62
MATTESON	IVANHOE - CAVANAUGH	20	50.55	52.10	52.08
MATTESON	JOLIET - JOLYARD	3.6	2.41	4.49	2.08
MATTESON	JOLYARD - MATTESON	25.4	73.65	64.90	68.43
MATTESON	KIRYARD - BUFFINGTO	0.5	0.27	0.32	0.31
MATTESON	KIRYARD - GARY	0.8	2.37	1.84	2.59
MATTESON	KIRYARD - PINE	16.7	0.58	0.00	0.01
MATTESON	MATTESON - CHIHEIGHT	1.9	46.87	46.24	48.18
MATTESON	STOCKTON - GOFF	37.6	2.23	5.26	5.93
MATTESON	STOCKTON - KIRYARD	48.6	53.17	55.94	56.07
MCCOMB	CENJCA - SUMMIT	52	18.70	14.73	18.81
MCCOMB	CRYSTAL SPRIN - WESSON	0.4	33.44	26.67	33.69
MCCOMB	ELTON - CRYSTAL SPRIN	7.5	33.20	26.46	33.53
MCCOMB	FERNWOOD - FRENIER	16.3	25.41	20.89	28.22
MCCOMB	FRENIER - ORLEANS JCT	4.3	9.51	8.46	12.17
MCCOMB	HARAHAN - MAYS YARD	0.7	0.00	0.00	
MCCOMB	JACKSON - ELTON	4	16.89	13.52	22.35
MCCOMB	KENNER - MAYS YARD	0.7	11.20	7.50	10.17
MCCOMB	MAYS YARD - NEW ORLEANS	46.5	0.01	0.00	1.51
MCCOMB	ORLEANS JCT - KENNER	2.8	9.46	7.50	10.17
MCCOMB	SUMMIT - FERNWOOD	0.7	15.99	12.60	16.21
MCCOMB	WESSON - CENJCA	1.6	16.73	13.35	16.85
MEDFORD	SPENCER - MEDFORD	1.2	0.02	0.01	0.01
MEMPHIS	DENIE - MEMPHIS	89.6	46.27	44.47	52.91
MEMPHIS	MEMPHIS - EAST JCT	19.1	23.14	22.22	26.18
MEMPHIS	MEMPHIS - WEST JCT	11.2	55.51	48.48	58.87
MEMPHIS	WOODSTOCK - MEMPHIS	10.2	0.72	0.64	0.62
MINNEAPOLIS	OWEN - WITHROW	11.6	3.81	3.63	4.16
MINNTAC	WOLF - MOUNTAIN IRON	11.6	27.17	25.66	28.62

Subdivision	Segment	Route miles	Gross tons per miles (000,000)		
			2019	2020	2021
MISSABE	ADOLPH - FAIRLANE	23.5	51.43	45.04	48.39
MISSABE	DULUTH - ADOLPH	14.3	19.94	19.04	22.14
MISSABE	FAIRLANE - KEENAN	23.6	67.37	62.58	64.99
MISSABE	IRON JCT - WOLF	5.7	92.12	86.16	87.31
MISSABE	KEENAN - IRON JCT	23.5	66.87	63.90	63.57
MISSABE	WOLF - SHELTON JCT	10.3	65.63	61.04	59.93
MT CLEMENS	DOUBLE TRACK - RICHMOND	11	11.92	10.12	10.74
MT CLEMENS	MILWAUKEE JCT - DOUBLE TRACK	19.3	12.40	10.52	11.22
MT CLEMENS	RICHMOND - TAPPAN	7.77	15.46	13.13	13.97
NEENAH	BLACK WOLF - NEENAH	3.9	72.67	64.26	67.67
NEENAH	FOND DU LAC - VAN DYNE	2	72.43	64.01	67.42
NEENAH	NEENAH - STOCKTON	7.5	68.47	60.47	63.85
NEENAH	VAN DYNE - BLACK WOLF	11.2	36.21	32.00	33.71
NEW LONDON	APPLETON - NEW LONDON	8	0.06	0.07	0.07
NEW LONDON	NEW LONDON - MANAWA	14	0.03	0.03	0.02
NEWBERRY	TROUT LAKE - MUNISING JCT	6.1	0.12	0.12	0.13
OMAHA	FT DODGE - IDA GROVE JCT	8.4	3.26	3.45	3.00
OMAHA	IDA GROVE JCT - OMAHA	21.1	0.72	0.78	0.67
ORE	ESCANABA - LARCH	37.9	4.38	4.21	4.54
ORE	LARCH - PARTRIDGE	9.4	3.52	3.39	3.65
OSAGE	MONA JUNCTION - STAJCT	7.3	1.22	1.08	1.09
OSAGE	STAJCT - LYLE	14.2	0.48	0.61	0.57
PEMBINE	ARGONNE - PEMBINE	10	0.35	0.30	0.40
PEMBINE	HERMANSVILLE - POWERS	25.4	2.48	2.16	2.21
PEMBINE	PEMBINE - HERMANSVILLE	11.1	0.73	0.60	0.81
PEORIA	DECATUR - MT PULASKI	8.8	3.24	3.61	3.07
PEORIA	MATTOON - DECATUR	0.1	5.28	5.57	5.25
PEORIA	MT PULASKI - PEORIA	1	2.50	2.32	1.78
PLOVER	PLOVER - WISCONSIN RAP	8.1	1.87	1.59	1.11
PLOVER	STEVENS POINT - PLOVER	1.9	1.89	1.60	1.15
RAINY	ASH LAKE - ORR	0.2	77.97	68.75	69.94
RAINY	GLENDALE - HALEY	39.7	78.04	68.76	69.94
RAINY	HALEY - VIRGINIA	14.8	78.06	68.79	69.97
RAINY	INTERNATNL BO - RANIER	88.6	76.90	67.86	69.10
RAINY	ORR - GLENDALE	1	77.97	68.75	69.94
RAINY	PEARY - MELRUDE	54.5	43.52	40.44	41.88
RAINY	PEARY - SIMAR	250.8	37.33	34.68	35.95
RAINY	RANIER - ASH LAKE	46.3	77.97	68.75	69.94
RAINY	VIRGINIA - PEARY	23.2	52.96	48.54	50.07
ROUSES POINT	ROUSES POINT - CANTIC	30	0.45	0.09	
SAUKVILLE	BROWN DEER - SAUKVILLE	15.5	0.21	0.22	0.26
SAUKVILLE	MILWAUKEE - BROWN DEER	16.7	0.10	0.10	0.12
SHAWANO	APPLETON - SHAWANO	4.9	0.18	0.21	0.24
SHAWANO	SHAWANO - THORNTON	87.4	0.06	0.10	0.12
SHORE LINE	ECORSE - FN	61	23.03	18.21	20.28
SHORE LINE	FN - LANG	21.1	10.94	8.83	9.70
SHORE LINE	FN - WYANDOTTE	5.46	8.48	6.96	7.76

Subdivision	Segment	Route miles	Gross tons per miles (000,000)		
			2019	2020	2021
SHORE LINE	MILWAUKEE JCT - VINEWOOD	51	9.39	7.23	7.80
SHORE LINE	VINEWOOD - ECORSE	2.54	0.58	0.31	0.27
SOUTH BEND	CASSOPOLIS - SCHOOLCRAFT	26.8	45.82	40.58	42.35
SOUTH BEND	GRIFFITH - SEDLEY	4	28.39	24.89	26.74
SOUTH BEND	PAVILION - BATTLE CREEK	43.9	23.45	20.80	21.70
SOUTH BEND	SCHOOLCRAFT - PAVILION	2.6	22.92	20.29	21.18
SOUTH BEND	SEDLEY - VALPARAISO	6.53	56.79	49.77	53.49
SOUTH BEND	SOUTH BEND - ELKHART	24.5			6.04
SOUTH BEND	SOUTH BEND - MARCELLUS	1.5	22.93	20.30	21.19
SOUTH BEND	STILLWELL - SBEND V FLWRS	21.7	28.81	25.33	27.29
SOUTH BEND	VALPARAISO - STILLWELL	7	28.48	24.99	26.81
STAMFORD	FORT ERIE - BLACK ROCK	20.4	10.88	9.15	9.77
STLOUIS	COULTERVILLE - LENZBURG	25.7	6.69	6.42	7.20
STLOUIS	DU QUOIN - PINCKNEYVILLE	21.7	6.93	6.85	7.28
STLOUIS	FREEBURG - WILDERMAN	38.6	1.60	1.73	2.64
STLOUIS	LENZBURG - FREEBURG	29.05	1.60	1.73	2.64
STLOUIS	PINCKNEYVILLE - COULTERVILLE	25	6.87	6.83	7.24
STLOUIS	WILDERMAN - EAST ST LOUIS	48	1.58	1.72	2.63
STRATHROY	BLACKWELL - SARNIA	25.4	24.34	21.78	23.20
STRATHROY	BLACKWELL - SARNIA 1 TRK	4	48.69	43.56	46.40
STRATHROY	MANDAUMIN - BLACKWELL	36.6	24.32	21.78	23.20
STRATHROY	SARNIA - PORT HURON	14.4	23.19	21.53	22.99
SUPERIOR	HAYWARD JCT - SOUTH ITASCA	73.1	70.93	60.61	64.83
SUPERIOR	JUNCTION CITY - SPENCER	46.9	75.34	63.86	68.31
SUPERIOR	LADYSMITH - HAYWARD JCT	7.5	71.85	60.99	65.09
SUPERIOR	NOPEMING JCT - ADOLPH	38.6	35.62	29.83	31.92
SUPERIOR	OWEN - LADYSMITH	108.5	71.09	59.87	63.65
SUPERIOR	SAUNDERS - STEELTON	123.3	74.44	66.75	95.18
SUPERIOR	SOUTH ITASCA - SAUNDERS	4.2	71.31	63.18	66.81
SUPERIOR	SOUTH ITASCA - SUPERIOR	10.8	2.93	1.36	
SUPERIOR	SPENCER - OWEN	25.7	74.80	63.74	68.09
SUPERIOR	STEELTON - NOPEMING JCT	8	79.59	70.28	72.15
SUPERIOR	STEVENS POINT - JUNCTION CITY	6	76.88	68.35	73.68
SWANTON	EAST ALBURGH - CANTIC	7.2	2.23	1.77	1.61
TAYLORSVILLE	SARATOGA - TAYLORSVILLE	7.5	0.13	0.24	0.23
TETE JAUNE	HARVEY - MCBRIDE	10.5	54.10	58.87	48.26
TETE JAUNE	TAVERNA - HARVEY	4.2	35.20	40.34	32.15
TWO HARBORS	TWO HARBORS - DIVERT	178	5.24	4.57	4.86
VALLEY	JUNCTION CITY - BRADLEY	14	3.29	2.96	3.23
VALLEY	NEW LISBON - WISCONSIN RAP	1.4	2.71	1.32	1.35
VALLEY	WISCONSIN RAP - JUNCTION CITY	16.3	25.55	16.07	14.94
WATERLOO	ACKLEY - FT DODGE	3.6	7.02	7.53	6.46
WATERLOO	WATERLOO - ACKLEY	7.3	7.02	7.57	6.50
WAUKESHA	BYRON - FOND DU LAC	1	73.03	65.51	69.61
WAUKESHA	DES PLAINES - LEITHTON	0.6	11.38	9.82	9.74
WAUKESHA	DUPLAINVILLE - SUSSEX	3.2	73.02	65.01	68.86

Subdivision	Segment	Route miles	Gross tons per miles (000,000)		
			2019	2020	2021
WAUKESHA	FOND DU LAC - EDEN	4	0.31	0.26	0.27
WAUKESHA	FOREST PARK - ROSEMONT	1.5	3.40	2.90	3.19
WAUKESHA	GRAYS LAKE - LAKE VILLA	2.7	35.76	32.07	33.88
WAUKESHA	LAKE VILLA - DUPLAINVILLE	0.9	71.80	64.32	67.94
WAUKESHA	LEITHTON - MUNDELEIN	3.9	35.79	32.12	33.93
WAUKESHA	LOMIRA - BYRON	3.1	73.02	65.51	69.61
WAUKESHA	LOMIRA - FOND DU LAC	1.2	36.51	32.75	34.80
WAUKESHA	MUNDELEIN - GRAYS LAKE	0.1	71.52	64.12	67.75
WAUKESHA	ROSEMONT - DES PLAINES	6.2	4.86	4.16	5.77
WAUKESHA	RUGBY JCT - LOMIRA	6.4	72.43	64.95	68.95
WAUKESHA	SUSSEX - RUGBY JCT	46.6	72.38	64.54	68.36
WEST BEND	D B R SIDING - WEST BEND	16.1	0.07	0.09	0.12
WHITEHALL	MERRILLAN - EAST WINONA	28.5	4.93	2.85	2.47
WHITEHALL	WISCONSIN RAP - MERRILLAN	0.1	12.68	7.39	7.38
YAZOO	BANKS - LAKEVIEW	22.5	51.50	44.19	54.67
YAZOO	JACKSON - YAZOO CITY	6.3	49.01	41.78	52.48
YAZOO	LAKEVIEW - WEST JCT	25	19.65	17.20	20.99
YAZOO	MARKS - BANKS	0.6	51.60	44.27	54.78
YAZOO	SWAN LAKE - MARKS	1.1	51.65	44.31	54.79
YAZOO	YAZOO CITY - SWAN LAKE	6.2	51.14	43.86	54.33

Appendix A

Opinion of Counsel

OPINION OF COUNSEL
FOR APPLICANTS
[SECTION 1180.6(a)(4)]

ILLINOIS CENTRAL RAILROAD COMPANY AND SUBSIDIARIES

As counsel for Illinois Central Railroad Company and its subsidiaries (collectively "IC"), we are generally familiar with the proposed Transaction and have reviewed the foregoing Application. It is our opinion that the Transaction, to the extent it involves IC, meets the requirements of law, is within the corporate powers of IC and its subsidiaries and affiliates, and will be legally authorized and valid, if approved by the Surface Transportation Board and the other requirements set forth in the agreement governing the Transaction are satisfied or waived. Capitalized terms used and not otherwise defined in this opinion shall have the meanings specified in the foregoing Application.

Sean Finn
~~Executive~~ Vice-President,
Chief Legal Officer and
Corporate Secretary

Executed 28th day of February, 2022.

Kathryn Gainey
Deputy General Counsel

Executed ___ day of _____, 2022.

OPINION OF COUNSEL
FOR APPLICANTS
[SECTION 1180.6(a)(4)]

ILLINOIS CENTRAL RAILROAD COMPANY AND SUBSIDIARIES

As counsel for Illinois Central Railroad Company and its subsidiaries (collectively "IC"), we are generally familiar with the proposed Transaction and have reviewed the foregoing Application. It is our opinion that the Transaction, to the extent it involves IC, meets the requirements of law, is within the corporate powers of IC and its subsidiaries and affiliates, and will be legally authorized and valid, if approved by the Surface Transportation Board and the other requirements set forth in the agreement governing the Transaction are satisfied or waived. Capitalized terms used and not otherwise defined in this opinion shall have the meanings specified in the foregoing Application.

Sean Finn
Executive Vice-President,
Chief Legal Officer and
Corporate Secretary

Executed _____ day of _____, 2022.

Kathryn Gainey
Deputy General Counsel

Executed 28th day of February, 2022.

SIGNATURES, OATHS, AND CERTIFICATIONS OF APPLICANTS' EXECUTIVE OFFICERS [SECTION 1180.4(c)(2)(i)]

ILLINOIS CENTRAL RAILROAD COMPANY

I, Ghislain Houle, declare under penalty of perjury under the laws of the United States that I am Executive Vice-President and Chief Financial Officer of Illinois Central Railroad Company, Applicant herein; that I am one of the executive officers duly authorized to sign, to verify, and to file this Application on behalf of the foregoing; that I have knowledge of the matters contained in this Application to the extent they relate to the foregoing; and that the statements made in this Application are true and correct to the best of my knowledge and belief.



Ghislain Houle
Executive Vice-President and
Chief Financial Officer
Illinois Central Railroad
Company

Executed this 28th day of February, 2022.

I, Sean Finn, certify that I am Executive Vice-President, Chief Legal Officer and Corporate Secretary of Illinois Central Railroad Company, Applicant herein, and that Ghislain Houle, Executive Vice-President and Chief Financial Officer of Illinois Central Railroad Company, is duly authorized to sign, to verify, and to file this Application on behalf of the foregoing.



Sean Finn
Executive Vice-President,
Chief Legal Officer and
Corporate Secretary
Illinois Central Railroad
Company

Executed this 28th day of February, 2022.

CANADIAN NATIONAL RAILWAY COMPANY

I, Ghislain Houle, declare under penalty of perjury under the laws of the United States that I am Executive Vice-President and Chief Financial Officer of Canadian National Railway Company, Applicant herein; that I am one of the executive officers duly authorized to sign, to verify, and to file this Application on behalf of the foregoing; that I have knowledge of the matters contained in this Application to the extent they relate to the foregoing; and that the statements made in this Application are true and correct to the best of my knowledge and belief.



Ghislain Houle
Executive Vice-President and
Chief Financial Officer
Canadian National Railway
Company

Executed this 28th day of February, 2022.

I, Sean Finn, certify that I am Executive Vice-President, Chief Legal Officer and Corporate Secretary of Canadian National Railway Company, Applicant herein, and that Ghislain Houle, Executive Vice-President and Chief Financial Officer of Canadian National Railway Company, is duly authorized to sign, to verify, and to file this Application on behalf of the foregoing.

Sean Finn
Executive Vice-President,
Chief Legal Officer and
Corporate Secretary
Canadian National Railway
Company

Executed this 28th day of February, 2022.

Appendix B

Customer Support Statements

Statements SUPPORTING TRANSACTIONN

1. The Honorable Frank J. Mrvan, United States House of Representatives
2. Illinois State Senator Christopher Belt
3. Illinois State Senator Doris Turner
4. Illinois State Representative LaToya Greenwood
5. Mayor Robert Eastern III, City of East St. Louis, IL
6. Mayor Christopher W. Curtis, City of Kankakee, IL
7. Administrator Ben Benson, City of Lockport, IL
8. Mayor John Egofske, Village of Lemont, IL
9. Mayor Timothy Nugent, Village of Manteno, IL
10. Village President John F. Argoudelis, Village of Plainfield, IL
11. Mayor Joseph E. Roudez III, Village of University Park, IL
12. Economic Alliance of Kankakee County, IL
13. AgriTrading
14. Agrocorp Processing LTD.
15. AJC International Inc.
16. Angelo's Garden Centre
17. Atlantic Container Line
18. Battle River Railway
19. Belle Pulses, Ltd.
20. Big Sky Rail Corp.
21. Briercrest Grain Limited
22. Caneda Transport LTD
23. CDS Transportation Services LTD
24. Central Metal Buildings
25. CFS-Sartigan Railway
26. CHEP Canada
27. Chester Construction Supply
28. Coca-Cola Canada Bottling Limited
29. DeGroot's Nurseries
30. DFK Enterprise, Inc.
31. DG Global Inc.
32. Effingham Equity
33. Event Logistics Worldwide Inc.
34. Fine Choice Foods
35. Grande Cheese
36. Groupe De Scieries G.D.S. Inc.(Promobois G D S Inc.)
37. Heritage Grain Cooperative
38. Independent Dispatch, Inc.
39. Intermobil
40. Jefo Nutritions Inc.
41. Johnvince Foods/Planters Canada
42. KFI Inc.
43. Kristom International
44. Last Mountain Railway

45. Linear Grain Inc.
46. Lotus Terminals LTD
47. Mediterranean Shipping Company, Canada
48. Mediterranean Shipping Company, USA
49. MMI Freight Systems Inc.
50. MobilEx Terminal
51. National Silicates
52. North American Freight Logistics
53. OOCL (USA) Inc.
54. Padnos Iron and Metal
55. Pival International
56. Presto Enterprises Ltd.
57. Priam Logistics Inc.
58. Prince Rupert Port Authority
59. Protos Shipping Ltd.
60. Purely Canada Foods
61. Rankin County Limestone
62. Roslin Enterprises Inc.
63. Sadoff Iron and Metal Company
64. SM Line Corp.
65. Solurail Logistics Inc.
66. Suit-Kote Corp.
67. T. S. Lines Ltd.
68. Tiger Cool Express
69. TLS Truck Load Services Inc.
70. VIP Rail ULC
71. ZIM Integrating Shipping

FRANK J. MRVAN
1ST DISTRICT, INDIANA

1607 LONGWORTH
WASHINGTON, DC 20515-0007
(202) 225-2461

7895 BROADWAY, SUITE A
MERRILLVILLE, IN 46410
(219) 795-1844

http://mrvan.house.gov

PUBLIC VERSION

Congress of the United States
House of Representatives
Washington, DC 20515-0007

COMMITTEE ON VETERANS' AFFAIRS
SUBCOMMITTEES:
CHAIRMAN - TECHNOLOGY MODERNIZATION
HEALTH

EDUCATION AND LABOR COMMITTEE
SUBCOMMITTEES:
HEALTH, EMPLOYMENT, LABOR, AND PENSIONS
CIVIL RIGHTS AND HUMAN SERVICES

CO-CHAIRMAN - CONGRESSIONAL STEEL CAUCUS

CONGRESSIONAL LAW ENFORCEMENT CAUCUS

February 18, 2022

The Honorable Martin Oberman
Chairman
Surface Transportation Board
395 E Street Southwest
Washington, DC 20423-0012

Re: FD 36500, Canadian Pacific Railway—Control—Kansas City Southern

Dear Chairman Oberman,

I write today in support of the Canadian National (CN) railroad's condition request seeking the divestiture of the Kansas City Southern (KCS) line from Kansas City, Missouri to Springfield/East St. Louis, Illinois.

The freight rail industry remains an efficient, safe, and environmentally sound way of shipping goods throughout our nation. CN's economic impact in particular on Indiana's economy is significant, enabling supply chains and linking businesses throughout Northern Indiana to domestic and global markets. Indiana's First Congressional District, along Lake Michigan's southern shore, is home to three domestic steel mills and ancillary manufacturing, all which rely on the transportation of goods via railroads, the Ports of Indiana – Burns Harbor, and our interstate and state highway networks. This divestiture opportunity would further enhance connectivity in the state, providing Northern Indiana manufactures and farmers with new, faster service between Detroit, Chicago, and Kansas City.

I appreciate your review of CN's divestiture condition request in accordance with the Surface Transportation Board's procedures. If I may be able to provide any additional information, please do not hesitate to contact me.

Sincerely,

Frank J. Mrvan

Frank J. Mrvan
Member of Congress

FJM:ej

THIS STATIONERY PRINTED ON PAPER MADE OF RECYCLED FIBERS

PUBLIC VERSION

Office of State Senator Christopher Belt

Senator Christopher Belt
57th Senate District

M118 State Capitol
Springfield, IL 62706
217-782-5399

February 19, 2022

The Honorable Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36500, Canadian Pacific Railway—Control—Kansas City Southern

Dear Ms. Brown:

On behalf of 57th District of Illinois, I am writing to you today in support of CN's requested condition seeking divestiture of Kansas City Southern's (KCS) line from Kansas City, MO to Springfield, IL and East St. Louis, IL to CN should the Canadian Pacific (CP) merger with KCS be approved by the Surface Transportation Board.

CP and KCS have demonstrated they intend to focus their operations and plans for growth across CP's existing line connecting Kansas City to Chicago, making KCS's overlapping corridor between Kansas City to Springfield/East St. Louis redundant to their service offerings and rail operations after the merger. They have made it clear in their merger application they will divert traffic from the Kansas City to Springfield/East St. Louis line and do not plan to invest in that line, leaving the track to slowly degrade and reducing the competitive shipping options for customers in the 57th District that rely on this line to efficiently move goods to domestic and international markets. Without the proposed CN condition, we are concerned that CP's plan will reduce a competitive option over the overlapping corridor and have a detrimental effect on my community.

The 57th District of Illinois asks the Surface Transportation Board to condition any approval of the CP-KCS merger on CN's requested divesture condition of the Kansas City to Springfield/East St. Louis line should the Board approve the CP-KCS merger. CN's alternative would eliminate the risk of a languishing corridor to create new single-line service between Kansas City, 57th District, Chicago and Detroit – directly competing with the service that would be provided by CP-KCS. While new beneficial service will be available, no options will be lost as KCS will retain access to the divested lines. If the divestiture condition is granted, CN has committed to invest at least $250 million in the Kansas City to Springfield/East St. Louis line to improve transit times, which will directly help Illinois manufacturers and farmers as well as create new economic opportunity for the region without adding to congestion in Chicago. CN's plan will also create a viable alternative to trucks, diverting an estimated many thousands of trucks per year from the congested highways.

The 57th District is proud of our strong relationship with CN. CN's request that the Surface Transportation Board grant their divestiture conditions aligns with the neighborly and customer-focused approach to business that CN has demonstrated since the inception of our relationship. We urge the STB to realize the public interest benefits of CN's divestiture condition and encourage the Board work closely with the 57th District of Illinois, CN and all relevant parties to promote regional competition and customer choice.

Sincerely,



Christopher Belt
Illinois State Senator
57th District

cc: Parties of Record

PUBLIC VERSION

108 STATE HOUSE
SPRINGFIELD, ILLINOIS 62706
217-782-0228

DORIS TURNER

STATE SENATOR • 48th DISTRICT

February 4, 2022

The Honorable Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36500, Canadian Pacific Railway—Control—Kansas City Southern

Dear Ms. Brown:

I am writing to you today in support of CN's requested condition seeking divestiture of Kansas City Southern's (KCS) line from Kansas City, MO to Springfield, IL and East St. Louis, IL to CN should the Canadian Pacific (CP) merger with KCS be approved by the Surface Transportation Board.

CP and KCS have demonstrated they intend to focus their operations and plans for growth across CP's existing line connecting Kansas City to Chicago, making KCS's overlapping corridor between Kansas City to Springfield/East St. Louis redundant to their service offerings and rail operations after the merger. They have made it clear in their merger application they will divert traffic from the Kansas City to Springfield/East St. Louis line and do not plan to invest in that line, leaving the track to slowly degrade and reducing the competitive shipping options for customers in Springfield, Illinois that rely on this line to efficiently move goods to domestic and international markets. Without the proposed CN condition, we are concerned that CP's plan will reduce a competitive option over the overlapping corridor and have a detrimental effect on my community.

I am asking the Surface Transportation Board to condition any approval of the CP-KCS merger on CN's requested divesture condition of the Kansas City to Springfield/East St. Louis line should the Board approve the CP-KCS merger. CN's alternative would eliminate the risk of a languishing corridor to create new single-line service between Kansas City, Springfield, Chicago and Detroit – directly competing with the service that would be provided by CP-KCS. While new beneficial service will be available, no options will be lost as KCS will retain access to the divested lines. If the divestiture condition is granted, CN has committed to invest at least $250 million in the Kansas City to Springfield/East St. Louis line to improve transit times, which will directly help Illinois manufacturers and farmers as well as create new economic opportunity for the region without adding to congestion in Chicago. CN's plan will also create a viable alternative to trucks, diverting an estimated many thousands of trucks per year from the congested highways.

I am proud of my relationship with CN. During Springfield's railroad relocation project, I have had the opportunity to interact with principals of CN and those interactions have always been very productive and beneficial to the constituents that I represent. CN's request that the Surface Transportation Board grant their divestiture conditions

SOYBEAN INKS

aligns with the neighborly and customer-focused approach to business that CN has demonstrated since the inception of our relationship. I urge the STB to realize the public interest benefits of CN's divestiture condition and encourage the Board work closely with myself, Springfield leadership, CN and all relevant parties to promote regional competition and customer choice.

Sincerely,

Doris Turner

Doris Turner
Illinois State Senator

PUBLIC VERSION

HOUSE OF REPRESENTATIVES

DISTRICT OFFICE:
KENNETH HALL REGIONAL STATE OFFICE BLDG.
10 COLLINSVILLE AVE., SUITE 302
EAST ST. LOUIS, ILLINOIS 62201
618/857-8124
618/857-8116 FAX

CAPITOL OFFICE:
632 CAPITOL BUILDING
SPRINGFIELD, ILLINOIS 62706
217/782-5951

EMAIL: STATEREPGREENWOOD@GMAIL.COM

LATOYA GREENWOOD
STATE REPRESENTATIVE 114TH DISTRICT
MAJORITY CONFERENCE CHAIR

COMMITTEES:
- AGRICULTURE & CONSERVATION
- APPROP-ELEMENTARY & SECONDARY
- APPROPRIATIONS-HUMAN SERVICES
- CITIZEN IMPACT SUBCOMMITTEE
- CYBERSECURITY, DATA ANALYTICS, & IT
- HEALTH CARE AVAILABILITY & ACCESS
- MUSEUMS, ARTS, & CULTURAL ENHANCEMENT
- PRESCRIPTION DRUG AFFORDABILIT
- PUBLIC UTILITIES

February 22, 2022

The Honorable Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36500, Canadian Pacific Railway—Control—Kansas City Southern

Dear Ms. Brown:

I am writing to you today in support of CN's requested condition seeking divestiture of Kansas City Southern's (KCS) line from Kansas City, MO to Springfield, IL and East St. Louis, IL to CN should the Canadian Pacific (CP) merger with KCS be approved by the Surface Transportation Board.

CP and KCS have demonstrated they intend to focus their operations and plans for growth across CP's existing line connecting Kansas City to Chicago, making KCS's overlapping corridor between Kansas City to Springfield/East St. Louis redundant to their service offerings and rail operations after the merger. They have made it clear in their merger application they will divert traffic from the Kansas City to Springfield/East St. Louis line and do not plan to invest in that line, leaving the track to slowly degrade and reducing the competitive shipping options for customers in East St. Louis that rely on this line to efficiently move goods to domestic and international markets. Without the proposed CN condition, we are concerned that CP's plan will reduce a competitive option over the overlapping corridor and have a detrimental effect on my community.

I am asking the Surface Transportation Board to condition any approval of the CP-KCS merger on CN's requested divesture condition of the Kansas City to Springfield/East St. Louis line should the Board approve the CP-KCS merger. CN's alternative would eliminate the risk of a languishing corridor to create a new single-line service between Kansas City, East St. Louis, Chicago, and Detroit – directly competing with the service that would be provided by CP-KCS. While new beneficial services will be available, no options will be lost as KCS will retain access to the divested lines. If the divestiture condition is granted, CN has committed to invest at least $250 million in the Kansas City to Springfield/East St. Louis line to improve transit times, which will directly help Illinois manufacturers and farmers as well as create new economic opportunities for the region without adding to the congestion in Chicago. CN's plan will also create a viable alternative to trucks, diverting estimated many thousands of trucks per year from the congested highways.

I am proud of my strong relationship with CN. CN's request that the Surface Transportation Board grant their divestiture conditions aligns with the neighborly and customer-focused approach to business that CN has demonstrated since the inception of our relationship. I urge the STB to realize the public interest benefits of CN's divestiture condition and encourage the Board to work closely with local leaders, CN, and all relevant parties to promote regional competition and customer choice.

Sincerely,



LaToya Greenwood
District 114 State Representative
Majority Conference Chair
Illinois House of Representatives

cc: Parties of Record

PUBLIC VERSION

OFFICE OF THE MAYOR
ROBERT EASTERN III

301 River Park Drive • East St. Louis, Illinois 62201 • (618) 482-6600

February 4, 2022

The Honorable Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36500, Canadian Pacific Railway—Control—Kansas City Southern

Dear Ms. Brown,

On behalf of the City of East St. Louis, I am writing to you today in support of CN's requested condition seeking divestiture of Kansas City Southern's (KCS) line from Kansas City, MO to Springfield, IL and East St. Louis, IL to CN should the Canadian Pacific (CP) merger with KCS be approved by the Surface Transportation Board.

CP and KCS have demonstrated they intend to focus their operations and plans for growth across CP's existing line connecting Kansas City to Chicago, making KCS's overlapping corridor between Kansas City to Springfield/East St. Louis redundant to their service offerings and rail operations after the merger. They have made it clear in their merger application they will divert traffic from the Kansas City to Springfield/East St. Louis line and do not plan to invest in that line, leaving the track to slowly degrade and reducing the competitive shipping options for customers in East St. Louis that rely on this line to efficiently move goods to domestic and international markets. Without the proposed CN condition, we are concerned that CP's plan will reduce a competitive option over the overlapping corridor and have a detrimental effect on my community.

East St. Louis asks the Surface Transportation Board to condition any approval of the CP-KCS merger on CN's requested divesture condition of the Kansas City to Springfield/East St. Louis line should the Board approve the CP-KCS merger. CN's alternative would eliminate the risk of a languishing corridor to create new single-line service between Kansas City, East St. Louis, Chicago and Detroit – directly competing with the service that would be provided by CP-KCS. While new beneficial service will be available, no options will be lost as KCS will retain access to the divested lines. If the divestiture condition is granted, CN has committed to invest at least $250 million in the Kansas City to Springfield/East St. Louis line to improve transit times, which will directly help our manufacturers and farmers as well as creating new economic opportunity for the metro-east region. CN's plan will also create a viable alternative to trucks, diverting an estimated many thousands of trucks per year from the congested highways.

The City of East St. Louis is proud of our strong relationship with CN. CN's request that the Surface Transportation Board grant their divestiture conditions aligns with the neighborly and customer-focused approach to business that CN has demonstrated since the inception of our relationship. We urge the STB to realize the public interest benefits of CN's divestiture condition and encourage the Board work closely with the city, CN and all relevant parties to promote regional competition and customer choice.

Sincerely,

Robert Eastern III
Mayor

cc: Parties of Record

- OFFICE OF THE MAYOR -
Christopher W. Curtis
City of Kankakee

February 8, 2022

The Honorable Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36500, Canadian Pacific Railway—Control—Kansas City Southern

Dear Ms. Brown:

On behalf of the City of Kankakee, I am writing to you today in support of CN's requested condition seeking divestiture of Kansas City Southern' s (KCS) line from Kansas City, MO to Springfield, IL and East St. Louis, IL to CN should the Canadian Pacific (CP) merger with KCS be approved by the Surface Transportation Board.

CP and KCS have demonstrated they intend to focus their operations and plan for growth across CP's existing line connecting Kansas City to Chicago, making KCS's overlapping corridor between Kansas City to Springfield/East St. Louis redundant to their service offerings and rail operations after the merger. They have made it clear in their merger application they will divert traffic from the Kansas City to Springfield/East St. Louis line and do not plan to invest in that line, leaving the track to slowly degrade and reducing the competitive shipping options for customers in the City of Kankakee that rely on this line to efficiently move goods to domestic and international markets. Without the proposed CN condition, we are concerned that CP's plan will reduce a competitive option over the overlapping corridor and have a detrimental effect on my community.

The City of Kankakee asks the Surface Transportation Board to condition any approval of the CP-KCS merger on CN's requested divesture condition of the Kansas City to Springfield/East St. Louis line should the Board approve the CP-KCS merger. CN's alternative would eliminate the risk of a languishing corridor to create new single-line service between Kansas City, City of Kankakee, Chicago and Detroit – directly competing with the service that would be provided by CP-KCS. While new beneficial service will be available, no options will be lost as KCS will retain access to the divested lines. If the divestiture condition is granted, CN has committed to invest at least $250 million in the Kansas City to Springfield/East St. Louis line to improve transit times, which will directly help our manufacturers and farmers as well as creating new economic opportunity for this geographic region. CN's plan will also create a viable alternative to trucks, diverting an estimated many thousands of trucks per year from the congested highways.

ADMINISTRATION BUILDING
304 South Indiana Avenue
Kankakee, Illinois 60901-3904

Telephone: 815-933-0500
Fax: 815-936-3619
Website: www.citykankakee-il.gov

- OFFICE OF THE MAYOR -
Christopher W. Curtis
City of Kankakee

The City of Kankakee is proud of our strong relationship with CN. CN rail is a key economic development tool for our City and region and a key asset in helping us procure industrial development. Our City is located an hour outside of Chicago and is an attractive alternative to locating near major metropolitan area's. We allow quick shipping options to the Chicago area and other larger cities, but provide lower land cost, lower operating cost and less traffic congestion. By allowing CN's rail footprint to grow and connect, the City of Kankakee's ability to grow and prosper will only continue with this expansion. CN's request that the Surface Transportation Board grant their divestiture conditions aligns with the neighborly and customer-focused approach to business that CN has demonstrated since the inception of our relationship. We urge the STB to realize the public interest benefits of CN's divestiture condition and encourage the Board work closely with the City of Kankakee, CN and all relevant parties to promote regional competition and customer choice.

Sincerely,
City of Kankakee

Chris W. Curtis
Mayor

CC. / Parties of Record

ADMINISTRATION BUILDING
304 South Indiana Avenue
Kankakee, Illinois 60901-3904

Telephone: 815-933-0500
Fax: 815-936-3619
Website: www.citykankakee-il.gov

LOCKPORT

Mayor
Steven Streit

City Clerk
Kathleen Gentile

Administrator
Ben Benson

Alderman
Karen Kostecki - 1st Ward
Matt Kairis - 1st Ward
JR Gillogly - 2nd Ward
Larry Schreiber - 2nd Ward
Christina Bergbower - 3rd Ward
Joanne Bartelsen - 4th Ward
Renee Saban - 4th Ward
Mark Lobes – At-Large

City of Historic Pride

222 E. Ninth Street ♦ Lockport, IL 60441-3497

January 21, 2022

The Honorable Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36500, Canadian Pacific Railway—Control—Kansas City Southern

Dear Ms. Brown:

On behalf of the City of Lockport I am writing to you today in support of CN's requested condition seeking divestiture of Kansas City Southern's (KCS) line from Kansas City, MO to Springfield, IL and East St. Louis, IL to CN should the Canadian Pacific (CP) merger with KCS be approved by the Surface Transportation Board.

CP and KCS have demonstrated they intend to focus their operations and plans for growth across CP's existing line connecting Kansas City to Chicago, making KCS's overlapping corridor between Kansas City to Springfield/East St. Louis redundant to their service offerings and rail operations after the merger. They have made it clear in their merger application they will divert traffic from the Kansas City to Springfield/East St. Louis line and do not plan to invest in that line, leaving the track to slowly degrade and reducing the competitive shipping options for customers in Lockport that rely on this line to efficiently move goods to domestic and international markets. Without the proposed CN condition, we are concerned that CP's plan will reduce a competitive option over the overlapping corridor and have a detrimental effect on my community.

The City of Lockport asks the Surface Transportation Board to condition any approval of the CP-KCS merger on CN's requested divesture condition of the Kansas City to Springfield/East St. Louis line should the Board approve the CP-KCS merger. CN's alternative would eliminate the risk of a languishing corridor to create new single-line service between Kansas City, Lockport, Chicago and Detroit – directly competing with the service that would be provided by CP-KCS. While new beneficial service will be available, no options will be lost as

KCS will retain access to the divested lines. If the divestiture condition is granted, CN has committed to invest at least $250 million in the Kansas City to Springfield/East St. Louis line to improve transit times, which will directly help our manufacturers and farmers as well as creating new economic opportunity for the Midwest. CN's plan will also create a viable alternative to trucks, diverting an estimated many thousands of trucks per year from the congested highways.

The City of Lockport is proud of our strong relationship with CN. CN's request that the Surface Transportation Board grant their divestiture conditions aligns with the neighborly and customer-focused approach to business that CN has demonstrated since the inception of our relationship. We urge the STB to realize the public interest benefits of CN's divestiture condition and encourage the Board work closely with the City of Lockport, CN, and all relevant parties to promote regional competition and customer choice.

Sincerely,



Ben Benson
City Administrator

cc: Parties of Record

VILLAGE OF LEMONT

www.lemont.il.us

February 3, 2022

The Honorable Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36500, Canadian Pacific Railway—Control—Kansas City Southern

Dear Ms. Brown:

On behalf of the Village of Lemont, Illinois, (the Village), I am writing to you today in support of CN's requested condition seeking divestiture of Kansas City Southern's (KCS) line from Kansas City, MO to Springfield, IL and East St. Louis, IL to CN should the Canadian Pacific (CP) merger with KCS be approved by the Surface Transportation Board.

CP and KCS have demonstrated they intend to focus their operations and plans for growth across CP's existing line connecting Kansas City to Chicago, making KCS's overlapping corridor between Kansas City to Springfield/East St. Louis redundant to their service offerings and rail operations after the merger. They have made it clear in their merger application they will divert traffic from the Kansas City to Springfield/East St. Louis line and do not plan to invest in that line, leaving the track to slowly degrade and reducing the competitive shipping options for customers in the Village that rely on this line to efficiently move goods to domestic and international markets. Without the proposed CN condition, we are concerned that CP's plan will reduce a competitive option over the overlapping corridor and have a detrimental effect on my community.

The Village of Lemont respectfully asks the Surface Transportation Board to condition any approval of the CP-KCS merger on CN's requested divesture condition of the Kansas City to Springfield/East St. Louis line should the Board approve the CP-KCS merger. CN's alternative would eliminate the risk of a languishing corridor to create new single-line service between Kansas City, the Village, Chicago and Detroit – directly competing with the service that would be provided by CP-KCS. While new beneficial service will be available, no options will be lost as KCS will retain access to the divested lines. If the divestiture condition is granted, CN has committed to invest at least $250 million in the Kansas City to Springfield/East St. Louis line to improve transit times, which will directly help Illinois manufacturers and farmers as well as create new economic opportunity for the region without adding to congestion in Chicago. CN's plan will also create a viable alternative to trucks, diverting an estimated many thousands of trucks per year from the congested highways.

418 Main Street
Lemont, IL 60439

p 630.257.1550
f 630.257.1598

vlemont@lemont.il.us
www.lemont.il.us

VILLAGE OF LEMONT

www.lemont.il.us

The Village is proud of our strong relationship with CN. CN has operated around the Village for years and is a good partner when it comes to addressing the Village's local needs. CN's request that the Surface Transportation Board grant their divestiture conditions aligns with the neighborly and customer-focused approach to business that CN has demonstrated since the inception of our relationship. We urge the STB to realize the public interest benefits of CN's divestiture condition and encourage the Board work closely with the Village, CN and all relevant parties to promote regional competition and customer choice.

Sincerely,

John Egofske
Mayor, Village of Lemont

cc: Parties of Record

418 Main Street
Lemont, IL 60439

p 630.257.1550
f 630.257.1598

vlemont@lemont.il.us
www.lemont.il.us

PUBLIC VERSION 303692

ENTERED
Office of Proceedings
February 7, 2022
Part of
Public Record

Village of
Manteno
TIMOTHY O. NUGENT, Village President

ROBIN BATKA, Village Clerk
CHRIS LAROCQUE, Village Administrator

Trustees
TIMOTHY BOYCE
TODD CROCKETT
DIANE DOLE
JOEL GESKY
SAMUEL MARTIN
WENDELL O. PHILLIPS



January 21, 2022

The Honorable Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36500, Canadian Pacific Railway—Control—Kansas City Southern

Dear Ms. Brown:

On behalf of the Village of Manteno, I am writing to you today in support of CN's requested condition seeking divestiture of Kansas City Southern's (KCS) line from Kansas City, MO to Springfield, IL and East St. Louis, IL to CN should the Canadian Pacific (CP) merger with KCS be approved by the Surface Transportation Board.

CP and KCS have demonstrated they intend to focus their operations and plans for growth across CP's existing line connecting Kansas City to Chicago, making KCS's overlapping corridor between Kansas City to Springfield/East St. Louis redundant to their service offerings and rail operations after the merger. They have made it clear in their merger application they will divert traffic from the Kansas City to Springfield/East St. Louis line and do not plan to invest in that line, leaving the track to slowly degrade and reducing the competitive shipping options for customers in the Village of Manteno that rely on this line to efficiently move goods to domestic and international markets. Without the proposed CN condition, we are concerned that CP's plan will reduce a competitive option over the overlapping corridor and have a detrimental effect on my community.

The Village of Manteno asks the Surface Transportation Board to condition any approval of the CP-KCS merger on CN's requested divesture condition of the Kansas City to Springfield/East St. Louis line should the Board approve the CP-KCS merger. CN's alternative would eliminate the risk of a languishing corridor to create new single-line service between Kansas City, Manteno, Chicago and Detroit – directly competing with the service that would be provided by CP-KCS. While new beneficial service will be available, no options will be lost as KCS will retain access to the divested lines.

If the divestiture condition is granted, CN has committed to invest at least $250 million in the Kansas City to Springfield/East St. Louis line to improve transit times, which will directly help our manufacturers and farmers as well as creating new economic opportunity for the Kankakee County area. CN's plan will also create a viable alternative to trucks, diverting an estimated many thousands of trucks per year from the congested highways.

The Village of Manteno is proud of our strong relationship with CN. CN's request that the Surface Transportation Board grant their divestiture conditions aligns with the neighborly and customer-focused approach to business that CN has demonstrated since the inception of our relationship. We urge the STB to realize the public interest benefits of CN's divestiture condition and encourage the Board work closely with the Village of Manteno, CN and all relevant parties to promote regional competition and customer choice.

Sincerely,

Timothy O. Nugent
Village President

cc: Parties of Record

PUBLIC VERSION

John F. Argoudelis
PRESIDENT

Michelle Gibas
VILLAGE CLERK

TRUSTEES
Harry Benton
Kevin M. Calkins
Patricia T. Kalkanis
Cally J. Larson
Tom Ruane
Brian Wojowski

February 10, 2022

The Honorable Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36500, Canadian Pacific Railway—Control—Kansas City Southern

Dear Ms. Brown:

I am writing to you today in support of CN's requested condition seeking divestiture of Kansas City Southern's (KCS) line from Kansas City, MO to Springfield, IL and East St. Louis, IL to CN should the Canadian Pacific (CP) merger with KCS be approved by the Surface Transportation Board.

CP and KCS have demonstrated that they intend to focus their operations and plans for growth across CP's existing line connecting Kansas City to Chicago, making KCS's overlapping corridor between Kansas City to Springfield/East St. Louis redundant to their service offerings and rail operations after the merger. They have made it clear in their merger application they will divert traffic from the Kansas City to Springfield/East St. Louis line and do not plan to invest in that line.

The Village of Plainfield asks that the Surface Transportation Board condition any approval of the CP-KCS merger on CN's requested divesture condition of the Kansas City to Springfield/East St. Louis line should the Board approve the CP-KCS merger. CN's plan will create a viable alternative to trucks, thus diverting a significant number of trucks per year from the congested highways which will help Plainfield and the greater Will County area.

The Village of Plainfield is proud of our strong relationship with CN. They have always been responsive to the community's needs including establishing a quiet zone, relocating instrumentation equipment, and most recently, assisting the Village with making trail connections. We appreciate their continued partnership.

CN's request that the Surface Transportation Board grant their divestiture conditions aligns with the neighborly and customer-focused approach to business that CN has demonstrated since the inception of our relationship. We urge the STB to realize the public interest benefits of CN's divestiture condition and encourage the Board work closely with CN and all relevant parties to promote regional competition and customer choice.

Sincerely,

John F. Argoudelis
Village President

24401 W. Lockport Street Plainfield, IL 60544
Phone (815) 436-7093 Fax (815) 436-1950 Web www.plainfield-il.org

Village of
University Park

Joseph E. Roudez III
MAYOR

Dorothy R. Jones, MMC
VILLAGE CLERK

BOARD OF TRUSTEES.
Janelle McFadden
Theaplise Brooks
Sonia Jenkins-Bell
Shirley Bolding
Donzell Franklin
Karen Lewis

Ernestine Beck-Fulgham
VILLAGE MANAGER

James H. Ellis
VILLAGE TREASURER

January 27, 2022

The Honorable Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36500, Canadian Pacific Railway—Control—Kansas City Southern

Dear Ms. Brown:

On behalf of the Village of University Park I am writing to you today in support of CN's requested condition seeking divestiture of Kansas City Southern' s (KCS) line from Kansas City, MO to Springfield, IL and East St. Louis, IL to CN should the Canadian Pacific (CP) merger with KCS be approved by the Surface Transportation Board.

CP and KCS have demonstrated they intend to focus their operations and plan for growth across CP's existing line connecting Kansas City to Chicago, making KCS's overlapping corridor between Kansas City to Springfield/East St. Louis redundant to their service offerings and rail operations after the merger. They have made it clear in their merger application they will divert traffic from the Kansas City to Springfield/East St. Louis line and do not plan to invest in that line, leaving the track to slowly degrade and reducing the competitive shipping options for customers in University Park that rely on this line to efficiently move goods to domestic and international markets. Without the proposed CN condition, we are concerned that CP's plan will reduce a competitive option over the overlapping corridor and have a detrimental effect on my community.

The Village of University Park asks the Surface Transportation Board to condition any approval of the CP-KCS merger on CN's requested divesture condition of the Kansas City to Springfield/East St. Louis line should the Board approve the CP-KCS merger. CN's alternative would eliminate the risk of a languishing corridor to create new single-line service between Kansas City, University Park, Chicago and Detroit – directly competing with the service that would be provided by CP-KCS. While new beneficial service will be available, no options will be lost as KCS will retain access to the divested lines. If the divestiture condition is granted, CN has committed to invest at least $250 million in the Kansas City to Springfield/East St. Louis line to improve transit times, which will directly help Illinois manufacturers and farmers as well as create new economic opportunity for the region without adding to congestion in Chicago. CN's plan will also create a viable alternative to trucks, diverting an estimated many thousands of trucks per year from the congested highways.

The Village of University Park is proud of our strong relationship with CN. CN's request that the Surface Transportation Board grant their divestiture conditions aligns with the neighborly and customer-focused approach to business that CN has demonstrated since the inception of our relationship. We urge the STB to realize the public interest benefits of CN's divestiture condition and encourage the Board work closely with University Park, CN and all relevant parties to promote regional competition and customer choice.

Sincerely,

Joseph E. Roudez III
Mayor
Village of University Park

cc: Parties of Record

PUBLIC VERSION

ECONOMIC ALLIANCE OF KANKAKEE COUNTY

Jeff Hammes, Chair
Peoples Bank

Dr. Michael Boyd, Vice Chair
Kankakee Community College

Jeff Bennett
McColly Bennett Real Estate

David Johns
Geoffrey, Johns & Associates

Melissa Kahoun
Aqua Illinois

Phil Kambic
Riverside Healthcare

Chad Miller
Kankakee County Board

Stephen Liehr
Kankakee County Board

Steve Magruder
IBEW retired

Pat Martin
Midland States Bank

Theodis Pace
Kankakee County NAACP

Samuel Payton
Kankakee County Board

Maureen Powell
CSL Behring Kankakee

Christopher Shride
Amita Health

Russell Tobey
Kankakee Valley Construction Co.

Andrew Wheeler
Kankakee County Board

January 21, 2022

The Honorable Cynthia T. Brown Chief
Section of Administration Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36500, Canadian Pacific Railway—Control—Kansas City Southern

Dear Ms. Brown:

On behalf of ŭKŝ 9ŏƨy2Yʌŏ !ffʌl·yŏŝ 2ŧ Yl·yʃl·ʃŝŝ /2ʤyűè, I am writing to you today in support of CN's requested condition seeking divestiture of Kansas City Southern's (KCS) line from Kansas City, MO to Springfield, IL and East St. Louis, IL to CN should the Canadian Pacific (CP) merger with KCS be approved by the Surface Transportation Board.

CP and KCS have demonstrated they intend to focus their operations and plans for growth across CP's existing line connecting Kansas City to Chicago, making KCS's overlapping corridor between Kansas City to Springfield/East St. Louis redundant to their service offerings and rail operations after the merger. They have made it clear in their merger application they will divert traffic from the Kansas City to Springfield/East St. Louis line and do not plan to invest in that line, leaving the track to slowly degrade and reducing the competitive shipping options for customers in Yl·yʃl·ʃŝŝ /2ʤyűè that rely on this line to efficiently move goods to domestic and international markets. Without the proposed CN condition, we are concerned that CP's plan will reduce a competitive option over the overlapping corridor and have a detrimental effect on my community.

¢Kŝ 9ŏƨy2Yʌŏ !ffʌl·yŏŝ 2ŧ Yl·yʃl·ʃŝŝ /2ʤyűè asks the Surface Transportation Board to condition any approval of the CP-KCS merger on CN's requested ŘʌØŝăűʌűʤℕŝ condition of the Kansas City to Springfield/East St. Louis line should the Board approve the CP-KCS merger. CN's alternative would eliminate the risk of a languishing corridor to create new single-line service between Kansas City, Yl·yʃl·ʃŝŝ /2ʤyűè, Chicago and Detroit – directly competing with the service that would be provided by CP-KCS. While new beneficial service will be available, no options will be lost as KCS will retain access to the divested lines. If the divestiture condition is granted, CN has committed to invest at least $250 million in the Kansas City to Springfield/East St. Louis line to improve transit times, which will directly help our manufacturers and farmers as well as creating new economic opportunity foℕ Yl·yʃl·ʃŝŝ /2ʤyűè. CN's plan will also create a viable alternative to trucks, diverting an estimated many thousands of trucks per year from the congested highways.

PUBLIC VERSION

ECONOMIC ALLIANCE OF KANKAKEE COUNTY

Jeff Hammes, Chair
Peoples Bank

Dr. Michael Boyd, Vice Chair
Kankakee Community College

Jeff Bennett
McColly Bennett Real Estate

David Johns
Geoffrey, Johns & Associates

Melissa Kahoun
Aqua Illinois

Phil Kambic
Riverside Healthcare

Chad Miller
Kankakee County Board

Stephen Liehr
Kankakee County Board

Steve Magruder
IBEW retired

Pat Martin
Midland States Bank

Theodis Pace
Kankakee County NAACP

Samuel Payton
Kankakee County Board

Maureen Powell
CSL Behring Kankakee

Christopher Shride
Amita Health

Russell Tobey
Kankakee Valley Construction Co.

Andrew Wheeler
Kankakee County Board

The Economic Alliance of Kankakee County is proud of our strong relationship with CN. Many of the food, plastic and steel manufacturers, along with several distribution warehouses in and around Kankakee County utilize the railways. Rail access is a strong selling point to many potential investors to expand developments in our region, and we look forward to that continued growth. CN's request that the Surface Transportation Board grant their divestiture conditions aligns with the neighborly and customer-focused approach to business that CN has demonstrated since the inception of our relationship. We urge the STB to realize the public interest benefits of CN's divestiture condition and encourage the Board work closely with the Economic Alliance of Kankakee County, CN and all relevant parties to promote regional competition and customer choice.

Sincerely,

Timothy O. Nugent
President/CEO

cc: Parties of Record

PUBLIC VERSION

340 Michigan St SE
P.O. Box 609
Hutchinson, MN 55350

AGRI TRADING

320-587-2133
800-328-5189
Fax 320-587-5816

The Honorable Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36500, Canadian Pacific Railway—Control—Kansas City Southern

Dear Ms. Brown:

On behalf of AgriTrading, I am writing to you today in support of CN's requested condition seeking divestiture of Kansas City Southern's (KCS) line from Kansas City, MO to Springfield, IL and East St. Louis, IL to CN should the Canadian Pacific (CP) merger with KCS be approved by the Surface Transportation Board.

CP and KCS have demonstrated they intend to focus their operations and plans for growth across CP's existing line connecting Kansas City to Chicago, making KCS's overlapping corridor between Kansas City to Springfield/East St. Louis redundant to their service offerings and rail operations after the merger. They have made it clear in their merger application they will divert traffic from the Kansas City to Springfield/East St. Louis line and do not plan to invest in that line, leaving the track to slowly degrade and reducing the competitive shipping options for AgriTrading and other shippers like us that rely on this corridor to efficiently move goods to and from Kansas City markets. Without the proposed CN condition, we are concerned that CP's plan will reduce a competitive option over the overlapping corridor.

AgriTrading asks the Surface Transportation Board to condition any approval of the CP-KCS merger on CN's requested divesture condition of the Kansas City to Springfield/East St. Louis line should the Board approve the CP-KCS merger. CN's alternative would eliminate the risk of a languishing corridor to create new single-line service between Kansas City, Chicago and Detroit – directly competing with the service that would be provided by CP-KCS. While new service will be available, no options will be lost as KCS will retain access to the divested lines. This new competitive service will be particularly beneficial to AgriTrading as we utilize multiple locations on this line and having it served by multiple railroads will lead to better pricing and better service.

If the divestiture condition is granted, CN has committed to invest in the Kansas City to Springfield/East St. Louis line to improve transit times over the line. CN's plan will create a viable alternative to trucks, diverting an estimated many thousands of trucks per year from the congested highways.

AgriTrading is proud of our strong 45 year relationship with CN and other Railroads where we ship various commodities that service the Renewable Fuels Sector as well as the animal Feed sector. CN's

request that the Surface Transportation Board grant their divestiture conditions aligns with the customer-focused approach to business that CN has demonstrated since the inception of our relationship. We hope the STB will also realize the customer-focused public interest benefits of CN's divestiture condition and will work closely with AgriTrading, CN and all relevant parties to promote regional competition and customer choice.

Sincerely,

Jon DeRock
Chief Financial Officer
AgriTrading

cc: Parties of Record

AGROCORP PROCESSING

The Honorable Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36500, Canadian Pacific Railway—Control—Kansas City Southern

Dear Ms. Brown:

On behalf of Agrocorp Processing LTD., I am writing to you today in support of CN's requested condition seeking divestiture of Kansas City Southern's (KCS) line from Kansas City, MO to Springfield, IL and East St. Louis, IL to CN should the Canadian Pacific (CP) merger with KCS be approved by the Surface Transportation Board.

CP and KCS have demonstrated they intend to focus their operations and plans for growth across CP's existing line connecting Kansas City to Chicago, making KCS's overlapping corridor between Kansas City to Springfield/East St. Louis redundant to their service offerings and rail operations after the merger. This will reduce the competitive shipping options for Agrocorp Processing LTD and other shippers like us that rely on this corridor to efficiently move goods to and from Kansas City markets. Without the proposed CN condition, we are concerned that our competitive options will be reduced over the overlapping corridor.

Agrocorp Processing LTD asks the Surface Transportation Board to condition any approval of the CP-KCS merger on CN's requested divesture condition of the Kansas City to Springfield/East St. Louis line should the Board approve the CP-KCS merger. CN's alternative would create a new single-line service between Kansas City, Chicago, and Detroit – directly competing with the service that would be provided by CP-KCS. while new service will be available, no options will be lost as KCS will retain access to the divested lines. If the divestiture condition is granted, CN has committed to invest in the Kansas City to Springfield/East St. Louis line to improve transit times over the line. CN's plan will create a viable alternative to trucks, diverting an estimated many thousands of trucks per year from the congested highways.

Unit 210B – 254 Edmonton Street, Winnipeg, MB, Canada R3C 3Y4
www.agrocorp.ca | trade@agrocorp.ca | (604) 681 8675 | (866) 337 4559

CN's request that the Surface Transportation Board grant their divestiture conditions aligns with the customer-focused approach to business that CN has demonstrated as a long term service provider. We hope the STB will also realize the customer-focused public interest benefits of CN's divestiture condition and will work closely with Agrocorp Processing LTD, CN and all relevant parties to promote regional competition and customer choice.

Sincerely,

Valeriy Bolgarov

Valeriy Bolgarov
Trade Execution Manager and Trader

cc: Parties of Record



The Honorable Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36500, Canadian Pacific Railway—Control—Kansas City Southern

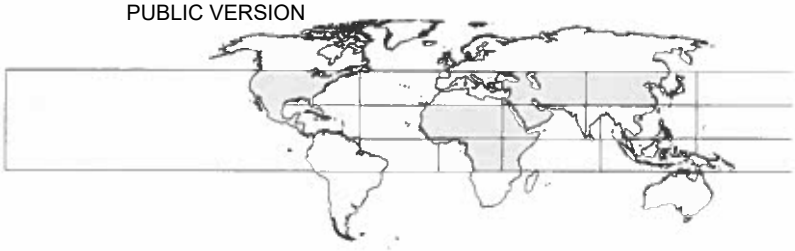
Dear Ms. Brown:

On behalf of AJC International Inc, I am writing to you today in support of CN's requested condition seeking divestiture of Kansas City Southern's (KCS) line from Kansas City, MO to Springfield, IL and East St. Louis, IL to CN should the Canadian Pacific (CP) merger with KCS be approved by the Surface Transportation Board.

CP and KCS have demonstrated they intend to focus their operations and plans for growth across CP's existing line connecting Kansas City to Chicago, making KCS's overlapping corridor between Kansas City to Springfield/East St. Louis redundant to their service offerings and rail operations after the merger. This will reduce the competitive shipping options for AJC International Inc and other shippers like us that rely on this corridor to efficiently move goods to and from Kansas City markets. Without the proposed CN condition, we are concerned that our competitive options will be reduced over the overlapping corridor.

AJC International Inc asks the Surface Transportation Board to condition any approval of the CP-KCS merger on CN's requested divesture condition of the Kansas City to Springfield/East St. Louis line should the Board approve the CP-KCS merger. CN's alternative would create a new single-line service between Kansas City, Chicago, and Detroit – directly competing with the service that would be provided by CP-KCS. while new service will be available, no options will be lost as KCS will retain access to the divested lines. If the divestiture condition is granted, CN has committed to invest in the Kansas City to Springfield/East St. Louis line to improve transit times over the line. CN's plan will create a viable alternative to trucks, diverting an estimated many thousands of trucks per year from the congested highways.

CN's request that the Surface Transportation Board grant their divestiture conditions aligns with the customer-focused approach to business that CN has demonstrated as a long term service provider. We hope the STB will also realize the customer-focused public interest benefits of CN's divestiture condition and will work closely with Ricardo Monteiro, CN and all relevant parties to promote regional competition and customer choice.



Sincerely,

Ricardo Monteiro
Director, Global Transportation

ANGELO'S GARDEN CENTRE

1801 Highway 7 Concord, Ontario Canada

The Honorable Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36500, Canadian Pacific Railway—Control—Kansas City Southern

Dear Ms. Brown:

On behalf of Angelo's Garden Centre, I am writing to you today in support of CN's requested condition seeking divestiture of Kansas City Southern's (KCS) line from Kansas City, MO to Springfield, IL and East St. Louis, IL to CN should the Canadian Pacific (CP) merger with KCS be approved by the Surface Transportation Board.

CP and KCS have demonstrated they intend to focus their operations and plans for growth across CP's existing line connecting Kansas City to Chicago, making KCS's overlapping corridor between Kansas City to Springfield/East St. Louis redundant to their service offerings and rail operations after the merger. They have made it clear in their merger application they will divert traffic from the Kansas City to Springfield/East St. Louis line and do not plan to invest in that line, leaving the track to slowly degrade and reducing the competitive shipping options for Angelo's Garden Centre and other shippers like us that rely on this corridor to efficiently move goods to and from Kansas City markets. Without the proposed CN condition, we are concerned that CP's plan will reduce a competitive option over the overlapping corridor.

Angelo's Garden Centre asks the Surface Transportation Board to condition any approval of the CP-KCS merger on CN's requested divesture condition of the Kansas City to Springfield/East St. Louis line should the Board approve the CP-KCS merger. CN's alternative would eliminate the risk of a languishing corridor to create new single-line service between Kansas City, Chicago and Detroit – directly competing with the service that would be provided by CP-KCS. While new service will be available, no options will be lost as KCS will retain access to the divested lines. This new competitive service will be particularly beneficial to intermodal customers like Angelo's Garden Centre. We will gain a new option for single-line service to ports served by CN – helping implement the USMCA.

If the divestiture condition is granted, CN has committed to invest in the Kansas City to Springfield/East St. Louis line to improve transit times over the line. CN's plan will create a viable alternative to trucks, diverting an estimated many thousands of trucks per year from the congested highways.

Angelo's Garden Centre is proud of our strong 15 year relationship with CN and TransX/H&R. We have been shipping with rail companies for more then 15 years and we have found that the more rail lines available to transport companies the more completion there is and the more competitive pricing they can

offer us.CN's request that the Surface Transportation Board grant their divestiture conditions aligns with the customer-focused approach to business that CN has demonstrated since the inception of our relationship. We hope the STB will also realize the customer-focused public interest benefits of CN's divestiture condition and will work closely with Angelo's Garden Centre, TransX and all relevant parties to promote regional competition and customer choice.

Sincerely,

Carlo Ammendolia
Owner

cc: Parties of Record

PUBLIC VERSION

Atlantic Container Line

50 Cardinal Drive • Westfield, New Jersey 07090 • Tel.: 908-518-5300

Writer's Direct Number:

Phone: (908) 518-5710
Fax: (908) 518-7326
E-mail: BMcBride@ACLCargo.com

January 14, 2022

The Honorable Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36500, Canadian Pacific Railway—Control—Kansas City Southern

Dear Ms. Brown:

On behalf of Atlantic Container Line, I am writing to you today in support of CN's requested condition seeking divestiture of Kansas City Southern's (KCS) line from Kansas City, MO to Springfield, IL and East St. Louis, IL to CN should the Canadian Pacific (CP) merger with KCS be approved by the Surface Transportation Board.

CP and KCS have demonstrated they intend to focus their operations and plans for growth across CP's existing line connecting Kansas City to Chicago, making KCS's overlapping corridor between Kansas City to Springfield/East St. Louis redundant to their service offerings and rail operations after the merger. This will reduce the competitive shipping options for Atlantic Container Line and other shippers like us that rely on this corridor to efficiently move goods to and from Kansas City markets. Without the proposed CN condition, we are concerned that our competitive options will be reduced over the overlapping corridor.

Atlantic Container Line asks the Surface Transportation Board to condition any approval of the CP-KCS merger on CN's requested divesture condition of the Kansas City to Springfield/East St. Louis line should the Board approve the CP-KCS merger. CN's alternative would create a new single-line service between Kansas City, Chicago, and Detroit – directly competing with the service that would be provided by CP-KCS. while new service will be available, no options will be lost as KCS will retain access to the divested lines. If the divestiture condition is granted, CN has committed to invest in the Kansas City to Springfield/East St. Louis line to improve transit

Atlantic Container Line

times over the line. CN's plan will create a viable alternative to trucks, diverting an estimated many thousands of trucks per year from the congested highways.

CN's request that the Surface Transportation Board grant their divestiture conditions aligns with the customer-focused approach to business that CN has demonstrated as a long term service provider. We hope the STB will also realize the customer-focused public interest benefits of CN's divestiture condition and will work closely with Atlantic Container Line, CN and all relevant parties to promote regional competition and customer choice.

Sincerely,

Brian McBride

Brian McBride
Vice President Logistics

cc: Parties of Record

Battle River Railway

Box 128
Forestburg Alberta
T0B 1N0

The Honorable Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36500, Canadian Pacific Railway—Control—Kansas City Southern

Dear Ms. Brown:

On behalf of Battle River Railway (BRR) I am writing to you today in support of CN's requested condition seeking divestiture of Kansas City Southern's (KCS) line from Kansas City, MO to Springfield, IL and East St. Louis, IL to CN should the Canadian Pacific (CP) merger with KCS be approved by the Surface Transportation Board.

CP and KCS have demonstrated they intend to focus their operations and plans for growth across CP's existing line connecting Kansas City to Chicago, making KCS's overlapping corridor between Kansas City to Springfield/East St. Louis redundant to their service offerings and rail operations after the merger. This will reduce the competitive shipping options for our customers and other shippers like us that rely on this corridor to efficiently move goods to and from Kansas City markets. Without the proposed CN condition, we are concerned that our competitive options will be reduced over the overlapping corridor.

BRR asks the Surface Transportation Board to condition any approval of the CP-KCS merger on CN's requested divesture condition of the Kansas City to Springfield/East St. Louis line should the Board approve the CP-KCS merger. CN's alternative would create a new single-line service between Kansas City, Chicago, and Detroit – directly competing with the service that would be provided by CP-KCS. while new service will be available, no options will be lost as KCS will retain access to the divested lines. If the divestiture condition is granted, CN has committed to invest in the Kansas City to Springfield/East St. Louis line to improve transit times over the line. CN's plan will create a viable alternative to trucks, diverting an estimated many thousands of trucks per year from the congested highways.

CN's request that the Surface Transportation Board grant their divestiture conditions aligns with the customer-focused approach to business that CN has demonstrated as a long term service provider. We hope the STB will also realize the customer-focused public interest benefits of CN's divestiture condition and will work closely with BRR, CN and all relevant parties to promote regional competition and customer choice.

Sincerely,

Matthew Enright
GM, BRR

cc: Parties of Record

PUBLIC VERSION

BELLE PULSES LTD.
Tony or Francis Gaudet
P.O. Box 65
1101 Main Street
Bellevue, Sask.
S0K 3Y0
Bellevue: (306)423-5202 or: 877-423-5202
Fax: (306)423-6212
GST#R100459833
Email: bellepulses@sasktel.net

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The Honorable Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36500, Canadian Pacific Railway—Control—Kansas City Southern

Dear Ms. Brown:

On behalf of Belle Pulses Ltd., I am writing to you today in support of CN's requested condition seeking divestiture of Kansas City Southern's (KCS) line from Kansas City, MO to Springfield, IL and East St. Louis, IL to CN should the Canadian Pacific (CP) merger with KCS be approved by the Surface Transportation Board.

CP and KCS have demonstrated they intend to focus their operations and plans for growth across CP's existing line connecting Kansas City to Chicago, making KCS's overlapping corridor between Kansas City to Springfield/East St. Louis redundant to their service offerings and rail operations after the merger. This will reduce the competitive shipping options for Belle Pulses Ltd. and other shippers like us that rely on this corridor to efficiently move goods to and from Kansas City markets. Without the proposed CN condition, we are concerned that our competitive options will be reduced over the overlapping corridor.

Belle Pulses Ltd. asks the Surface Transportation Board to condition any approval of the CP-KCS merger on CN's requested divesture condition of the Kansas City to Springfield/East St. Louis line should the Board approve the CP-KCS merger. CN's alternative would create a new single-line service between Kansas City, Chicago, and Detroit – directly competing with the service that would be provided by CP-KCS. while new service will be available, no options will be lost as KCS will retain access to the divested lines. If the divestiture condition is granted, CN has committed to invest in the Kansas City to Springfield/East St. Louis line to improve transit times over the line. CN's plan will create a viable alternative to trucks, diverting an estimated many thousands of trucks per year from the congested highways.

CN's request that the Surface Transportation Board grant their divestiture conditions aligns with the customer-focused approach to business that CN has demonstrated as a long term service provider. We hope the STB will also realize the customer-focused public interest benefits of CN's divestiture condition and will work closely with Belle Pulses Ltd., CN and all relevant parties to promote regional competition and customer choice.

Sincerely,

Belle Pulses Ltd.

cc: Parties of Record

BELLE PULSES LTD. Seal

PUBLIC VERSION

Big Sky Rail Corp. PO Box 3192
Regina, SK S4P 3G7

The Honorable Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36500, Canadian Pacific Railway—Control—Kansas City Southern

Dear Ms. Brown:

On behalf of Big Sky Rail Corp. (BGS), I am writing to you today in support of CN's requested condition seeking divestiture of Kansas City Southern's (KCS) line from Kansas City, MO to Springfield, IL and East St. Louis, IL to CN should the Canadian Pacific (CP) merger with KCS be approved by the Surface Transportation Board.

CP and KCS have demonstrated they intend to focus their operations and plans for growth across CP's existing line connecting Kansas City to Chicago, making KCS's overlapping corridor between Kansas City to Springfield/East St. Louis redundant to their service offerings and rail operations after the merger. This will reduce the competitive shipping options for BGS and other shippers like us that rely on this corridor to efficiently move goods to and from Kansas City markets. Without the proposed CN condition, we are concerned that our competitive options will be reduced over the overlapping corridor.

BGS asks the Surface Transportation Board to condition any approval of the CP-KCS merger on CN's requested divesture condition of the Kansas City to Springfield/East St. Louis line should the Board approve the CP-KCS merger. CN's alternative would create a new single-line service between Kansas City, Chicago, and Detroit – directly competing with the service that would be provided by CP-KCS. while new service will be available, no options will be lost as KCS will retain access to the divested lines. If the divestiture condition is granted, CN has committed to invest in the Kansas City to Springfield/East St. Louis line to improve transit times over the line. CN's plan will create a viable alternative to trucks, diverting an estimated many thousands of trucks per year from the congested highways.

CN's request that the Surface Transportation Board grant their divestiture conditions aligns with the customer-focused approach to business that CN has demonstrated as a long term service provider. We hope the STB will also realize the customer-focused public interest benefits of CN's divestiture condition and will work closely with BGS, CN and all relevant parties to promote regional competition and customer choice.

Sincerely,

Dane Kostenuk
BGS General Manager

PUBLIC VERSION

The Honorable Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36500, Canadian Pacific Railway—Control—Kansas City Southern

Dear Ms. Brown:

On behalf of Briercrest Grain Limited, I am writing to you today in support of CN's requested condition seeking divestiture of Kansas City Southern's (KCS) line from Kansas City, MO to Springfield, IL and East St. Louis, IL to CN should the Canadian Pacific (CP) merger with KCS be approved by the Surface Transportation Board.

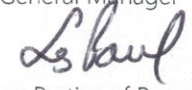
CP and KCS have demonstrated they intend to focus their operations and plans for growth across CP's existing line connecting Kansas City to Chicago, making KCS's overlapping corridor between Kansas City to Springfield/East St. Louis redundant to their service offerings and rail operations after the merger. This will reduce the competitive shipping options for Briercrest Grain Limited and other shippers like us that rely on this corridor to efficiently move goods to and from Kansas City markets. Without the proposed CN condition, we are concerned that our competitive options will be reduced over the overlapping corridor.

Briercrest Grain Limited asks the Surface Transportation Board to condition any approval of the CP-KCS merger on CN's requested divesture condition of the Kansas City to Springfield/East St. Louis line should the Board approve the CP-KCS merger. CN's alternative would create a new single-line service between Kansas City, Chicago, and Detroit – directly competing with the service that would be provided by CP-KCS. while new service will be available, no options will be lost as KCS will retain access to the divested lines. If the divestiture condition is granted, CN has committed to invest in the Kansas City to Springfield/East St. Louis line to improve transit times over the line. CN's plan will create a viable alternative to trucks, diverting an estimated many thousands of trucks per year from the congested highways.

CN's request that the Surface Transportation Board grant their divestiture conditions aligns with the customer-focused approach to business that CN has demonstrated as a long term service provider. We hope the STB will also realize the customer-focused public interest benefits of CN's divestiture condition and will work closely with Briercrest Grain Limited, CN and all relevant parties to promote regional competition and customer choice.

Sincerely

Les Paul
General Manager



cc: Parties of Record



The Honorable Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36500, Canadian Pacific Railway—Control—Kansas City Southern

Dear Ms. Brown:

On behalf of Caneda Transport LTD, I am writing to you today in support of CN's requested condition seeking divestiture of Kansas City Southern's (KCS) line from Kansas City, MO to Springfield, IL and East St. Louis, IL to CN should the Canadian Pacific (CP) merger with KCS be approved by the Surface Transportation Board.

CP and KCS have demonstrated they intend to focus their operations and plans for growth across CP's existing line connecting Kansas City to Chicago, making KCS's overlapping corridor between Kansas City to Springfield/East St. Louis redundant to their service offerings and rail operations after the merger. This will reduce the competitive shipping options for Caneda Transport LTD and other shippers like us that rely on this corridor to efficiently move goods to and from Kansas City markets. Without the proposed CN condition, we are concerned that our competitive options will be reduced over the overlapping corridor.

Caneda Transport LTD asks the Surface Transportation Board to condition any approval of the CP-KCS merger on CN's requested divesture condition of the Kansas City to Springfield/East St. Louis line should the Board approve the CP-KCS merger. CN's alternative would create a new single-line service between Kansas City, Chicago, and Detroit – directly competing with the service that would be provided by CP-KCS. while new service will be available, no options will be lost as KCS will retain access to the divested lines. If the divestiture condition is granted, CN has committed to invest in the Kansas City to Springfield/East St. Louis line to improve transit times over the line. CN's plan will create a viable alternative to trucks, diverting an estimated many thousands of trucks per year from the congested highways.

CN's request that the Surface Transportation Board grant their divestiture conditions aligns with the customer-focused approach to business that CN has demonstrated as a long term service provider. We hope the STB will also realize the customer-focused public interest benefits of CN's divestiture condition and will work closely with Caneda Transport LTD, CN and all relevant parties to promote regional competition and customer choice.

Sincerely,

Scott Nielson
Director of Sales & Logistics

cc: Parties of Record

PUBLIC VERSION

CDS Group of Companies
CDS Transload
CDS Cold Storage
CDS Customs Services Ltd
Canadian Dry Storage Ltd
Canadian Distribution Services Ltd

The Honorable Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36500, Canadian Pacific Railway—Control—Kansas City Southern

Dear Ms. Brown:

On behalf of CDS Transportation Services LTD, I am writing to you today in support of CN's requested condition seeking divestiture of Kansas City Southern's (KCS) line from Kansas City, MO to Springfield, IL and East St. Louis, IL to CN should the Canadian Pacific (CP) merger with KCS be approved by the Surface Transportation Board.

CP and KCS have demonstrated they intend to focus their operations and plans for growth across CP's existing line connecting Kansas City to Chicago, making KCS's overlapping corridor between Kansas City to Springfield/East St. Louis redundant to their service offerings and rail operations after the merger. They have made it clear in their merger application they will divert traffic from the Kansas City to Springfield/East St. Louis line and do not plan to invest in that line, leaving the track to slowly degrade and reducing the competitive shipping options for CDS Transportation Services LTD and other shippers like us that rely on this corridor to efficiently move goods to and from Kansas City markets. Without the proposed CN condition, we are concerned that CP's plan will reduce a competitive option over the overlapping corridor.

CDS Transportation Services LTD asks the Surface Transportation Board to condition any approval of the CP-KCS merger on CN's requested divesture condition of the Kansas City to Springfield/East St. Louis line should the Board approve the CP-KCS merger. CN's alternative would eliminate the risk of a languishing corridor to create new single-line service between Kansas City, Chicago and Detroit – directly competing with the service that would be provided by CP-KCS. While new service will be available, no options will be lost as KCS will retain access to the divested lines. This new competitive service will be particularly beneficial to intermodal customers like CDS Transportation Services LTD. We will gain a new option for single-line service to ports served by CN – helping implement the USMCA.

If the divestiture condition is granted, CN has committed to invest in the Kansas City to Springfield/East St. Louis line to improve transit times over the line. CN's plan will create a viable alternative to trucks, diverting an estimated many thousands of trucks per year from the congested highways.

CDS Transportation Services LTD is proud of our strong 15+ year relationship with CN and TransX/H&R. CN's request that the Surface Transportation Board grant their divestiture conditions aligns with the customer-focused approach to business that CN has demonstrated since the inception of our relationship. We hope the STB will also realize the customer-focused public interest benefits of CN's divestiture condition and will work closely with CDS Transportation Services LTD, TransX and all relevant parties to promote regional competition and customer choice.

Sincerely,

Jason Ando
Transportation Manager

18351 McCartney Way, Richmond, British Columbia, V6W0A1 CANADA
Main: (604) 279-0960 | Fax: (604) 279-0956 | Website: www.cdsltd.ca

CMB

CENTRAL METAL BUILDING, INC.

Serving Central Mississippi and Beyond

Office 601·936·3825

106 Diane Drive Richland, MS 39218

Ken Parker
Ken@centralmetalbuildings.com
Cell 601·720·7823

The Honorable Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36500, Canadian Pacific Railway—Control—Kansas City Southern

Dear Ms. Brown:

On behalf of Central Metal Buildings, I am writing to you today in support of CN's requested condition seeking divestiture of Kansas City Southern's (KCS) line from Kansas City, MO to Springfield, IL and East St. Louis, IL to CN should the Canadian Pacific (CP) merger with KCS be approved by the Surface Transportation Board.

CP and KCS have demonstrated they intend to focus their operations and plans for growth across CP's existing line connecting Kansas City to Chicago, making KCS's overlapping corridor between Kansas City to Springfield/East St. Louis redundant to their service offerings and rail operations after the merger. They have made it clear in their merger application they will divert traffic from the Kansas City to Springfield/East St. Louis line and do not plan to invest in that line, leaving the track to slowly degrade and reducing the competitive shipping options for Central Metal Buildings and other shippers like us that rely on this corridor to efficiently move goods to and from Kansas City markets. Without the proposed CN condition, we are concerned that CP's plan will reduce a competitive option over the overlapping corridor.

Central Metal Buildings asks the Surface Transportation Board to condition any approval of the CP-KCS merger on CN's requested divesture condition of the Kansas City to Springfield/East St. Louis line should the Board approve the CP-KCS merger. CN's alternative would eliminate the risk of a languishing corridor to create new single-line service between Kansas City, Chicago and Detroit – directly competing with the service that would be provided by CP-KCS. While new service will be available, no options will be lost as KCS will retain access to the divested lines.

If the divestiture condition is granted, CN has committed to invest in the Kansas City to Springfield/East St. Louis line to improve transit times over the line. CN's plan will create a viable alternative to trucks, diverting an estimated many thousands of trucks per year from the congested highways.

Central Metal Buildings is proud of our strong 2 year relationship with CN. CN's request that the Surface Transportation Board grant their divestiture conditions aligns with the customer-focused approach to business that CN has demonstrated since the inception of our relationship. We hope the STB will also realize the customer-focused public interest benefits of CN's divestiture condition and will work closely with Central Metal Buildings CN and all relevant parties to promote regional competition and customer choice.

PUBLIC VERSION

Sincerely,

Ken Parker
President

cc: Parties of Record

CHEMIN DE FER
SARTIGAN
RAILWAY

PUBLIC VERSION

The Honorable Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36500, Canadian Pacific Railway—Control—Kansas City Southern

Dear Ms. Brown:

On behalf of Sartigan Railway, I am writing to you today in support of CN's requested condition seeking divestiture of Kansas City Southern's (KCS) line from Kansas City, MO to Springfield, IL and East St. Louis, IL to CN should the Canadian Pacific (CP) merger with KCS be approved by the Surface Transportation Board.

CP and KCS have demonstrated they intend to focus their operations and plan for growth across CP's existing line connecting Kansas City to Chicago, making KCS's overlapping corridor between Kansas City to Springfield/East St. Louis redundant to their service offerings and rail operations after the merger. They have made it clear in their merger application they will divert traffic from the Kansas City to Springfield/East St. Louis line and do not plan to invest in that line, leaving the track to slowly degrade and reducing the competitive shipping options for our customers that rely on this corridor to efficiently move goods to and from Kansas City markets.

We have multiple lumber shippers who ship through this lane to reach Kansas City and other Midwestern destinations. The two grain terminals on our railway, ComAgro Inc and Aliments Breton Foods Canada Inc source their grain from suppliers on this line or from suppliers who route the traffic through this lane.

Without the proposed CN condition, we are concerned that CP's plan will reduce a competitive option over the overlapping corridor.

CFS-Sartigan Railway asks the Surface Transportation Board to condition any approval of the CP-KCS merger on CN's requested divesture condition of the Kansas City to Springfield/East St. Louis line should the Board approve the CP-KCS merger. CN's alternative would eliminate the risk of a languishing corridor to create new single-line service between Kansas City, Chicago and Detroit – directly competing with the service that would be provided by CP-KCS. While new

399, Rue Jean-Marie Rousseau, Vallée-Jonction, Québec, G0S 3J0
Courriel : stephan.vachon@sartigan.ca
www.sartigan.ca
Téléphone : 418-209-5848

PUBLIC VERSION

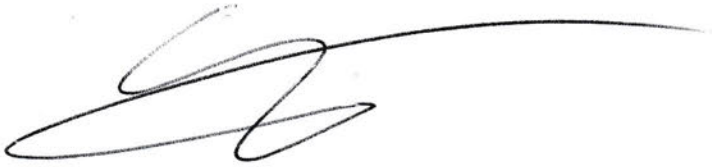
service will be available, no options will be lost as KCS will retain access to the divested lines. We will gain a new option for single-line service to ports served by CN – helping implement the USMCA.

If the divestiture condition is granted, CN has committed to invest in the Kansas City to Springfield/East St. Louis line to improve transit times over the line. CN's plan will create a viable alternative to trucks, diverting an estimated many thousands of trucks per year from the congested highways.

Sartigan Railway is proud of our strong 9-year relationship with CN. CN has been a true business partner helping our company to develop new customers and return rail service to an abandoned railway line with many economic and environmental benefits for the communities served.

CN's request that the Surface Transportation Board grant their divestiture conditions aligns with the customer-focused approach to business that CN has demonstrated since the inception of our relationship. We hope the STB will also realize the customer-focused public interest benefits of CN's divestiture condition and will work closely with Sartigan Railway, CN and all relevant parties to promote regional competition and customer choice.

Sincerely,



Stephan Vachon, co-owner & general manager
CFS-Sartigan Railway

cc: Parties of Record

399, Rue Jean-Marie Rousseau, Vallée-Jonction, Québec, G0S 3J0
Courriel : stephan.vachon@sartigan.ca
www.sartigan.ca
Téléphone : 418-209-5848

CHEP
A Brambles Company

Canada
7400 East Danbro Crescent
Mississauga, Ontario
L5N 8C6
Canada
Tel: +1 905 790 2437

The Honorable Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36500, Canadian Pacific Railway—Control—Kansas City Southern

Dear Ms. Brown:

On behalf of CHEP Canada, I am writing to you today in support of CN's requested condition seeking divestiture of Kansas City Southern's (KCS) line from Kansas City, MO to Springfield, IL and East St. Louis, IL to CN should the Canadian Pacific (CP) merger with KCS be approved by the Surface Transportation Board.

CP and KCS have demonstrated they intend to focus their operations and plans for growth across CP's existing line connecting Kansas City to Chicago, making KCS's overlapping corridor between Kansas City to Springfield/East St. Louis redundant to their service offerings and rail operations after the merger. They have made it clear in their merger application they will divert traffic from the Kansas City to Springfield/East St. Louis line and do not plan to invest in that line, leaving the track to slowly degrade and reducing the competitive shipping options for [CHEP Canada] and other shippers like us that rely on this corridor to efficiently move goods to and from Kansas City markets. Without the proposed CN condition, we are concerned that CP's plan will reduce a competitive option over the overlapping corridor.

CHEP Canada] asks the Surface Transportation Board to condition any approval of the CP-KCS merger on CN's requested divesture condition of the Kansas City to Springfield/East St. Louis line should the Board approve the CP-KCS merger. CN's alternative would eliminate the risk of a languishing corridor to create new single-line service between Kansas City, Chicago and Detroit – directly competing with the service that would be provided by CP-KCS. While new service will be available, no options will be lost as KCS will retain access to the divested lines. This new competitive service will be particularly beneficial to intermodal customers like CHEP Canada . We will gain a new option for single-line service to ports served by CN – helping implement the USMCA.

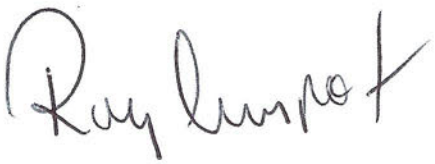
If the divestiture condition is granted, CN has committed to invest in the Kansas City to Springfield/East St. Louis line to improve transit times over the line. CN's plan will create a viable alternative to trucks, diverting an estimated many thousands of trucks per year from the congested highways.

CHEP
A Brambles Company

Canada
7400 East Danbro Crescent
Mssissauga, Ontario
L5N 8C6
Canada
Tel: +1 905 790 2437

CHEP Canada is proud of our strong 20 plus year relationship with CN. CHEP partners with CN Rail within Canada and cross border to and from North East US and Mid-West. CN services CHEP Canada customers reliably and economically in those region and markets. Over the years, CN Rail have met and exceeded CHEP Canada expectations and continues to offer new solutions growing partnership and business relationship. CN's request that the Surface Transportation Board grant their divestiture conditions aligns with the customer-focused approach to business that CN has demonstrated since the inception of our relationship. We hope the STB will also realize the customer-focused public interest benefits of CN's divestiture condition and will work closely with CHEP Canada, CN and all relevant parties to promote regional competition and customer choice.

Sincerely,



Roy Gunpat
Manager, Transportation and Logistics

LOGISTICS
7400 E DANBRO CRESCENT
MISSISSAUGA, ONTARIO L5N 8C6

TEL: 647-799-1564
Roy.Gunpat@chep.com

A BRAMBLES COMPANY

CHEP

HANDLING THE WORLD'S MOST IMPORTANT PRODUCTS everyday.

cc: Parties of Record

CHESTER STORE
2229 State Street
Chester, IL 62233
618-826-4502

PUBLIC VERSION

CONSTRUCTION SUPPLY

RED BUD STORE
1250 W. Market Street
Red Bud, IL 62278
618-826-4503

The Honorable Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36500, Canadian Pacific Railway—Control—Kansas City Southern

Dear Ms. Brown:

On behalf of Construction Supply, I am writing to you today in support of CN's requested condition seeking divestiture of Kansas City Southern's (KCS) line from Kansas City, MO to Springfield, IL and East St. Louis, IL to CN should the Canadian Pacific (CP) merger with KCS be approved by the Surface Transportation Board.

CP and KCS have demonstrated they intend to focus their operations and plans for growth across CP's existing line connecting Kansas City to Chicago, making KCS's overlapping corridor between Kansas City to Springfield/East St. Louis redundant to their service offerings and rail operations after the merger. They have made it clear in their merger application they will divert traffic from the Kansas City to Springfield/East St. Louis line and do not plan to invest in that line, leaving the track to slowly degrade and reducing the competitive shipping options for Construction Supply and other shippers like us that rely on this corridor to efficiently move goods to and from Kansas City markets. Without the proposed CN condition, we are concerned that CP's plan will reduce a competitive option over the overlapping corridor.

Construction Supply asks the Surface Transportation Board to condition any approval of the CP-KCS merger on CN's requested divesture condition of the Kansas City to Springfield/East St. Louis line should the Board approve the CP-KCS merger. CN's alternative would eliminate the risk of a languishing corridor to create new single-line service between Kansas City, Chicago and Detroit – directly competing with the service that would be provided by CP-KCS. While new service will be available, no options will be lost as KCS will retain access to the divested lines.

If the divestiture condition is granted, CN has committed to invest in the Kansas City to Springfield/East St. Louis line to improve transit times over the line. CN's plan will create a viable alternative to trucks, diverting an estimated many thousands of trucks per year from the congested highways.

Construction Supply is proud of our strong 11 year relationship with CN. Construction Supply is a distributor of building materials in the Midwest. We have a reload site on CN Track located in Du Quoin, Illinois. We are very satisfied with the service CN gives us. CN's request that the Surface Transportation Board grant their divestiture conditions aligns with the customer-focused approach to business that CN has demonstrated since the inception of our relationship. We hope the STB will also realize the customer-focused public interest benefits of CN's divestiture condition and will work closely with Construction Supply, CN and all relevant parties to promote regional competition and customer choice.

Sincerely,

John Roth

Construction Supply
President

cc: Parties of Record

Coca-Cola Canada Bottling Limited

The Honorable Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36500, Canadian Pacific Railway—Control—Kansas City Southern

Dear Ms. Brown:

On behalf of Coca Cola Canada Bottling Ltd (CCCBL), I am writing to you today in support of CN's requested condition seeking divestiture of Kansas City Southern's (KCS) line from Kansas City, MO to Springfield, IL and East St. Louis, IL to CN should the Canadian Pacific (CP) merger with KCS be approved by the Surface Transportation Board.

CP and KCS have demonstrated they intend to focus their operations and plans for growth across CP's existing line connecting Kansas City to Chicago, making KCS's overlapping corridor between Kansas City to Springfield/East St. Louis redundant to their service offerings and rail operations after the merger. This will reduce the competitive shipping options for CCCBL and other shippers like us that rely on this corridor to efficiently move goods to and from Kansas City markets. Without the proposed CN condition, we are concerned that our competitive options will be reduced over the overlapping corridor.

CCCBL asks the Surface Transportation Board to condition any approval of the CP-KCS merger on CN's requested divesture condition of the Kansas City to Springfield/East St. Louis line should the Board approve the CP-KCS merger. CN's alternative would create a new single-line service between Kansas City, Chicago, and Detroit – directly competing with the service that would be provided by CP-KCS. while new service will be available, no options will be lost as KCS will retain access to the divested lines. If the divestiture condition is granted, CN has committed to invest in the Kansas City to Springfield/East St. Louis line to improve transit times over the line. CN's plan will create a viable alternative to trucks, diverting an estimated many thousands of trucks per year from the congested highways.

CN's request that the Surface Transportation Board grant their divestiture conditions aligns with the customer-focused approach to business that CN has demonstrated as a long term service provider. We hope the STB will also realize the customer-focused

Coca-Cola Canada Bottling Limited

public interest benefits of CN's divestiture condition and will work closely with CCCBL, CN and all relevant parties to promote regional competition and customer choice.

Sincerely,

Dave Keenan
Director Transportation
Coca Cola Canada Bottling Ltd
dkeenan@cokecanada.com

cc: Parties of Record

Coca-Cola Canada Bottling Limited

Sincerely,

Coca-Cola Canada Bottling Limited

1840 London Line, Sarnia, Ontario N7T 7H2
Phone: (519) 542-3435
e-mail address: jeff@degroots.ca

The Honorable Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36500, Canadian Pacific Railway—Control—Kansas City Southern

February 1, 2022

Dear Ms. Brown:

On behalf of DeGroot's Nurseries, I am writing to you today in support of CN's requested condition seeking divestiture of Kansas City Southern's (KCS) line from Kansas City, MO to Springfield, IL and East St. Louis, IL to CN should the Canadian Pacific (CP) merger with KCS be approved by the Surface Transportation Board.

CP and KCS have demonstrated they intend to focus their operations and plans for growth across CP's existing line connecting Kansas City to Chicago, making KCS's overlapping corridor between Kansas City to Springfield/East St. Louis redundant to their service offerings and rail operations after the merger. They have made it clear in their merger application they will divert traffic from the Kansas City to Springfield/East St. Louis line and do not plan to invest in that line, leaving the track to slowly degrade and reducing the competitive shipping options for DeGroot's and other shippers like us that rely on this corridor to efficiently move goods to and from Kansas City markets. Without the proposed CN condition, we are concerned that CP's plan will reduce a competitive option over the overlapping corridor.

DeGroot's Nurseries asks the Surface Transportation Board to condition any approval of the CP-KCS merger on CN's requested divesture condition of the Kansas City to Springfield/East St. Louis line should the Board approve the CP-KCS merger. CN's alternative would eliminate the risk of a languishing corridor to create new single-line service between Kansas City, Chicago and Detroit – directly competing with the service that would be provided by CP-KCS. While new service will be available, no options will be lost as KCS will retain access to the divested lines. This new competitive service will be particularly beneficial to intermodal customers like Degroot's Nurseries. We will gain a

1840 London Line, Sarnia, Ontario N7T 7H2
Phone: (519) 542-3435
e-mail address: jeff@degroots.ca

new option for single-line service to ports served by CN – helping implement the USMCA.

If the divestiture condition is granted, CN has committed to invest in the Kansas City to Springfield/East St. Louis line to improve transit times over the line. CN's plan will create a viable alternative to trucks, diverting an estimated many thousands of trucks per year from the congested highways.

DeGroot's Nurseries is proud of our strong 10 year relationship with CN and TransX/H&R. We have had reliable competitive service during these years. CN's request that the Surface Transportation Board grant their divestiture conditions aligns with the customer-focused approach to business that CN has demonstrated since the inception of our relationship. We hope the STB will also realize the customer-focused public interest benefits of CN's divestiture condition and will work closely with DeGroot's Nurseries, TransX and all relevant parties to promote regional competition and customer choice.

Sincerely,

Jeff Baarschers

Nursery Manager

Landscape Canada

Landscape Ontario
HORTICULTURAL TRADES ASSOCIATION

1840 London Line, Sarnia, Ontario N7T 7H2
Phone: (519) 542-3435
e-mail address: jeff@degroots.ca

Landscape Canada

Landscape Ontario
HORTICULTURAL TRADES ASSOCIATION

DFK Enterprise, Inc.

Derek Kruk
President

944 Rockbridge Road
Naperville, Illinois 60540
February 4, 2022

Cynthia T. Brown

Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36514, Canadian National Railway Company, Grand Trunk Corporation, and CN's Rail Operating Subsidiaries—Control—Kansas City Southern, the Kansas City Southern Railway Company, Gateway Eastern Railway Company, and the Texas Mexican Railway Company

Dear Ms. Brown:

My name is Derek Kruk, and I am President of DFK Enterprise (DFK). In my role, I am responsible for all company rail operations.

DFK Enterprise is a bulk oil trading and transportation company with ongoing rail operations in North America. DFK has used CN frequently over the last ten years to ship petroleum products from multiple Canadian locations into the US Midwest and Louisiana.

DFK Enterprise supports approval of CN's voting trust. We believe CN's proposed voting trust benefits KCS and its shareholders by creating the opportunity for them to make a fair, informed decision when choosing between the competing offers and by shielding them from the lengthy regulatory approval process that would arise following an acquisition of KCS by either CN or CP.

To ensure fair and transparent review of CN's voting trust, DFK Enterprise also supports CN's request that the STB review CN's voting trust agreement simultaneously with CP's proposed voting trust and that the review process include a brief public comment period. Such a review would ensure a level playing field for the bids.

DFK Enterprise is proud of our ten year relationship with CN and appreciate their outreach to us since April 20 regarding the proposed KCS-CN combination. Their voting trust—as well as their request that the STB review their voting trust concurrently with its review of CP's trust with a period for public comment—demonstrates the customer-focused approach to business that CN has demonstrated since the inception of our relationship. We look forward to seeing CN's commitment to fairness and efficiency reflected in the STB's review of the voting trust as well as the entire transaction.

Sincerely,

Derek Kruk

Derek Kruk
President



250-4299 Canada Way
Burnaby, BC, Canada
V5G 1H3

T 604-597-5060
F 604-597-4933

The Honorable Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36500, Canadian Pacific Railway—Control—Kansas City Southern

Dear Ms. Brown:

On behalf of DG Global Inc, I am writing to you today in support of CN's requested condition seeking divestiture of Kansas City Southern's (KCS) line from Kansas City, MO to Springfield, IL and East St. Louis, IL to CN should the Canadian Pacific (CP) merger with KCS be approved by the Surface Transportation Board.

CP and KCS have demonstrated they intend to focus their operations and plan for growth across CP's existing line connecting Kansas City to Chicago, making KCS's overlapping corridor between Kansas City to Springfield/East St. Louis redundant to their service offerings and rail operations after the merger. They have made it clear in their merger application they will divert traffic from the Kansas City to Springfield/East St. Louis line and do not plan to invest in that line, leaving the track to slowly degrade and reducing the competitive shipping options for DG Global Inc and other shippers like us that rely on this corridor to efficiently move goods to and from Kansas City markets. Without the proposed CN condition, we are concerned that CP's plan will reduce a competitive option over the overlapping corridor.

DG Global Inc asks the Surface Transportation Board to condition any approval of the CP-KCS merger on CN's requested divesture condition of the Kansas City to Springfield/East St. Louis line should the Board approve the CP-KCS merger. CN's alternative would eliminate the risk of a languishing corridor to create new single-line service between Kansas City, Chicago and Detroit – directly competing with the service that would be provided by CP-KCS. While new service will be available, no options will be lost as KCS will retain access to the divested lines. This new competitive service will be particularly beneficial to intermodal customers like DG Global Inc. We will gain a new option for single-line service to ports served by CN – helping implement the USMCA.

If the divestiture condition is granted, CN has committed to invest in the Kansas City to Springfield/East St. Louis line to improve transit times over the line. CN's plan will create a viable alternative to trucks, diverting an estimated many thousands of trucks per year from the congested highways.

DG Global Inc is proud of our strong 16-year relationship with CN; we rely on CN's services to service our customer base in the USA from our Canadian originations. CN's request that the Surface Transportation Board grant their divestiture conditions aligns with the customer-focused approach to business that CN has demonstrated since the inception of our relationship. We hope the STB will also realize the customer-focused

public interest benefits of CN's divestiture condition and will work closely with DG Global Inc, CN and all relevant parties to promote regional competition and customer choice.

Sincerely,



Mike Allaire
Director- Western Canada
DG Global West Inc.

cc: Parties of Record

PUBLIC VERSION

THE EQUITY

The Honorable Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

February 4, 2022

Re: FD 36500, Canadian Pacific Railway—Control—Kansas City Southern

Dear Ms. Brown:

Effingham Equity is a 102-year-old agricultural cooperative that has our origin adjacent to the CN rail line in Effingham, IL. In the early days, our company was primarily a receiver of products that arrived by rail such as coal, hay, and feed ingredients. During the past 102 years we have utilized our rail access to grow our company from 53 farmer members at a single location in 1919 to over 5,000 farmer members across 18 locations encompassing more than 20,000 square miles in south central Illinois. Put simply, we do agriculture! We rely on the CN rail to bring us fertilizer and feed ingredients for our customers to successfully operate their farms. Additionally, as production agriculture has improved total output, we rely heavily on the CN rail to transport our grain to end users throughout their territory and to the export market.

On behalf of Effingham Equity, I am writing to you today in support of CN's requested condition seeking divestiture of Kansas City Southern's (KCS) line from Kansas City, MO to Springfield, IL and East St. Louis, IL to CN should the Canadian Pacific (CP) merger with KCS be approved by the Surface Transportation Board.

CP and KCS have demonstrated they intend to focus their operations and plans for growth across CP's existing line connecting Kansas City to Chicago, making KCS's overlapping corridor between Kansas City to Springfield/East St. Louis redundant to their service offerings and rail operations after the merger. They have made it clear in their merger application they will divert traffic from the Kansas City to Springfield/East St. Louis line and do not plan to invest in that line, leaving the track to slowly degrade and reducing the competitive shipping options for Effingham Equity and other shippers like us that rely on this corridor to efficiently move goods to and from East St Louis markets. Without the proposed CN condition, we are concerned that CP's plan will reduce a competitive option over the overlapping corridor.

Effingham Equity asks the Surface Transportation Board to condition any approval of the CP-KCS merger on CN's requested divesture condition of the Kansas City to Springfield/East St. Louis line should the Board approve the CP-KCS merger. CN's alternative would eliminate the risk of a languishing corridor to create new single-line service between Kansas City, Chicago and Detroit –

Ph: (217) 342-4101 • Toll Free: (800) 223-1337 • Fax: (217) 347-7601
P.O. Box 488 • 201 W. Roadway Ave. • Effingham, IL 62401

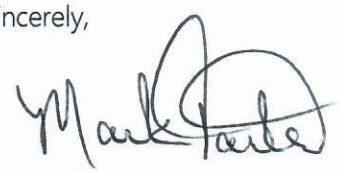
THE EQUITY

directly competing with the service that would be provided by CP-KCS. While new service will be available, no options will be lost as KCS will retain access to the divested lines.

If the divestiture condition is granted, CN has committed to invest in the Kansas City to Springfield/East St. Louis line to improve transit times over the line. CN's plan will create a viable alternative to trucks, diverting an estimated many thousands of trucks per year from the congested highways.

Effingham Equity is proud of our strong 102 year relationship with CN (previously IC). CN's request that the Surface Transportation Board grant their divestiture conditions aligns with the customer-focused approach to business that CN has demonstrated since the inception of our relationship. We hope the STB will also realize the customer-focused public interest benefits of CN's divestiture condition and will work closely with Effingham Equity, CN and all relevant parties to promote regional competition and customer choice.

Sincerely,



Mark Tarter
VP Grain
Effingham Equity

Events Logistics
WORLDWIDE INC.

The Honorable Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36500, Canadian Pacific Railway—Control—Kansas City Southern

Dear Ms. Brown:

On behalf of Events Logistics Worldwide Inc. I am writing to you today in support of CN's requested condition seeking divestiture of Kansas City Southern's (KCS) line from Kansas City, MO to Springfield, IL and East St. Louis, IL to CN should the Canadian Pacific (CP) merger with KCS be approved by the Surface Transportation Board.

CP and KCS have demonstrated they intend to focus their operations and plans for growth across CP's existing line connecting Kansas City to Chicago, making KCS's overlapping corridor between Kansas City to Springfield/East St. Louis redundant to their service offerings and rail operations after the merger. They have made it clear in their merger application they will divert traffic from the Kansas City to Springfield/East St. Louis line and do not plan to invest in that line, leaving the track to slowly degrade and reducing the competitive shipping options for Events Logistics Worldwide Inc. and other shippers like us that rely on this corridor to efficiently move goods to and from Kansas City markets. Without the proposed CN condition, we are concerned that CP's plan will reduce a competitive option over the overlapping corridor.

Events Logistics Worldwide Inc. asks the Surface Transportation Board to condition any approval of the CP-KCS merger on CN's requested divesture condition of the Kansas City to Springfield/East St. Louis line should the Board approve the CP-KCS merger. CN's alternative would eliminate the risk of a languishing corridor to create new single-line service between Kansas City, Chicago and Detroit – directly competing with the service that would be provided by CP-KCS. While new service will be available, no options will be lost as KCS will retain access to the divested lines. This new competitive service will be particularly beneficial to intermodal customers like Events Logistics Worldwide Inc.. We will gain a new option for single-line service to ports served by CN – helping implement the USMCA.

If the divestiture condition is granted, CN has committed to invest in the Kansas City to Springfield/East St. Louis line to improve transit times over the line. CN's plan will create a viable alternative to trucks, diverting an estimated many thousands of trucks per year from the congested highways.

Events Logistics Worldwide Inc. is proud of our strong 3 year relationship with CN. We are very happy with the timely, ecological and cost efficient service received from CN for our international cargo loads. CN's request that the Surface Transportation Board grant their divestiture conditions aligns with the customer-focused approach to business that CN has demonstrated since the inception of our relationship. We hope the STB will also realize

Events Logistics
WORLDWIDE INC.

the customer-focused public interest benefits of CN's divestiture condition and will work closely with Events Logistics Worldwide Inc., CN and all relevant parties to promote regional competition and customer choice.

Sincerely,



Events Logistics Worldwide Inc.
Stephane St-Laurent
President

cc: Parties of Record

Events Logistics Worldwide Inc
407 RANG THIERSANT, SAINT-LOUIS, QC, J0G1K0 CANADA

The Honorable Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36500, Canadian Pacific Railway—Control—Kansas City Southern

Dear Ms. Brown:

On behalf of FINE CHOIDE FOODS, I am writing to you today in support of CN's requested condition seeking divestiture of Kansas City Southern's (KCS) line from Kansas City, MO to Springfield, IL and East St. Louis, IL to CN should the Canadian Pacific (CP) merger with KCS be approved by the Surface Transportation Board.

CP and KCS have demonstrated they intend to focus their operations and plan for growth across CP's existing line connecting Kansas City to Chicago, making KCS's overlapping corridor between Kansas City to Springfield/East St. Louis redundant to their service offerings and rail operations after the merger. They have made it clear in their merger application they will divert traffic from the Kansas City to Springfield/East St. Louis line and do not plan to invest in that line, leaving the track to slowly degrade and reducing the competitive shipping options for FINE CHOICE FOODS and other shippers like us that rely on this corridor to efficiently move goods to and from Kansas City markets. Without the proposed CN condition, we are concerned that CP's plan will reduce a competitive option over the overlapping corridor.

FINE CHOICE FOODS asks the Surface Transportation Board to condition any approval of the CP-KCS merger on CN's requested divesture condition of the Kansas City to Springfield/East St. Louis line should the Board approve the CP-KCS merger. CN's alternative would eliminate the risk of a languishing corridor to create new single-line service between Kansas City, Chicago, and Detroit – directly competing with the service that would be provided by CP-KCS. While new service will be available, no options will be lost as KCS will retain access to the divested lines. This new competitive service will be particularly beneficial to intermodal customers like FINE CHOICE FOODS. We will gain a new option for single-line service to ports served by CN – helping implement the USMCA.

If the divestiture condition is granted, CN has committed to invest in the Kansas City to Springfield/East St. Louis line to improve transit times over the line. CN's plan will create a viable alternative to trucks, diverting an estimated many thousands of trucks per year from the congested highways.

FINE CHOICE FOODS is proud of our strong 5-year relationship with CN and TransX/H&R. For example, we also move a lot of our products from West to East Canada by intermodal mode of transportation with a reasonable shipping cost than by shipping by road. CN's request that the Surface Transportation Board grant their divestiture conditions aligns with the customer-focused approach to business that CN has demonstrated since the inception of our relationship. We hope the STB will also realize the customer-focused public interest benefits of CN's divestiture condition and will work closely with FINE CHOICE FOODS, TransX and all relevant parties to promote regional competition and customer choice.

Sincerely,

Alfredo Wong (SCMP, CCLP, MBA)
Logistics Planner
Fine Choice Foods
23011 Fraserwood Way, Richmond BC, V6V 3B3
phone:(604)522-3110 Ext. 226
www.finechoicefoods.com

cc: Parties of Record

Grande Cheese

The Honorable Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36500, Canadian Pacific Railway—Control—Kansas City Southern

Dear Ms. Brown:

On behalf of TransX, I am writing to you today in support of CN's requested condition seeking divestiture of Kansas City Southern's (KCS) line from Kansas City, MO to Springfield, IL and East St. Louis, IL to CN should the Canadian Pacific (CP) merger with KCS be approved by the Surface Transportation Board.

CP and KCS have demonstrated they intend to focus their operations and plans for growth across CP's existing line connecting Kansas City to Chicago, making KCS's overlapping corridor between Kansas City to Springfield/East St. Louis redundant to their service offerings and rail operations after the merger. They have made it clear in their merger application they will divert traffic from the Kansas City to Springfield/East St. Louis line and do not plan to invest in that line, leaving the track to slowly degrade and reducing the competitive shipping options for Grande Cheese and other shippers like us that rely on this corridor to efficiently move goods to and from Kansas City markets. Without the proposed CN condition, we are concerned that CP's plan will reduce a competitive option over the overlapping corridor.

Grande Cheese asks the Surface Transportation Board to condition any approval of the CP-KCS merger on CN's requested divesture condition of the Kansas City to Springfield/East St. Louis line should the Board approve the CP-KCS merger. CN's alternative would eliminate the risk of a languishing corridor to create new single-line service between Kansas City, Chicago and Detroit – directly competing with the service that would be provided by CP-KCS. While new service will be available, no options will be lost as KCS will retain access to the divested lines. This new competitive service will be particularly beneficial to intermodal customers like Grande Cheese. We will gain a new option for single-line service to ports served by CN – helping implement the USMCA.

If the divestiture condition is granted, CN has committed to invest in the Kansas City to Springfield/East St. Louis line to improve transit times over the line. CN's plan will create a viable alternative to trucks, diverting an estimated many thousands of trucks per year from the congested highways.

Grande Cheese is proud of our strong 2 year relationship with CN and TransX/H&R.
CN's request that the Surface Transportation Board grant their divestiture conditions aligns with the customer-focused approach to business that CN has demonstrated since the inception of our relationship. We hope the STB will also realize the customer-focused public interest benefits of CN's divestiture condition and will work closely with Grande Cheese, TransX and all relevant parties to promote regional competition and customer choice.

Sincerely,

Joe Contardi
CEO

cc: Parties of Record

GROUPE DE SCIERIES G.D.S. INC.
Centre administratif
Administrative center

207, route 295
Dégelis (Québec)
Canada G5T 1R1

Tél. : (418) 853-2566
Fax : (418) 853-2569
www.groupgds.com

The Honorable Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36500, Canadian Pacific Railway—Control—Kansas City Southern

Dear Ms. Brown:

On behalf of Group GDS, I am writing to you today in support of CN's requested condition seeking divestiture of Kansas City Southern's (KCS) line from Kansas City, MO to Springfield, IL and East St. Louis, IL to CN should the Canadian Pacific (CP) merger with KCS be approved by the Surface Transportation Board.

CP and KCS have demonstrated they intend to focus their operations and plans for growth across CP's existing line connecting Kansas City to Chicago, making KCS's overlapping corridor between Kansas City to Springfield/East St. Louis redundant to their service offerings and rail operations after the merger. They have made it clear in their merger application they will divert traffic from the Kansas City to Springfield/East St. Louis line and do not plan to invest in that line, leaving the track to slowly degrade and reducing the competitive shipping options for Group GDS and other shippers like us that rely on this corridor to efficiently move goods to and from Kansas City markets. Without the proposed CN condition, we are concerned that CP's plan will reduce a competitive option over the overlapping corridor.

Group GDS asks the Surface Transportation Board to condition any approval of the CP-KCS merger on CN's requested divesture condition of the Kansas City to Springfield/East St. Louis line should the Board approve the CP-KCS merger. CN's alternative would eliminate the risk of a languishing corridor to create new single-line service between Kansas City, Chicago and Detroit – directly competing with the service that would be provided by CP-KCS. While new service will be available, no options will be lost as KCS will retain access to the divested lines. This new competitive service will be particularly beneficial to intermodal customers like Group GDS. We will gain a new option for single-line service to ports served by CN – helping implement the USMCA.

If the divestiture condition is granted, CN has committed to invest in the Kansas City to Springfield/East St. Louis line to improve transit times over the line. CN's plan will create a viable alternative to trucks, diverting an estimated many thousands of trucks per year from the congested highways.

Group GDS is proud of our strong 20 years relationship with CN. CN's request that the Surface Transportation Board grant their divestiture conditions aligns with the customer-focused approach to business that CN has demonstrated since the inception of our relationship. We hope the STB will also realize the customer-focused public interest benefits of CN's divestiture condition and will work closely with Group GDS, CN and all relevant parties to promote regional competition and customer choice.

Sincerely,



Frederic Deschenes
Sales Director

cc: Parties of Record

The Honorable Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36500, Canadian Pacific Railway—Control—Kansas City Southern

Dear Ms. Brown:

On behalf of HERITAGE GRAIN COOP, I am writing to you today in support of CN's requested condition seeking divestiture of Kansas City Southern's (KCS) line from Kansas City, MO to Springfield, IL and East St. Louis, IL to CN should the Canadian Pacific (CP) merger with KCS be approved by the Surface Transportation Board.

CP and KCS have demonstrated they intend to focus their operations and plans for growth across CP's existing line connecting Kansas City to Chicago, making KCS's overlapping corridor between Kansas City to Springfield/East St. Louis redundant to their service offerings and rail operations after the merger. They have made it clear in their merger application they will divert traffic from the Kansas City to Springfield/East St. Louis line and do not plan to invest in that line, leaving the track to slowly degrade and reducing the competitive shipping options for HERITAGE GRAIN COOP and other shippers like us that rely on this corridor to efficiently move goods to and from Kansas City markets. Without the proposed CN condition, we are concerned that CP's plan will reduce a competitive option over the overlapping corridor.

HERITAGE GRAIN COOP asks the Surface Transportation Board to condition any approval of the CP-KCS merger on CN's requested divesture condition of the Kansas City to Springfield/East St. Louis line should the Board approve the CP-KCS merger. CN's alternative would eliminate the risk of a languishing corridor to create new single-line service between Kansas City, Chicago and Detroit – directly competing with the service that would be provided by CP-KCS. While new service will be available, no options will be lost as KCS will retain access to the divested lines.

If the divestiture condition is granted, CN has committed to invest in the Kansas City to Springfield/East St. Louis line to improve transit times over the line. CN's plan will create a viable alternative to trucks, diverting an estimated many thousands of trucks per year from the congested highways.

HERITAGE GRAIN COOP is proud of our strong 20+ year relationship with CN. Currently we ship 25 car trains to southeast feed customers, adding this line would be beneficial to us by opening up opportunities to reach other markets. CN's request that the Surface Transportation Board grant their divestiture conditions aligns with the customer-focused approach to business that CN has demonstrated since the

inception of our relationship. We hope the STB will also realize the customer-focused public interest benefits of CN's divestiture condition and will work closely with HERITAGE GRAIN COOP, CN and all relevant parties to promote regional competition and customer choice.

Sincerely,

Stacey Longfellow
Heritage Grain Cooperative
Assistant General Manager

cc: Parties of Record

Independent Dispatch, Inc.

The Honorable Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36500, Canadian Pacific Railway—Control—Kansas City Southern

Dear Ms. Cynthia Brown,

On behalf of Independent Dispatch, Inc., I am writing to you today in support of CN's requested condition seeking divestiture of Kansas City Southern's (KCS) line from Kansas City, MO to Springfield, IL and East St. Louis, IL to CN should the Canadian Pacific (CP) merger with KCS be approved by the Surface Transportation Board.

CP and KCS have demonstrated they intend to focus their operations and plans for growth across CP's existing line connecting Kansas City to Chicago, making KCS's overlapping corridor between Kansas City to Springfield/East St. Louis redundant to their service offerings and rail operations after the merger. This will reduce the competitive shipping options for IDI, our customers, and other US shippers that rely on this corridor to efficiently move goods to and from Kansas City markets. Without the proposed CN condition, we are concerned that our competitive options will be limited over the overlapping corridor.

Independent Dispatch, Inc. asks the Surface Transportation Board to condition any approval of the CP-KCS merger on CN's requested divesture condition of the Kansas City to Springfield/East St. Louis line should the Board approve the CP-KCS merger. CN's alternative would create a new single-line service between Kansas City, Chicago, and Detroit – directly competing with the service that would be provided by CP-KCS. while new service will be available, no options will be lost as KCS will retain access to the divested lines. If the divestiture condition is granted, CN has committed to invest in the Kansas City to Springfield/East St. Louis line to improve transit times over the line. CN's plan will create a viable alternative to trucks which will improve congestion on highways, reduce carbon emissions and help shippers move their freight as the driver shortage continues.

CN's request that the Surface Transportation Board grant their divestiture conditions aligns with the customer-focused approach to business that CN has demonstrated as a long-term service provider. We hope the STB will also realize the customer-focused public interest benefits of CN's divestiture condition and will work closely with IDI, US shippers, CN and all relevant parties to promote regional competition and customer choice.

Sincerely,



Erica L. Hill
Independent Dispatch, Inc.
ehill@independentdispatch.com

PUBLIC VERSION

Intermobil Box 3192 Stn Main
Regina, SK S4P 3G7

The Honorable Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36500, Canadian Pacific Railway—Control—Kansas City Southern

Dear Ms. Brown:

On behalf of Intermobil, I am writing to you today in support of CN's requested condition seeking divestiture of Kansas City Southern's (KCS) line from Kansas City, MO to Springfield, IL and East St. Louis, IL to CN should the Canadian Pacific (CP) merger with KCS be approved by the Surface Transportation Board.

CP and KCS have demonstrated they intend to focus their operations and plans for growth across CP's existing line connecting Kansas City to Chicago, making KCS's overlapping corridor between Kansas City to Springfield/East St. Louis redundant to their service offerings and rail operations after the merger. This will reduce the competitive shipping options for Intermobil and other shippers like us that rely on this corridor to efficiently move goods to and from Kansas City markets. Without the proposed CN condition, we are concerned that our competitive options will be reduced over the overlapping corridor.

Intermobil asks the Surface Transportation Board to condition any approval of the CP-KCS merger on CN's requested divesture condition of the Kansas City to Springfield/East St. Louis line should the Board approve the CP-KCS merger. CN's alternative would create a new single-line service between Kansas City, Chicago, and Detroit – directly competing with the service that would be provided by CP-KCS. while new service will be available, no options will be lost as KCS will retain access to the divested lines. If the divestiture condition is granted, CN has committed to invest in the Kansas City to Springfield/East St. Louis line to improve transit times over the line. CN's plan will create a viable alternative to trucks, diverting an estimated many thousands of trucks per year from the congested highways.

CN's request that the Surface Transportation Board grant their divestiture conditions aligns with the customer-focused approach to business that CN has demonstrated as a long term service provider. We hope the STB will also realize the customer-focused public interest benefits of CN's divestiture condition and will work closely with Intermobil, CN and all relevant parties to promote regional competition and customer choice.

Sincerely,





Kent Affleck
Division Head; Mobil Group of Companies

Jon Stricker
Intermobil Terminal Manager

cc: Parties of Record

Jefo Nutrition Inc.
5020 Avenue Jefo, C.P. 325
Saint-Hyacinthe, Québec
Canada, J2S 7B6
T 450 799 2000
F 450 778 1338

The Honorable Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36500, Canadian Pacific Railway—Control—Kansas City Southern

St Hyacinthe, Monday January 31, 2022

Chère Madame Brown,

JEFO NUTRITION INC is Canadian leader for Animal Feed. We manage a large volume of our activities with and through USA and a big share of them are connected to railway transport, including CN rail : 8,000 Teu's a year import and export, USA supplies shipped by full waggons, Multimodal service to deliver USA customers and our USA distribution centers, and a wish that our weekly flows to Mexico could move from Road to Multimodal.
JEFO Group owns a private rail infrastructure in a Québec small city and it is served by CN rail almost daily. Up to 135 wagons can be parked on our tracks.
We are highly connected to North American agro-food industry.

On behalf of JEFO NUTRITION INC, I am writing to you today in support of CN's requested condition seeking divestiture of Kansas City Southern's (KCS) line from Kansas City, MO to Springfield, IL and East St. Louis, IL to CN should the Canadian Pacific (CP) merger with KCS be approved by the Surface Transportation Board.

CP and KCS have demonstrated they intend to focus their operations and plans for growth across CP's existing line connecting Kansas City to Chicago, making KCS's overlapping corridor between Kansas City to Springfield/East St. Louis redundant to their service offerings and rail operations after the merger.

As per public information displayed CP-KCS have made it clear in their merger application they will divert traffic from the Kansas City to Springfield/East St. Louis line and do not plan to invest in that line, leaving the track to slowly degrade.
As top considerations for JEFO NUTRITION INC, that rail solutions should receive priority to support environment sustainability concerns, reduction of carbon footprint, enhance and we believe both USA and Canadian governments should always both decide THE COHERENCE must remain core objectives.
Increasing the competitive rail shipping options through maintaining and developing infrastructures **(which is in total coherence with President Biden huge plans)** should start by obvious and easy decisions to be made and built.

We believe CN Rail is right to apply from Surface Transportation Board the Kansas City to Springfield and East Saint Louis corridor to be allocated to them. In order to increase competition and efficiency move goods to and from Kansas City markets. Without the proposed CN condition, we are concerned that CP's plan will reduce a competitive option over the overlapping corridor.

Jefo Nutrition Inc.
5020 Avenue Jefo, C.P. 325
Saint-Hyacinthe, Québec
Canada, J2S 7B6
T 450 799 2000
F 450 778 1338

JEFO NUTRITONS INC kindly asks the Surface Transportation Board to condition any approval of the CP-KCS merger on CN's requested divesture condition of the Kansas City to Springfield/East St. Louis line should the Board approve the CP-KCS merger. CN's alternative would eliminate the risk of a languishing corridor to create new single-line service between

Kansas City, Chicago and Detroit – directly competing with the service that would be provided by CP-KCS. While new service will be available, no options will be lost as KCS will retain access to the divested lines.

This new competitive service will be particularly beneficial to intermodal customers like JEFO NUTRITIONS INC. We will gain a new option for single-line service to ports served by CN – helping implement the USMCA.

If the divestiture condition is granted, CN has committed to invest in the Kansas City to Springfield/East St. Louis line to improve transit times over the line. CN's plan will create a viable alternative to trucks, diverting an estimated many thousands of trucks per year from the congested highways.

JEFO NUTRITION INC is proud of our strong 25 years relationship with CN and like many companies we rely on CN network and resources, and others, to optimise our supply chain and support sustainable developments in transport.

CN's request that the Surface Transportation Board grant their divestiture conditions aligns with the customer-focused approach to business that CN has demonstrated since the inception of our relationship. We hope the STB will also realize the customer-focused public interest benefits of CN's divestiture condition and will work closely with JEFO NUTRITION INC, CN and all relevant parties to promote regional competition and customer choice.

Truly and logisticaly yours,

Frédéric Houdoyer, Director of Operations, Jefo Nutritions
On Behalf Mr Jean-François Fontaine, Jefo Group Vice-President.

cc: Parties of Record

PLANTERS

JOHNVINCE FOODS

Jan 25, 2022

The Honorable Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36500, Canadian Pacific Railway—Control—Kansas City Southern

Dear Ms. Brown:

On behalf of, I am writing to you today in support of CN's requested condition seeking divestiture of Kansas City Southern' s (KCS) line from Kansas City, MO to Springfield, IL and East St. Louis, IL to CN should the Canadian Pacific (CP) merger with KCS be approved by the Surface Transportation Board.

CP and KCS have demonstrated they intend to focus their operations and plan for growth across CP's existing line connecting Kansas City to Chicago, making KCS's overlapping corridor between Kansas City to Springfield/East St. Louis redundant to their service offerings and rail operations after the merger. This will reduce the competitive shipping options for Johnvince Foods and other shippers like us that rely on this corridor to efficiently move goods to and from Kansas City markets. Without the proposed CN condition, we are concerned that our competitive options and prices will be reduced over the overlapping corridor.

Johnvince Foods asks the Surface Transportation Board to condition any approval of the CP-KCS merger on CN's requested divesture condition of the Kansas City to Springfield/East St. Louis line should the Board approve the CP-KCS merger. CN's alternative would create a new single-line service between Kansas City, Chicago, and Detroit – directly competing with the service that would be provided by CP-KCS. while new service will be available, no options will be lost as KCS will retain access to the divested lines. If the divestiture condition is granted, CN has committed to invest in the Kansas City to Springfield/East St. Louis line to improve transit times over the line. CN's plan will create a viable alternative to trucks, diverting an estimated many thousands of trucks per year from the congested highways.

CN's request that the Surface Transportation Board grant their divestiture conditions aligns with the customer-focused approach to business that CN has demonstrated as a long-term service provider. We hope the STB will also realize the customer-focused public interest benefits of CN's divestiture condition and will work closely with Johnvince Foods, CN and all relevant parties to promote regional competition and customer choice.

Sincerely,

LDV

Luis Deviveiros
Vice President of Operations
Johnvince Foods/Planters Canada

cc: Parties of Record

555 Steeprock Drive Toronto ON Canada M3J 2Z6 t 416 636 6146 f 416 636 6177 www.johnvince.com

KFI Inc
6295 Kestrel Rd

Mississauga, ON L5T 1Z4

The Honorable Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36500, Canadian Pacific Railway—Control—Kansas City Southern

Dear Ms. Brown:

On behalf of TransX, I am writing to you today in support of CN's requested condition seeking divestiture of Kansas City Southern's (KCS) line from Kansas City, MO to Springfield, IL and East St. Louis, IL to CN should the Canadian Pacific (CP) merger with KCS be approved by the Surface Transportation Board.

CP and KCS have demonstrated they intend to focus their operations and plans for growth across CP's existing line connecting Kansas City to Chicago, making KCS's overlapping corridor between Kansas City to Springfield/East St. Louis redundant to their service offerings and rail operations after the merger. They have made it clear in their merger application they will divert traffic from the Kansas City to Springfield/East St. Louis line and do not plan to invest in that line, leaving the track to slowly degrade and reducing the competitive shipping options for KFI and other shippers like us that rely on this corridor to efficiently move goods to and from Kansas City markets. Without the proposed CN condition, we are concerned that CP's plan will reduce a competitive option over the overlapping corridor.

KFI asks the Surface Transportation Board to condition any approval of the CP-KCS merger on CN's requested divesture condition of the Kansas City to Springfield/East St. Louis line should the Board approve the CP-KCS merger. CN's alternative would eliminate the risk of a languishing corridor to create new single-line service between Kansas City, Chicago and Detroit – directly competing with the service that would be provided by CP-KCS. While new service will be available, no options will be lost as KCS will retain access to the divested lines. This new competitive service will be particularly beneficial to intermodal customers like KFI. We will gain a new option for single-line service to ports served by CN – helping implement the USMCA.

If the divestiture condition is granted, CN has committed to invest in the Kansas City to Springfield/East St. Louis line to improve transit times over the line. CN's plan will create a viable alternative to trucks, diverting an estimated many thousands of trucks per year from the congested highways.

KFI is proud of our strong 8 year relationship with CN and TransX/H&R.
CN's request that the Surface Transportation Board grant their divestiture conditions aligns with the customer-focused approach to business that CN has demonstrated since the inception of our relationship. We hope the STB will also realize the customer-focused public interest benefits of CN's divestiture condition

and will work closely with KFI, TransX and all relevant parties to promote regional competition and customer choice.

PUBLIC VERSION

Sincerely,



Ravi Kumar Angirekula
Plant Manger

cc: Parties of Record

PUBLIC VERSION

KRISTOM INTERNATIONAL

The Honorable Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36500, Canadian Pacific Railway—Control—Kansas City Southern

Dear Ms. Brown:

On behalf of [Kristom International], I am writing to you today in support of CN's requested condition seeking divestiture of Kansas City Southern's (KCS) line from Kansas City, MO to Springfield, IL and East St. Louis, IL to CN should the Canadian Pacific (CP) merger with KCS be approved by the Surface Transportation Board.

CP and KCS have demonstrated they intend to focus their operations and plans for growth across CP's existing line connecting Kansas City to Chicago, making KCS's overlapping corridor between Kansas City to Springfield/East St. Louis redundant to their service offerings and rail operations after the merger. This will reduce the competitive shipping options for [Kristom International] and other shippers like us that rely on this corridor to efficiently move goods to and from Kansas City markets. Without the proposed CN condition, we are concerned that our competitive options will be reduced over the overlapping corridor.

[Kristom International] asks the Surface Transportation Board to condition any approval of the CP-KCS merger on CN's requested divesture condition of the Kansas City to Springfield/East St. Louis line should the Board approve the CP-KCS merger. CN's alternative would create a new single-line service between Kansas City, Chicago, and Detroit – directly competing with the service that would be provided by CP-KCS. while new service will be available, no options will be lost as KCS will retain access to the divested lines. If the divestiture condition is granted, CN has committed to invest in the Kansas City to Springfield/East St. Louis line to improve transit times over the line. CN's plan will create a viable alternative to trucks, diverting an estimated many thousands of trucks per year from the congested highways.

CN's request that the Surface Transportation Board grant their divestiture conditions aligns with the customer-focused approach to business that CN has demonstrated as a long term service provider. We hope the STB will also realize the customer-focused public interest benefits of CN's divestiture condition and will work closely with [Kristom International], CN and all relevant parties to promote regional competition and customer choice.

Sincerely,



Jeffrey Clarke

President -Representative

cc: Parties of Record

PUBLIC VERSION

Last Mountain Railway PO Box 3192
Regina, SK S4P 3G7

The Honorable Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36500, Canadian Pacific Railway—Control—Kansas City Southern

Dear Ms. Brown:

On behalf of Last Mountain Railway (LMR), I am writing to you today in support of CN's requested condition seeking divestiture of Kansas City Southern's (KCS) line from Kansas City, MO to Springfield, IL and East St. Louis, IL to CN should the Canadian Pacific (CP) merger with KCS be approved by the Surface Transportation Board.

CP and KCS have demonstrated they intend to focus their operations and plans for growth across CP's existing line connecting Kansas City to Chicago, making KCS's overlapping corridor between Kansas City to Springfield/East St. Louis redundant to their service offerings and rail operations after the merger. This will reduce the competitive shipping options for LMR and other shippers like us that rely on this corridor to efficiently move goods to and from Kansas City markets. Without the proposed CN condition, we are concerned that our competitive options will be reduced over the overlapping corridor.

LMR asks the Surface Transportation Board to condition any approval of the CP-KCS merger on CN's requested divesture condition of the Kansas City to Springfield/East St. Louis line should the Board approve the CP-KCS merger. CN's alternative would create a new single-line service between Kansas City, Chicago, and Detroit – directly competing with the service that would be provided by CP-KCS. while new service will be available, no options will be lost as KCS will retain access to the divested lines. If the divestiture condition is granted, CN has committed to invest in the Kansas City to Springfield/East St. Louis line to improve transit times over the line. CN's plan will create a viable alternative to trucks, diverting an estimated many thousands of trucks per year from the congested highways.

CN's request that the Surface Transportation Board grant their divestiture conditions aligns with the customer-focused approach to business that CN has demonstrated as a long term service provider. We hope the STB will also realize the customer-focused public interest benefits of CN's divestiture condition and will work closely with LMR, CN and all relevant parties to promote regional competition and customer choice.

Sincerely,



Dane Kostenuk
LMR General Manager

Linear Grain inc

67 Centre Avenue West, Box 219
Carman, Manitoba Canada R0G 0J0
Tel 204.745.6747 Fax 204.745.6573
Email: linear@lineargrain.com

The Honorable Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36500, Canadian Pacific Railway—Control—Kansas City Southern

Dear Ms. Brown:

On behalf of Linear Grain Inc, I am writing to you today in support of CN's requested condition seeking divestiture of Kansas City Southern's (KCS) line from Kansas City, MO to Springfield, IL and East St. Louis, IL to CN should the Canadian Pacific (CP) merger with KCS be approved by the Surface Transportation Board.

CP and KCS have demonstrated they intend to focus their operations and plans for growth across CP's existing line connecting Kansas City to Chicago, making KCS's overlapping corridor between Kansas City to Springfield/East St. Louis redundant to their service offerings and rail operations after the merger. This will reduce the competitive shipping options for Linear Grain Inc and other shippers like us that rely on this corridor to efficiently move goods to and from Kansas City markets. Without the proposed CN condition, we are concerned that our competitive options will be reduced over the overlapping corridor.

Linear Grain Inc asks the Surface Transportation Board to condition any approval of the CP-KCS merger on CN's requested divesture condition of the Kansas City to Springfield/East St. Louis line should the Board approve the CP-KCS merger. CN's alternative would create a new single-line service between Kansas City, Chicago, and Detroit – directly competing with the service that would be provided by CP-KCS. while new service will be available, no options will be lost as KCS will retain access to the divested lines. If the divestiture condition is granted, CN has committed to invest in the Kansas City to Springfield/East St. Louis line to improve transit times over the line. CN's plan will create a viable alternative to trucks, diverting an estimated many thousands of trucks per year from the congested highways.

CN's request that the Surface Transportation Board grant their divestiture conditions aligns with the customer-focused approach to business that CN has demonstrated as a long term service provider. We

hope the STB will also realize the customer-focused public interest benefits of CN's divestiture condition and will work closely with Linear Grain Inc, CN and all relevant parties to promote regional competition and customer choice.

Sincerely,



Ryan McKnight
President
Linear Grain Inc

cc: Parties of Record

The Honorable Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36500, Canadian Pacific Railway—Control—Kansas City Southern

Dear Ms. Brown:

On behalf of Lotus Terminals LTD., I am writing to you today in support of CN's requested condition seeking divestiture of Kansas City Sothern's (KCS) line from Kansas City, MO to Springfield, IL and East St. Louis, IL to CN should the Canadian Pacific (CP) merger with KCS be approved by the Surface Transportation Board.

CP and KCS have demonstrated they intend to focus their operations and plan for growth across CP's existing line connecting Kansas City to Chicago, making KCS's overlapping corridor between Kansas City to Springfield/East St. Louis redundant to their service offerings and rail operations after the merger. They have made it clear in their merger application they will divert traffic from the Kansas City to Springfield/East St. Louis line and do not plan to invest in that line, leaving the track to slowly degrade and reducing the competitive shipping options for Lotus Terminals LTD and other shippers like us that rely on this corridor to efficiently move goods to and from Kansas City markets. Without the proposed CN condition, we are concerned that CP's plan will reduce a competitive option over the overlapping corridor.

Lotus Terminals LTD asks the Surface Transportation Board to condition any approval of the CP-KCS merger on CN's requested divesture condition of the Kansas City to Springfield/East St. Louis line should the Board approve the CP-KCS merger. CN's alternative would eliminate the risk of a languishing corridor to create new single-line service between Kansas City, Chicago, and Detroit – directly competing with the service that would be provided by CP-KCS. While new service will be available, no options will be lost as KCS will retain access to the divested lines. This new competitive service will be particularly beneficial to intermodal customers like Lotus Terminals LTD. We will gain a new option for single-line service to ports served by CN – helping implement the USMCA.

If the divestiture condition is granted, CN has committed to invest in the Kansas City to Springfield/East St. Louis line to improve transit times over the line. CN's plan will create a viable alternative to trucks, diverting an estimated many thousands of trucks per year from the congested highways.

Lotus Terminals LTD is proud of our strong relationship with CN.CN's request that the Surface Transportation Board grant their divestiture conditions aligns with the customer-focused approach to business that CN has demonstrated since the inception of our relationship. We hope the STB will also realize the customer-focused public interest benefits of CN's divestiture condition and will work closely with Lotus Terminals LTD, CN and all relevant parties to promote regional competition and customer choice.

Sincerely,

Marcus Patenaude

Intermodal Specialist



MEDITERRANEAN SHIPPING COMPANY

The Honorable Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36500, Canadian Pacific Railway—Control—Kansas City Southern

Dear Ms. Brown:

On behalf of Mediterranean Shipping Company (MSC) I am writing to you today in support of CN's requested condition seeking divestiture of Kansas City Southern's (KCS) line from Kansas City, MO to Springfield, IL and East St. Louis, IL to CN should the Canadian Pacific (CP) merger with KCS be approved by the Surface Transportation Board.

CP and KCS have demonstrated they intend to focus their operations and plans for growth across CP's existing line connecting Kansas City to Chicago, making KCS's overlapping corridor between Kansas City to Springfield/East St. Louis redundant to their service offerings and rail operations after the merger. This will reduce the competitive shipping options for MSC and other shippers like us that rely on this corridor to efficiently move goods to and from Kansas City markets. Without the proposed CN condition, we are concerned that our competitive options will be reduced over the overlapping corridor.

MSC asks the Surface Transportation Board to condition any approval of the CP-KCS merger on CN's requested divesture condition of the Kansas City to Springfield/East St. Louis line should the Board approve the CP-KCS merger. CN's alternative would create a new single-line service between Kansas City, Chicago, and Detroit – directly competing with the service that would be provided by CP-KCS. while new service will be available, no options will be lost as KCS will retain access to the divested lines. If the divestiture condition is granted, CN has committed to invest in the Kansas City to Springfield/East St. Louis line to improve transit times over the line. CN's plan will create a viable alternative to trucks, diverting an estimated many thousands of trucks per year from the congested highways.

CN's request that the Surface Transportation Board grant their divestiture conditions aligns with the customer-focused approach to business that CN has demonstrated as a long term service provider. We hope the STB will also realize the customer-focused public interest benefits of CN's divestiture condition and will work closely with MSC CN and all relevant parties to promote regional competition and customer choice.

Sincerely,



Jason Brooks
Vice President of Logistics

cc: Parties of Record

MEDITERRANEAN SHIPPING COMPANY

The Honorable Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36500, Canadian Pacific Railway—Control—Kansas City Southern

Dear Ms. Brown:

On behalf of Mediterranean Shipping Company (MSC) I am writing to you today in support of CN's requested condition seeking divestiture of Kansas City Southern's (KCS) line from Kansas City, MO to Springfield, IL and East St. Louis, IL to CN should the Canadian Pacific (CP) merger with KCS be approved by the Surface Transportation Board.

CP and KCS have demonstrated they intend to focus their operations and plans for growth across CP's existing line connecting Kansas City to Chicago, making KCS's overlapping corridor between Kansas City to Springfield/East St. Louis redundant to their service offerings and rail operations after the merger. This will reduce the competitive shipping options for MSC and other shippers like us that rely on this corridor to efficiently move goods to and from Kansas City markets. Without the proposed CN condition, we are concerned that our competitive options will be reduced over the overlapping corridor.

MSC asks the Surface Transportation Board to condition any approval of the CP-KCS merger on CN's requested divesture condition of the Kansas City to Springfield/East St. Louis line should the Board approve the CP-KCS merger. CN's alternative would create a new single-line service between Kansas City, Chicago, and Detroit – directly competing with the service that would be provided by CP-KCS. while new service will be available, no options will be lost as KCS will retain access to the divested lines. If the divestiture condition is granted, CN has committed to invest in the Kansas City to Springfield/East St. Louis line to improve transit times over the line. CN's plan will create a viable alternative to trucks, diverting an estimated many thousands of trucks per year from the congested highways.

CN's request that the Surface Transportation Board grant their divestiture conditions aligns with the customer-focused approach to business that CN has demonstrated as a long term service provider. We hope the STB will also realize the customer-focused public interest benefits of CN's divestiture condition and will work closely with MSC CN and all relevant parties to promote regional competition and customer choice.

Sincerely,

Robert Milazzo
EVP Intermodal

cc: Parties of Record

MMI FREIGHT SYSTEMS INC.
3484 Boul. des Sources
Suite 524
Dollard Des Ormeaux, QC, Canada
H9B 1Z9

514 798-1919(T)
1 877-798-1919
866 476-4777(F) ADMINISTRATION
855 215-3030(F) OPERATIONS

The Honorable Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36500, Canadian Pacific Railway—Control—Kansas City Southern

Dear Ms. Brown:

On behalf of MMI Freight Systems Inc. I am writing to you today in support of CN's requested condition seeking divestiture of Kansas City Southern's (KCS) line from Kansas City, MO to Springfield, IL and East St. Louis, IL to CN should the Canadian Pacific (CP) merger with KCS be approved by the Surface Transportation Board.

CP and KCS have demonstrated they intend to focus their operations and plans for growth across CP's existing line connecting Kansas City to Chicago, making KCS's overlapping corridor between Kansas City to Springfield/East St. Louis redundant to their service offerings and rail operations after the merger. They have made it clear in their merger application they will divert traffic from the Kansas City to Springfield/East St. Louis line and do not plan to invest in that line, leaving the track to slowly degrade and reducing the competitive shipping options for MMI Freight Systems Inc. and other shippers like us that rely on this corridor to efficiently move goods to and from Kansas City markets. Without the proposed CN condition, we are concerned that CP's plan will reduce a competitive option over the overlapping corridor.

MMI Freight Systems Inc. asks the Surface Transportation Board to condition any approval of the CP-KCS merger on CN's requested divesture condition of the Kansas City to Springfield/East St. Louis line should the Board approve the CP-KCS merger. CN's alternative would eliminate the risk of a languishing corridor to create new single-line service between Kansas City, Chicago and Detroit – directly competing with the service that would be provided by CP-KCS. While new service will be available, no options will be lost as KCS will retain access to the divested lines. This new competitive service will be particularly beneficial to intermodal customers like MMI Freight Systems Inc. We will gain a new option for single-line service to ports served by CN – helping implement the USMCA.

If the divestiture condition is granted, CN has committed to invest in the Kansas City to Springfield/East St. Louis line to improve transit times over the line. CN's plan will create a viable alternative to trucks, diverting an estimated many thousands of trucks per year from the congested highways.

MMI Freight Systems Inc.is proud of our strong 15-year relationship with CN and TransX/H&R, throughout our business dealings, MMI Freight Systems has been able to expand both our customer base and geographical positions to outside markets. We value and look forward to further expansion of our US market through TransX/CN partnership.
CN's request that the Surface Transportation Board grant their divestiture conditions aligns with the customer-focused approach to business that CN has demonstrated since the inception of our relationship. We hope the STB will also realize the customer-focused public interest benefits of CN's divestiture condition and will work closely with MMI Freight Systems Inc. TransX and all relevant parties to promote regional competition and customer choice.

Sincerely,
Tina Iannuzzi for MMI Freight Systems Inc..

Tina A. Iannuzzi

MMI Freight Systems Inc.
General Manager

cc: Parties of Record

PUBLIC VERSION

MobilEx Terminal Box 3192 Stn Main
Regina, SK S4P 3G7

The Honorable Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36500, Canadian Pacific Railway—Control—Kansas City Southern

Dear Ms. Brown:

On behalf of MobilEx Terminal, I am writing to you today in support of CN's requested condition seeking divestiture of Kansas City Southern's (KCS) line from Kansas City, MO to Springfield, IL and East St. Louis, IL to CN should the Canadian Pacific (CP) merger with KCS be approved by the Surface Transportation Board.

CP and KCS have demonstrated they intend to focus their operations and plans for growth across CP's existing line connecting Kansas City to Chicago, making KCS's overlapping corridor between Kansas City to Springfield/East St. Louis redundant to their service offerings and rail operations after the merger. This will reduce the competitive shipping options for MobilEx Terminal and other shippers like us that rely on this corridor to efficiently move goods to and from Kansas City markets. Without the proposed CN condition, we are concerned that our competitive options will be reduced over the overlapping corridor.

MobilEx Terminal asks the Surface Transportation Board to condition any approval of the CP-KCS merger on CN's requested divesture condition of the Kansas City to Springfield/East St. Louis line should the Board approve the CP-KCS merger. CN's alternative would create a new single-line service between Kansas City, Chicago, and Detroit – directly competing with the service that would be provided by CP-KCS. while new service will be available, no options will be lost as KCS will retain access to the divested lines. If the divestiture condition is granted, CN has committed to invest in the Kansas City to Springfield/East St. Louis line to improve transit times over the line. CN's plan will create a viable alternative to trucks, diverting an estimated many thousands of trucks per year from the congested highways.

CN's request that the Surface Transportation Board grant their divestiture conditions aligns with the customer-focused approach to business that CN has demonstrated as a long term service provider. We hope the STB will also realize the customer-focused public interest benefits of CN's divestiture condition and will work closely with MobilEx Terminal, CN and all relevant parties to promote regional competition and customer choice.

Sincerely,

Kent Affleck
Division Head; Mobil Group of Companies

Trevor Pennell
MobilEx Terminal Manager

cc: Parties of Record

National Silicates
an affiliate of PQ Corporation

The Honorable Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36500, Canadian Pacific Railway—Control—Kansas City Southern

Dear Ms. Brown:

On behalf of National Silicates, I am writing to you today in support of CN's requested condition seeking divestiture of Kansas City Southern's (KCS) line from Kansas City, MO to Springfield, IL and East St. Louis, IL to CN should the Canadian Pacific (CP) merger with KCS be approved by the Surface Transportation Board.

CP and KCS have demonstrated they intend to focus their operations and plans for growth across CP's existing line connecting Kansas City to Chicago, making KCS's overlapping corridor between Kansas City to Springfield/East St. Louis redundant to their service offerings and rail operations after the merger. They have made it clear in their merger application they will divert traffic from the Kansas City to Springfield/East St. Louis line and do not plan to invest in that line, leaving the track to slowly degrade and reducing the competitive shipping options for National Silicates and other shippers like us that rely on this corridor to efficiently move goods to and from Kansas City markets. Without the proposed CN condition, we are concerned that CP's plan will reduce a competitive option over the overlapping corridor.

National Silicates asks the Surface Transportation Board to condition any approval of the CP-KCS merger on CN's requested divesture condition of the Kansas City to Springfield/East St. Louis line should the Board approve the CP-KCS merger. CN's alternative would eliminate the risk of a languishing corridor to create new single-line service between Kansas City, Chicago and Detroit – directly competing with the service that would be provided by CP-KCS. While new service will be available, no options will be lost as KCS will retain access to the divested lines. This new competitive service will be particularly beneficial to carload customers like National Silicates. We will gain a new option for access to two of our sister manufacturing plants in the Midwest served along this corridor served by CN.

If the divestiture condition is granted, CN has committed to invest in the Kansas City to Springfield/East St. Louis line to improve transit times over the line. CN's plan will create a viable alternative to trucks, diverting an estimated many thousands of trucks per year from the congested highways.

National Silicates is proud of our strong 35+ year relationship with CN, working in partnership to serve 5 manufactures sites in Canada and 1 in Illinois. We work with CN in many areas from rail activity to customs brokerage, and export intermodal. CN's request that the Surface Transportation Board grant their divestiture conditions aligns with the customer-focused approach to business that CN has demonstrated since the

inception of our relationship. We hope the STB will also realize the customer-focused public interest benefits of CN's divestiture condition and will work closely with National Silicates, CN and all relevant parties to promote regional competition and customer choice.

Sincerely,



Mike Vinca
Purchasing and Logistics Manager
National Silicates
Toronto, ON
Ph # 416 225 7771 / ext. 148

cc: Parties of Record

North American Freight Logistics

111 – 250 Schoolhouse Street, Coquitlam, BC V3K 6V7 Canada
Tel (604) 523-6235 ~ Fax (604) 523-6237 ~ 1-888-828-6235 ~ accounts@nafl.ca ~ www.nafl.ca

The Honorable Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36500, Canadian Pacific Railway—Control—Kansas City Southern

Dear Ms. Brown:

On behalf of North American Freight Logistics, I am writing to you today in support of CN's requested condition seeking divestiture of Kansas City Southern's (KCS) line from Kansas City, MO to Springfield, IL and East St. Louis, IL to CN should the Canadian Pacific (CP) merger with KCS be approved by the Surface Transportation Board.

CP and KCS have demonstrated they intend to focus their operations and plan for growth across CP's existing line connecting Kansas City to Chicago, making KCS's overlapping corridor between Kansas City to Springfield/East St. Louis redundant to their service offerings and rail operations after the merger. They have made it clear in their merger application they will divert traffic from the Kansas City to Springfield/East St. Louis line and do not plan to invest in that line, leaving the track to slowly degrade and reducing the competitive shipping options for North American Freight Logistics and other shippers like us that rely on this corridor to efficiently move goods to and from Kansas City markets. Without the proposed CN condition, we are concerned that CP's plan will reduce a competitive option over the overlapping corridor.

North American Freight Logistics asks the Surface Transportation Board to condition any approval of the CP-KCS merger on CN's requested divesture condition of the Kansas City to Springfield/East St. Louis line should the Board approve the CP-KCS merger. CN's alternative would eliminate the risk of a languishing corridor to create new single-line service between Kansas City, Chicago and Detroit – directly competing with the service that would be provided by CP-KCS. While new service will be available, no options will be lost as KCS will retain access to the divested lines. This new competitive service will be particularly beneficial to intermodal customers like North American Freight Logistics. We will gain a new option for single-line service to ports served by CN – helping implement the USMCA.

If the divestiture condition is granted, CN has committed to invest in the Kansas City to Springfield/East St. Louis line to improve transit times over the line. CN's plan will create a viable alternative to trucks, diverting an estimated many thousands of trucks per year from the congested highways.

North American Freight Logistics is proud of our strong 15-year relationship with CN and TransX/H&R. We have worked for years with CN direct to bring freight out of the mid-west and eastern United States to various customers in Western Canada. CN's request that the Surface Transportation Board grant their divestiture conditions aligns with the customer-focused approach to business that CN has

North American Freight Logistics

111 – 250 Schoolhouse Street, Coquitlam, BC V3K 6V7 Canada
Tel (604) 523-6235 ~ Fax (604) 523-6237 ~ 1-888-828-6235 ~ accounts@nafl.ca ~ www.nafl.ca

demonstrated since the inception of our relationship. We hope the STB will also realize the customer-focused public interest benefits of CN's divestiture condition and will work closely with North American Freight Logistics, TransX and all relevant parties to promote regional competition and customer choice.

Sincerely,

Jeff Vowles

Jeffrey E. Vowles
President, North American Freight Logistics

cc: TransX – Alan Couto – Director of Corporate Sales, North America

OOCL
We take it personally

January 21, 2022

The Honorable Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

PUBLIC VERSION

Re: FD 36000 Canadian Pacific Railway—Control—Kansas City Southern

Dear Ms. Brown:

On behalf of OOCL (USA) Inc. I am writing to you today in support of CN's requested condition seeking divestiture of Kansas City Southern's (KCS) line from Kansas City, MO to Springfield, IL and East St. Louis, IL to CN should the Canadian Pacific (CP) merger with KCS be approved by the Surface Transportation Board.

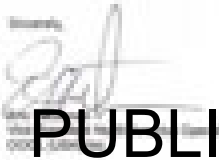
CP and KCS have demonstrated they intend to focus their operations and plans for growth across CP's existing line connecting Kansas City to Chicago, making KCS's overlapping corridor between Kansas City to Springfield/East St. Louis redundant to their service offerings and rail operations after the merger. This will reduce the competitive shipping options for OOCL (USA) Inc. and other shippers that rely on this corridor to efficiently move goods to and from Kansas City markets. Without the proposed CN condition, we are concerned that our competitive options will be reduced over the overlapping corridor.

OOCL (USA) Inc. asks the Surface Transportation Board to condition any approval of the CP-KCS merger on CN's requested divestiture condition of the Kansas City to Springfield/East St. Louis line should the Board approve the CP-KCS merger. CN's alternative would create a new single-line service between Kansas City, Chicago, and Detroit – directly competing with the service that would be provided by CP-KCS, while new service will be available, no options will be lost as KCS will retain access to the divested lines. If the divestiture condition is granted, CN has committed to invest in the Kansas City to Springfield/East St. Louis line to improve transit times over the line. CN's plan will create a viable alternative to trucks, diverting an estimated many thousands of trucks per year from the congested highways.

CN's request that the Surface Transportation Board grant their divestiture conditions aligns with the customer-focused approach to business that CN has demonstrated as a long-term service provider. We hope the STB will also realize the customer-focused public interest benefits of CN's divestiture condition and will work closely with OOCL (USA) Inc. CN and all relevant parties to promote regional competition and customer choice.

OOCL

We take it personally



PUBLIC VERSION

Padnos

Paper, Plastics, Metals and more
Recycling the world over, and over

The Honorable Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36500, Canadian Pacific Railway—Control—Kansas City Southern

Dear Ms. Brown:

On behalf of Padnos Iron and Metal, I am writing to you today in support of CN's requested condition seeking divestiture of Kansas City Southern's (KCS) line from Kansas City, MO to Springfield, IL and East St. Louis, IL to CN should the Canadian Pacific (CP) merger with KCS be approved by the Surface Transportation Board.

CP and KCS have demonstrated they intend to focus their operations and plans for growth across CP's existing line connecting Kansas City to Chicago, making KCS's overlapping corridor between Kansas City to Springfield/East St. Louis redundant to their service offerings and rail operations after the merger. They have made it clear in their merger application they will divert traffic from the Kansas City to Springfield/East St. Louis line and do not plan to invest in that line, leaving the track to slowly degrade and reducing the competitive shipping options for Padnos Iron and Metal and other shippers like us that rely on this corridor to efficiently move goods to and from Kansas City markets. Without the proposed CN condition, we are concerned that CP's plan will reduce a competitive option over the overlapping corridor.

Padnos Iron and Metal asks the Surface Transportation Board to condition any approval of the CP-KCS merger on CN's requested divesture condition of the Kansas City to Springfield/East St. Louis line should the Board approve the CP-KCS merger. CN's alternative would eliminate the risk of a languishing corridor to create new single-line service between Kansas City, Chicago and Detroit – directly competing with the service that would be provided by CP-KCS. While new service will be available, no options will be lost as KCS will retain access to the divested lines. This new competitive service will be particularly beneficial to intermodal customers like Padnos

Iron and Metal. We will gain a new option for single-line service to ports served by CN – helping implement the USMCA.

If the divestiture condition is granted, CN has committed to invest in the Kansas City to Springfield/East St. Louis line to improve transit times over the line. CN's plan will create a viable alternative to trucks, diverting an estimated many thousands of trucks per year from the congested highways.

Padnos Iron and Metal is proud of our strong 15 year relationship with CN. We ship over 20 rail-cars a month into various markets that provide us a competitive advantage that is only met with because of the rail service. CN's great service and gondola car supply allows us to ship to locations we did not think possible before. CN's request that the Surface Transportation Board grant their divestiture conditions aligns with the customer-focused approach to business that CN has demonstrated since the inception of our relationship. We hope the STB will also realize the customer-focused public interest benefits of CN's divestiture condition and will work closely with Padnos Iron and Metal CN and all relevant parties to promote regional competition and customer choice.

Sincerely,

Zack Brachman
Logistics Manager

cc: Parties of Record

Friday, February 18th, 2022.

The Honorable Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington DC 20423-0001

Re : FD 36500, Canadian Pacific Railway – Control – Kansas City Solutions

Dear Ms. Brown

On Behalf of PIVAL International, I am writing to you today in support of CN's requested condition seeking divestiture of Kansas City Southern's (KCS) line from Kansas City, MO to Springfield, IL and East St. Louis, IL to CN should the Canadian Pacific (CP) merger with KCS be approved by the Surface Transportation Board.

CP and KCS have demonstrated they intend to focus their operations and plans for growth across CP's existing line connecting Kansas City to Chicago, making KCS's overlapping corridor between Kansas City to Springfield/East St. Louis redundant service offerings and rail operations after the merger. They have made it clear in their merger application they will divert traffic from Kansas City to Springfield/East St. Louis line and do not plan to invest in that line, leaving the track to slowly degrade and reducing the competitive shipping options for PiVAL International and other shippers like us that rely on this corridor to efficiently move goods to and from Kansas City markets. Without the proposed CN condition, we are concerned that CP's plan will reduce a competitive option over the overlapping corridor.

PiVAL International asks the Surface Transportation Board to condition any approval of the CP-KCS merger on CN's requested divesture condition of the Kansas City to Springfield/East St. Louis line should the Board approve the CP-KCS merger. CN's alternative would eliminate the risk of languishing corridor to create new single-line between Kansas City, Chicago, and Detroit – directly competing with the service that would be provided by CP-KCS. While new service will

be available, no options will be lost as KCS will retain access to the divested lines. This new competitive service will be particularly beneficial to intermodal customers like PiVAL International. We will gain a new option for single-line service to ports served by CN-helping implement the USMCA.

If the divestiture condition is granted, CN has committed to invest in the Kansas City to Springfield/East St. Louis line to improve transit times over the line. CN's plan will create a viable alternative to trucks, diverting an estimated many thousands of trucks per year the congested highways.

PiVAL International is proud of our strong 19-year relationship with CN. CN has always demonstrate being customer focused. We hope the STB will also realize the customer-focused public interest benefits of CN's divesture condition and will work closely with PiVAL International, CN and all relevant parties to promote regional and customer choice.

Sincerely,

Sylvie St-Laurent
C 438-394-0558
Directrice Solutions Clients et Tarification
Director Customer Solutions and Pricing
Montreal, QC
514-684-1600 ext. 727

PARTNERS IN VALUE ADDED LOGISTICS

Website | LinkedIn | YouTube | Facebook

PE Presto Enterprises Ltd.

2930 LONSDALE AVE. P.O. BOX 37068 LONSDALE,
NORTH VANCOUVER, BC V7N 4M4
Phone: (604)-723-9728. Email:
prestoenterprise@gmail.com

The Honorable Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36500, Canadian Pacific Railway—Control—Kansas City Southern

Dear Ms. Brown:

On behalf of Presto Enterprises Ltd, I am writing to you today in support of CN's requested condition seeking divestiture of Kansas City Southern's (KCS) line from Kansas City, MO to Springfield, IL and East St. Louis, IL to CN should the Canadian Pacific (CP) merger with KCS be approved by the Surface Transportation Board.

CP and KCS have demonstrated they intend to focus their operations and plans for growth across CP's existing line connecting Kansas City to Chicago, making KCS's overlapping corridor between Kansas City to Springfield/East St. Louis redundant to their service offerings and rail operations after the merger. They have made it clear in their merger application they will divert traffic from the Kansas City to Springfield/East St. Louis line and do not plan to invest in that line, leaving the track to slowly degrade and reducing the competitive shipping options for Presto Enterprises Ltd and other shippers like us that rely on this corridor to efficiently move goods to and from Kansas City markets. Without the proposed CN condition, we are concerned that CP's plan will reduce a competitive option over the overlapping corridor.

Presto Enterprises Ltd asks the Surface Transportation Board to condition any approval of the CP-KCS merger on CN's requested divesture condition of the Kansas City to Springfield/East St. Louis line should the Board approve the CP-KCS merger. CN's alternative would eliminate the risk of a languishing corridor to create new single-line service between Kansas City, Chicago and Detroit – directly competing with the service that would be provided by CP-KCS. While new service will be available, no options will be lost as KCS will retain access to the divested lines. This new competitive service will be particularly beneficial to intermodal customers like [COMPANY NAME]. We will gain a new option for single-line service to ports served by CN – helping implement the USMCA.

If the divestiture condition is granted, CN has committed to invest in the Kansas City to Springfield/East St. Louis line to improve transit times over the line. CN's plan will create a viable alternative to trucks, diverting an estimated many thousands of trucks per year from the congested highways.

Presto Enterprises Ltd is proud of our strong 10 year relationship with CN and TransX/H&R. We have a daily intermodal shipment from BC to ON, CN's request that the Surface Transportation Board grant their divestiture conditions aligns with the customer-focused approach to business that CN has demonstrated since the inception of our relationship. We hope the STB will also realize the customer-focused public interest benefits of CN's divestiture condition and will work closely with Presto Enterprises Ltd, TransX and all relevant parties to promote regional competition and customer choice.

Sincerely,



Pearl Wang
Director, Presto Enterprises Ltd.

cc: Parties of Record

Priam Logistics Inc.
Connecting the world

The Honorable Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36500, Canadian Pacific Railway—Control—Kansas City Southern

Dear Ms. Brown:

On behalf of Priam Logistics Inc., I am writing to you today in support of CN's requested condition seeking divestiture of Kansas City Southern's (KCS) line from Kansas City, MO to Springfield, IL and East St. Louis, IL to CN should the Canadian Pacific (CP) merger with KCS be approved by the Surface Transportation Board.

CP and KCS have demonstrated they intend to focus their operations and plans for growth across CP's existing line connecting Kansas City to Chicago, making KCS's overlapping corridor between Kansas City to Springfield/East St. Louis redundant to their service offerings and rail operations after the merger. This will reduce the competitive shipping options for Priam Logistics Inc. and other shippers like us that rely on this corridor to efficiently move goods to and from Kansas City markets. Without the proposed CN condition, we are concerned that our competitive options will be reduced over the overlapping corridor.

Priam Logistics Inc. asks the Surface Transportation Board to condition any approval of the CP-KCS merger on CN's requested divesture condition of the Kansas City to Springfield/East St. Louis line should the Board approve the CP-KCS merger. CN's alternative would create a new single-line service between Kansas City, Chicago, and Detroit – directly competing with the service that would be provided by CP-KCS. while new service will be available, no options will be lost as KCS will retain access to the divested lines. If the divestiture condition is granted, CN has committed to invest in the Kansas City to Springfield/East St. Louis line to improve transit times over the line. CN's plan will create a viable alternative to trucks, diverting an estimated many thousands of trucks per year from the congested highways.

CN's request that the Surface Transportation Board grant their divestiture conditions aligns with the customer-focused approach to business that CN has demonstrated as a long term service provider. We hope the STB will also realize the customer-focused public interest benefits of CN's divestiture condition and will work closely with Priam Logistics Inc, CN and all relevant parties to promote regional competition and customer choice.

Sincerely,

Troy Wasmuth
President

Suite 300 – 330 St. Mary Ave. R3C 1M5 Phone: 204-819-7284 Toll Free: 1-888-200-7183

PRINCE RUPERT PORT AUTHORITY
ADMINISTRATION PORTUAIRE DE PRINCE RUPERT
200-215 COW BAY ROAD / *CHEMIN COW BAY*
PRINCE RUPERT, B.C. / *C.-B.* V8J 1A2

PUBLIC VERSION

PITÉL: 250 627 8899
FAX: 250 627 8980

February 22, 2022

The Honorable Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36500, Canadian Pacific Railway—Control—Kansas City Southern

Dear Ms. Brown:

On behalf of Prince Rupert Port Authority, I am writing to you today in support of CN's requested condition seeking divestiture of Kansas City Southern's (KCS) line from Kansas City, MO to Springfield, IL and East St. Louis, IL to CN should the Canadian Pacific (CP) merger with KCS be approved by the Surface Transportation Board.

CP and KCS have demonstrated they intend to focus their operations and plans for growth across CP's existing line connecting Kansas City to Chicago, making KCS's overlapping corridor between Kansas City to Springfield/East St. Louis redundant to their service offerings and rail operations after the merger. This will reduce the competitive shipping options for Prince Rupert Port Authority and other shippers like us that rely on this corridor to efficiently move goods to and from Kansas City markets. Without the proposed CN condition, we are concerned that our competitive options will be reduced over the overlapping corridor.

Prince Rupert Port Authority asks the Surface Transportation Board to condition any approval of the CP-KCS merger on CN's requested divesture condition of the Kansas City to Springfield/East St. Louis line should the Board approve the CP-KCS merger. CN's alternative would create a new single-line service between Kansas City, Chicago, and Detroit – directly competing with the service that would be provided by CP-KCS. while new service will be available, no options will be lost as KCS will retain access to the divested lines. If the divestiture condition is granted, CN has committed to invest in the Kansas City to Springfield/East St. Louis line to improve transit times over the line. CN's plan will create a viable alternative to trucks, diverting an estimated many thousands of trucks per year from the congested highways.

CN's request that the Surface Transportation Board grant their divestiture conditions aligns with the customer-focused approach to business that CN has demonstrated as a long term service provider. We hope the STB will also realize the customer-focused public interest benefits of CN's divestiture condition and will work closely with Prince Rupert Port Authority, CN and all relevant parties to promote regional competition and customer choice.

Sincerely,
PRINCE RUPERT PORT AUTHORITY



Shaun Stevenson
President & CEO

cc: Parties of Record

February 3, 2022

The Honorable Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36500, Canadian Pacific Railway—Control—Kansas City Southern

Dear Ms. Brown:

On behalf of Protos Shipping Ltd., I am writing to you today in support of CN's requested condition seeking divestiture of Kansas City Southern's (KCS) line from Kansas City, MO to Springfield, IL and East St. Louis, IL to CN should the Canadian Pacific (CP) merger with KCS be approved by the Surface Transportation Board.

CP and KCS have demonstrated they intend to focus their operations and plans for growth across CP's existing line connecting Kansas City to Chicago, making KCS's overlapping corridor between Kansas City to Springfield/East St. Louis redundant to their service offerings and rail operations after the merger. This will reduce the competitive shipping options for Protos and other shippers like us that rely on this corridor to efficiently move goods to and from Kansas City markets. Without the proposed CN condition, we are concerned that our competitive options will be reduced over the overlapping corridor.

Protos Shipping Ltd. asks the Surface Transportation Board to condition any approval of the CP-KCS merger on CN's requested divesture condition of the Kansas City to Springfield/East St. Louis line should the Board approve the CP-KCS merger. CN's alternative would create a new single-line service between Kansas City, Chicago, and Detroit – directly competing with the service that would be provided by CP-KCS. while new service will be available, no options will be lost as KCS will retain access to the divested lines. If the divestiture condition is granted, CN has committed to invest in the Kansas City to Springfield/East St. Louis line to improve transit times over the line. CN's plan will create a viable alternative to trucks, diverting an estimated many thousands of trucks per year from the congested highways.

CN's request that the Surface Transportation Board grant their divestiture conditions aligns with the customer-focused approach to business that CN has demonstrated as a long term service provider. We hope the STB will also realize the customer-focused public interest benefits of CN's divestiture condition and will work closely with Protos, CN and all relevant parties to promote regional competition and customer choice.

Sincerely,

Andre Neuendorff
President,
Protos Shipping Ltd.

cc: Parties of Record

PURELY CANADA
FOODS

The Honorable Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36500, Canadian Pacific Railway—Control—Kansas City Southern

Dear Ms. Brown:

On behalf of PURELY CANADA FOODS, I am writing to you today in support of CN's requested condition seeking divestiture of Kansas City Southern's (KCS) line from Kansas City, MO to Springfield, IL and East St. Louis, IL to CN should the Canadian Pacific (CP) merger with KCS be approved by the Surface Transportation Board.

CP and KCS have demonstrated they intend to focus their operations and plans for growth across CP's existing line connecting Kansas City to Chicago, making KCS's overlapping corridor between Kansas City to Springfield/East St. Louis redundant to their service offerings and rail operations after the merger. This will reduce the competitive shipping options for Purely Canada Foods and other shippers like us that rely on this corridor to efficiently move goods to and from Kansas City markets. Without the proposed CN condition, we are concerned that our competitive options will be reduced over the overlapping corridor.

Purely Canada Foods asks the Surface Transportation Board to condition any approval of the CP-KCS merger on CN's requested divesture condition of the Kansas City to Springfield/East St. Louis line should the Board approve the CP-KCS merger. CN's alternative would create a new single-line service between Kansas City, Chicago, and Detroit – directly competing with the service that would be provided by CP-KCS. while new service will be available, no options will be lost as KCS will retain access to the divested lines. If the divestiture condition is granted, CN has committed to invest in the Kansas City to Springfield/East St. Louis line to improve transit times over the line. CN's plan will create a viable alternative to trucks, diverting an estimated many thousands of trucks per year from the congested highways.

CN's request that the Surface Transportation Board grant their divestiture conditions aligns with the customer-focused approach to business that CN has demonstrated as a long term service provider. We hope the STB will also realize the customer-focused public interest benefits of CN's divestiture condition and will work closely with Purely Canada foods, CN and all relevant parties to promote regional competition and customer choice.

Sincerely,

Ray Hassan, Logistics Manager

PURELY CANADA FOODS CORP
Corporate Seal

cc: Parties of Record

PUBLIC VERSION

Rankin County Limestone, LLC
1001 Underwood Drive • Flowood, MS 39232
Ken Parker • 601•720•7823
Rankincountylimestone@gmail.com

The Honorable Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36500, Canadian Pacific Railway—Control—Kansas City Southern

Dear Ms. Brown:

On behalf of Rankin County Limestone, I am writing to you today in support of CN's requested condition seeking divestiture of Kansas City Southern's (KCS) line from Kansas City, MO to Springfield, IL and East St. Louis, IL to CN should the Canadian Pacific (CP) merger with KCS be approved by the Surface Transportation Board.

CP and KCS have demonstrated they intend to focus their operations and plans for growth across CP's existing line connecting Kansas City to Chicago, making KCS's overlapping corridor between Kansas City to Springfield/East St. Louis redundant to their service offerings and rail operations after the merger. They have made it clear in their merger application they will divert traffic from the Kansas City to Springfield/East St. Louis line and do not plan to invest in that line, leaving the track to slowly degrade and reducing the competitive shipping options for Rankin County Limestone and other shippers like us that rely on this corridor to efficiently move goods to and from Kansas City markets. Without the proposed CN condition, we are concerned that CP's plan will reduce a competitive option over the overlapping corridor.

Rankin County Limestone asks the Surface Transportation Board to condition any approval of the CP-KCS merger on CN's requested divesture condition of the Kansas City to Springfield/East St. Louis line should the Board approve the CP-KCS merger. CN's alternative would eliminate the risk of a languishing corridor to create new single-line service between Kansas City, Chicago and Detroit – directly competing with the service that would be provided by CP-KCS. While new service will be available, no options will be lost as KCS will retain access to the divested lines.

If the divestiture condition is granted, CN has committed to invest in the Kansas City to Springfield/East St. Louis line to improve transit times over the line. CN's plan will create a viable alternative to trucks, diverting an estimated many thousands of trucks per year from the congested highways.

Rankin County Limestone is proud of our strong 2 year relationship with CN. CN's request that the Surface Transportation Board grant their divestiture conditions aligns with the customer-focused approach to business that CN has demonstrated since the inception of our relationship. We hope the STB will also realize the customer-focused public interest benefits of CN's divestiture condition and will work closely with Rankin County Limestone CN and all relevant parties to promote regional competition and customer choice.

Sincerely,

Ken Parker
President

PUBLIC VERSION

677 Dundas St.
Woodstock, Ontario, Canada
N4S 1E5
1-888-997-0993

The Honorable Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36500, Canadian Pacific Railway—Control—Kansas City Southern

Dear Ms. Brown:

On behalf of Roslin Enterprises Inc., I am writing to you today in support of CN's requested condition seeking divestiture of Kansas City Southern's (KCS) line from Kansas City, MO to Springfield, IL and East St. Louis, IL to CN should the Canadian Pacific (CP) merger with KCS be approved by the Surface Transportation Board.

CP and KCS have demonstrated they intend to focus their operations and plans for growth across CP's existing line connecting Kansas City to Chicago, making KCS's overlapping corridor between Kansas City to Springfield/East St. Louis redundant to their service offerings and rail operations after the merger. They have made it clear in their merger application they will divert traffic from the Kansas City to Springfield/East St. Louis line and do not plan to invest in that line, leaving the track to slowly degrade and reducing the competitive shipping options for Roslin Enterprises Inc. and other shippers like us that rely on this corridor to efficiently move goods to and from Kansas City markets. Without the proposed CN condition, we are concerned that CP's plan will reduce a competitive option over the overlapping corridor.

Roslin Enterprises Inc. asks the Surface Transportation Board to condition any approval of the CP-KCS merger on CN's requested divesture condition of the Kansas City to Springfield/East St. Louis line should the Board approve the CP-KCS merger. CN's alternative would eliminate the risk of a languishing corridor to create new single-line service between Kansas City, Chicago and Detroit – directly competing with the service that would be provided by CP-KCS. While new service will be available, no options will be lost as KCS will retain access to the divested lines.

If the divestiture condition is granted, CN has committed to invest in the Kansas City to Springfield/East St. Louis line to improve transit times over the line. CN's plan will create a viable alternative to trucks, diverting an estimated many thousands of trucks per year from the congested highways.

Roslin Enterprises Inc. is proud of our strong relationship with CN. CN has helped develop new business with Roslin Enterprises and currently ships 100% of its finished product by Rial to the Gulf Coast. This development has removed over a 1,000 truck load's from the roads and helped to grow Roslin by over 200% year over year. With the new construction of a Renewable Diesel Plant in Hugoton, KS the expansion of CN's service to Kansas City will allow us to access a new high valued customer. CN's service at our facility has always been excellent and their willingness to help solve problems has been second to none. CN's safety protocol and training has also been a huge advantage for Roslin Enterprises. They have trained our employees that have contact with the rail and given ownership at Roslin the confidence to expand our rail business year over year. CN's request that the Surface Transportation Board grant their divestiture conditions aligns with the customer-focused approach to business that CN has demonstrated since the inception of our relationship. We hope the STB will also realize the customer-focused public interest benefits of CN's divestiture condition and will work closely with Roslin Enterprises Inc., CN and all relevant parties to promote regional competition and customer choice.

Sincerely,



Scott Dennis
President/CEO

cc: Parties of Record

SADOFF IRON & METAL COMPANY

THE PREFERRED CHOICE IN RECYCLING

Wisconsin
Berlin: 920.361.1450
Fond du Lac: 920.921.2070
Green Bay: 920.434.0137
Manitowoc: 920.684.3388
Oshkosh: 920.651.9398
Sheboygan: 920.457.2431

Nebraska
Lincoln: 402.470.2510
Omaha: 402.345.6624

The Honorable Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36500, Canadian Pacific Railway—Control—Kansas City Southern

Dear Ms. Brown:

On behalf of Sadoff Iron and Metal Company, I am writing to you today in support of CN's requested condition seeking divestiture of Kansas City Southern's (KCS) line from Kansas City, MO to Springfield, IL and East St. Louis, IL to CN should the Canadian Pacific (CP) merger with KCS be approved by the Surface Transportation Board.

CP and KCS have demonstrated they intend to focus their operations and plans for growth across CP's existing line connecting Kansas City to Chicago, making KCS's overlapping corridor between Kansas City to Springfield/East St. Louis redundant to their service offerings and rail operations after the merger. They have made it clear in their merger application they will divert traffic from the Kansas City to Springfield/East St. Louis line and do not plan to invest in that line, leaving the track to slowly degrade and reducing the competitive shipping options for Sadoff Iron and Metal and other shippers like us that rely on this corridor to efficiently move goods to and from Kansas City markets. Without the proposed CN condition, we are concerned that CP's plan will reduce a competitive option over the overlapping corridor.

Sadoff Iron and Metal asks the Surface Transportation Board to condition any approval of the CP-KCS merger on CN's requested divesture condition of the Kansas City to Springfield/East St. Louis line should the Board approve the CP-KCS merger. CN's alternative would eliminate the risk of a languishing corridor to create new single-line service between Kansas City, Chicago and Detroit – directly competing with the service that would be provided by CP-KCS. While new service will be available, no options will be lost as KCS will retain access to the divested lines. This new competitive service will be particularly beneficial to intermodal customers like Sadoff Iron and Metal. We will gain a new option for single-line service to ports served by CN – helping implement the USMCA.

If the divestiture condition is granted, CN has committed to invest in the Kansas City to Springfield/East St. Louis line to improve transit times over the line. CN's plan will create a viable alternative to trucks, diverting an estimated many thousands of trucks per year from the congested highways.

Sadoff Iron and Metal is proud of our strong 21-year relationship with CN. We utilize CN rail services at our Fond du Lac and Manitowoc, Wisconsin locations. We have found the CN to be a valued business partner over the course of our relationship. CN's request that the Surface Transportation Board grant their divestiture conditions aligns with the customer-focused approach to business that CN has demonstrated since the inception of our relationship. We hope the STB will also realize the customer-focused public interest benefits of CN's divestiture condition and will work closely with Sadoff Iron and Metal, CN and all relevant parties to promote regional competition and customer choice.

Sincerely,
SADOFF IRON AND METAL COMPANY

Mark H. Lasky
Chief Executive Officer

cc: Parties of Record

PUBLIC VERSION

585 N Juniper Dr suite 250, Chandler, AZ 85226
Tel: (480) 588-3200 Fax(480) 493-5617

The Honorable Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36500, Canadian Pacific Railway—Control—Kansas City Southern

Dear Ms. Brown:

On behalf of SM LINE CORP., I am writing to you today in support of CN's requested condition seeking divestiture of Kansas City Southern's (KCS) line from Kansas City, MO to Springfield, IL and East St. Louis, IL to CN should the Canadian Pacific (CP) merger with KCS be approved by the Surface Transportation Board.

CP and KCS have demonstrated they intend to focus their operations and plans for growth across CP's existing line connecting Kansas City to Chicago, making KCS's overlapping corridor between Kansas City to Springfield/East St. Louis redundant to their service offerings and rail operations after the merger. This will reduce the competitive shipping options for SM Line and other shippers like us that rely on this corridor to efficiently move goods to and from Kansas City markets. Without the proposed CN condition, we are concerned that our competitive options will be reduced over the overlapping corridor.

SM Line asks the Surface Transportation Board to condition any approval of the CP-KCS merger on CN's requested divesture condition of the Kansas City to Springfield/East St. Louis line should the Board approve the CP-KCS merger. CN's alternative would create a new single-line service between Kansas City, Chicago, and Detroit – directly competing with the service that would be provided by CP-KCS. While new service will be available, no options will be lost as KCS will retain access to the divested lines. If the divestiture condition is granted, CN has committed to invest in the Kansas City to Springfield/East St. Louis line to improve transit times over the line. CN's plan will create a viable alternative to trucks, diverting an estimated many thousands of trucks per year from the congested highways.

CN's request that the Surface Transportation Board grant their divestiture conditions aligns with the customer-focused approach to business that CN has demonstrated as a long term service provider. We hope the STB will also realize the customer-focused public interest benefits of CN's divestiture condition and will work closely with SM Line, CN and all relevant parties to promote regional competition and customer choice.

Sincerely,

Paul F Schneider
Director, Intermodal

cc: Parties of Record

SOLURAIL

25 rd Roland-Masse, Val-d'Or,
Quebec, Canada, J9P 0E3

The Honorable Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36500, Canadian Pacific Railway—Control—Kansas City Southern

Dear Ms. Brown:

On behalf of Solurail Logistics Inc. I am writing to you today in support of CN's requested condition seeking divestiture of Kansas City Southern's (KCS) line from Kansas City, MO to Springfield, IL and East St. Louis, IL to CN should the Canadian Pacific (CP) merger with KCS be approved by the Surface Transportation Board.

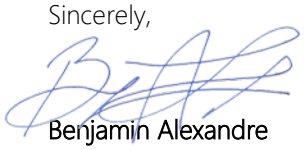
CP and KCS have demonstrated they intend to focus their operations and plans for growth across CP's existing line connecting Kansas City to Chicago, making KCS's overlapping corridor between Kansas City to Springfield/East St. Louis redundant to their service offerings and rail operations after the merger. They have made it clear in their merger application they will divert traffic from the Kansas City to Springfield/East St. Louis line and do not plan to invest in that line, leaving the track to slowly degrade and reducing the competitive shipping options for Solurail Logistics Inc and other shippers like us that rely on this corridor to efficiently move goods to and from Kansas City markets. Without the proposed CN condition, we are concerned that CP's plan will reduce a competitive option over the overlapping corridor.

Solurail Logistics Inc asks the Surface Transportation Board to condition any approval of the CP-KCS merger on CN's requested divesture condition of the Kansas City to Springfield/East St. Louis line should the Board approve the CP-KCS merger. CN's alternative would eliminate the risk of a languishing corridor to create new single-line service between Kansas City, Chicago and Detroit – directly competing with the service that would be provided by CP-KCS. While new service will be available, no options will be lost as KCS will retain access to the divested lines. This new competitive service will be particularly beneficial to intermodal customers like Solurail Logistics Inc. We will gain a new option for single-line service to ports served by CN – helping implement the USMCA.

If the divestiture condition is granted, CN has committed to invest in the Kansas City to Springfield/East St. Louis line to improve transit times over the line. CN's plan will create a viable alternative to trucks, diverting an estimated many thousands of trucks per year from the congested highways.

Solurail Logistics Inc is proud of our strong 13 years relationship with CN. The CN team have always been a great support to our growth and we are looking to develop the intermodal services with them by providing new opportunities to our Canadian customers. CN's request that the Surface Transportation Board grant their divestiture conditions aligns with the customer-focused approach to business that CN has demonstrated since the inception of our relationship. We hope the STB will also realize the customer-focused public interest benefits of CN's divestiture condition and will work closely with Solurail and his clients, CN and all relevant parties to promote regional competition and customer choice.

Sincerely,



Benjamin Alexandre
President
Solurail Logistics Inc

cc: Parties of Record

SUIT-KOTE CORPORATION

The Honorable Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36500, Canadian Pacific Railway—Control—Kansas City Southern

Dear Ms. Brown:

On behalf of Suit-Kote Corporation, I am writing to you today in support of CN's requested condition seeking divestiture of Kansas City Southern's (KCS) line from Kansas City, MO to Springfield, IL and East St. Louis, IL to CN should the Canadian Pacific (CP) merger with KCS be approved by the Surface Transportation Board.

CP and KCS have demonstrated they intend to focus their operations and plan for growth across CP's existing line connecting Kansas City to Chicago, making KCS's overlapping corridor between Kansas City to Springfield/East St. Louis redundant to their service offerings and rail operations after the merger. They have made it clear in their merger application they will divert traffic from the Kansas City to Springfield/East St. Louis line and do not plan to invest in that line, leaving the track to slowly degrade and reducing the competitive shipping options for Suit-Kote Corporation and other shippers like us that rely on this corridor to efficiently move goods to and from Kansas City markets. Without the proposed CN condition, we are concerned that CP's plan will reduce a competitive option over the overlapping corridor.

Suit-Kote Corporation asks the Surface Transportation Board to condition any approval of the CP-KCS merger on CN's requested divesture condition of the Kansas City to Springfield/East St. Louis line should the Board approve the CP-KCS merger. CN's alternative would eliminate the risk of a languishing corridor to create new single-line service between Kansas City, Chicago and Detroit – directly competing with the service that would be provided by CP-KCS. While new service will be available, no options will be lost as KCS will retain access to the divested lines.

If the divestiture condition is granted, CN has committed to invest in the Kansas City to Springfield/East St. Louis line to improve transit times over the line. CN's plan will create a viable alternative to trucks, diverting an estimated many thousands of trucks per year from the congested highways.

Suit-Kote Corporation is proud of our strong 12-year relationship with CN. CN Rail provides shipping services of Bituminous Asphalt from Canada into the Northeastern U.S. CN's request that the Surface Transportation Board grant their divestiture conditions aligns with the customer-focused approach to business that CN has demonstrated since the inception of our relationship. We hope the STB will also realize the customer-focused public interest benefits of CN's divestiture condition and will work closely with Suit-Kote Corporation, CN and all relevant parties to promote regional competition and customer choice.

Sincerely,

Brent Hall
Director Procurement
Suit-Kote Corporation
1911 Lorings Crossing Road
Cortland, NY, USA

cc: Parties of Record

- T. S. LINES LTD.

- 9/F., C-Bons International Center, 108 Wai Yip Street,
- Kowloon Hong Kong

- FEB.15TH 2022

The Honorable Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36500, Canadian Pacific Railway—Control—Kansas City Southern

Dear Ms. Brown:

On behalf of T. S . LINES LTD., I am writing to you today in support of CN's requested condition seeking divestiture of Kansas City Southern's (KCS) line from Kansas City, MO to Springfield, IL and East St. Louis, IL to CN should the Canadian Pacific (CP) merger with KCS be approved by the Surface Transportation Board.

CP and KCS have demonstrated they intend to focus their operations and plans for growth across CP's existing line connecting Kansas City to Chicago, making KCS's overlapping corridor between Kansas City to Springfield/East St. Louis redundant to their service offerings and rail operations after the merger. This will reduce the competitive shipping options for T. S . LINES LTD. and other shippers like us that rely on this corridor to efficiently move goods to and from Kansas City markets. Without the proposed CN condition, we are concerned that our competitive options will be reduced over the overlapping corridor.

T. S . LINES LTD. asks the Surface Transportation Board to condition any approval of the CP-KCS merger on CN's requested divesture condition of the Kansas City to Springfield/East St. Louis line should the Board approve the CP-KCS merger. CN's alternative would create a new single-line service between Kansas City, Chicago, and Detroit – directly competing with the service that would be provided by CP-KCS. while new service will be available, no options will be lost as KCS will retain access to the divested lines. If the divestiture condition is granted, CN has committed to invest in the Kansas City to Springfield/East St. Louis line to improve transit times over the line. CN's plan will create a viable alternative to trucks, diverting an estimated many thousands of trucks per year from the congested highways.

CN's request that the Surface Transportation Board grant their divestiture conditions aligns with the customer-focused approach to business that CN has demonstrated as a long term service provider. We hope the STB will also realize the customer-focused public interest benefits of CN's divestiture condition and will work closely with T. S . LINES LTD., CN and all relevant parties to promote regional competition and customer choice.

Sincerely,



Russell Huang
Senior Vice President of T.S. Lines Co.,Ltd. for and on behalf of T.S. Lines Ltd.
Signed at: Taipei, Taiwan

cc: Parties of Record

Tiger Cool Express

January 17, 2022

The Honorable Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36500, Canadian Pacific Railway—Control—Kansas City Southern

Dear Ms. Brown:

On behalf of Tiger Cool Express LLC, I am writing to you today in support of CN's requested condition seeking divestiture of Kansas City Southern's (KCS) line from Kansas City, MO to Springfield, IL and East St. Louis, IL to CN should the Canadian Pacific (CP) merger with KCS be approved by the Surface Transportation Board.

CP and KCS have demonstrated they intend to focus their operations and plans for growth across CP's existing line connecting Kansas City to Chicago, making KCS's overlapping corridor between Kansas City to Springfield/East St. Louis redundant to their service offerings and rail operations after the merger. This will reduce the competitive shipping options for Tiger Cool Express LLC and other shippers like us that rely on this corridor to efficiently move goods to and from Kansas City markets. Without the proposed CN condition, we are concerned that our competitive options will be reduced over the overlapping corridor.

Tiger Cool Express LLC asks the Surface Transportation Board to condition any approval of the CP-KCS merger on CN's requested divesture condition of the Kansas City to Springfield/East St. Louis line should the Board approve the CP-KCS merger. CN's alternative would create a new single-line service between Kansas City, Chicago, and Detroit – directly competing with the service that would be provided by CP-KCS. while new service will be available, no options will be lost as KCS will retain access to the divested lines. If the divestiture condition is granted, CN has committed to invest in the Kansas City to Springfield/East St. Louis line to improve transit times over the line. CN's plan will create a viable alternative to trucks, diverting an estimated many thousands of trucks per year from the congested highways.

CN's request that the Surface Transportation Board grant their divestiture conditions aligns with the customer-focused approach to business that CN has demonstrated as a long term service provider. We hope the STB will also realize the customer-focused public interest benefits of CN's divestiture condition and will work closely with Tiger Cool Express LLC, CN and all relevant parties to promote regional competition and customer choice.

Sincerely,

Theodore Prince
Co-Founder and Chief Strategy Officer

cc: Parties of Record

PUBLIC VERSION

January 28, 2022

The Honorable Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36500, Canadian Pacific Railway—Control—Kansas City Southern

Dear Ms. Brown:

On behalf of TLS Inc, I am writing to you today in support of CN's requested condition seeking divestiture of Kansas City Southern's (KCS) line from Kansas City, MO to Springfield, IL and East St. Louis, IL to CN should the Canadian Pacific (CP) merger with KCS be approved by the Surface Transportation Board.

CP and KCS have demonstrated they intend to focus their operations and plans for growth across CP's existing line connecting Kansas City to Chicago, making KCS's overlapping corridor between Kansas City to Springfield/East St. Louis redundant to their service offerings and rail operations after the merger. They have made it clear in their merger application they will divert traffic from the Kansas City to Springfield/East St. Louis line and do not plan to invest in that line, leaving the track to slowly degrade and reducing the competitive shipping options for TLS Inc. and other shippers like us that rely on this corridor to efficiently move goods to and from Kansas City markets. Without the proposed CN condition, we are concerned that CP's plan will reduce a competitive option over the overlapping corridor.

TLS Inc. asks the Surface Transportation Board to condition any approval of the CP-KCS merger on CN's requested divesture condition of the Kansas City to Springfield/East St. Louis line should the Board approve the CP-KCS merger. CN's alternative would eliminate the risk of a languishing corridor to create new single-line service between Kansas City, Chicago and Detroit – directly competing with the service that would be provided by CP-KCS. While new service will be available, no options will be lost as KCS will retain access to the divested lines. This new competitive service will be particularly beneficial to intermodal customers like TLS Inc. We will gain a new option for single-line service to ports served by CN – helping implement the USMCA.

If the divestiture condition is granted, CN has committed to invest in the Kansas City to Springfield/East St. Louis line to improve transit times over the line. CN's plan will create a viable alternative to trucks, diverting an estimated many thousands of trucks per year from the congested highways.

454 Aime-Vincent. ~Vaudreuil-Dorion ~ Québec ~ J7V 5V5 ~ Tél.: (514) 447 4857 Fax: (844) 453-1610

PUBLIC VERSION

January 28, 2022

TLS is proud of our strong 6-year relationship with CN. Moving more than a hundred containers from Mexico to Canada on a per annum basis reduces the carbon footprint and fuel consumption which is an environmentally conscious decision TLS is proud of. This divestiture would increase our volume of container movements and create a larger reduction of carbon output, while further reducing fuel consumption and benefitting the environment even more so.

CN's request that the Surface Transportation Board grant their divestiture conditions aligns with the customer-focused approach to business that CN has demonstrated since the inception of our relationship. We hope the STB will also realize the customer-focused public interest benefits of CN's divestiture condition and will work closely with TLS Inc., CN and all relevant parties to promote regional competition and customer choice.

Sincerely,

TLS Truck Load Services Inc..

Director of Sales

DON MCINTOSH

cc: Parties of Record

454 Aime-Vincent. ~Vaudreuil-Dorion ~ Québec ~ J7V 5V5 ~ Tél.: (514) 447 4857 Fax: (844) 453-1610

February 10, 2022

The Honorable Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36500, Canadian Pacific Railway—Control—Kansas City Southern

Dear Ms. Brown:

On behalf of VIP Rail ULC., I am writing to you today in support of CN's requested condition seeking divestiture of Kansas City Southern's (KCS) line from Kansas City, MO to Springfield, IL and East St. Louis, IL to CN should the Canadian Pacific (CP) merger with KCS be approved by the Surface Transportation Board.

CP and KCS have demonstrated they intend to focus their operations and plans for growth across CP's existing line connecting Kansas City to Chicago, making KCS's overlapping corridor between Kansas City to Springfield/East St. Louis redundant to their service offerings and rail operations after the merger. They have made it clear in their merger application they will divert traffic from the Kansas City to Springfield/East St. Louis line and do not plan to invest in that line, leaving the track to slowly degrade and reducing the competitive shipping options for VIP Rail ULC. and other shippers like us that rely on this corridor to efficiently move goods to and from Kansas City markets. Without the proposed CN condition, we are concerned that CP's plan will reduce a competitive option over the overlapping corridor.

VIP Rail ULC. asks the Surface Transportation Board to condition any approval of the CP-KCS merger on CN's requested divesture condition of the Kansas City to Springfield/East St. Louis line should the Board approve the CP-KCS merger. CN's alternative would eliminate the risk of a languishing corridor to create new single-line service between Kansas City, Chicago and Detroit – directly competing with the service that would be provided by CP-KCS. While new service will be available, no options will be lost as KCS will retain access to the divested lines.

If the divestiture condition is granted, CN has committed to invest in the Kansas City to Springfield/East St. Louis line to improve transit times over the line. CN's plan will create a viable alternative to trucks, diverting an estimated many thousands of trucks per year from the congested highways.

300 Kenny Street, P.O. Box 411, Sarnia, Ontario N7T 7J2
P: 519-383-7200 F: 519-383-7800
www.viprail.com * office@viprail.com

VIP Rail ULC. is proud of our strong 12 year relationship with CN. VIP operates several last mile switching operations that support customer activity in the Sarnia area with CN and have the same operation with KCS in Port Arthur, Texas. We have strong relationships in the Petrochemical industry and are considered first in class transload operators who focus on assisting customers with custom rail solutions. CN's request that the Surface Transportation Board grant their divestiture conditions aligns with the customer-focused approach to business that CN has demonstrated since the inception of our relationship. We hope the STB will also realize the customer-focused public interest benefits of CN's divestiture condition and will work closely with VIP Rail ULC., CN and all relevant parties to promote regional competition and customer choice.

Sincerely,

Darcy M Brede

Darcy Brede
COO Alpenglow Rail / VIP Rail / USA Rail

cc: Parties of Record

300 Kenny Street, P.O. Box 411, Sarnia, Ontario N7T 7J2
P: 519-383-7200 F: 519-383-7800
www.viprail.com * office@viprail.com

ZIM The Z Factor

Jan. 26th, 2022

The Honorable Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36500, Canadian Pacific Railway—Control—Kansas City Southern

Dear Ms. Brown:

On behalf of ZIM Integrated Shipping, I am writing to you today in support of CN's requested condition seeking divestiture of Kansas City Southern's (KCS) line from Kansas City, MO to Springfield, IL and East St. Louis, IL to CN should the Canadian Pacific (CP) merger with KCS be approved by the Surface Transportation Board.

CP and KCS have demonstrated they intend to focus their operations and plans for growth across CP's existing line connecting Kansas City to Chicago, making KCS's overlapping corridor between Kansas City to Springfield/East St. Louis redundant to their service offerings and rail operations after the merger. This will reduce the competitive shipping options for ZIM and other shippers like us that rely on this corridor to efficiently move goods to and from Kansas City markets. Without the proposed CN condition, we are concerned that our competitive options will be reduced over the overlapping corridor.

ZIM asks the Surface Transportation Board to condition any approval of the CP-KCS merger on CN's requested divesture condition of the Kansas City to Springfield/East St. Louis line should the Board approve the CP-KCS merger. CN's alternative would create a new single-line service between Kansas City, Chicago, and Detroit – directly competing with the service that would be provided by CP-KCS. while new service will be available, no options will be lost as KCS will retain access to the divested lines. If the divestiture condition is granted, CN has committed to invest in the Kansas City to Springfield/East St. Louis line to improve transit times over the line. CN's plan will create a viable alternative to trucks, diverting an estimated many thousands of trucks per year from the congested highways.

CN's request that the Surface Transportation Board grant their divestiture conditions aligns with the customer-focused approach to business that CN has demonstrated as a long term service provider. We hope the STB will also realize the customer-focused public interest benefits of CN's divestiture condition and will work closely with ZIM, CN and all relevant parties to promote regional competition and customer choice.

Sincerely,

Liat Uliel-mirkin
Global Intermodal Manager

Scanned with CamScanner

Exhibit E

CN-13, FD 36500
PUBLIC VERSION

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 36500

CANADIAN PACIFIC RAILWAY LIMITED; CANADIAN PACIFIC RAILWAY COMPANY; SOO LINE RAILROAD COMPANY; CENTRAL MAINE & QUEBEC RAILWAY US INC.; DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION; AND DELAWARE & HUDSON RAILWAY COMPANY, INC. – CONTROL – KANSAS CITY SOUTHERN, THE KANSAS CITY SOUTHERN RAILWAY COMPANY, GATEWAY EASTERN RAILWAY COMPANY, AND THE TEXAS MEXICAN RAILWAY COMPANY

CN'S COMMENTS ON APPLICATION AND REQUEST FOR CONDITIONS

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Counsel for Canadian National Railway Company, Grand Trunk Corporation, and CN's Rail Operating Subsidiaries

Dated: February 28, 2022

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EXECUTIVE SUMMARY

Applicants claim that a combined CP-KCS will deliver massive pro-competitive benefits, while causing no competitive harm, and they assert that joining their networks would generate substantial operating efficiencies, without any risk of harm to service.[1] Based on this rosy picture, Applicants choose not to offer meaningful protective conditions.

Applicants' position is flatly inconsistent with their own prior advocacy. For example, after CP spent much of 2021 raising alarms about the competitive risks of mergers involving parallel lines (and claiming that even a proposed divestiture of a parallel line would be insufficient to mitigate competitive harm), Applicants simply ignore the fact that KCS's Springfield Line is parallel to CP's north-south mainline. Applicants not only fail to propose conditions to remedy this loss of horizontal competition, they entirely abandon KCS's prior plans to invest in the line to improve track speeds to better compete with trucks and propose no merger-related capital investment in it.

---

[1] Railroad Control Application, *Canadian Pacific Railway, et. al.—Control—Kansas City Southern, et al.*, STB Docket No. FD 36500 (filed Oct. 29, 2021) ("Application"), Vol. 1, at 1 § 1180.6 ("The CP/KCS combination presents a once-in-a-lifetime opportunity to inject new and invigorated competition into North-South transportation corridors connecting the United States, Mexico, and Canada, supporting U.S. and North American economic growth. The Transaction is unambiguously and uniformly beneficial for competition and the public interest."); *id.* at 11 § 1180.6(a)(2)(i) ("The Transaction will generate competitive benefits and cause no competitive harm."); *id.*, Verified Statement of Keith Creel ¶ 28 ("CP/KCS will enhance competition against the larger Class I railroads in the central United States and do so without harming competition anywhere.").

Applicants concede they must offer gateway protections to address the well-recognized risk of vertical foreclosure from Applicants' obvious incentive to favor single-line CP-KCS movements over participation in joint-line movements with other railroads. The Application, however, proposed only an ill-defined gateway commitment, without specifying the locations at which it would apply, an enforcement mechanism, or any limitation on what "commercially reasonable" rates the proposed condition would permit Applicants to charge (short of a maximum reasonable rate as determined in a rate reasonableness case).

Moreover, Applicants present no evidence that they have adequately considered – much less planned for – the types of implementation-related service disruptions that have plagued multiple recent rail mergers. They appear to have forgotten their pledge to provide "all the information [the Board] needs to satisfy itself that Applicants have carefully planned for the integration of these railroads and will implement measures to monitor and adjust service levels during the integration process so that shippers' service levels are safeguarded . . ."[2] Indeed, they do not propose any future Board oversight of their merger, despite the fact that such oversight has been a standard condition in prior major mergers and that CP

[2] Applicants' Reply to Objections to KCS Waiver from 2001 Major Merger Rules, *Canadian Pacific Railway, et. al.—Control—Kansas City Southern, et al.*, STB Docket No. FD 36500, at 19 (filed Apr. 12, 2021) ("Applicants' Reply to Objections to KCS Waiver").

itself has advocated for oversight in connection with a recent *significant* transaction.[3]

Applicants' request for a virtually unconditioned merger would be inappropriate even if their Application had made a compelling, well-supported case demonstrating that their merger was clearly in the public interest. But they have not come close to doing so. The Application is riddled with errors, omissions, inconsistencies, and plainly unreasonable assumptions.

For example, Applicants' Base Year Operating Plan is not based on their traffic or operations during the "Base Year" that they selected (and the Board accepted).[4] Instead, it is based on a single month of unrepresentative traffic data from disparate (and inconsistent) time periods, with arbitrary alterations, and the CP and KCS train service plans that were in effect during the 1st Quarter of 2021. Further, neither Applicants' operating expense estimates nor their financial *pro formas* are based on their Operating Plan. Rather, those exhibits are based on a spreadsheet of operating statistics untethered to Applicants' Operating Plan and unsupported by any other record evidence. Applicants' traffic diversion estimates are similarly full of errors and invalid assumptions. For example, the single largest "revenue synergy" they identify—accounting for {{Redacted Redacted}} of their alleged

[3] Canadian Pacific's Comments to Application, *CSX Corporation and CSX Transportation, Inc., et al.—Control and Merger—Pan Am Systems, Inc., et al.*, STB Docket No. FD 36472, at 27–28 (filed Aug. 27, 2021) (requesting indefinite oversight).

[4] *See* Decision No. 11, *Canadian Pacific Railway Ltd.—Control—Kansas City Southern, et al,*, STB Docket No. FD 36500 (STB served Nov. 23, 2021).

merger-related synergies—is for a movement from a crude oil facility *that Applicants had already contracted with the shipper to move in joint CP-KCS service before the merger was contemplated.* Redacted

} He Redacted

} Finally, Applicants publicly disavowed their own density charts in January 2022, claiming that it would be a "misrepresentation" to use them to identify projected density changes on CPKC lines.[8] Based on these and other errors, the Board cannot rely on the Application in evaluating this proposed transaction.

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[5] Exhibit 8, Excerpts from Transcript of February 22, 2022 Deposition of Patrick J. Ottensmeyer ("Ottensmeyer Dep."), at 88:11–90:13.

[6] *Id.* at 89:9–16.

[7] *Id.* at 88:11–90:13.

[8] *See* Applicants' Reply to Canadian National's Description of Anticipated Responsive Application, *Canadian Pacific Railway Ltd., et al.—Control—Kansas City Southern, et al.*, STB Docket No. FD 36500, at 9, n.7 (filed Jan. 28, 2022) (claiming three times that density figures from Exhibit 14 were "figures presented by CN").

Canadian National Railway Company and its U.S. subsidiaries (referred to collectively herein as "CN") understand that rail mergers that deliver more efficient service and create more effective competition can deliver public benefits to customers—if such mergers are appropriately conditioned to guard against harms to the public interest. That was why CN voluntarily requested that its proposed merger with KCS be reviewed under the Board's current, more stringent merger rules, and publicly committed to conditions to assuage concerns about competitive harm—including a divestiture of a parallel line and a robust gateway commitment with an arbitration remedy, and additional conditions to enhance competition.[9] That was why CN volunteered to comply with the new rules requirement to provide a full Service Assurance Plan and would have complied with the Board's performance of a full Environmental Impact Statement for the proposed CN-KCS merger.[10] Railroads proposing major mergers must commit to real protective

[9] *See* CN Letter, *Canadian Pacific Railway, Ltd., et al.—Control—Kansas City Southern, et al.*, STB Docket No. FD 36500, at 2 (filed Apr. 26, 2021) ("CN will submit an application that fully complies with the current major merger rules."); CN Letter, *Canadian Pacific Railway, Ltd., et. al.—Control—Kansas City Southern, et al.*, STB Finance Docket 36500, at 3 (filed Apr. 23, 2021) ("CN would commit to keep all existing gateways between KCS and other rail carriers open on commercially reasonable terms, including the Kansas City gateway between KCS and CP."); Applicants' Reply to Comments on Proposed Voting Trust Agreement, *Canadian National Railway Company et al.—Control—Kansas City Southern, et al.*, STB Docket No. FD 36514, at 60 (filed July 6, 2021) (noting CN's commitment to "divest the KCS line between Baton Rouge and New Orleans"); *See id.*, Reply Verified Statement of James Cairns at 4 (noting arbitration commitment).

[10] *See* CN Letter, *Canadian National Railway Company et al.—Control—Kansas City Southern, et al.*, STB Docket No. FD 36514, at 1 (filed May 3, 2021) ("CN … is committed to filing an application that includes all elements required by the current merger rules.").

conditions that guard against harms to service, competition, or other aspects of the public interest.

As CN shows herein, the CP-KCS merger will provide far fewer and smaller public benefits than Applicants have represented and will cause competitive harms and operational and service problems that Applicants have ignored. As explained above, the Application itself is replete with material inconsistencies and obvious errors. The Board should require Applicants to make concrete commitments to mitigate the competitive harms and operational and service problems the merger will create, including by imposing conditions on merger approval. Indeed, the numerous errors in Applicants' data and Operating Plan undermine any confidence in the Application's basic assertions.

As the Board is aware, even under the old merger rules, the Board can approve a combination only if it is in the public interest.[11] Congress expressly set a higher bar for major mergers, based on its recognition that a merger of Class I railroads requires a thorough assessment of all relevant factors.[12] Thus, Applicants are required to prove that their proposed combination would benefit the public interest and that these benefits would outweigh any potential harms. That is why

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[11] *See generally Railroad Consolidation Procedures*, 47 Fed. Reg. 9844, 9845 (Mar. 8, 1982); *id.* § 1111.1 (c); Decision No. 44, *Union Pacific Corp., et al. – Control and Merger – S. Pac. Rail Corp., et al.*, STB Docket No. FD 32760, 1 S.T.B. 233, 367 (1999) ("*UP-SP*"); *S. Pac. Transp. Co. v. ICC*, 736 F.2d 708, 712 (D.C. Cir. 1984) ("In deciding whether and what conditions to impose, the Commission's guide is the public interest.").

[12] 49 U.S.C. § 11324(b)–(c).

applicants in successful merger applications, including applications under the old rules, have proven and quantified specific, concrete benefits to the *public*—not simply increases in the railroads' profitability.[13]

Relatedly, the Board has statutory authority to condition its approval of mergers to address competitive and other public-interest concerns.[14] The Board has

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[13] *See, e.g.*, Decision No. 10, *Canadian National Railway Co., et al.—Control—Wisconsin Central Transportation Corp.*, STB Docket No. FD 34000 (STB served Sept. 7, 2001), slip op. at 11–12 (in approving the acquisition, recognizing public benefits such as, "expanded single-line service and other large network advantages," the "availability of a larger supply of well-maintained locomotives and railcars, "cost-saving[s] … without large labor force reductions," "shortened car transit times, increased reliability, and other service improvements and operating efficiencies," and "that CN will remain financially strong after consummation of the transaction[] and … have the financial resources to maintain the integrated CN/WC system in top condition"); Decision No. 89, *CSX Corp. and CSX Transp., Inc. and Norfolk Southern Corp. and Norfolk Southern Ry. Co., et al.—Control and Operating Leases/Agreements—Conrail Inc. and Consolidated Rail Corp.*, STB Docket No. FD 33388, 3 S.T.B. 196, 248–49 (1998) ("*CSX/NS-Conrail*") (recognizing public benefits of more effective competition with trucks, "new and efficient single-line service," "improved service and reduced transit times," over a million truck diversions annually, and "substantial new investments in improving rail infrastructure" of over $1.1 billion "in new rail property and equipment," "reduce[d] … cost[s] of providing transportation by about $1 billion per year," "lower rates," and "improved financial ratios"); *Norfolk Southern Corp.—Control—Norfolk & Western Railway Co. and Southern Railway Co.*, ICC Docket No. FD 29430 (Sub-No. 1), 366 I.C.C. 173, 193–96 (1982) ("carefully distinguish[ing] between public and private benefits" and recognizing "cost reductions," "service improvements," "rate reductions or deferral of rate increases," "faster or more reliable service," and "the railroad industry … becom[ing] stronger, more competitive, and more responsive to the shipping public" as examples of public benefits, in contrast to mere "benefits for the applicants," such as "profits," "raising rates," "reduc[ing] competition," or mere "transfer[s] [of] revenues … without significantly affecting efficiency").

[14] *See* 49 U.S.C. §§ 11324(c),11344(c); *UP-SP*, 1 S.T.B. at 367 (discussing the breadth of the Board's "'broad conditioning power and [] continuing oversight'" of mergers) (quoting *McLean Trucking Co. v. United States*, 321 U.S. 67, 87–88 (1944)); *Grainbelt Corp. v. STB*, 109 F.3d 794, 796 (D.C. Cir. 1997) ("The Commission . . . has broad authority to impose protective conditions to govern

explained that it has "broad power under 49 U.S.C. § 11344(c) to impose appropriate conditions on our approval of railroad consolidations, including those that might be useful in ameliorating potential anticompetitive effects," and that its "overriding concern in the imposition of conditions is the public interest."[15] The Board has not hesitated to deny applications and impose significant conditions where it was concerned about whether public benefits outweighed potential harms, including under its old rules.[16] Further, the Board has cited the importance of lessons learned from mergers under the old rules, which sometimes resulted in substantial harms to service and significant transitional disruptions, indicating it would carefully evaluate the need to address concerns about service, including by requiring concrete commitments from merging railroads.[17]

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mergers."); *CSX/NS-Conrail,* 3 S.T.B. at 250 ("we have used our broad conditioning authority to *preserve or enhance* service and competitive opportunities" (emphasis added)).

[15] *Norfolk Southern Corp.—Control—Norfolk & Western Railway Co. & Southern Railway Co.*, ICC Finance Docket No. 29430 (Sub-No. 1), 366 I.C.C. 173, 235 (1982).

[16] *See, e.g.*, Decision No. 44, *Union Pacific Corp., et al.—Control and Merger—Southern Pacific Rail Corp., et al.*, STB Docket No. FD 32760 (STB served Aug. 12, 1996) (granting extensive BNSF trackage rights to remedy competitive harm); *Santa Fe Southern Pacific Corp.—Control—Southern Pacific Transportation Co.*, ICC Docket No. FD 30400, 3 I.C.C.2d 926, 935–36 (1987) ("Having had the opportunity to examine the complete package that applicants have presented, we think it continues to pose considerable problems.").

[17] *See, e.g.*, Final Rules, *Major Rail Consolidation Procedures*, STB Docket No. EP 582 (Sub-No. 1) (STB served June 11, 2001), slip op, at 20–21 ("Despite the railroads' very strong financial incentives to avoid post-merger service disruptions, despite substantial planning by applicants in conjunction with this agency and the Federal Railroad Administration (FRA), and despite carefully phased and delayed implementation, the *CSX/NS/CR* transaction resulted in severe service problems that plagued applicants and their customers for a full year or more. Moreover, …

Applicants here bear the burden of demonstrating that their combination is in the public interest,[18] but they have not carried it. CN shows in Part I that the Application contains a host of shortcuts, inconsistencies, and material gaps. Based on the content of the Application (and related workpapers), it is not possible to determine whether the merger is in the public interest.

CN shows in Part II that Applicants have failed to quantify, and have significantly overstated, the benefits of the proposed transaction while omitting its significant risks. Applicants simply assume that the mere existence of a CPKC single-line route via Kansas City will automatically result in public benefits—even without adequate, specified capital investments to support anticipated traffic growth and even if the CPKC single-line route is longer or more circuitous than other (cheaper and faster) competitive options. The only quantified benefit in the Application is the merged railroad's anticipated private profits—which are not a public benefit at all. Neither do Applicants' post-merger traffic diversion and revenue estimates constitute public benefits; and, in any event, Applicants'

The [*UP/SP,] UP/CNW[,]* and *BN/SF* transactions were also accompanied by service disruptions …. Thus, it is natural for the Board to be concerned about future mergers in this connection …."); *id.* at 41 (requiring a concrete Service Assurance Plan for major merger proposals to plan for and swiftly address "any potential adverse service effects during implementation").

[18] 49 CFR § 1180.4(c)(8) ("The application must present a *prima facie case*. Applicants can fail to meet their burden of proof and thus not present a prima facie case either by (i) disclosing facts that, even if construed in their most favorable light, are insufficient to support a finding that the proposal is consistent with the public interest, or by (ii) disclosing facts that affirmatively demonstrate that the proposal is not in the public interest. *See Railroad Consolidation Procedures*, 363 I.C.C. 767 (1980).").

predictions are wildly overstated and entirely unreliable. Applicants have also failed to demonstrate that the merger will give rise to any substantial unquantifiable public benefits (such as more efficient routings, increased capacity, capital investment, or improved service). Even if proven, any such modest benefits would be overshadowed by the significant risks and uncertainty created by Applicants' "essentially meaningless"[19] Operating Plan.

The limited capital investments identified in the Application are demonstrably inadequate to support the predicted traffic growth, which would more than double the number of trains on key line segments and at major terminal areas on the CPKC network (including at locations where CPKC must share capacity with other freight carriers and Amtrak). Shockingly, { Redacted

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In Part III.A, CN shows the Application also fails to address the merger's severe risks of competitive and other harms to the public interest. The CP-KCS merger presents a significant horizontal competition issue. KCS currently operates a line ("the Springfield Line") that is parallel to CP's line running between Kansas

[19] Exhibit 2, Verified Statement of Carl Van Dyke ("Van Dyke V.S.") at 5.

[20] Exhibit 7, Excerpts from Transcript of February 18, 2022 Deposition of Raymond A. Elphick and John F. Orr ("Elphick/Orr Dep."), at 71–74, 93–97, 152–155.

City and Chicago. The Board recognized in *CN-IC* that the Springfield Line's connection to CN was a viable competitive route, but it has been less used in recent years. Despite KCS's recent pre-merger statements that this line could be a "Kansas City Speedway" competing for north-south traffic with routes like the CP line,[21] the Application abandons this plan, and instead anticipates no increased investment in the Springfield Line.

An unconditioned merger would permanently eliminate the Springfield Line as a competitive alternative, instead favoring the parallel CP line. The Board should condition approval of the merger on divestiture of the Springfield Line so that CN can preserve and upgrade the route and turn it into a high speed, efficient route—competing for traffic not only between Kansas City and Chicago, but beyond to Detroit and Eastern Canada. This condition can be imposed without impeding a combined CPKC in any way. CN proposes to grant back to KCS haulage rights that will enable KCS to access customers on the Springfield Line. Thus, every customer on the Springfield Line would retain access to KCS, while gaining access to CN, and would benefit from CN's investments in the line. To protect the public interest, merger approval should be conditioned on this targeted divestiture.[22]

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[21] *See, e.g.*, Exhibit 14, June 3, 2021 CN-KCS Presentation Slides, Bernstein's 37th Annual Strategic Decisions Conference ("Bernstein Slides"), at 5 (touting the "Kansas City Speedway – connecting CN's Midwest foothold and the KC region").

[22] Today, CN is separately filing a responsive application seeking divestiture in STB Docket No. FD 36500 (Sub-Nos. 1–4).

Moreover, the merger will reduce routing choices through gateways, by diminishing KCS's existing incentives to interchange traffic with other railroads on commercially reasonable terms. Pre-merger, KCS served as an important neutral interchange partner, providing limited single-line service, and thus had a strong incentive to cooperate neutrally with all connecting railroads to jointly serve shippers that neither could serve individually. Post-merger, KCS will have an incentive to maximize traffic that is exchanged with CP. Applicants' vague promises to keep gateways open provide an insufficient safeguard against this potential loss of competition. Instead, as explained in Parts III.B and IV, merger approval should be conditioned on their concrete commitment to prompt, neutral arbitration of commercially reasonable rates and the provision of service on non-discriminatory terms.

In Part III.B, CN shows that the merger also presents significant risks to the rail network as a whole. Despite Applicants' earlier assurances, the Application does not provide "all the information [the Board] needs to satisfy itself that Applicants have carefully planned for the integration of these railroads and will implement measures to monitor and adjust service levels during the integration process so that shippers' service levels are safeguarded . . ."[23] In fact, the opposite is true. Applicants' witness admitted that the "Service Assurance Group" that he vaguely referenced in his verified statement does not exist, and that Applicants have no plans for public reporting of metrics, Board monitoring, or any of the other

[23] Applicants' Reply to Objections to KCS Waiver, at 19.

key elements of a Service Assurance Plan. The Board should insist on fulfillment of this promise, through provision of a Service Assurance Plan or its equivalent, as a condition of approving the merger, as well as imposing at least five years of post-merger monitoring.

Moreover, as detailed in Part III.C, the Application substantially overstates the financial benefits the merged company will achieve.[24] When the predicted revenue growth fails to materialize, the merged company will have a strong incentive to cut costs, raise prices for shippers, discriminate against interline partners, degrade service, defer investment and maintenance, and spin off assets—exacerbating the risks of harm described above. Respectfully, the Board needs to put safeguards in place through robust conditions that will guard against these harms to the public interest.

For all these reasons, Applicants have not carried their burden of demonstrating that the merger is in the public interest, and it is essential that the Board, at the very least, impose conditions sufficient to mitigate the harms the merger would cause. Specifically, as set forth in Part IV, CN requests that the Board require divestiture of the Springfield Line to CN, require a concrete gateway commitment including neutral arbitration of disputed rates, require Applicants to fulfill their promise to provide the equivalent of a Service Assurance Plan, and impose a monitoring period for a minimum of five years. Both divestiture and access

[24] *See generally*, Exhibit 4, Verified Statement of Mark E. Zmijewski ("Zmijewski V.S."), at Section III.

to gateways on fair terms are independently important to prevent the merger from causing competitive harm—the former mitigates a specific competitive concern regarding parallel routes between Kansas City and Chicago and routes beyond to Detroit and Eastern Canada, while the latter does so for all situations where a formerly neutral KCS would be motivated to force customers to use CP-KCS single-line routes by refusing to participate in competitive joint-line routes on commercially reasonable terms. If the merger goes forward, these conditions are essential to addressing the competitive concerns it raises. The Service Assurance Plan (or its equivalent) and post-merger monitoring are necessary to prevent one of the most troubling consequences of mergers under the old rules, where disruption and degradation of service followed the less demanding examination of a merger's benefits and harms. As demonstrated below, such concerns are plainly present here.

Accompanying these comments are several verified statements in support.[25] First, Exhibit 1 is the Verified Statement of David Hunt. Mr. Hunt is a Vice-President of the global consulting firm of Oliver Wyman and has been a consultant in the transportation sector for more than 35 years. His statement analyzes the Application's post-merger traffic diversion projections and demonstrates that they are based on flawed methodologies, unsupported assumptions, and error-ridden calculations, and thus are wholly unreliable.

Exhibit 2 is the Verified Statement of Carl Van Dyke. Mr. Van Dyke is a senior advisor and partner emeritus at Oliver Wyman and has been a consultant in

[25] The workpapers will be made available to parties upon request.

the transportation sector for more than 40 years. As the developer of the MultiRail modeling software for analyzing rail operations, operating expenses, and associated investment requirements, he shows that Applicants' Operating Plan is based on invalid inputs, significant omissions, and numerous errors such that it is wholly unreliable and fails to comply with the Board's requirements.

Exhibit 3 is the Verified Statement of Hugh Randall. Mr. Randall is a senior advisor and partner emeritus at Oliver Wyman and has been a consultant in the transportation sector for over 30 years. His statement shows that Applicants' capital investment plan is inadequate and their operating expense estimates are clearly erroneous and unreliable.

Exhibit 4 is the Verified Statement of Mark E. Zmijewski. Professor Zmijewski is a professor emeritus at The University of Chicago Booth School of Business and Senior Consultant to Charles River Associates, specializing in accounting, valuation, and securities analysis. His statement analyzes the financial effects of CP's acquisition of KCS using the same analyses CP used to criticize CN's proposed acquisition of KCS and concludes that CP's financial risks—including high debt leverage, historically low ROIC, and likely incentives to behave anti-competitively when Applicants' over-optimistic financial projections fail to materialize—are the very same risks CP asserted made the proposed CN-KCS merger contrary to the public interest. Professor Zmijewski also reviews Applicants' claimed merger benefits in light of FTC guidelines and concludes that most of them would not be considered as cognizable or verifiable benefits.

I. THE APPLICATION IS RIDDLED WITH ERRORS, INCONSISTENCIES, AND FLAWED ASSUMPTIONS THAT CANNOT PROVIDE A BASIS FOR THE BOARD TO FIND THAT THE MERGER IS CONSISTENT WITH THE PUBLIC INTEREST.

Before the Board can even consider the "public interest" question in this proceeding, it must first understand the transaction Applicants are proposing and how the proposed merger will be implemented. But Applicants have submitted an Application that is so riddled with errors, omissions, inconsistencies, and unrealistic assumptions that the Board simply cannot rely on it in performing the public interest assessment required by 49 U.S.C. § 11323 *et seq.* and the Board's merger regulations.

As explained by CN witness Carl Van Dyke—the developer of the MultiRail modeling software for analyzing rail traffic and operations, operating expenses, and associated investment requirements—the first prerequisite for a sound operating plan for a proposed merger is a *traffic study* that, among other things, accurately predicts the volume of traffic that will be carried by the merger railroad.[26] These traffic diversion figures drive the development of the *operating plan.*[27] The projected traffic diversions also determine the merger's predicted revenues, which, along with the operating statistics derived from the operating plan, provide the necessary inputs to the *financial plan* (*i.e.,* revenues, capital spending, and operating expenses).[28]

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[26] Van Dyke V.S. at 10

[27] *Id.*

[28] *Id.* at 7.

"Any failure to use reasonable inputs and/or generate accurate outputs at any step [of this process] cascades through the process and renders the subsequent calculations invalid."[29] This is precisely what is offered in the Application—a error-ridden foundation that generates meaningless projections.

A. Applicants' Projected Traffic Diversions and Revenue Projections Are Grossly Exaggerated and Invalid.

Fundamental to an analysis of whether the proposed merger is in the public interest are diversion studies and related revenue projections. These are critical building blocks to assessing, for example, the extent to which the merger will generate procompetitive benefits, take trucks off the road, and allow the merging parties to handle their increased debt load. As Mr. Hunt explains, Applicants' diversion studies and related revenue projections are based on flawed methodologies, unsupported assumptions, and erroneous calculations that render the results of the study invalid.[30] These errors are not minor—Applicants' traffic-related revenue projections appear to be overstated by more than 100 percent.[31] As Mr. Hunt demonstrates, rather than the more than $1 billion of traffic-related revenue Applicants project, the likely figure is on the order of $500 million.[32]

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[29] *Id.*

[30] Exhibit 1, Verified Statement of David T. Hunt ("Hunt V.S.") at 3.

[31] *Id.* at 3–4.

[32] *Id.* at 6, Exhibit 3-2.

This overstatement is the result of several fundamental methodological errors committed by Applicants. First, Applicants grossly overstate expected rail-to-rail diversions and, as a result, the revenues they will earn post-merger.

Applicants' rail-to-rail diversions are based on the simplistic and highly implausible assumption that the length of a route is unrelated to that route's ability to gain a share of the available traffic.[33] But the relationship between route length and market share is a well-established concept in transportation modeling (as well as intuitive—the shortest route between an origin and destination can be expected to capture the greatest market share where cost is a function of distance).[34] Instead of applying this accepted principle, Applicants' experts mechanically assigned diversion percentages to traffic movements regardless of the relative distance of the incumbent rail route and the proposed CPKC route.[35] This is particularly problematic because the majority of the CPKC single-line routes that will be created by the merger are substantially longer than the already-existing route options available to shippers.[36] In fact, new CPKC single-line routes will be, on average, 217 miles longer than the routes over which the diverted traffic actually moves today.[37] Given that the routes to which Applicants predict traffic would be diverted are significantly longer than the routes over which that traffic moves today, Applicants'

[33] *Id.* at 8.

[34] *Id.*

[35] *Id.* at 8–13.

[36] *Id.* at 13–14.

[37] *Id.* at 14.

claim that 216,675 carloads and containers will be diverted to CPKC is simply not credible.[38]

To compound this clearly invalid assumption, Applicants' traffic experts applied overstated revenue amounts for many diverted carloads that are much higher than the average per carload revenue for those movements shown in the STB Public Waybill sample, in some cases by over 60 percent.[39] This overstatement of revenue per diverted carload is neither explained nor justified.[40] In other words, Applicants implausibly project that CPKC will collect more revenue from shippers on diverted traffic than those shippers pay today, and will do so by diverting the shipments to new CPKC routes that are substantially more circuitous than the existing joint-line route! As a result of these, and other, errors, Applicants have overstated the rail-to-rail diversions by at least $133 million.[41]

But this massive overstatement is just the tip of the iceberg. Applicants also proffer "supplemental" diversion estimates from company witnesses, which add an additional $411 million of projected revenues gains (approximately 40 percent of the total incremental revenue gains) over and above the diversions found by their expert traffic witnesses (Richard Brown, Nathaniel S. Zebrowski,

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[38] *Id.*

[39] *Id.* at 7 & n.9.

[40] *Id.*

[41] *Id.* at 7.

and Bengt Muten).[42] These "additional opportunities" include traffic that Applicants' experts did not include in their analysis of the same commodities, movements that clearly are not merger-related (because CP or KCS already participate in those movements today), and even traffic that does not currently exist.[43] CN witness Mr. Hunt estimates that these phantom opportunities account for as much as $388 million of the $411 million in projected "supplemental" revenues posited by Applicants' company witnesses.[44] For example, the claim by CP witnesses Jonathan Wahba and Mike Naatz that the merger would allow new shipments of "DRUbit" from a facility at Hardisty, AB, ignores that CP and KCS had already signed a contract to serve such shipments in 2019—long before merger discussions began.[45] Redacted

[42] *See generally*, Application, Vol. 2, Verified Statement of Richard W. Brown and Nathaniel S. Zebrowski ("Brown & Zebroswki V.S.") and Verified Statement of Bengt Mutén.

[43] Hunt V.S. at 24–35.

[44] *Id*. This does not include a currency conversion error that further overstates revenues on shipments with a currency conversion by 78%. *Id.* at 23–24.

[45] *See* Exhibit 11, December 3, 2019 Gibson Energy Press Release ("Gibson Energy Press Release"), at 1 (announcing "an agreement to construct and operate a diluent recovery unit (DRU) near Hardisty, Alberta, Canada … to process 50,000 barrels per day of inlet bitumen blend through the DRU to be shipped by Canadian Pacific … and Kansas City Southern Railway Company … to the U.S. Gulf Coast"); *id.* at 3 (KCS stating the agreement was "a great opportunity to grow our business in the Gulf Coast area and develop our Port Arthur asset").

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}} Applicants have disclosed in their SEC filings that they had reached remarkably different views of the potential synergies of the merger before entering the transaction. Specifically, at the KCS special Board meeting held on September 15, 2021, the KCS Board of Directors considered two separate synergies analyses: a CP synergies analysis showing annualized EBITDA synergies for the combined company of approximately $990 million ($810 million from revenue synergies and $180 million from operating and expense synergies); and a KCS management synergies analysis showing EBITDA synergies of approximately $377 million ($222 million from revenue synergies and $155 million from operating and expense synergies).[47] The enormous gap between the CP analysis and the KCS analysis casts considerable doubt on the

[46] *See* Ottensmeyer Dep. at 88:11–90:13 (stating that the Dec. 3, 2019, Gibson Energy Press Release described "a new service, moving DRUbit from western Canada to the U.S. Gulf Coast, specifically Port Arthur, Texas" with "a Canadian Pacific origin, interchanged at Kansas City, and … from Kansas City to Port Arthur," and responding, "Correct," when asked if the new service was "well before any merger talks"); *id.* at 90:3–13 (responding, "Correct" to the statement that "CP and KCS didn't need a merger to develop this particular piece of interline business").

[47] Exhibit 15, Excerpts from Canadian Pacific Railway Limited Form F-4 Registration Statement, filed with the Securities and Exchange Commission on October 1, 2021, at pp. 64–65, 97.

accuracy of Applicants' merger synergies analysis—particularly when the Application appears to have adopted the CP analysis and discarded the KCS one.

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[48] {{Redacted

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[49] {{Redacted

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[50] Exhibit 13, Excerpts from February 4, 2021 KCS Board of Directors Meeting Materials, at KCSR-HC-00014589 through KCSR-HC-00014591.

[51] *Id.* at KCSR-HC-00014591

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B. Applicants' Operating Plan Is "Essentially Meaningless."

As Mr. Van Dyke attests from his experience, "a rigorous operations plan is a key element of a reliable merger application."[53] In particular, the operating plan must be based on a "series of logical, interrelated steps," each of which must be sound to ensure that later steps are not skewed.[54] Applicants' operating planning process, however, "fails at nearly every level … [and] [t]he result is a set of modeling outputs that were so unreliable that *Applicants themselves disregarded their own operating plan outputs, including train-miles and GTMs – both of which are critical drivers of operating costs*."[55] The outputs of Applicants' Operating Plan do not align with their financial and environmental evidence and cannot be reconciled with one another. The result is incoherence.

Applicants' approach to developing their Operating Plan is both conceptually flawed and patently unreasonable. Applicants proposed to use 2019 as the "Base Year" for the Application. In its Decision accepting the Application, the Board

[52] *Id.* at KCSR-HC-0014593 through KCSR-HC-0014601.

[53] Van Dyke V.S. at 7.

[54] *Id.* at 7.

[55] *Id.* at 12–13 (internal footnote omitted) (emphasis in original).

adopted 2019 as the Base Year for this proceeding.[56] However, Applicants did not develop a Base Year Operating Plan that accurately reflected the 2019 traffic or operations of CP or KCS. Instead, Applicants developed a MultiRail operating model based on a series of disparate data sources from different years.

For example, rather than using carload data for the year 2019,[57] Applicants input to MultiRail a traffic file containing carload traffic that moved on CP and/or KCS during a single month in a different year, October 2020.[58] For unit train traffic, Applicants used a single month (October 2019) for CP and a different 30-day period (which is not identified in the workpapers) for KCS. Neither the Application nor the underlying workpapers offer any evidence to support the notion that these disparate traffic sources accurately portray the traffic volumes and commodity mix that moved on CP and KCS, respectively, during the (supposed) 2019 Base Year.

Even more strangely, Applicants elected not to use the blocking and train service plans that were in effect on CP and KCS during the actual Base Year (2019)

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[56] Amended Notice of Intent to File Application for Approval of Transaction Subject to 49 U.S.C. §§ 11323-25, *Canadian Pacific Railway Ltd.—Control—Kansas City Southern, et al,*, STB Docket No. FD 36500, at 3 (filed Sept. 15, 2021) ("Applicants will use the year 2019 as the base year for purposes of the impact analyses to be included with the Application (which remains the last full year unaffected by the COVID pandemic for which data are available"); Decision No. 11, *Canadian Pacific Railway Ltd., et al.—Control—Kansas City Southern, et al,*, STB Docket No. FD 36500 (STB served Nov. 23, 2021).

[57] Full year CP and KCS traffic data for 2019 was available to Applicants. *See* CPKC WP-HC-Traffic File – Methodology, at 3 ("FTI supplied CPRS with multiple years of data, *but CPRS chose to use October 2020 for a base month*") (emphasis added).

[58] Elphick/Orr Dep. at 157:13 – 157:21.

in building an initial set of trains in the MultiRail model. Instead, Applicants constructed a Base Year (2019) blocking and train service plan that reflected the carriers' operations *as of the 1st Quarter of 2021*. Applicants' explanation for doing so—that Q1 2021 data were used to avoid attributing to the merger efficiencies already achieved by Applicants between 2019 and Q1 2021[59]—is beside the point. A series of inputs involving traffic, blocking plans and trains from three different time periods, by definition, cannot produce an accurate estimate of Applicants' actual Base Year (2019) operating plan.

Applicants further undermined the validity of their Operating Plan outputs for both the pre- and post-merger cases by removing trains that had traffic assigned to them by MultiRail from the counts of trains per day by subdivision and the subdivision traffic densities (tonnages). Specifically, Applicants applied a "rule" that removed from the train counts and line densities any train that did not traverse at least 25 percent of the stations on a subdivision. This rendered the trains per day and tonnages by subdivision incomplete and had a cascading effect on the calculation of key operating statistics, including train-miles (which in theory should be used to estimate operating expenses).[60]

While it is customary to use a full year of traffic data, *Applicants took a similar, mere one-month sample approach to rail yard activity and carloads,*

[59] *See* Application, Vol. 2, Exhibit 13 (Operating Plan), at 27.

[60] *See* Van Dyke V.S. at 24–25.

including the number of hazardous cars on their lines in the Base Year.[61] Applicants submitted this flawed information as the foundation of their Application, as well as in response to the requests from the Board's Office of Environmental Analysis.[62]

These and other significant errors when processing traffic data used to develop the Operating Plan resulted in "invalid traffic" that "distorted the Applicants' development of the Base Year blocking and routing plan, train plan, and the operating metrics, rendering the operating plan invalid and unusable."[63] The Operating Plan does not produce reliable estimates of traffic density, train counts, or yards where growth is expected such that "Applicants have provided essentially meaningless responses" to the Board's requirements.[64] Ultimately, Applicants'

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[61] *See, e.g.,* Application, Vol. 2 Operating Plan, Appendix B, Changes in Yard Volumes ("Base Traffic: October 2020FTIBase, 28 days" and "Alternate Traffic: October 2020FTIBase."). The Board requires density charts be submitted for the "latest available full calendar year" for precisely this purpose. *See* 49 C.F.R. § 1180.8(b)(5).

[62] Applicants' response to the Board's Office of Environmental Analysis did not reveal the use of a one-month snapshot from October 2020 for carload and intermodal traffic in the gross tons, rail yard activity, and [trains per day and carloads.] Letter from Applicants to Danielle Gosselin, FD 36500, at 2 (October 28, 2021) (In Response to Request A, Applicants indicated their transaction-related growth analyses "set 2019—the last pre-pandemic year—as a starting point" and indicating that they provided the "2019 baseline traffic" in tables); *id.* at 6 (In Response to Request F, "Like the other tables CP and KCS are providing, these tables show 2019 traffic…."). Applicants' December 20 response to the Board's Office of Environmental Affairs again reiterated their erroneous claim that their first response included actual historic numbers form 2019: "As it did in response to Information Request No. 1, CP is providing three data sets: actual numbers from 2019 (the last pre-pandemic year)…." Letter from Applicants to Danielle Gosselin, FD 36500, at 2 (Dec. 20, 2021).

[63] Van Dyke V.S. at 3.

[64] *Id.* at 5.

Operating Plan "fails to meet basic Board requirements" and is a "deeply flawed proposal that cannot be relied upon in evaluating the impact of the proposed merger on CP-KCS operations, the operations of other railroads, or other stakeholder, such as shippers and communities."[65]

The numerous flaws in Applicants' Operating Plan generated additional errors throughout the Application. For example, *Applicants did not use their Operating Plan to calculate their purported operating metrics or expenses*. In particular, the post-merger table of operating plan metrics in Applicants' Exhibit 13[66] is not based on the MultiRail Operating Plan but, rather, on a "System Model" that does not align with the Operating Plan.[67] And while the Operating Plan accounted for organic growth, the System Model does not (thereby significantly understating Year 3 operating metrics). Nor do the Operating Plan metrics align with Applicants' financial projections, which are based strictly on new business growth. Likewise, Applicants' environmental filing relies on values that are inconsistent with those in the Operating Plan. In other words, Applicants' System Model, operating plan, financial projections, and environmental filings—which all should be in harmony and reflect consistent inputs—paint multiple contradictory pictures, and there is no way of knowing which is correct.

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[65] Van Dyke V.S. at 2.

[66] *See* Application, Vol. 2 at 287, Table 2.

[67] *See* Elphick/Orr Dep. at 180:17–183:3.

These disconnects are not minor. For example, the Operating Plan produces an annual increase in train-miles of approximately {{Redacted }} whereas Applicants' costing process appears to be based on an increase of approximately { Red }} train-miles. Likewise, while the Operating Plan contemplates an { Redacted }}, the costing process uses an { Redacted }}. Applicants' decision not to develop operating metrics based on Applicants' Operating Plan (as has been done in prior merger cases) means that Applicants' operating and capital expense calculations (which should be based on accurate operating metrics) are understated and wholly "unreliable."[68]

C. Applicants' Financial Plan Is Inadequate and Understates Operating Costs by More Than $2.0 Billion.

A robust and accurate capital investment plan is necessary for the Board to determine the financial impact of the merger and the ability of the merging parties to handle their projected traffic. As Mr. Randall explains, Applicants identify specific projects for only 8 percent of the $5.7 billion they plan to spend in Years 1–3 and otherwise fail to identify the nature or location of other capital projects—much less their estimated cost and timing—which makes "it impossible for interested parties (or the Board) to assess the adequacy of Applicants' capital spending plans."[69]

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[68] Van Dyke V.S. at 6.

[69] Exhibit 3, Verified Statement of Hugh Randall ("Randall V.S."), at 7.

In any event, Applicants' projected capital spending appears to be woefully inadequate. Pre-merger, CP and KCS collectively averaged capital expenditures of $1.9 billion annually, which equaled 24.2 percent of revenue between 2014 and 2019, and in no year were their (combined) capital expenditures less than 21.0 percent of (combined) revenues. Post-merger, Applicants plan to continue spending the same $1.9 billion per year, or 20.6 percent of revenue, in Year 1, 20 percent in Year 2, and 19.6 percent in Year 3 on capital projects.[70] At the same time, Applicants are projecting that CPKC will transport 40 percent more traffic (in GTMs) by the end of Year 3 (19.8 percent resulting from merger-related growth and 21 percent from organic growth). As Mr. Randall notes, "[i]t is simply not credible that Applicants can adequately address the merged railroad's capital needs by spending no more per year than they spend before the merger, while accommodating significantly higher traffic growth."[71]

Importantly, Applicants have failed to provide for capital projects that clearly would be required to accommodate post-merger traffic volumes. Mr. Randall and his team at Oliver Wyman assessed the CPKC network in light of projected traffic increases and found that "significant train delays and service disruptions are likely without additional capital spending" to ensure line-of-road, yard capacity, key bridges, and locomotive fleets can handle the traffic.[72]

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[70] *Id.* at 8–9.

[71] *Id.*

[72] *Id.* at 10.

This is not surprising given the lack of attention Applicants paid to this critical issue. Applicants' operating witness, Mr. Elphick, {{Redacted

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With regard to operating expenses, Applicants "have failed to prove that they have adequately estimated operating expenses and have used a deeply flawed and inaccurate approach to cost analysis and financial projections."[75] In particular, Applicants' operating expense estimate is based entirely on a table of incremental

[73] *See, e.g.*, Elphick/Orr Dep. at 55:10-56:24, 79:21-81:4, 124:5-20, 250:14-251:23 Redacted

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[74] *See id.* at 124–28.

[75] Randall V.S. at 23.

operating expenses that has no relation to the Operating Plan and is not supported by work papers or other evidence.[76] Mr. Randall estimates that Applicants have understated their projected operating expenses for the first three years by no less than $2.0 billion and (based on CP's and KCS's U.S. actual experience) by as much as $2.47 billion.[77] This represents a "an understatement of the merged railroad's operating expenses of approximately 10.7 to 12.9 percent of total operating expenses for those years."[78]

Finally, Applicants overstate productivity savings. Doing so has the effect of allowing Applicants to claim they will have greater cash flow available to fund capital improvements and pay off the massive debt CP is incurring to acquire KCS. Reality is far less rosy and casts significant doubt on whether Applicants will be able to provide adequate levels of service.

Applicants make the obviously incorrect assumption that the vast majority of the projected productivity savings will be realized during the first year of merged operations. *Applicants assume that $93.5 million, or 80.8 percent, of the total projected $115.7 million savings in operating expenses will be achieved in Year 1.* For transportation, fuel-related, and locomotive leasing/depreciation cost savings, Applicants assume that fully 96.5 percent will be realized in Year 1.[79] It is highly

[76] *Id.* at 23–24.

[77] *Id.* at 23.

[78] *Id.*

[79] *Id.* at 24–25; *see* Oliver Wyman Opex worksheet for calculation.

unlikely that Applicants would be able to implement all of the operating changes required to generate virtually all of the achievable operating expense savings in the first post-merger year, especially when considering that CP and KCS cannot begin the merging of their networks until Day 1 of the approved merger.

Based on their seriously flawed operating expense estimation process, Applicants posit they will incur only $306.3 million in increased operating expenses to transport 510,315 incremental carloads, while those carloads will generate $1,021.9 million in additional revenues.[80] This equates to a 70 percent flow-through of revenue to operating income, or a 30 percent operating ratio—*something no Class I railroad in North America has ever achieved on either baseload or incremental traffic.*[81] As Mr. Randall explains, "while Applicants submitted the veneer of an operating expense development process (including a purported MultiRail analysis of post-merger operations), the operating expenses reflected in the Application are nothing more than assumptions that are unsupported by documentation or analysis."[82]

[80] Randall V.S. at 24.

[81] *Id.* at 31.

[82] *Id.* at 24.

II. APPLICANTS' ASSERTED BENEFITS ARE VASTLY OVERSTATED & UNSUPPORTED.

The core question entrusted to the Board in a Class I merger proceeding is whether the proposed merger is "consistent with the public interest."[83] This standard requires more than a mere showing that the proposed merger will result in private profits, traffic diversions, or even new single-line service. Rather, the application must demonstrate that verifiable and quantifiable benefits would flow *to the public* from the proposed merger, and that those *public* benefits would outweigh "any harm to competition, essential service(s), labor, and the environment that cannot be mitigated by conditions."[84] Applicants have failed to meet this standard.

A. Traffic Diversions and Private Profits Are Not Public Benefits.

Applicants have failed to prove the proposed merger will be in the public interest by quantifying its claimed public benefits.[85] The Application's alleged "quantified public benefits" is merely a balance sheet of hoped-for private earnings.[86] Providing an estimate of increased CP-KCS profits does not satisfy Applicants' burden of proof: The agency has long made clear that private earnings are not public benefits: "financial benefits for the consolidating carriers that are

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[83] Decision No. 37, *Canadian National Ry. Co., et al.—Control—Illinois Central Corp., et al.*, STB Docket No. FD 33556 (STB served May 25, 1999) ("*CN-IC*"), slip op. at 19 ("'[t]he Act's single and essential standard of approval is that the [Board] find the [transaction] to be "consistent with the public interest."').

[84] *Id.*

[85] *See id.*

[86] Application, Vol. 1 at 10; *id.*, Vol. 1 at 74 ("Summary of Benefits" exhibit).

purely transfers from competing carriers" are "private benefits [that] have not been considered in our analysis of the public benefits of the consolidation."[87]

In this proceeding, the demonstrated and quantifiable benefits to the shipping public supported by the Application are exactly *zero*. Providing financial gains to CP-KCS shareholders does not further the public interest. Applicants, who have the burden of proof to establish quantifiable public benefits in their Application, have thus failed to meet their burden.[88] The Board should not approve a major merger application that fails to prove any quantifiable public benefits, particularly in light of the current Administration's competition policy goals and positions.[89]

Likewise, Applicants' projected traffic diversions do not constitute public benefits. Shippers do not benefit from shifting traffic to different routes or different carriers absent some showing that those diversions will produce lower rates, better service, shorter routes, or the like—none of which Applicants have proven. In any event, as discussed above, Applicants' projected traffic diversions are grossly exaggerated and cannot be relied upon by the Board.

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[87] *Union Pac. Corp., et al.—Control—Missouri-Kansas-Texas R.R. Co., et al.*, ICC Finance Docket No. 30800, 1988 WL 226818, at *5 (decided May 13, 1988); *see also* Decision No. 37, *Canadian National Ry. Co., et al.—Control—Illinois Central Corp., et al.*, STB Finance Docket No. 33556 (STB served May 25, 1999), slip op. at 18, n. 62 (noting that the "total annual net revenue gain of $90.3 million[] must be viewed as a private benefit (not a public benefit) of the CN/IC control transaction").

[88] 49 CFR § 1180.4(c)(8).

[89] *See, e.g.*, *Promoting Competition in the American Economy*, E.O. 14036, 86 Fed. Reg. 36987 (Jul. 9, 2021), *available at* https://www.govinfo.gov/content/pkg/FR-2021-07-14/pdf/2021-15069.pdf.

B. Applicants' Assumed Public Benefits Are Unsupported and Overshadowed by the Significant Risks of the Proposed Merger.

If the errors, exaggerations, and unsubstantiated claims in the Application are set aside, the potential *public* benefits that remain from the proposed transaction do not amount to much. While CP and KCS may be able to capture some modest traffic diversions (if there are no serious service problems), the Application offers few substantial and identifiable capital improvements to enhance the national rail network or benefit shippers, limited environmental benefits, no planned innovations to improve the customer experience, and no evidence that rates would fall or service would improve.

Importantly, the majority of CPKC single-line routes to which Applicants propose to divert traffic are substantially longer than the incumbent routing options. Specifically, as CP-KCS witnesses Brown and Zebrowski acknowledge, *the new CPKC single-line route would be, on average, 217 miles longer than the routes over which the diverted traffic actually moves today*.[90] Replacing a more efficient, less costly interline route with a longer, more circuitous single-line route does not benefit shippers. Moreover, Applicants have not committed to any rate reductions for shippers who agree to utilize CPKC's less efficient routes. Indeed, Applicants assume a 333 R/VC ratio on traffic they convert from other railroads.[91]

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[90] Brown & Zebrowski V.S. at 132, Table 6.

[91] Application, Vol. 1 at 74. CP-KCS assert that the merger will result in a $1.02 billion "Revenue Increase from Traffic Gains" (primarily from alleged diversions from other railroads), but that their "Cost of Handling Added Traffic" would be only

Neither would a combined CP-KCS improve service, particularly in light of the more circuitous CPKC routes. In addition, as discussed above, Applicants' inadequate capital investment plan—far from improving service—actually poses a serious risk even to maintaining current service levels. With the longer routes and minimal levels of investment Applicants have planned, shippers cannot expect increased capacity, faster transit times, lower rates, or innovative service offerings.

Applicants have shown little interest in developing truck-to-rail diversion opportunities. They estimate that the merger would take only 64,000 trucks per year off the road. By contract, CN's Responsive Application will divert more than 80,000 annual truck shipments to the Springfield Line alone. Applicants' seeming indifference to removing trucks from America's highways is a loss to shippers, local communities, and the Administration's environmental goals. In addition, Applicants have failed to protect—and will be incentivized to discourage—interline opportunities, which would increase competition and offer more routing options to the benefit of shippers.

In short, Applicants have merely asserted—but have not proven—that significant public benefits would flow from the proposed transaction. Repeating the mantra of "single-line service" is not evidence. And even assuming some portion of the projected traffic diversions will materialize, any potential benefits to shippers

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$306 million. *Id.* Applicants are thus assuming that they would realize an average revenue-to-variable-cost ratio metric ("R/VC") of 333% on diversion traffic.

would be, at best, modest and would be far outweighed by the significant risks to the public interest that this proposed transaction poses, discussed next.

III. THE APPLICATION DOWNPLAYS THE SERIOUS PUBLIC INTEREST RISKS OF THE PROPOSED MERGER.

A. The Net Competition Benefits of the Proposed Transaction Are Negative Unless Remedial Conditions are Proposed.

Applicants repeatedly assert that their merger threatens no competitive harm whatsoever. That is untrue for multiple reasons. First, Applicants simply ignore the competition harm caused by their proposed consolidation of parallel lines and their plan to forego investment in KCS's Springfield Line. Second, the vague gateway commitment in the Application is plainly insufficient to protect against vertical foreclosure concerns. If the Board approves the proposed transaction, it should at a minimum, impose robust conditions to protect competition, including divestiture of the Springfield Line to CN and a clear and enforceable gateway commitment. The need to impose such conditions here is supported by CP's historical conduct. KCS used to offer a competitive alternative to Iowa and Minnesota based on agreements with CP—agreements that CP refused to renew, thus eliminating that competitive option only three years before proposing to acquire KCS. The Board should view CP's alleged "commitment" to preserving robust competition in light of its actual past actions.

1. A combined CP-KCS is not a "pure" end-to-end merger and raises significant horizontal competition concerns.

In opposing the proposed CN-KCS merger, CP proffered the verified statement of Dr. W. Robert Majure, who broadly asserted that a merger between

railroads with parallel routes creates a horizontal threat to competition.[92] In his expert opinion, railroads that terminate or originate traffic within the same BEA are competitors.[93] For example, Dr. Majure treated CN's and KCS's lines in Mississippi as competitive even though they were many miles apart.[94] Indeed, Dr. Majure's analysis treated CN's and KCS's main north-south lines as competing even though they were separated by the Mississippi River.[95] Dr. Majure's analysis did not consider truck or barge competition to be of any relevance, focusing exclusively on loss of "rail choice."[96] Apparently convinced by CP's advocacy, the Board

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[92] Canadian Pacific's Reply to CN and KCS Joint Motion for Approval of Voting Trust, *Canadian National Railway Company, et al.—Control—Kansas City Southern, et al.,* STB Docket No. 36514 ("Canadian Pacific Reply") (filed June 28, 2021),Verified Statement of W. Robert Majure ("Majure V.S."), ¶¶ 49–50; *see also id.* ¶¶ 46–48; *id.* at 38–41.

[93] Majure V.S. ¶¶ 42–53.

[94] Applicants' Reply to Comments on Proposed Voting Trust Agreement, *Canadian National Railway Company, et al.—Control—Kansas City Southern, et al*., STB Docket No. 36514 (filed July 6, 2021), Reply Verified Statement of William J. Rennicke ("Rennicke Reply V.S."), at 40–41 (discussing Dr. Majure's competition analysis). The DOJ also raised concerns about mergers involving parallel lines, even when they do not serve the same origin-destination pairs. Comment of the U.S. Dep't of Justice, *Canadian National Railway Company et al.—Control—Kansas City Southern Railway Company, et al.*, STB Docket No. 36514, at 2 (filed May 14, 2021); *see also* Comment of the U.S. Dep't of Justice, *CSX Corporation and CSX Transportation, Inc., et al—Control and Merger—Pam Am Systems, Inc, et al*. STB Docket No. FD 36472, at 3 (filed Aug. 26, 2021).

[95] *Compare* Majure V.S. ¶ 48 & Ex. 4, *with* Rennicke Reply V.S. at 16, 32–33, 37–42.

[96] *Compare* Majure V.S. ¶¶ 5, 46, *with* Rennicke Reply V.S. at 22–23.

concluded that CN and KCS "operate parallel lines through the central portion of the United States…."[97]

Applicants now try to sweep CP's prior positions under the rug. They appear to hope that if they repeatedly assert their merger is a "pure" "end-to-end" combination, that will make it so.[98] Rhetoric, however, is not a substitute for facts. The CP-KCS merger raises a significant horizontal competitive concern that must be addressed by the Board.

As CN had demonstrated, the Springfield Line is part of a direct competitive alternative to CP's route between Kansas City and Chicago, and beyond to Detroit and Eastern Canada.[99]

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[97] *Canadian National Railway Co., et al.—Control—Kanas City Southern, et al.*, STB Docket No. FD 36514, at 28 (STB served Aug. 31, 2021).

[98] Application, Vol. I, at 20; *id.*, Creel V.S. ¶ 28. This hide-the-ball tactic stands in direct contrast to CN's treatment of horizontal competition issues in its proposed merger with KCS. There, CN expressly acknowledged the parallel KCS line between Baton Rouge and New Orleans, Louisiana and committed to divest the line on terms that would ensure no reduction in competition for shippers in that corridor. Joint Motion for Approval of Voting Trust Agreement, *Canadian National Railway Company—Control—Kansas City Southern*, STB Docket No. FD 36514 (filed May 26, 2021),Verified Statement of Jean-Jacques Ruest, at 3–5,; *id.*, Verified Statement of William J. Rennicke, at 4, 7, 10.

[99] Description of Anticipated Responsive Application, *Canadian Pacific Railway Limited, et al.—Control—Kansas City Southern, et al.*, STB Docket No. 36500 ("Notice of Responsive Application") (filed Jan. 12, 2022).

The Parallel CP and KCS Routes



This route can be used to move freight in competition with CP's parallel line, and shippers have in the past moved freight between Kansas City and Chicago using this line.[100] More recently, KCS expressed interest in, and touted the benefits of, investing to increase track speeds on this line to create a "Kansas City Speedway."[101]

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[100] *See, e.g.*, Decision No. 37, *Canadian National Railway Company, et al.—Control—Illinois Central Corporation, et al.*, STB Finance Docket No. 33556, 4 S.T.B. 122, 175 (1999) ("*CN-IC*") (recognizing that KCS and Illinois Central (now CN) were interchanging "three trains per week" via the Springfield interchange point at Cockrell).

[101] *See, e.g.*, Kansas City Southern, *Combination of CN & Kansas City Southern: Creating the Premier Railway of the 21st Century*, at 8–9 (July 2021), *available at* https://www.sec.gov/Archives/edgar/data/0000054480/000005448021000202/kcsinvestorpresentation .htm (stating that "Kansas City Speedway" would be a "new competitive route between KC, Detroit & Chicago").

Yet Applicants propose *no* incremental investment in the Springfield Line.[102] A combined CP-KCS will have little incentive to invest in the Springfield Line or to partner with CN to create the Kansas City Speedway or to invest in improvements on the line, because such pro-competitive actions would be inconsistent with their plan to concentrate traffic on CP's parallel route to Chicago.

As DOJ has explained in this proceeding[103] and elsewhere,[104] a combined CP-KCS will have an incentive to resist efficient interchanges with rival railroads that could divert traffic from CP's network. The Application confirms that concern, as the parties apparently plan to allow the KCS Springfield Line effectively to wither on the vine in favor of CP's parallel route. This not only prevents its use as a competitive option for through traffic, but also harms local customers on the line who will see no incremental investment and likely deteriorating rail service.

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[102] Notice of Responsive Application at 3–4 (citing Application, Vol. 1 at 41) (showing no planned capital investment on Springfield Line).

[103] *See* Comment of the U.S. Dep't of Justice, *Canadian Pacific Railway Limited et al.—Control—Kansas City Southern Railway Company, et al.*, STB Docket No. FD 36500, at 4 (filed Apr. 12, 2021 (observing that the pending merger would cause "KCS [to] make decisions regarding new track construction and old track closure with an eye toward interchanging KCS traffic with CP in the future. Such decisions may be at the expense of interchanges with other railroads, even though these other interchanges may be better for KCS's customers and KCS itself").

[104] *See* Comment of the U.S. Dep't of Justice, *CSX Corporation and CSX Transportation, Inc., et al.—Control and Merger—Pan Am Systems, Inc., et al.*, STB Docket No. 36472, at 3 (filed Aug. 26, 2021) (noting that if CSX were to acquire a stake in a line parallel to its own it could "undermine [its rivals] notwithstanding the joint venture by sabotaging this service and expecting to recapture traffic on its independent line").

Applicants appear to suggest that there is no competitive issue because CN's lines do not physically connect with KCS's at Springfield.[105] Applicants are wrong. In fact, CN's subsidiary, Illinois Central, has unrestricted trackage rights over UP to connect with KCS at Springfield, as recognized by the STB in its decision in the *CN-IC* merger.[106]

Further, and dispositively, Dr. Majure, Applicants' economist, acknowledges that { Redacted

}}[107] The fact that this traffic today is moved jointly by KCS in cooperation with a railroad other than CP contradicts Applicants' assertion that the Springfield Line is not "parallel" to CP's line.[108] Indeed, it directly raises the concern that the merger will eliminate KCS's existing incentives to facilitate the

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[105] Applicants' Reply to Canadian National's Description of Anticipated Responsive Application, *Canadian Pacific Railway Limited, et al.,—Control—Kansas City Southern, et al.*, STB Docket No. FD 36500, at 6 (filed Jan. 28, 2022).

[106] *CN-IC*, 4 S.T.B. at 190–99 (describing various trackage rights agreements relevant to KCS/IC Springfield interchange).

[107] Buried towards the end of his statement, Dr. Majure { Redacted

} *Id.*

[108] Applicants' Reply to Canadian National's Description of Anticipated Responsive Application, Canadian Pacific Railway Limited, et al.—Control—Kansas City Southern, et al., STB Docket No. FD 36500, at 6 (filed Jan. 28, 2022).

interchange of traffic with other railroads because it risks diverting traffic from CP after the merger.[109]

To be sure, the traffic volumes that currently move between Kansas City and Chicago over the Springfield Line are below the levels that are currently moved by CP over its parallel line.[110] But that does not mean that shippers today are not able to leverage the Springfield Line as a competitive threat when negotiating with CP, as Dr. Majure previously acknowledged.[111]

Moreover, even if there were *no* traffic being moved between Kansas City and Chicago today over the Springfield Line, there would still be a significant competitive concern. As noted, KCS has touted the potential for this line to be upgraded to create a Kansas City Speedway.[112] As described in CN's Notice of

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[109] In making this suggestion, Applicants are again quarreling with their own economist. Dr. Majure { Redacted }} Majure V.S. ¶ 54. And yet, KCS does not serve the Upper Midwest or Canada, which makes clear that corridor competition under Dr. Majure's argument includes interline routes.

[110] *Cf.* Majure V.S. ¶ 70.

[111] Majure V.S. ¶¶ 18–19, 38 (describing { Redacted }).

[112] *See, e.g.*, Bernstein Slides, at 5 (touting the "Kansas City Speedway – connecting CN's Midwest foothold and the KC region"); Kansas City Southern,, *Combination of CN & Kansas City Southern: Creating the Premier Railway of the 21st Century*, at 8–9 (July 2021), *available at* https://www.sec.gov/Archives/edgar/data/0000054480/000005448021000202/kcsinvestorpresentation .htm (stating the "Kansas City Speedway" would be a "new competitive route between KC, Detroit & Chicago").

Responsive Application, such a Speedway would provide enormous public interest benefits—preserving and renewing the route and doing more to benefit customers, including creating a more attractive option for moving freight between Kansas City and Chicago and then beyond to Michigan and Eastern Canada.[113] It would provide a far superior alternative to CP's more circuitous route and, CN projects, remove more than 80,000 trucks off the road annually.[114] The antitrust agencies have repeatedly recognized that significant competitive concerns arise where, as here, an acquiring company will have reduced incentive to deploy the acquired assets efficiently because of the concern that doing so will cannibalize the acquiring company's existing sales.[115]

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[113] *See generally,* Notice of Responsive Application.

[114] Application and Exhibits, *Canadian Pacific Railway, et. al.—Control—Kansas City Southern, et al.*, STB Docket No. FD 36500 (Sub-Nos. 1, 2, 3, 4) (filed Feb. 28, 2022) ("CN Responsive Application"), Verified Statement of David T. Hunt, at 8.

[115] *See* U.S. DEP'T OF JUST., ANTITRUST DIV., MERGER REMEDIES MANUAL 6–9 (Sept. 2020); Press Release, U.S. Dep't of Just, Antitrust Div., Just. Department Sues to Block Visa's Proposed Acquisition of Plaid (Nov. 5, 2020), https://www.justice.gov/opa/pr/justice-department-sues-block-visas-proposed-acquisition-plaid (asserting, *inter alia*, that Visa's acquisition of Plaid was likely to prevent Plaid from competing with it in the future); *United States v. Bazaarvoice, Inc.*¸ No. 13-cv-0013-WHO, 2014 WL 203966 (N.D. Cal. Jan. 8, 2014), https://www.justice.gov/atr/case-document/file/488846/download (similar); *cf.* Press Release, Fed. Trade Comm'n, FTC Challenges Illumina's Proposed Acquisition of Cancer Detection Test Maker Grail (Mar. 30, 2021) (similar), https://www.ftc.gov/news-events/press-releases/2021/03/ftc-challenges-illuminas-proposed-acquisition-cancer-detection.

2. CP's acquisition of KCS will fundamentally undermine KCS's existing incentives to interchange traffic with other railroads on commercially reasonable terms

The proposed merger will also reduce KCS's existing incentives to interchange traffic with other railroads on commercially reasonable terms, creating a significant threat to future rail competition. Today, KCS provides very little "single-line" service. According to STB data, approximately 87 percent of the traffic KCS carries is handled in partnership with another railroad.[116] Pre-merger KCS is, in essence, a neutral connecting carrier with strong incentives to work cooperatively with other railroads to exchange traffic on reasonable terms so that KCS and its partners can jointly serve shippers that individually neither could serve.

The proposed transaction will fundamentally change those existing incentives. Post-merger, Applicants will have a strong incentive to favor CP-KCS routings, to the detriment of other efficient routes in which other railroads participate with either KCS or CP today. KCS will seek to concentrate that traffic on the combined firm's routes, which serves many of the same geographic areas in the Midwest and Canada as CN. Working with CN, in contrast, would threaten to divert traffic from CP, reducing the revenues the combined company earns.[117] CP-

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[116] *See* STB 2019 Commodity Statistics Report for KCS, *available at* https://www.stb.gov/wp-content/uploads/files/econdata/QCS/KCS/2019/QCS-KCS-2019.xlsx (showing 13 percent of KCS traffic are local moves where KCS serves both the origin and destination—164,967 cars of local KCS movements out of 1,263,808 total movements).

[117] When CP-KCS serve a customer entirely over their own facilities, they keep all of the revenues earned. When KCS jointly serves a customer with another railroad such as CN, then those revenues are divided between KCS and the partner railroad.

KCS, for example, may not have an incentive to maintain service levels at efficient interchanges with other railroads or to quote competitive rates for movements that require participation of other railroads.

This agency has repeatedly recognized that an "end-to-end" rail combination, while generally efficient, can nevertheless raise significant vertical competition concerns: "[In an end-to-end merger], the consolidated system may profit by limiting the 'downstream' competition [from connecting carriers] and routing traffic over its own lines from origin to destination.… This vertical foreclosure effect will occur, if at all, at the gateways served commonly by the consolidating carriers."[118] DOJ has likewise recognized the potential for vertical competitive harm from end-to-end

[118] *Lamoille Valley R.R. Co. v. ICC*, 711 F.2d 295, 319 (D.C. Cir. 1983) (quoting *Union Pac. Corp.—Control—Mo. Pac. Corp.*, 366 I.C.C. 462, 529 (1982)); *see also* Decision No. 44, *Union Pac. Corp., et al.—Control & Merger—Southern Pac. R.R. Co., et al.*, 1 S.T.B. 233, 365 (1996) (recognizing that "[v]ertical effects [may] occur where the merging parties connect end-to-end"); *Union Pac. Corp., et al.—Control—Missouri Pacific Corp. and Missouri Pacific Railroad Co.*, 366 I.C.C. 462, 514 (1982) ("A vertical effect can occur if one of the consolidating carriers formerly interchanged traffic with both its consolidation partner and other carriers in providing joint line services over a particular gateway. The transaction then may result in the foreclosure of the nonincluded carrier from competing in the markets it formerly served."); *Norfolk S. Corp.—Control—Norfolk & W. Ry. Co., et al.*, 366 I.C.C. 173, 216 (1982) ("An end-to-end consolidation … may allow the system to divert traffic from remaining competitors and hence foreclose their opportunity to compete in the marketplace. … Such diversions can have anticompetitive effects."); *Guilford Transp. Indus., Inc.—Control—Bost. & Me. Corp.*, 366 I.C.C. 294, 341 (1982) ("We have previously found that end-to-end rail consolidations can directly reduce competitive alternatives … for shippers located at common points on the consolidating systems").

transactions—indeed, it has raised this concern with respect to the CP-KCS merger itself.[119]

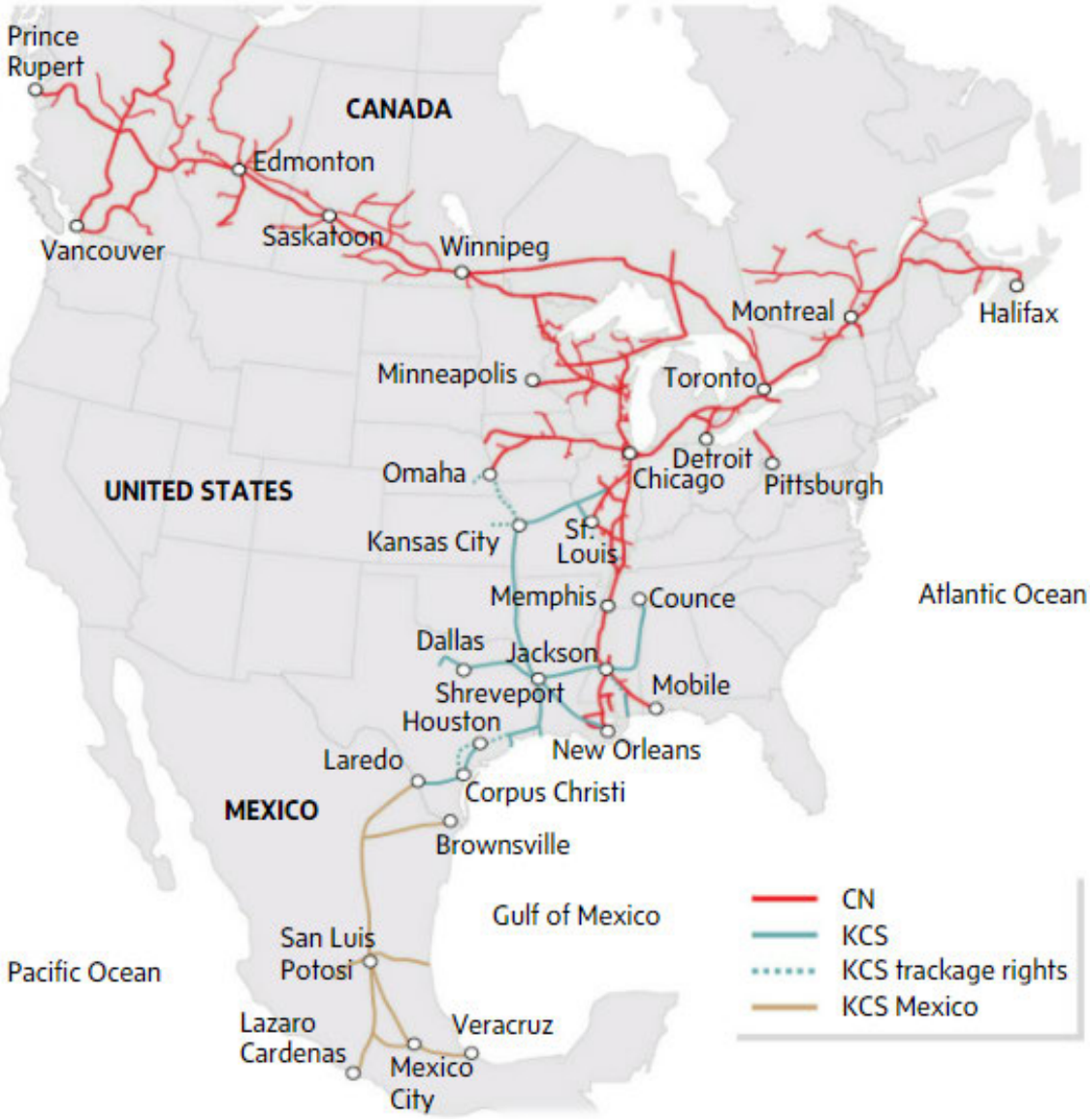
Of particular concern is that post-merger KCS will have reduced incentive to interchange traffic with CN at Jackson, Mississippi—an exchange that illustrates the points made above. As KCS has previously recognized, there is a significant commercial opportunity to connect origins and destinations in Mexico and Texas on its network with destinations in the upper Midwest and Canada on CN's network.[120] The interchange at Jackson is a critical link for CN and its customers to reach origins and destinations in Mexico and Texas. After the merger, however, a combined CP-KCS will be concerned that interchanging at Jackson with CN and other railroads will divert traffic away from the legacy CP network, which connects with KCS at Kansas City, and through that route, services large parts of Canada and the Midwest. The following maps illustrate this point.

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[119] Comment of the U.S. Dep't of Justice, Canadian Pacific Railway Limited et al.-Control-Kansas City Southern Railway Company, et al., STB Docket No. 36500, at 4 (filed Apr. 12, 2021) (after the merger, KCS will make operational and investment decisions with an "eye toward interchanging KCS traffic with CP").

[120] *See, e.g.*, Joint Motion for Approval of Voting Trust Agreement, Canadian National Railway Company, et al.-Control-Kansas City Southern, et al., STB Docket No. FD 36514 (filed May 26, 2021), Verified Statement of Patrick J. Ottensmeyer at 8–9.

CN and KCS Networks Efficiently Connect at Jackson to Serve Traffic Flows between Texas/Mexico and the Upper Midwest/Canada



CP and KCS Will Have an Incentive to Favor CP-KCS Routes between Texas/Mexico and the Upper Midwest/Canada



The Application underscores this concern. In connection with the CN-KCS merger proposal, KCS recognized that the merger would allow shippers to move industrial goods between Texas and Mexico, on the one hand, and Detroit and Ontario, on the other, via Jackson. However, the Application projects a material *decrease* in KCS's interchange traffic with CN and other railroads at Jackson, while traffic on the competing CP-KCS route via Kansas City is expected to increase substantially.[121] Indeed, the core assumption of CP-KCS's claims of volume growth from the merger is that a substantial volume of traffic that CP and KCS currently

[121] *See* Application, Vol. 2 at 305 (showing decrease in cars moving through Jackson yard even under CP-KCS "growth plan").

move in joint-line service with other railroads will instead move on single-line CP-KCS service.[122] Applicant's post-merger strategy is further revealed by the fact that *the Application identifies $276 million in planned capital investment in the proposed CPKC north-south mainline between Sabula Jct., IA, and Beaumont, TX, while no capital investment dollars are earmarked for KCS's Springfield Line.*[123]

This vividly illustrates the danger that a combined CP-KCS will set prices and degrade service to push shippers to their own long-haul routes unless significant enforceable protections are imposed as merger conditions. Applicants' operating plan thus confirms the need for the Board to impose meaningful, enforceable conditions to ensure that gateways remain open on commercially reasonable terms.

Ultimately, and as conceded by Applicants,[124] the issue is what conditions the Board should impose to address these concerns, not whether any conditions should be imposed. Given the foregoing facts, no other position would be tenable. However,

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[122] *See* Applicants' Reply to "Comments" Seeking Rejection of Application Filed October 29,2021, *Canadian Pacific Railway Limited, et al.-Control-Kansas City Southern, et al.*, STB Docket No. 36500, at 3 (filed Nov. 16, 2021) (asserting that CP-KCS single-line service would replace 80,356 UP interline moves, 38,342 BNSF interline moves, 15,439 CSXT interline moves, and 9,540 CN interline movements). To be sure, single-line service can potentially offer shippers substantial benefits and some amount of diversion can be expected from the new CP-KCS single-line service will be able to offer. However, as explained above, Applicants' diversion estimates are overstated because their single-line offerings are frequently inferior to existing, substantially shorter routes and they appear to envision charging commercially unreasonable rates.

[123] *See* Application, Vol. 2, Operating Plan (Exhibit 13) at 85, Table 8.

[124] *See* Application, Vol. 1 at 233.

the vague commitments that Applicants have proffered to date are facially inadequate and would not address the fundamental concern that the merger will eliminate KCS's existing incentive to act as a neutral connecting carrier and work cooperatively with other railroads to serve shippers that KCS cannot today service by itself. CN explains some of the key contours required for an effective gateway commitment in Section IV below.

3. CP's pre-merger actions to foreclose competition from KCS raise serious concerns.

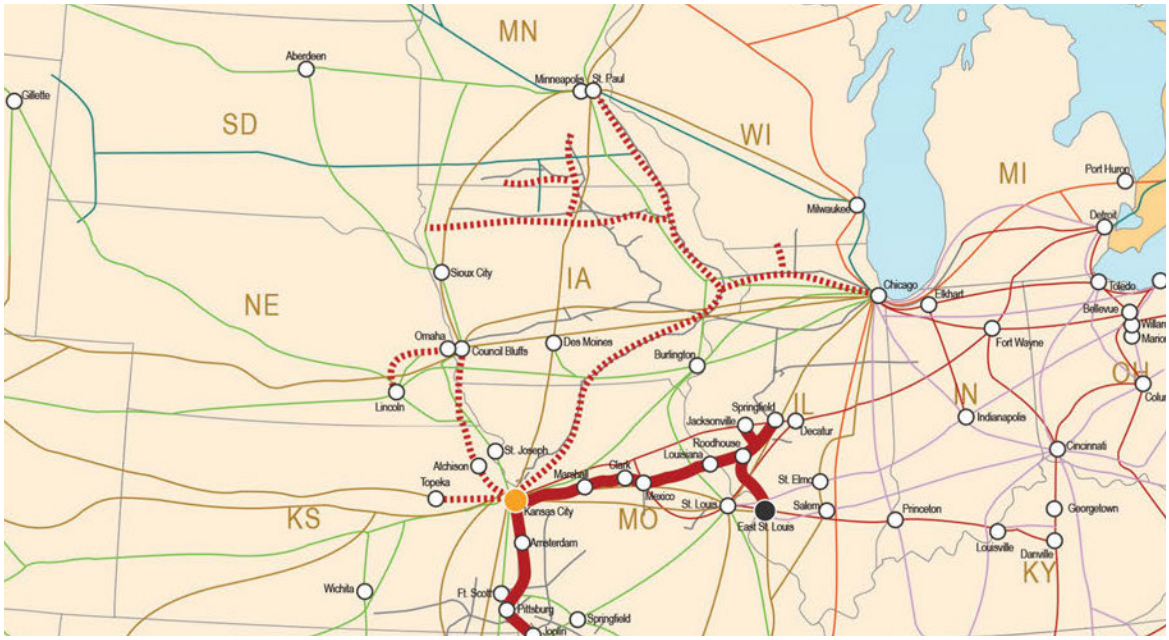
KCS formerly had hundreds of miles of haulage rights over CP lines, which enabled KCS to compete for grain traffic moving from Iowa and Minnesota to destinations on the KCS network, and for chemicals, forest products, and other carload traffic moving between Kansas City and Chicago, based on other agreements with the Dakota, Minnesota and Eastern ("DM&E") and Iowa, Chicago, and Eastern Railway ("IC&E") (collectively, "DME"), entered in 1997.[125] After CP acquired control of DM&E and IC&E, it refused to renew those agreements. As a result, "no customer is jointly served by CP and KCS" today only because CP

[125] Specifically, a "Grain Agreement" that provided KCS with ratemaking authority for the transportation of grain from IC&E-served origins in Iowa and Minnesota to KCS-served destinations in the south-central United States and a "Chicago Agreement" that gave KCS ratemaking authority for rail service over the IC&E route between Kansas City and Chicago for chemicals, forest products, and other carload commodities. *See* Decision No. 11, *Canadian Pacific Railway Company, et al.—Control—Dakota, Minnesota & Eastern Railroad Corp., et al.*, STB Docket No. FD 35081, at 11 (STB served Sept. 30, 2008) ("*CP-DME*"); *see also* Comments of the Kansas City Southern Railway Company and Request for Conditions, *Canadian Pacific Railway Company, et al.—Control—Dakota, Minnesota & Eastern Railway Corp., et al.*, STB Docket No. 35081, at 8–11 filed Mar. 4, 2008).

unilaterally extinguished KCS's access to those customers four years ago, converting customers with access to both KCS and CP into customers solely served by CP.

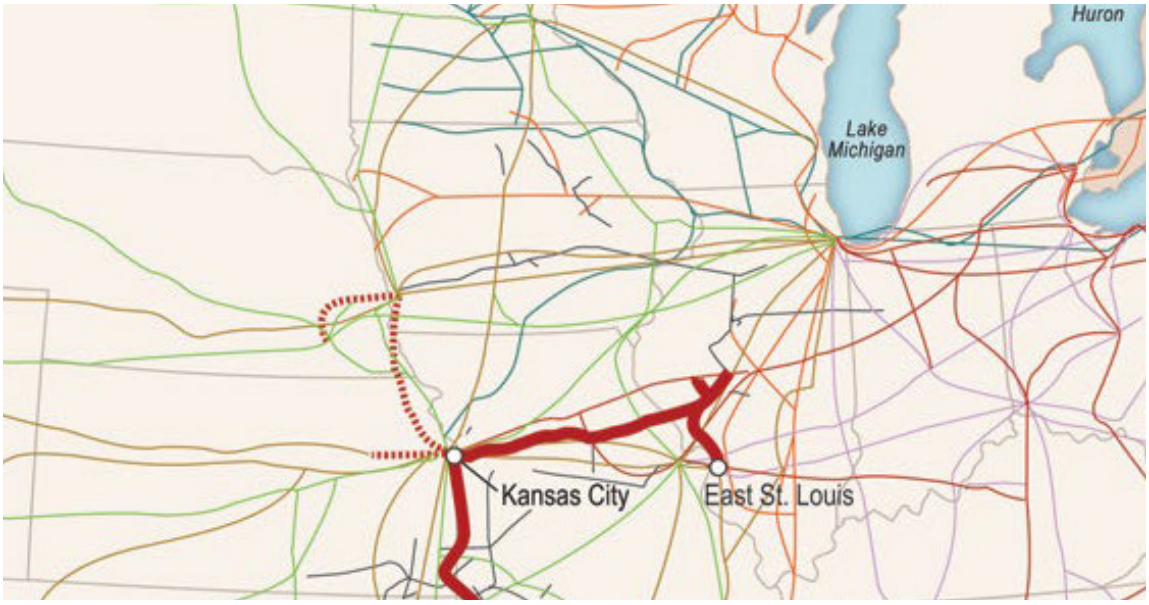
The impact of CP's unilateral action is illustrated by looking at the difference between KCS's system maps in 2017 and 2018. KCS's market reach over CP's lines was markedly reduced after the Grain Agreement expired:

KCS System Map in 2017 (northern portion)[126]



[126] *See* Exhibit 9, Excerpts from 2016 KCS Annual Report. This excerpts the northern portion of the KCS system; the entire map is in Exhibit 9.

KCS System Map in 2018 (northern portion)[127]



CP should not be allowed to claim no competitive harm where the absence of competition results from its own anti-competitive behavior. This history is all the more reason for the Board to ensure strong conditions are in place to prevent CP from using its position to decrease competition on the network.

B. The Application's Inadequate and Unreliable Operating Plan Poses A Serious Risk to the Post-Merger Service of CPKC and Other Rail Carriers.

One of the Board's primary concerns in connection with its review of railroad mergers is their potential for post-consummation service disruptions. When commenters raised objections to CP's and KCS's request that the Board assess their merger under the old rules, they noted that one of the main catalysts for the updated 2001 merger rules was the experience of severe service disruptions that

[127] *See* Exhibit 10, Excerpts from 2017 KCS Annual Report. This excerpts the northern portion of the KCS system; the entire map is enclosed at Exhibit 10.

occurred following several 1990s mergers.[128] For that reason, interested stakeholders asked the Board to apply the new rules so that, among other things, CP and KCS would be required to submit a Service Assurance Plan.

In response, Applicants made a promise to the STB. They pledged that if they were permitted to proceed under the old rules, they would provide an effective equivalent by giving the Board "all the information [the Board] needs to satisfy itself that Applicants have carefully planned for the integration of these railroads and will implement measures to monitor and adjust service levels during the integration process so that shippers' service levels are safeguarded . . ."[129]

Applicants have broken that promise. They did not submit a Service Assurance Plan with the Application, or anything like it. The Application includes only a vague reference to a "Service Assurance Team."[130] However, when asked for documents related to that group in discovery, Applicants responded that there were none. When asked to explain the group in his deposition, CP witness Mr. Brooks admitted that the group had not even been formed yet, and that Applicants had no plans to publicly report on its work, publish any metrics or benchmarks, or develop

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[128] CSX Transportation, Inc. Comments with Respect to Rules Applicable to this Proceeding, *Canadian Pacific Railway Limited, et al.—Control—Kansas City Southern, et al.*, STB Docket No. FD 36500, at 2 (filed Apr. 1, 2021); Comments of the United States Department of Justice, *Canadian Pacific Railway Limited et al.—Control—Kansas City Southern Railway Company, et al.*, STB Docket No. FD 36500, at 8 (filed Apr. 12, 2021).

[129] Applicants' Reply to Objections to KCS Waiver, at 19.

[130] *See* Application, Vol. 1, Verified Statement of John Brooks ¶ 51.

contingency plans for merger-related disruptions.[131] A mere reference to a "Service Assurance Team" that does not currently exist and that apparently would carry out its work in secret plainly does not provide "all the information [the Board] needs to satisfy itself that Applicants have carefully planned for the integration of these railroads . . ."

Indeed, the Operating Plan itself makes clear that Applicants have not carefully planned for post-merger service—or at least that they have not undertaken detailed capacity analyses or developed a detailed capital investment plan that will limit the potential for service disruption. On the contrary, the Application and Operating Plan contain a myriad of inconsistencies and methodological errors that should raise alarms about service disruptions.[132]

First, as discussed above, Applicants' Operating Plan is based on traffic data, a blocking plan, and a train service plan that have not been shown to be truly representative of CP and KCS Base Year (2019) traffic and operations. In addition, Applicants arbitrarily altered the outputs of their MultiRail model (*e.g.*, by removing from their train counts and tonnages any train that did not traverse 25 percent or more of the nodes in a subdivision). These methodological flaws render

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[131] Exhibit 5, Excerpts from Transcript of February 4, 2022 Deposition of John Brooks ("Brooks Dep."), at 210:22–212:18.

[132] *See CSX Corp. and CSX Transp., Inc., Norfolk S. Corp. and Norfolk S. Ry. Co.—Control and Operating Leases/Agreements—Conrail Inc. and Consolidated Rail Corp.*, STB Docket No. FD 33388, 3 S.T.B. 196, 249 (1998) ("We are mindful of the fact that the recent *UP/SP* merger was followed by serious service problems resulting from a variety of factors, a significant one being a rail infrastructure that is inadequate to meet the rapidly increasing demand for rail service ….").

the Operating Plan fatally deficient. This, in turn, means that the Operating Plan cannot reliably support the development of accurate operating statistics (including trains, train miles and GTMs), operating expenses, capital requirements or equipment needs for the merged railroad. These critical components of the Operating Plan must be accurate to assure the Board that service will not be disrupted.

Second, accurate estimates of line density, train counts, and yard activity[133] "are critical to demonstrating that a merged railroad will be able to move projected post-merger traffic over the network without degrading service."[134] Significantly, in their reply to CN's Notice of Responsive Application, *Applicants disavowed their own density data provided in Application Exhibit 14.*[135] Accurate estimates of train counts and line density are essential to identifying line segments where capital investment may be required to maintain fluid train service. Likewise, accurate estimates of yard activity are necessary to identify yards with insufficient capacity to handle the projected post-merger increase in switching work. As demonstrated

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[133] *See* 49 C.F.R. § 1180.8(b)(1) (requiring applicants to provide three specific items in the operating plan for first year in which it will be implemented: (i) traffic density (tonnage) maps or tables for all main and secondary network line segments, (ii) train counts for all main and secondary network line segments, and (iii) a list of all yards anticipated to experience activity growth of 20 percent or more).

[134] Van Dyke Verified Statement at 19.

[135] *See* Applicants' Reply to Canadian National's Description of Anticipated Responsive Application, *Canadian Pacific Railway Ltd., et al.—Control—Kansas City Southern, et al.*, STB Docket No. FD 36500, at 9 n.7 (filed Jan. 28, 2022) (claiming three times that density figures from Exhibit 14 were "figures presented by CN").

above, none of these critical elements of Applicants' Operating Plan is reliable or valid. The traffic density tables and maps contain numerous material errors, for example, omitting unit trains and using unsupported "calibration factors." The projected changes in yard activity portrayed in the Operating Plan are inconsistent with the data in Applicants' environmental filing and significantly underestimate intermodal yard traffic. Contravening Board rules, the Application fails to accurately identify all yards with a projected 20 percent change in activity level (*e.g.*, Port Arthur, Texas).[136] These are not merely "theoretical" failures—inaccurate train counts, density projections, and yard activity estimates can lead to service failures that spread throughout a network.

Third, even assuming that the Operating Plan were valid, the Application is deeply flawed because Applicants chose not to use its outputs to estimate the merged railroad's operating expenses. The GTMs, train-miles, and car-miles generated by an operating plan are customarily used to calculate the merged railroad's operating expenses, equipment needs and capital expenditure requirements. Here, Applicants instead developed a "System Model" that was divorced from the Operating Plan, and they based their operating expense estimates on a spreadsheet of values that was likewise unrelated to the Operating Plan. Like the Operating Plan itself, Applicants' operating expense calculations are unreliable and do not provide a credible basis for the Board to assess the potential for service disruptions.

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[136] Van Dyke V.S. at 24.

Fourth, Applicants' operating expense estimates are based only on "synergy growth" (i.e., the amount of additional traffic that CPKC would gain by diverting shipments from other railroads and trucks) and do not account for the Application's projected "organic growth" (i.e., the amount of additional traffic occurring as a result of general economic and business conditions during Years 1-3). The omission of "organic growth" resulted in massive errors. For example, while the Operating Plan projected an annual increase in train-miles of roughly {{Redacted}} by Year 3, Applicants' operating expense estimates reflect an increase of only {{Redacted}} train-miles per year. Likewise, the Operating Plan projects an increase in GTMs of {{Redacted}}, while operating costs assume an increase of only {{Redacted}} GTMs. The Board can have no assurance that the merged railroad has accurately forecast its operating expenses.

In short, the Application offers no assurance that this major merger will not be disruptive. To the contrary, Applicants' defective and deficient evidence creates ample cause for concern about the potential for serious post-merger services disruption. Moreover, even where the proponents of a merger have submitted realistic and reliable evidence, the Board has, in recent years, imposed a condition providing for post-merger oversight for five years to monitor the actual effects of the merger on rail service. Indeed, the Board has made such oversight a standard condition in major merger proceedings governed by the new merger rules. Under the circumstances present here, and in light of Applicants' unfulfilled promise to

address service assurance in their Application, the Board should impose a five-year oversight period here.

C. Applicants' Unsubstantiated Growth Synergies, Combined with CP's Plan to Not Reduce Earnings, Poses Significant Public Interest Risks.

The proposed CP-KCS merger raises serious financial concerns. Indeed, it flunks the very test that CP has proposed to evaluate the potential financial consequences of a merger of Class I railroads. The combination of the massive debt being assumed by CP with patently unrealistic growth projections will likely leave CP starved for cash. This in turn will inevitably lead to post-merger CP cutting service or leveraging its increased market power to enhance the revenues it needs to service its debt. The merger is thus likely to disserve the public interest, with potentially severe consequences for shippers, interconnecting railroads, and the national economy.

In opposing CN's proposed merger with KCS, CP conducted a financial analysis of the transaction and concluded that:

(1) "CN Will Take on a Very High Level of Debt," "[t]he proposed transaction will CN's leverage to levels that CN has not incurred in the recent past," and CN's debt leverage would be "materially higher than that of any other Class 1 railroad over the last decade;"[137]

(2) After the transaction, CN's rate of return on investment ("ROIC") would fall below its historic and target levels;[138] and

[137] Exhibit 4, Verified Statement of Mark E. Zmijewski ("Zmijewski V.S.") ¶ 20 (quoting Velani V.S. at 6, 8).

[138] *Id.* ¶ 40.

(3) CN had failed to conduct stress testing of its projections using conservative assumptions, demonstrating that CN is "leaving no margin for error," calling into question its ability to repay its debt and retain investor confidence.[139]

Based on this analysis, CP reached the following conclusion:

> CN's targeted rate of return will not be achieved based on the synergies CN forecasts, which will place pressure on CN to boost returns in other ways, such as through cost-cutting, or — more plausibly — reaping the benefits of reduced competition ….[140]

In his attached verified statement, Professor Mark Zmijewski, a Professor at the University of Chicago Booth School of Business, has applied CP's own analysis of the proposed CN-KCS merger to CP's proposed acquisition of KCS.[141]

Straightforward application of CP's financial test shows that:

- "CP is taking on a high level of debt that will substantially increase CP's leverage, and thus, its financial risk;"[142]
- CP's leverage ratios are as high as the CN leverage ratios CP criticized, and higher than its target ratio;[143]
- a credit rating analysis of CP post-acquisition "further corroborate[s] the conclusion of substantially increased financial risk";[144]
- CP's post-transaction ROIC will fall far below its historic and target levels;[145] and

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[139] *Id.* ¶¶ 17, 29.

[140] *Id.* ¶ 5 (quoting Velani V.S. at 11).

[141] To be sure, CN does not agree with all aspects of CP's prior analysis, which CN showed was exaggerated and flawed. But CP cannot now complain about application of its own financial "stress-test" to its proposed acquisition of KCS.

[142] Zmijewski V.S. ¶ 20.

[143] *Id.* ¶ 28.

[144] *Id.* ¶ 20.

[145] *Id.* ¶ 40.

- stress-testing CP's transaction with conservative projections about post-transaction growth and revenues reveals that CP would be subject to the same anti-competitive incentives it predicted for CP.[146]

More specifically, in criticizing CN's leverage in connection with its proposed transaction, CP noted that it would be "materially higher than that of any other Class I railroad over the last decade," highlighting that as of 2020 "the highest leverage amongst other Class I railroads is 3.0 times Adj. Debt/EBITDA, materially lower than the contemplated 4.8 times adjusted debt/EBITDA for CN."[147] That standard is fatal to CP. Applying that very standard, Professor Zmijewski shows CP's "[u]nconsolidated leverage ratios are as high as CN's leverage ratios, and based on both sets of forecasts, CP's leverage ratios are higher than the Target Leverage Ratio of 2.5x."[148] Indeed, Professor Zmijewski demonstrates that CP's $8.2 billion acquisition debt "pushes the leverage ratio above the thresholds associated with investment grade credit rating."[149]

Likewise, again using the same analysis CP did of CN's transaction, Professor Zmijewski has shown that CP's post acquisition ROIC would be substantially lower than CP's historical ROIC and target ROIC of roughly 15%.[150] In its 2021 SEC Form 8K filing, however, CP shows that while it had a ROIC of 16.7 percent in 2020—consistent with its historical ROIC—that number fell dramatically

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[146] *Id.* ¶¶ 36, 38.

[147] *Id.* ¶ 28 (quoting Velani V.S. at 8–9).

[148] *Id.* ¶ 28.

[149] *Id.* ¶ 37.

[150] *Id.* ¶ 40.

to 8.2 percent in 2021 after the KCS acquisition.[151] Even using CP's optimistic forecasts of synergies submitted to the STB, "the expected ROIC in the post-acquisition period ranges between 7.0% and 9.1% and is well below CP's 15% target ROIC even with a full credit of [CP's] Claimed Efficiencies."[152] In this scenario, CP would have to "more than double its unleveraged earnings" to achieve an ROIC close to its 15% target.[153] Critically, moreover, using a more conservative forecast of synergies arising from the merger, "the expected ROIC in the post-acquisition period … falls even lower into the 5.7 to 6.3% range."[154]

Finally, in connection with CN's proposed merger, CP highlighted the importance of stress testing a transaction to determine whether a company can manage its debt if optimistic projections are not realized. Indeed, CP criticized CN for allegedly failing to do so and accused CN of adopting a strategy that "leaves no margin for error."[155] Despite CP's (incorrect) criticism of CN on this point,[156] CP failed to stress test its own proposed acquisition.

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[151] *Id.* ¶ 52.

[152] *Id.* ¶ 56.

[153] *Id.* ¶ 56.

[154] *Id.* ¶ 58.

[155] *Id.* ¶ 29.

[156] *See* Applicants' Reply to Comments on Proposed Voting Trust Agreement, *Canadian National Railway Co., et al.—Control—Kansas City Southern, et al.*, STB Docket No. FD 36514 (filed July 6, 2021), Exhibit 4, Reply Verified Statement of Mark Zmijewski at 15–25 (showing multiple stress tests in extreme financial distress scenarios).

All of the financial risks described above become worse if, as is likely, CP's rosy synergy and growth projections do not come to pass. As described in other sections of these Comments, CP's projections are built on data riddled with errors and illogical assumptions. If CP's claimed revenue gains and operating efficiencies are not realized, then "CP would be $2.2 billion short of the free cash flow that is necessary to de-lever the company by Year 4 to a level consistent with CP's historical leverage."[157] Yet CP's ability to successfully manage the financial risk associated with its transaction depends on CP's ability to de-leverage the company by aggressively repaying its debt.

The post-merger combination of CP's high leverage and low ROIC—and CP's likely inability materially to improve its financial position in the way it forecasts—raise significant public interest concerns under 49 U.S.C. § 11324(b)(5). After asserting that CN could not meet its stated ROIC targets based on the synergies CN projected in connection with its acquisition of KCS, CP asserted that CN "must have based its investment decision on some unstated set of strategic benefits CN expects to realize. The most plausible explanation is that CN's investment is justified by CN's anticipated increase in market power — giving it greater pricing power."[158] That was nonsense—and CN proved its confidence in the projected growth benefits of its then-proposed transaction by committing to a review under the new merger rules with enhanced competitive conditions. But if one accepts that a railroad that

[157] Zmijewski V.S. ¶ 34.

[158] *Id.* ¶ 59.

fails to realize projected merger synergies would be motivated to make up the difference by behaving anti-competitively—these same conclusions "equally apply to, and are equally valid for, CP's acquisition of KCS."[159]

At a minimum, these financial considerations raise serious concerns about the "effect of the proposed transaction on the adequacy of transportation to the public."[160] As CP itself has stated, in the circumstances presented here, CPKC will likely face a cash crunch and seek to boost profits by cutting costs and reducing capital investment, with inevitable, negative consequences for service quality.

IV. CONDITIONS ARE NECESSARY TO ENSURE THE PUBLIC INTEREST IS PROTECTED.

Given the serious deficiencies and inaccuracies of the Application, the Board must impose conditions if it approves the proposed merger to protect the public interest.

A. If the Board Approves the Merger, It Should Order Divestiture of the Springfield Line to CN as a Condition of the Merger

In light of the competitive concerns and threat to the adequacy of post-merger transportation discussed above, the Board should require divestiture to CN's U.S. subsidiary, Illinois Central, of the Springfield Line.[161] Divestiture would (i) ensure that this important asset will be efficiently utilized to preserve the Kansas City to Chicago corridor and to provide an efficient competitive option in the Kansas City to

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[159] *Id.*

[160] 49 U.S.C. § 11324(b)(1).

[161] Notice of Responsive Application at 1.

Chicago corridor, (ii) restore and upgrade the Springfield Line, (iii) improve transportation options and increase rail-to-rail competition, and (iv) take more than 80,000 long-haul trucks off of the nation's highways annually. CN proposes to develop the "Kansas City Speedway" that KCS envisioned prior to its agreement to merge with CP. To this end, CN has committed to invest approximately $250 million to create a high speed, direct route between Kansas City and Chicago.[162] These investments would be used to increase the speed of the entire route to at least 40 mph and to add intermodal and automotive terminal capacity, among other improvements.

This would preserve and foster competition and give rail shippers a far more efficient way of shipping between Kansas City and Chicago, and beyond to Michigan and Eastern Canada. CP's service to these areas is limited by restrictions on its trackage rights and other operational constraints. In contrast to CP, CN would be able to serve intermodal and automotive shippers in Michigan and Ontario over its own tracks, providing shippers with a far more efficient way of reaching Kansas City.

CN projects that this route could annually take more than 80,000 long-haul trucks off the road—more than CP-KCS project for their entire post-merger

[162] *Id.* at 5, 7.

network.[163] This would generate significant environmental benefits in the form of reduced greenhouse gas emissions.

Applicants do not dispute that the Board has authority to order divestiture. The Board has express statutory authority from Congress to order the "divestiture of parallel tracks" as a condition of approving a merger and in furtherance of its authority to ensure a merger serves the public interest.[164]

To be sure, the Board will not "lightly" order divestiture, and any divestiture remedy should be "tailored" to the concerns that have been identified.[165] But CN's proposal satisfies these criteria. CN is seeking only targeted divestiture of the Springfield Line (including ancillary rights to access yard facilities in the Kansas City terminal area). Divestiture here is necessary to ensure that this key asset connecting Kansas City with CN's line to Chicago will remain available to provide efficient and competitive rail service, whereas, absent the requested condition, CP will have little (if any) incentive to deploy the assets efficiently.

Indeed, the antitrust authorities routinely seek divestiture in these circumstances.[166] "Structural remedies are strongly preferred in merger cases

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[163] *See* CN Responsive Application, Verified Statement of David T. Hunt, at 8; Application, Vol. 1 at 23, 310 (asserting that CP-KCS will divert 64,000 trucks to rail annually).

[164] 49 U.S.C. § 11324(c).

[165] Applicants Reply to Responsive Application at 7–8.

[166] *See* U.S. DEP'T OF JUST., ANTITRUST DIV., MERGER REMEDIES MANUAL 6–9 (Sept. 2020); Press Release, U.S. Dep't of Just, Antitrust Div., Just. Department Sues to Block Visa's Proposed Acquisition of Plaid (Nov. 5, 2020), https://www.justice.gov/opa/pr/justice-department-sues-block-visas-proposed-

because they are clean and effective, and they avoid ongoing government entanglement in the market."[167] Divestiture is also needed for CN to make the "Kansas City Speedway" a reality, which will benefit shippers of intermodal and automotive traffic moving between Kansas City, on the one hand, and Detroit and points in Eastern Canada, on the other hand.

Finally, Applicants would not be harmed by this divestiture, except to the extent it would be used to provide meaningful competition to CP's parallel line between Kansas City and Chicago and Detroit.[168] As explained in the Responsive Application in FD 36500 (Sub-No.1), CN would grant KCS haulage rights to serve all customers on the Springfield Line and to interchange with other carriers at interchange points along the Line. No local customer on the Springfield Line would lose a rail option—to the contrary, most of those shippers would gain access to an additional rail alternative.

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acquisition-plaid (asserting, *inter alia*, that Visa's acquisition of Plaid was likely to prevent Plaid from competing with it in the future); *United States v. Bazaarvoice, Inc.*¸ No. 13-cv-0013-WHO, 2014 WL 203966 (N.D. Cal. Jan. 8, 2014), https://www.justice.gov/atr/case-document/file/488846/download (similar); Press Release, Fed. Trade Comm'n, FTC Challenges Illumina's Proposed Acquisition of Cancer Detection Test Maker Grail (Mar. 30, 2021) (similar), https://www.ftc.gov/news-events/press-releases/2021/03/ftc-challenges-illuminas-proposed-acquisition-cancer-detection.

[167] Comments of the U.S. Dep't of Justice, *CSX Corporation and CSX Transportation, Inc., et al.—Control—Pan Am Systems, Inc., et al.*, STB Docket No. FD 36472, at 6 (filed Aug. 26, 2021) ("*CSX-Pan Am*") (citing U.S. DEP'T OF JUST., ANTITRUST DIV., MERGER REMEDIES MANUAL 13 (Sept. 2020)).

[168] *Cf.* Applicants Reply to Responsive Application at 8.

As discussed previously, Applicants apparently do not plan on making the investments necessary to maintain their existing customer base or serve new customers, whereas CN's planned improvements would *increase* the speed at which trains could be operated on the Springfield Line, benefiting all shippers who rely on the line, including those that would choose to ship their freight via CPKC pursuant to the haulage arrangement.[169] CN's planned investment would also increase line capacity, again benefiting all shippers on the line, including those that would choose CPKC haulage service.

B. The Board Should Impose Conditions Needed to Prevent a Combined CP-KCS from Engaging in Foreclosure.

In CN's proposed acquisition of KCS, CN addressed possible "vertical" concerns forthrightly and committed to significant conditions to address them financially. Specifically, CN committed to keep existing gateways open on commercially reasonable terms, not on the basis of maximum regulatory rate-setting methodologies, and to promptly arbitrate disputes before a neutral.[170]

Applicants have conceded that they must provide a remedy to address the vertical concerns raised by the merger, but offered only vague promises: They stated that the combined company will "maintain efficient operations" and "offer commercially reasonable rates and terms."[171] Notably, Applicants did not identify

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[169] *See* CN Responsive Application, Exhibit 13 (Operating Plan).

[170] *See* CN-26/KCS-9, Applicants' Reply to Comments on Proposed Voting Trust Agreement, *CN-KCS* (July 6, 2021), Reply Verified Statement of James Cairns, at 11–12.

[171] *See* Application, Vol. 1 at 233.

what "gateways" are covered by their commitment.[172] Nor did they provide any detail as to how this commitment would be enforced, other than potential Board enforcement on an individual, post-hoc basis, which would be highly inefficient and fail to offer meaningful assurances of competitive joint-line service.[173] Indeed, ultimately revealing the lack of substance to the merging parties' commitment, the Application stated that CPKC will work "to find ways to make these commitments more concrete and readily enforceable."[174]

As explained below, the Board should tighten and strengthen the vague gateway commitments offered by Applicants. In this regard, in their depositions, Applicants' own witnesses effectively conceded the gateway conditions as proposed were not sufficient and that additional protections were appropriate. At the same time, as revealed by the deposition testimony, Applicants appear to intend to enforce an "affected traffic" restriction on the availability of the gateway condition that was not disclosed in the Application. The Board should make clear that Applicants cannot adopt this new restriction. Finally, consistent with gateway conditions that CN offered in connection with its proposed acquisition of CP, the

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[172] Subsequent developments increase the need for skepticism of CP-KCS's "trust us" approach. In discovery responses, CP and KCS named only seven locations that would be covered by their gateway commitment: Chicago, St Paul, Jackson, Shreveport, Laredo, Robstown, and Kansas City). *See* Applicants' Responses to CN's First Discovery Requests at 70. That list omits numerous gateways where CN exchanges traffic with CN or KCS, including gateways at the Canadian border for cross-border traffic (Vancouver; Superior, Wisconsin; Noyes, MN); East Dubuque, Illinois; Superior, WI; Baton Rouge, Louisiana; and Hattiesburg, Mississippi.

[173] *See* Application, Vol. 1 at 233.

[174] *Id*.

Board should adopt binding arbitration as the means to resolve disputes over whether Applicants are offering commercially reasonable terms.

1. Although CN believes the gateway conditions proposed by Applicants remain a second-best remedy with respect to the vertical concerns it has identified,[175] at a minimum, the Board must clarify and strengthen the vague commitments proposed by Applicants. Indeed, CP itself has in the past argued that vague assurances that merging parties will agree to keep gateways open on "commercially reasonable" terms are insufficient to protect competition and that clear and enforceable terms are necessary.[176]

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[175] As discussed above, CN's principal concern is how the merger will change KCS's incentives with respect to working with CN to serve customers in Mexico. Requiring CPKC to grant CN haulage rights between Jackson and Laredo, Texas would be a superior solution to the gateway conditions Applicants have proposed here. A haulage condition would largely eliminate CPKC's ability to block CN from competing because CN would be able to independently price traffic to Laredo, paying a fixed fee to CPKC to haul traffic on CN's account. However, CN understands a key portion of the line between Jackson and New Orleans (the so-called "Meridian Speedway") is jointly owned and operated by NS and KCS. CN further understands the contractual arrangement between NS and KCS may restrict KCS's ability to grant haulage rights, and thus NS would likely contend that the Board cannot order KCS to grant haulage rights to CN. Because of this contractual restriction, CN is not now seeking a haulage condition. Of course, if the Board concludes haulage is the only condition that can fully ameliorate the competitive concerns raised by the CP-KCS merger, it could condition the merger on CPKC securing the necessary rights to provide haulage to CN. At a minimum, however, if the Board approves the merger subject to gateway conditions, the Board should make clear that it will permit parties to seek haulage in the future if the Applicants do not in fact provide commercially reasonable rates and services as they have committed to do.

[176] Brooks Dep., Ex. 5 at 2 (CP comments).

Notably, in his deposition testimony, CP's Chief Marketing Officer, John Brooks, "clarified" the gateway commitments in important respect. The Board should hold Applicants to these representations.

- On behalf of Applicants, Mr. Brooks clarified that a "gateway" means "the interchange point that would link two carriers." He agreed that "any location where two railroads interchange or link together" is a "gateway."[177]

- Mr. Brooks effectively abandoned the Applicant's position that a rate would be "commercially reasonable" merely because it was below the maximum lawful rate that would be permitted by the Board.[178] Instead, Mr. Brooks agreed that to be "commercially reasonable" the rate must be one that would give the customer a "choice" and that a "high gateway rate" that would "force traffic to [Applicants'] single-line routes" "would not be acceptable."[179] Mr. Brooks also acknowledged that this "commercially reasonable" rate commitment applies both to a shipper's request for "interline rates" as well as a competing carrier's request for a "commercially reasonable divisions."[180]

- Mr. Brooks acknowledged Applicants' commitment also extended to non-rate terms. Just as Applicants could foreclose competition by charging high joint rates to shippers that want to reach CP-KCS's rivals, they could also do so by degrading the quality of the interchange with those

[177] Brooks Dep. at 21:23–22:2.

[178] Brooks Dep. at 82:11–14, 103:23–104:2. While Applicants acknowledged that "interline options via these gateways must be commercially viable" to provide meaningful competition to its own service, the Application itself merely stated that they were committing to offering a "Rule 11" rate—that is, a rate between the gateway and a shipper location that could theoretically be challenged before the Board. *See* Application, Vol. 1 at 233.

[179] Brooks Dep. at 210:12–21.

[180] *Id.* at 94:22–95:5, 96:21–97:7.

rivals.[181] Thus, Mr. Brooks acknowledged that Applicants needed "to provide the best quality service we can provide to the interchange."[182]

The need to hold Applicants to Mr. Brooks' clarifications is reinforced by the testimony of Dr. Majure. CP's expert economist, Dr. Majure, admitted that his conclusion that the transaction would not result in anticompetitive foreclosure at locations like Laredo was entirely predicated on the general applicability and the efficacy of the types of conditions imposed by the STB in the *KCS/Tex-Mex/TFM* decision—that is, Dr. Majure did not offer any opinion that the transaction was unlikely to result in harm to competition absent these conditions being universally applied to the combined CP-KCS.[183] And, as the Board knows, these conditions include the right of connecting carriers to challenge a rate, and service commitments to mitigate the possibility of non-price foreclosure.[184]

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[181] *See, e.g.*, *CSX Corp.—Control—Am. Com. Lines, Inc.*, 2 I.C.C.2d 490, 515 (1984) ("In our competitive analysis, we will consider whether the proposed transaction would create or enhance the ability of CSX and ACBL to maintain rates above competitive levels, or to reduce or eliminate nonprice competition, in the relevant transportation markets."); *see also* U.S. Dep't of Justice & Fed. Trade Comm'n, Vertical Merger Guidelines 4 (June 30, 2020) (noting that foreclosure can occur, *inter alia*, by lowering product quality) (withdrawn by FTC on other grounds).

[182] Brooks Dep. at 209:16–210:3; *see also id.* at 209:6–11 (agreeing that with respect to "the quality of interchange service at a gateway" that Applicants' "intent would be to preserve the service there").

[183] Exhibit 6, Excerpts from Transcript of February 7, 2022 Deposition of W. Robert Majure, Ph.D., at 92:7–94:13.

[184] *See* NITL-3, Comments and Statement of Support on behalf of the National Industrial Transportation League, *Kansas City Southern—Control—Kansas City Southern Ry. Co. et al.*, STB Finance Docket No. 34342 (filed Aug. 4 2003) (attached as Exhibit 1 to the Verified Statement of John Brooks). These conditions include an arbitration requirement, as discussed further below.

2. On the other hand, discovery revealed that CP-KCS intend to engraft a limitation on their gateway commitment that was nowhere mentioned in their Application. In his deposition testimony, Mr. Brooks stated for the first time that Applicants' gateway condition only applied to "affected" movements. The thrust of this limitation appears to be that Applicants will only agree to provide commercially reasonable interline rates or division for movements where a combined CPKC would, *for the first time*, be able to provide competing single-line service (or at least a longer portion of the movement that it previously could).[185]

As a matter of economics, foreclosure concerns are not raised solely where a competitor seeks to move traffic between the same origin and destination as a new CP-KCS single-line movement. As the Board has recognized, geographic competition means that movements between different origins and destinations can still compete with each other. Geographic competition exists when a shipper can "obtain[] the same product from a different source, or by shipping the same product to a different destination . . ."[186] DOJ raised this very concern with regard to the CP-KCS merger.[187] Thus, Applicants would still potentially have incentive to

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[185] *See* Brooks Dep. at 89:13–19. Mr. Brooks, however, was unable to articulate a clear standard for what constitutes "affected traffic" that would be entitled to the gateway protection commitment *See id.* at 94:3–7, 123:15–126:9, 126:15–129:25.

[186] *See* Decision, *Market Dominance Determinations—Product and Geographic Competition*, STB Docket No. EP 627, at 1 (STB served Dec. 21, 1998); *see also* Decision, *Major Rail Consolidation Procedures,* STB Docket No. EP 582 (Sub-NO. 1), 2001 WL 648944, at *11 (STB served June 11, 2001).

[187] Comment of the U.S. Dep't of Justice, *Canadian Pac. Ry. Ltd., et al. – Control – Kansas City S. Ry Co., et al.*, STB Finance Docket No. FD 36500 (filed April 12,

refuse to interchange traffic with rivals even via routes where they do not themselves provide single line service, but where that route may be attractive as an alternative to a shipper that they do serve.

In addition, it is not clear whether Applicants' limitation would apply only where the exact same origin-destination is served by a combined CP-KCS. So, for example, it is unclear whether Applicants would provide commercially reasonable access at Kansas City where a rival is seeking to provide interline service from New Orleans to Minneapolis—a route that CP-KCS could provide as single-line service—but where the rival's customer in Minneapolis is not currently a CP customer or able to access CP's facilities in Chicago.

For these reasons, the Board should reject Applicants' attempted after-the-fact limitation on its gateway commitment. It would eliminate competitive protections in instances where Applicants may still have incentive to foreclose competition and invite countless disputes as to whether a particular route qualified.

3. Notwithstanding the foregoing, key aspects of how Applicants' gateway commitments would actually be implemented remain unclear. Applicants acknowledge that "CP isn't promising to agree with shippers on a more concrete standard for what it means for a rate to be commercially reasonable."[188] Rather, as

2021), at 9 ("[R]ailroads can also compete through 'source competition'—that is, the ability of shippers to choose between railroads that can carry their goods to (or receive goods from) different endpoints.").

[188] Brooks Dep. at 100:2–5.

Mr. Brooks conceded, Applicants are "just saying [they will] talk [with shippers] and try to develop some sort of standard."[189]

CN agrees with Applicants in so far as they are saying it would be difficult—if not impossible—to prescribe *ex ante* a rate formula that would ensure a particular rate in connection with a particular movement for a particular route is commercially reasonable. Whether a particular rate or division provides a commercially viable alternative to CP-KCS will depend on a host of factors, such as the length of the move, the nature of the freight, the extent of intermodal, geographic and source competition, and the point of interchange. As Applicants acknowledge, given these factors, there will undoubtedly be "good faith" disagreement as to whether a particular interline rate or division offered by CP-KCS is, in fact, "commercially reasonable."[190]

It is essential that such disputes be resolved promptly and efficiently. Otherwise, CP-KCS could potentially preclude competition simply by threatening to force resolution of any dispute by litigation before the Board. The potential costs involved in such litigation would deter shippers and carriers alike from invoking their rights and the inherent delay would likely render even favorable decisions of little value because the commercial opportunity will have vanished. At a minimum, Applicants should be required to commit to prompt arbitration of all disputes over

[189] *Id.* at 100:6–19.

[190] *Id.* at 102:7–103:2.

commercially reasonable rates, similar to the commitment in the NITL settlement agreement that was incorporated into the *Tex Mex* conditions.[191]

C. Applicants Should Be Required to Provide A Service Assurance Plan or Its Equivalent.

In light of the errors, inconsistencies, and illogic embedded in Applicants' Operating Plan, which cascade into the Application's projected operating expenses and investment planning, service disruptions are a serious concern. Applicants received approval to proceed under the old rules after expressly committing to provide the Board with adequate information to ensure that the merger would not result in service disruptions. Yet the Application provides no such assurance and gives rise to serious concerns. In this setting, the Board should require Applicants to provide a Service Assurance Plan or its equivalent. Merger applicants under the old rules have provided such plans,[192] and it is clearly appropriate to require such a plan here.

The Board should also impose an oversight period of at least five years. The Board has done so in past mergers, and Applicants would be required to do so

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[191] National Industrial Transportation League (NITL) Letter Filing, STB Docket No. FD 34342 (filed Aug. 5, 2003), Attached Agreement, at 3 § 6.

[192] *See, e.g.*, Decision No. 10, *Canadian National Railway Company, et al.—Control—Wisconsin Central Transportation Corporation, et al.*, STB Docket No. FD 34000, at 20 (STB served Sept. 7, 2001) ("[E]ven with a *minor* transaction, there is a need to assure the Board that service is not compromised, particularly during the implementation of the transaction. With this in mind, applicants have provided a Service Assurance Plan … to assure the Board and affected shippers that all aspects of the implementation planning process have been fully considered." (emphasis added)).

under the new rules.[193] The oversight period should include required reporting on whether merger benefits have been achieved, compliance with conditions, and any merger-related harms. The Board should retain jurisdiction to impose additional conditions as needed and to entertain additional conditions requests from parties. The deficiencies in this Application and operating plan require no less.

CONCLUSION

For the reasons stated in these Comments, Applicants have failed to carry their burden to show that this merger is in the public interest. At the very least, the conditions requested, including the divestiture of the Springfield Line to CN, should be imposed to prevent the harms to public interest that the merger threatens.

[193] *See* Final Rules, *Major Rail Consolidation Procedures*, STB Docket No. EP 582 (Sub-No. 1), at 10 (STB served June 11, 2001); *CSX/NS-Conrail,* 3 S.T.B. at 217 ("we are establishing oversight for 5 years so that we may assess the progress of implementation of the CSX/NS/CR transaction and the workings of the various conditions we have imposed").

Respectfully submitted,

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Dated: February 28, 2022

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of February 2022, a copy of the foregoing Comments on Application and Request for Conditions was served by first class mail or email on the service list for Finance Docket No. 36500.

/s/ Matthew J. Warren
Matthew J. Warren

Exhibit 1

Verified Statement of David Hunt

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 36500

CANADIAN PACIFIC RAILWAY LIMITED; CANADIAN PACIFIC RAILWAY COMPANY; SOO LINE RAILROAD COMPANY; CENTRAL MAINE & QUEBEC RAILWAY US INC.; DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION; AND DELAWARE & HUDSON RAILWAY COMPANY, INC. – CONTROL – KANSAS CITY SOUTHERN, THE KANSAS CITY SOUTHERN RAILWAY COMPANY, GATEWAY EASTERN RAILWAY COMPANY, AND THE TEXAS MEXICAN RAILWAY COMPANY

CN'S COMMENTS ON APPLICATION AND REQUEST FOR CONDITIONS

Verified Statement of David T. Hunt

February 28, 2022

PUBLIC VERSION

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1. Qualifications

My name is David T. Hunt. I am a Vice President with Oliver Wyman, a global general management consulting firm with more than 60 offices in 31 countries. My office address is 1 University Square, Suite 100, Princeton, NJ 08540.

Oliver Wyman is a leading general management consulting firm. We maintain one of the largest practices in the world dedicated to the transportation and logistics sectors. Oliver Wyman's transportation clients include national and regional governments on six continents, as well as many of the world's largest users of rail services, railroads, motor carriers, leasing companies, and industrial and consumer manufacturing firms.

I have been a consultant in the transportation sector for more than 35 years. I joined Oliver Wyman in 2008, specializing in strategic planning, regulatory issues, and operations for freight railroads and other freight transportation providers. Prior to joining Oliver Wyman, I was a consultant at Cambridge Systematics, Wilbur Smith Associates, and ALK Associates. While at ALK from 1983 through 2000, I provided services to clients in connection with all of the Class I railroad mergers that occurred during that time period. I also was responsible for the annual calibration of and updates to ALK's Advanced Traffic Diversion Model that was used in ICC and STB merger proceedings. I hold a bachelor's degree in civil engineering from West Virginia University and a master's degree in civil engineering and operations research from Princeton University. My resume is included in Appendix A.

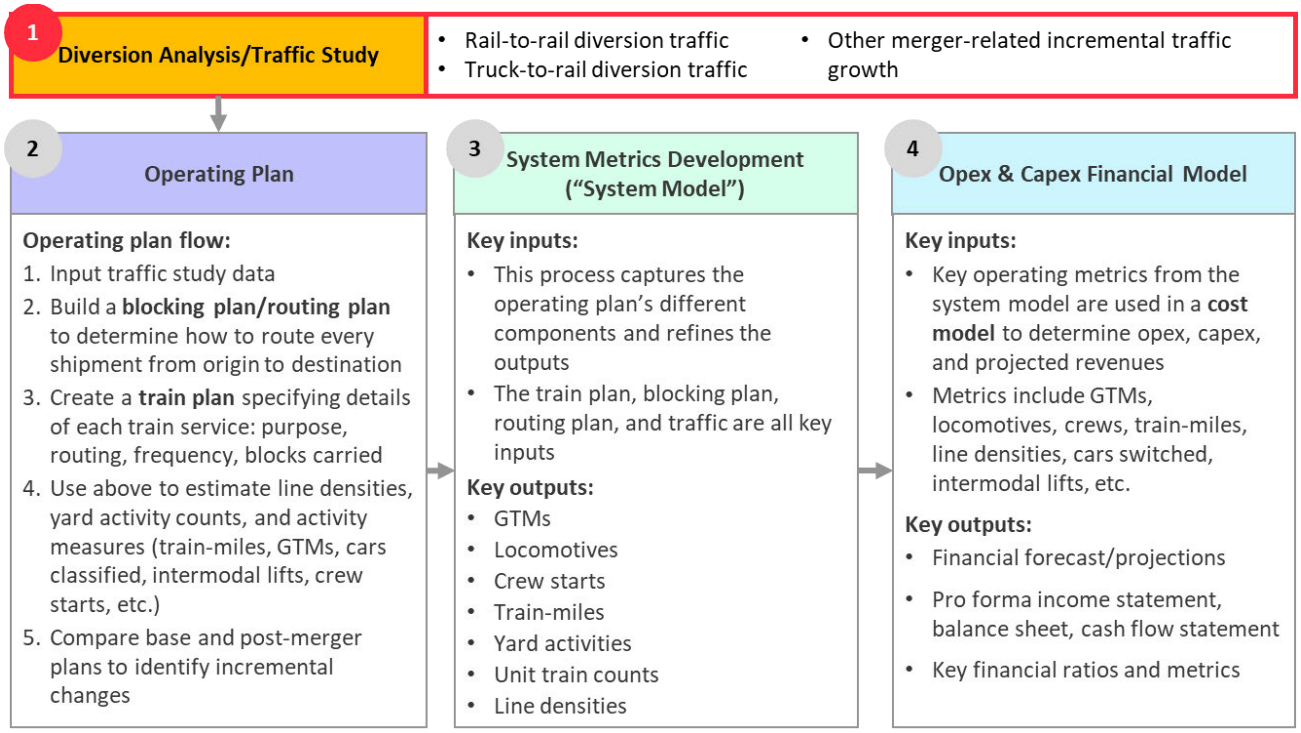
2. Assignment and Summary of Findings

I have been asked to review and comment on Applicants' testimony regarding the traffic diversions and associated revenues that are likely to be achieved by the merged CPKC as a result of the proposed transaction. Specifically, my testimony focuses on the traffic and revenue synergies from rail-to-rail diversions projected by witnesses Richard W. Brown and Nathan S. Zebrowski, the truck diversions posited by witness Mutén, and the additional traffic and revenue sources identified by witnesses Jonathan Wahba and Michael J. Naatz (in their corresponding Verified Statements and work papers to the Application).

As shown in Exhibit 2-1, complete and accurate traffic and revenue data is the fundamental building block of the major merger application required by Board regulations.[1] Accurate operating plans, operating statistics, and financial exhibits must be predicated on reliable traffic projections. As shown below, Applicants' traffic diversion estimates (and associated revenues) are vastly overstated. Exhibit 2-1 illustrates the relationship between traffic projections and other elements of a merger application.

[1] The required content applicable to the CP/KCS major merger application is set forth at 49 CFR 1180.7 through 49 CFR 1180.11 (2000).

Exhibit 2-1: Elements of a reliable merger plan: the operating plan and financial model are dependent on the accuracy of Applicants' traffic projections[2]



The Application claims that the proposed merger will generate $1,021.9 million in incremental revenue[3] from rail-to-rail diversions, truck-to rail diversions, and (what Applicants characterize as) "growth initiatives."[4] The Applicants' traffic diversion studies, however, are based on flawed methodologies, unsupported assumptions, and erroneous calculations that render their traffic and revenue estimates invalid. Indeed, *Applicants' merger-related revenue projections appear to be overstated by more than $520.2 million. When corrected, Applicants' adjusted merger-related revenue projection is $501.8 million. The overstatement is more than*

[2] Exhibit 2-1 depicts the logical connection between traffic, operating, and financial elements of the application explicitly cited in the Canadian National-Illinois Central and Norfolk Southern-Conrail merger proceedings. *See* Finance Docket No. 33556, Railroad Control Application, Surface Transportation Board, July 1998 (CN-IC merger) and Finance Docket No. 33388, Railroad Control Application, Surface Transportation Board, June 1997 (Conrail merger). Oliver Wyman has been unable to find a clear connection between Applicants' traffic studies, operating plan, and financial model in the Canadian Pacific-Kansas City Southern Application or work papers.
[3] Application Vol. 1, p. 141. All revenue figures in this report are in 2019 US dollars.
[4] FD 36500 – Work Paper – HC – Growth Initiative Calculations.xlsx.

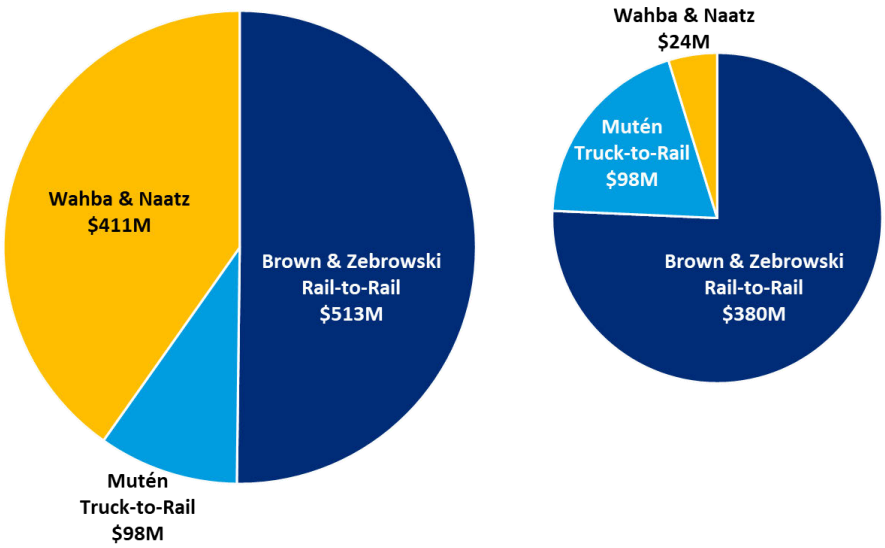
100 percent; i.e., the revenue gains claimed by Applicants are more than double the plausible incremental revenues that could be supported based on the traffic data provided in the Application and supporting work papers.

3. Applicants' Incremental Traffic and Revenues of $1.02 Billion Are Overstated by $520 Million and Are Inaccurate

Exhibit 3-1 identifies the amount of incremental revenue that Applicants' traffic witnesses claim the CPKC system will gain by Year 3 by diverting traffic from other railroads and motor carriers and from certain new business opportunities, and the amount of such incremental revenue that is realistic based on my testimony.

Exhibit 3-1: Applicants' projected incremental revenue gains from the proposed merger (left chart) and corrected totals (right chart)[5]

In 2019 US dollars



[5] Verified Statement of Richard W. Brown and Nathan S. Zebrowski, Application Vol. 2, p. 166, Table 28; Verified Statement of Bengt Mutén, Application Vol. 2, pp. 223-224; FD 36500 - Work Paper - HC - Growth Initiative Calculations.xlsx.

Reliable traffic volume and revenue estimates are critical to virtually every other element of the Application. A feasible operating plan must be based on an accurate count of cars and trains moving along the network. The incremental increase in traffic volume likewise informs decisions regarding the capital investment required to handle that traffic safely and efficiently. Accurate train data is essential to measuring the environmental impacts of the proposed transaction. From a financial perspective, the reliability of incremental traffic and revenue estimates determines the accuracy of Applicants' expense projections and pro forma financial exhibits.

The incremental traffic and revenue estimates presented by Applicants' traffic witnesses are inaccurate and vastly overstated, for a variety of reasons. In particular, I find that:

- The rail-to-rail traffic diversions projected by witnesses Brown and Zebrowski are based on critical conceptual flaws and significant calculation errors that result in a substantial overstatement of the incremental revenue likely to be achieved as a result of the merger. Witnesses Brown and Zebrowski apply fixed diversion percentages of 25, 50, or even 75 percent that are unsupported by any credible rationale. The Brown and Zebrowski traffic study also contains substantial calculation and conceptual errors. Finally, witnesses Brown and Zebrowski inflated their diversions of grain and forest products traffic with a random, unsupported five percent "market share increase."[6] The result of these flaws in the Brown and Zebrowski analysis is an overstatement of rail-to-rail traffic diversion revenues attributable to the proposed merger of at least $133 million.
- Applicants took the unusual step of "supplementing" the diversion estimates sponsored by their expert traffic witnesses (Brown, Zebrowski, and Mutén) with a verified statement by CP witness Wahba and KCS witness Naatz, who purport to identify "additional revenue opportunities" for the merged CPKC system. These additional traffic volumes and revenues – *which account for $411 million or 40 percent of the total incremental revenue gains set forth in the Application* – are based on unrealistic

[6] Brown and Zebrowski V.S., Application Vol. 2, ¶42 and ¶81.

assumptions and unsupported claims, including attributing to the merger *traffic movements in which CP and/or KCS already participate today* and other traffic gains that were excluded by Applicants' expert traffic witnesses. Those assumptions, inconsistencies, and conceptual errors invalidate as much as $387 million (out of the total of $411 million) in additional revenue opportunities posited by witnesses Wahba and Naatz.

In all, I estimate the $1,021.9 million in new revenue estimated by the Applicants' diversion witnesses should be reduced to at most $501.8 million in legitimate, plausible merger-related revenue gains. Corrections required to produce more realistic post-merger incremental revenue gains are shown in Exhibit 3-2.

Exhibit 3-2: Applicants' diversion estimates adjusted for incorrect assumptions, inconsistencies, and conceptual errors[7]

$ millions

Category		Adjusted Total
Applicants' Estimated New Revenue - Total	$ 1,021.9	
Brown & Zebrowski Overstatement of Revenue Due to Error	$ (47.4)	$ 974.5
Brown & Zebrowski Grain and Lumber Arbitrary 5% Gain	$ (86.0)	$ 888.5
Wahba & Naatz Crude Oil Movement Announced in 2019, Prior to Merger	$ (158.1)	$ 730.4
Wahba & Naatz Lazaro Cardenas Intermodal Unlikely Due to High Circuity	$ (107.0)	$ 623.4
Wahba & Naatz "Missed" by Other Experts - Grain	$ (36.7)	$ 586.7
Wahba & Naatz "Missed" by Other Experts - LPG	$ (30.5)	$ 556.2
Wahba & Naatz "Missed" by Other Experts – Perishables	$ (54.4)	$ 501.8
CPKC Revenue Adjusted for Mistakes, Overreach, and Poor Assumptions		**$ 501.8**
Revenue Overstatement		**$ 520.2**
Percent Revenue Overstated		**104%**

For the Applicants' diversion estimates to be achievable, shippers would have to agree to use longer rail routes and pay higher rates. The Applicants acknowledge that *the average route for rail-to-rail diversions on CPKC is 217 miles longer than the average route on current rail*

[7] Oliver Wyman work paper Corrected Revenue Summary.xlsx.

carriers.[8] Increased route length leads to increased shipment times, which impacts rail customers through the need for larger fleets to move the same traffic. Furthermore, as I demonstrate in Section 4.2, there are numerous cases where the incremental revenue assigned to CPKC greatly exceeds the revenue received by the existing carrier, in some cases by over 60 percent.[9]

4. Applicants' Rail-to-Rail Diversion Estimates Are Not Based on a Credible Methodology and Are Overstated by More Than $133 Million

Applicants' estimated rail-to-rail traffic diversion revenues are conceptually and arithmetically wrong. Revenues are significantly overstated for the following reasons:

- Witnesses Brown and Zebrowski use a simplistic rule-based modeling methodology that ignores the impact of route circuity on how divertible traffic is likely to be. This conceptual error undermines the validity of Applicants' operating plan, capital investment evidence, and assessment of environmental impacts.
- The methodology used by witnesses Brown and Zebrowski to allocate revenue to diverted traffic leads to an implausible result: According to their calculations, CPKC's post-merger revenues from diverted traffic shipments will, in many instances, substantially exceed the revenue currently earned by the railroads hauling that traffic today. This leads to at least a $47.4 million overstatement of revenue.
- Brown and Zebrowski's traffic diversion model applies simplistic rules that are not supported by data or other credible evidence. Moreover, their projected diversions include unjustified additions of traffic outside the model. Despite modeling specific origin-destination based grain and forest product shipments that could divert to CPKC, Brown and Zebrowski add to their totals an additional 5 percent market share increase

[8] Brown and Zebrowski V.S., Application Vol. 2, p. 132, Table 6.
[9] FD 36500 – Work Paper – HC – 8 - Diversion Identification.xlsx, Calculations tab, Row ID=6422. CN received {{ }} for a shipment from Jackson, MS to Chicago, IL. CPKC was given {{ }} in incremental revenue for this projected diversion, in constant 2019 dollars. This is an increase of 62 percent.

for these products, which they distribute equally across multiple locations.[10] These flaws result in an $86 million overstatement of revenue.

- An error in converting Canadian dollars to US dollars further inflates some of the revenues associated with diverted traffic.

I estimate that, collectively, these fundamental flaws in witnesses Brown and Zebrowski's analysis generate an overstatement of achievable revenue for the merged railroad from rail-to-rail diversions of more than *$133 million or 26 percent of the total of $513 million in rail-to-rail diversions projected by those witnesses*.

4.1 The simplistic modeling methodology employed by witnesses Brown and Zebrowski ignores the effect of route circuity and diverts traffic from customers over longer CPKC routes

The relationship between route length and route choice is a well-established concept in transportation modeling.[11] This idea is both simple and intuitive: the least-cost route between an origin and a destination is likely to capture the greatest share of traffic, where cost is a function of distance.[12] The traffic diversion models used in prior Class I railroad merger cases have consistently recognized this principle. Indeed, Applicants' own witness, Bengt Mutén, testifies that "distance between end points" was found by his former colleagues at Reebie Associates to be one of "the primary drivers of intermodal market share."[13] CP witness Mutén's truck-to-rail diversion model includes two parameters based on route distance: overall truck distance and the difference between truck and rail distances.[14]

[10] Brown and Zebrowski V.S., Application Vol. 2, ¶42 and ¶81.
[11] Route choice models use cost or travel time, both of which are a function of distance. *See, e.g.,* Chapter 7.2 "Route Choice," in Transportation Demand Analysis, Adib Kanafani, McGraw-Hill Book Company, New York, NY, 1983.
[12] The Board's Uniform Rail Costing System (URCS) lists distance as one of the mandatory parameters used in the railroad costing process. "Railroad Cost Program," Surface Transportation Board, User's Manual, December 2011, p. 1.
[13] Mutén V.S., pp. 17-18, ¶46.
[14] Mutén V.S., pp. 17-18, ¶46.

From a rail customer perspective, switching traffic from a shorter to a longer route can lead to increased transit times and higher transportation costs. If customers use private railcars, increased transit times require the purchase or lease of additional cars to move the same quantity of traffic, since the cycle time (origin to destination and back to origin) for each car will increase. Longer transit times also lead to increased inventory costs, since a shipment in transit is not available for productive use. Finally, switching to longer-distance routes increases the variable costs of a shipment, and these increased costs must be absorbed either by the railroad or the customer.

It appears that witnesses Brown and Zebrowski initially recognized the importance of distance in rail market share. They conducted a statistical analysis comparing the relationship between rail carriers' length-of-haul and their historical market share. But the results of their analysis – which purported to find "a weak correlation between the relative shares of traffic among the available routing options and the movement mileage for those options"[15] – are utterly inconsistent with both prior traffic diversion modeling and witness Mutén's truck-to-rail diversion analysis.

Using their flawed analysis as justification, witnesses Brown and Zebrowski set aside customary traffic diversion modeling principles and instead applied a set of fixed percentage-based diversion rules that are not supported by data. In an attempt to dismiss the competitive advantage enjoyed by a carrier whose route is shorter than that of a potential new entrant, witnesses Brown and Zebrowski arbitrarily assumed that any time CPKC will compete head-to-head with another railroad for single-line service, CPKC will divert a 25 percent share of traffic

[15] Brown and Zebrowski V.S., Application Vol. 2, p. 131; Mutén V.S., pp. 17-18, ¶46; FD 32549, Mark Hornung, V.S., ALK Associates.

regardless of the competing carriers' respective lengths of haul,.[16] They assigned this same arbitrary diversion percentage rule to each traffic lane involving a single-line competitor they studied, regardless of distance, asserting (without explanation or analysis of particular movements) that their percentages are "reasonable and conservative."[17]

To demonstrate the fallacy of their assumption, consider the example in Exhibit 4-1. It shows that witnesses Brown and Zebrowski assigned the same 25 percent traffic diversion share regardless of whether the new CPKC single-line service route would be shorter than the existing route – such as New Orleans, LA to Superior, WI – or drastically longer, such as New Orleans to Elkhart, IN. It is simply not credible to believe that CPKC could divert the same percentage of traffic in these two lanes; nor do witnesses Brown and Zebrowski support their conclusion with any logical or established traffic analysis. The fact that Brown and Zebrowski mechanically attribute the same diversion percentage to these vastly different scenarios highlights the degree to which their approach is flawed.

[16] Brown and Zebrowski V.S., Application Vol. 2, p. 132, Table 6 and p. 183, ¶16.
[17] Brown and Zebrowski V.S., Application Vol. 2, p. 183, ¶16.

Exhibit 4-1: Witnesses Brown and Zebrowski use the same diversion percentage, regardless of whether CPKC has a shorter route or much longer route[18]

Origin	Destination	Current RR	Current RR Miles	CPKC Miles	Difference in Miles	Assigned Diversion Percentage
New Orleans, LA	Superior, WI	BNSF	2023	1675	-348	25%
New Orleans, LA	Elkhart, IN	NS	1075[19]	1476	+401	25%
Chicago, IL	San Angelo, TX	BNSF	1274[20]	1499	+225	25%

In total, witnesses Brown and Zebrowski diverted a total of 66,845 cars and containers that now move in single-line service at a constant rate of 25 percent, regardless of the difference in length of haul between the incumbent carrier's single-line route and the proposed CPKC route.[21] It is important to note that, for these movements, the creation of a new CPKC single-line route would not, in itself, confer any advantage on the merged carrier, since an incumbent railroad already offers single-line service.

Even if Applicants' assumed diversion of 25 percent for lanes with existing single-line service were correct on average (which is impossible to determine, since it is not based on any data), this rule still generates serious downstream problems. For example, in Exhibit 4-1, if 25 percent were a realistic average, then CPKC would, in all likelihood, gain more than 25 percent of the traffic moving from New Orleans to Superior and less than 25 percent of the shipments from New Orleans to Elkhart. But witnesses Brown and Zebrowski mechanically diverted *exactly* 25 percent of both movements. The third example in Exhibit 4-1, from Chicago, IL to

[18] FD 36500 – Work Paper – HC – 8 - Diversion Identification.xlsx, Calculations tab, Row ID (column A) 14638, 14709, and 13350. Current RR Miles from column AB and CP/KCS miles from column BI. Diversion percentage from column BZ.
[19] FD 36500 – Work Paper – HC – 8 - Diversion Identification.xlsx, Calculations tab, Row ID (column A) 14709 states the distance is 581 miles; however, this appears to be an error, so the PC*Miler|Rail ver. 27 distance of 1,075 miles was used.
[20] FD 36500 – Work Paper – HC – 8 - Diversion Identification.xlsx, Calculations tab, Row ID (column A) 13350 states the distance is 1,104 miles; however, this appears to be an error, so the PC*Miler|Rail ver. 27 distance of 1,274 miles was used.
[21] FD 36500 – Work Paper – HC – 8 - Diversion Identification.xlsx. The 66,845 value was calculated by filtering Status to "Final" (column BJ) and New Percent to "25%" (column BZ) and then summing the Diversion Units (column CA).

San Angelo, TX, also receives the same 25 percent diversion, despite the CPKC route being 225 miles longer than the existing BNSF route.

This discrepancy impacts the operating plan, assessment of environmental impacts, capital investment evidence, and assumptions about impacts of the proposed merger on other railroads. Applying such a broad and unsupported diversion assumption has consequences for multiple components of the Application, including:

- **Operating plan**: Witnesses Brown and Zebrowski's indiscriminate diversion of 25 percent of the traffic in each diverted lane, rather than accounting for the real-world differences between scenarios like those in Exhibit 4-1, results in an overstatement of post-merger traffic volume in some lanes and an understatement of post-merger traffic volume in other lanes. This, in turn, means that the operating plan fails to assign the correct number of railcars and trains to the correct rail lines and yards. For the example in Exhibit 4-1, a realistic operating plan would need to provide for handling less traffic heading northeast to Elkhart and more traffic heading northwest to Superior from New Orleans.
- **Assessment of environmental impacts**: Spreading diverted traffic equally across rail lines dilutes the impact on routes where CPKC truly has an advantage in length-of-haul that might lead to diversion percentages above the arbitrary 25 percent value used by witnesses Brown and Zebrowski. Conversely, the use of a constant diversion percentage will lead to overstatement of volume increases on lines where CPKC has a distance disadvantage. Applicants' approach of applying a constant diversion percentage generates unreliable information on traffic volume increases by route, which is a primary input to the environmental assessment.
- **Capital investment evidence**: By potentially understating railcar and train counts on routes where CPKC could realistically achieve above-average diversion percentages due to length-of-haul advantages, the capital investment evidence may not properly reflect the infrastructure necessary to support the number of trains on those lines and in those yards.

- **Impact of merger on other railroads**: In the example in Exhibit 4-1, BNSF might experience more diversions than estimated by witnesses Brown and Zebrowski and NS less diversions. The true impact of the merger on other railroads, including on railroads' line capacity, operating plans, and capital plans, cannot be determined without an assessment of traffic diversions that includes length-of-haul impacts as part of diversion modeling.

The flaws in witnesses Brown and Zebrowski's mechanical approach likewise impacts their other estimated diversions. Witnesses Brown and Zebrowski estimate rail-to-rail diversions based on flat percentages of 25, 50, or 75, based on five "rules" that are summarized in Exhibit 4-2. But witnesses Brown and Zebrowski do not consider length-of-haul differences when applying these rules and percentages, and they offer no data, analysis, or other evidence to support such inflexible percentage-based diversion assumptions.[22]

Exhibit 4-2: Witnesses Brown and Zebrowski diversion percentages[23]

Traffic Type	Diversion Percentage/ Market Share
1. New CPKC Single-Line Moves Replacing Other Railroads' Interline Moves	50%
2. New CPKC Single-Line Moves Replacing Other Railroads' Single-Line Moves	25%
3. CP or KCS Interline Moves Converted to CPKC Single-Line Move Closed by CPKC	75%
4. Other CP or KCS Interline Moves Converted to CPKC Single-Line Move	50%
5. Remove Bridge Carrier on CPKC Route	75%

While differences in length-of-haul are important in any analysis of potential traffic diversions, they are of particular relevance in this case, because many of the CPKC single-line routes that will be created by the merger will be substantially longer than incumbent routing options. For example, in the New Orleans, LA to Elkhart, IN example contained in Exhibit 4-1, witnesses *Brown and Zebrowski divert railcars to a CPKC route that is 400 miles longer than*

[22] Brown and Zebrowski V.S., Application Vol. 2, p. 183, ¶16.
[23] Brown and Zebrowski V.S., Application Vol. 2, p. 134, Table 7.

the existing NS route. The CPKC route must move a shipment northwest on KCS from New Orleans to Kansas City and then head east from Kansas City to Elkhart on CP, whereas the NS route can move a shipment directly northeast from New Orleans to Elkhart. Witnesses Brown and Zebrowski were clearly aware of this fact – their testimony includes a table showing the average incremental circuity of the merged CPKC routes, summarized below in Exhibit 4-3.[24] As Exhibit 4-3 shows, *new CPKC single-line routes will be, on average, 217 miles longer than the routes over which potentially divertible traffic actually moves today*. Yet, Brown and Zebrowski apparently concluded that such substantial route-distance disadvantages would not affect CPKC's ability to divert traffic from carriers with more efficient routes.

Exhibit 4-3: Overall average mileage characteristics for traffic eligible to be diverted[25]

Length-of-Haul	Current Railroad	CPKC	Difference
Average miles	1,853	2,070	+217

Given that many of the CPKC routes to which witnesses Brown and Zebrowski diverted traffic are substantially longer than the routes over which that traffic moves today,[26] Brown and Zebrowski's estimate that 216,675 carloads and containers will be diverted to the CPKC network, regardless of circuity differences, is simply not credible.

4.2 Revenue for post-merger diverted traffic is overstated by $47.4 million due to errors assuming CPKC revenues after the merger exceed the rates currently charged to customers

The revenue gain for CPKC from diverted traffic should logically reflect the approximate revenue that would be lost by the railroads that currently haul that traffic. Indeed, witnesses Brown and Zebrowski "considered it appropriate to assume that CP/KCS would be *required to*

[24] Brown and Zebrowski V.S., Application Vol. 2, p. 132.
[25] Brown and Zebrowski V.S., Application Vol. 2, p. 132, Table 6.
[26] Brown and Zebrowski V.S., Application Vol. 2, p. 159.

offer rate reductions averaging five percent in order to attract traffic away from existing single-line service."[27] Yet the incremental revenue per diverted carload claimed by witnesses Brown and Zebrowski in many cases exceeds the rates currently charged by the incumbent carrier (in constant 2019 dollars). If Brown and Zebrowski's revenue estimates are accurate, it is hard to see how Applicants can claim that diverting this traffic will be beneficial to shippers, who (according to Brown and Zebrowski's revenue assumptions) would be charged significantly more than the current "going rate" to move those shipments over longer, more circuitous routes.[28]

Witnesses Brown and Zebrowski use the Board's Carload Waybill Sample to calculate the average revenue for a rail shipment for comparable available traffic.[29] The revenues were calculated for:

- **End-to-end movements** from the ultimate shipment origin to the ultimate shipment destination.
- **Segment movements** from the new CP or KCS on-point to the new CP or KCS off-point.

It is logical to expect that the revenue for a segment of a rail shipment would be *less* than the revenue for the entire rail shipment. Yet, in cases where the segment revenue exceeds the end-to-end revenue, *witnesses Brown and Zebrowski establish the illogical rule that "if the estimated end-to-end revenue amount was lower than the estimated segment revenue amount, we used the segment estimate*."[30] In other words, witnesses Brown and Zebrowski always selected the higher revenue.

[27] Brown and Zebrowski V.S., p. 21, ¶32 (emphasis added).
[28] Witnesses Brown and Zebrowski show that, on average, CPKC routes are 217 miles longer than the existing route and 323 miles longer than the shortest route in the market. Brown and Zebrowski V.S., Application Vol. 2, p. 132, Table 6.
[29] Brown and Zebrowski V.S., Application Vol. 2, p. 185, Appendix C, ¶2, Comparable traffic included origin and destination region, AAR car type, commodity, and car ownership.
[30] Brown and Zebrowski V.S., Application Vol. 2, p. 186, Appendix C, ¶5.

To illustrate the error, Exhibit 4-4 shows the movement of a carload of **{ }** from Bayou Pierre, LA to Chicago, IL that witnesses Brown and Zebrowski diverted from a KCS-CN interline route to CPKC. The pre-merger route for this shipment involves the KCS line from Bayou Pierre, LA to Jackson, MS, which generates {{ }} in revenue per carload for KCS. The shipment then interchanges to CN at Jackson, MS, generating {{ }} in revenue per carload for CN for the move between Jackson, MS and Chicago, IL. Cumulatively, the current revenue per carload on this movement is {{ }}.

Witnesses Brown and Zebrowski predict that after the merger, this traffic will be diverted to a CPKC single-line route, traveling from Bayou Pierre to Kansas City, MO on KCS lines, and then from Kansas City to Chicago on CP lines. The claimed incremental revenue on this movement is {{ }} per carload, which is {{ }} higher than the current rate for the entire KCS-CN route via Jackson. Witnesses Brown and Zebrowski further compound this higher rate by failing to subtract the {{ }} that KCS already receives for the movement from Bayou Pierre to Jackson. The error is that {{ }} is not incremental revenue, since the {{ }} already received by KCS is not removed.[31]

Exhibit 4-4: Example of the revenue error by witnesses Brown and Zebrowski[32]{{

[31] Witnesses Brown and Zebrowski average the revenue for each individual diversion with revenues for similar diversions and apply the averages in FD 36500 – Work Paper – HC – 8 – Diversion Identification, Results tab. Overstating the revenue for individual diversions leads to an overstatement of the averages, and therefore an overstatement of the total revenue.
[32] FD 36500 – Work Paper – HC – 8 - Diversion Identification.xlsx, Calculations tab, Row ID=6422. Map from PC*Miler|Rail, ver. 27.

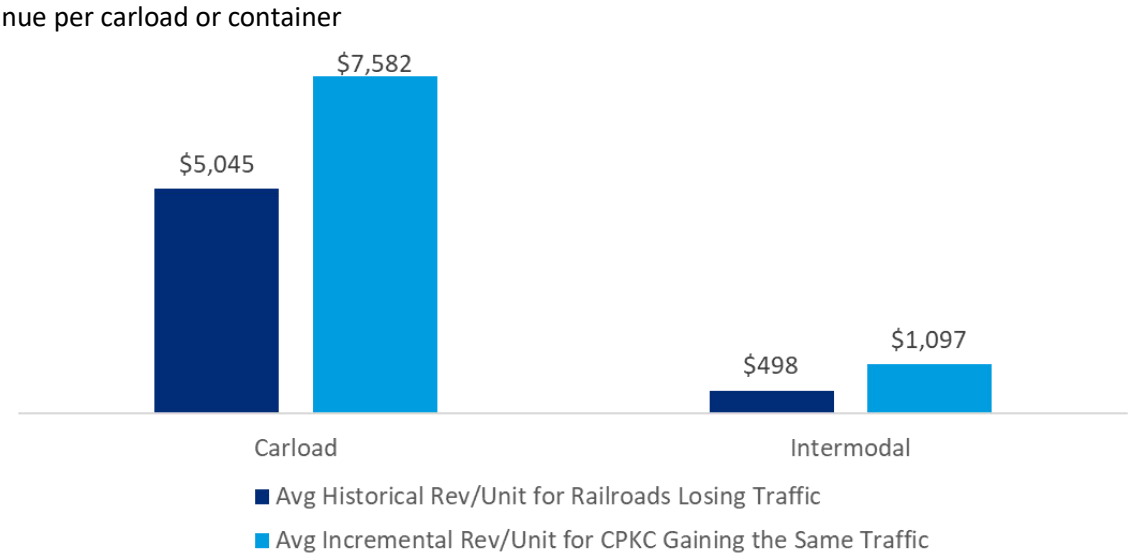
}}

The source of the overstatement of revenue can be traced back to the illogical rule to use the segment revenue if it exceeds the end-to-end revenue. The {{ }} in incremental revenue used by witnesses Brown and Zebrowski in the Bayou Pierre – Chicago example is actually the segment revenue from Jackson, MS to Chicago, IL, as calculated from the Board's Carload Waybill Sample. This segment revenue exceeded the end-to-end revenue from Bayou Pierre to Chicago, therefore witnesses Brown and Zebrowski selected the higher value, based on their rule. Because they considered it a segment rather than an end-to-end move, the existing KCS segment revenue from Bayou Pierre to Jackson was not subtracted.

To correct this example, I used the end-to-end revenue for Bayou Pierre to Chicago calculated by witnesses Brown and Zebrowski from the Board's Carload Waybill Sample and then subtracted the existing KCS revenue from Bayou Pierre to Jackson. So, instead of the {{ }} incremental revenue claimed by witnesses Brown and Zebrowski, my calculation using their values shows an end-to-end revenue of {{ }} minus the existing KCS revenue of {{ }}, to yield an incremental revenue to CPKC of {{ }}, which is {{ }} percent less than the current CN revenue of {{ }}.

Bayou Pierre to Chicago is not an isolated case. Witnesses Brown and Zebrowski select the higher segment revenue when it exceeds the end-to-end revenue for 52,927 of the 201,707 diverted railcars and containers (26.2 percent).[33] This results in incremental revenue added to CPKC that greatly exceeds the revenue lost by the current railroad, as shown in Exhibit 4-5.

Exhibit 4-5: Witnesses Brown and Zebrowski assign significantly more revenue to CPKC than was lost by the current carrier[34]



For carload traffic, the average revenue per car for the non-CP/KCS portion of the move lost by the current carrier is $5,045, while the incremental revenue added by witnesses Brown and Zebrowski as a benefit of the merger is $7,582. For intermodal traffic, the average revenue per container for the non-CP/KCS portion of the move lost by the current carrier is $498, while the incremental revenue added by witnesses Brown and Zebrowski as a benefit of the merger is $1,097.

[33] FD 36500 – Work Paper – HC – 8 - Diversion Identification.xlsx, Calculations tab. "CWS Segment > End to End Flag" (column CF) is 1. The 201,707 is the number of diverted cars and containers, excluding the 14,968 additional grain and forest products diversions (*see* Brown and Zebrowski V.S., Application Vol. 2, p. 159, Table 26).
[34] FD 36500 – Work Paper – HC – 8 - Diversion Identification.xlsx, Calculations tab, Filters were Non-CP/KCS Revenue/Car > 0 (col AD), Route Filter Flag = 0 (col BY), Diversion Units > 0 (col CA), and CWS Segment > End to End Flag = 1 (col CF). For Non-CP/KCS Revenue/Car, all records with a zero or negative value were excluded from the exhibit.

Applicants' experts appear to assume that customers after the merger will choose CPKC as a rail carrier even if distances are longer and rates are higher than those of the current rail movement. Absent competitive foreclosure by CPKC, this is not a logical assumption. Furthermore, witnesses Brown and Zebrowski's flawed use of the higher revenues (when the segment revenue exceeds the total revenue for the movement) falls disproportionately on shippers in Illinois and Michigan. Illinois originates or terminates 29 percent of the carloads and containers where witnesses Brown and Zebrowski selected the higher revenue, while Michigan originates or terminates 14 percent of the diverted carloads and containers.[35]

By applying the simple correction used in the Bayou Pierre – Chicago example to the diverted traffic in witnesses Brown and Zebrowski's Diversion Identification spreadsheet, I estimate that witnesses Brown and Zebrowski have overstated revenues by at least $47.4 million due to this error. My correction was to use the end-to-end revenue minus the existing CP-KCS revenue, rather than repeating the error made by witnesses Brown and Zebrowski of taking the higher segment revenue and not subtracting existing CP-KCS revenue to eliminate double counting.

However, this simple correction does not fully capture the magnitude of the error. For example, in an intermodal move from Chicago, IL to Laredo, TX, BNSF originates the traffic and interchanges with KCS for furtherance to Mexico. The historical data in witnesses Brown and Zebrowski's work papers show a revenue of {{ }} for KCS and {{ }} for BNSF, for a total revenue/container of {{ }}. The incremental CPKC revenue assigned by witnesses Brown and Zebrowski for this move is {{ }}, and when added to the existing KCS revenue, brings the total to {{ }}, which is { } percent above the historical 2019 revenue. I applied the

[35] FD 36500 – Work Paper – HC – 8 - Diversion Identification.xlsx, Calculations tab.

correction of subtracting the historical KCS revenue from the estimate by witnesses Brown and Zebrowski for end-to-end revenue, yielding an incremental revenue of {{ }} and a total revenue of {{ }}, which is still { } percent above the existing historical revenue.[36]

The challenge to determining the full magnitude of the error by witnesses Brown and Zebrowski is the poor data quality in their work papers for the historical revenue received by the non-CP/KCS carrier. In many cases, their work paper assigns revenue of zero, or even negative revenue, to the third-party railroad. For example, on a movement from Toluca, EM to Cottage Grove, MN, the revenue shown for the BNSF portion of the move is {{ }}.[37] This move was diverted to a CPKC route and assigned an incremental revenue of {{ }} for the CPKC diversion of the BNSF segment.[38]

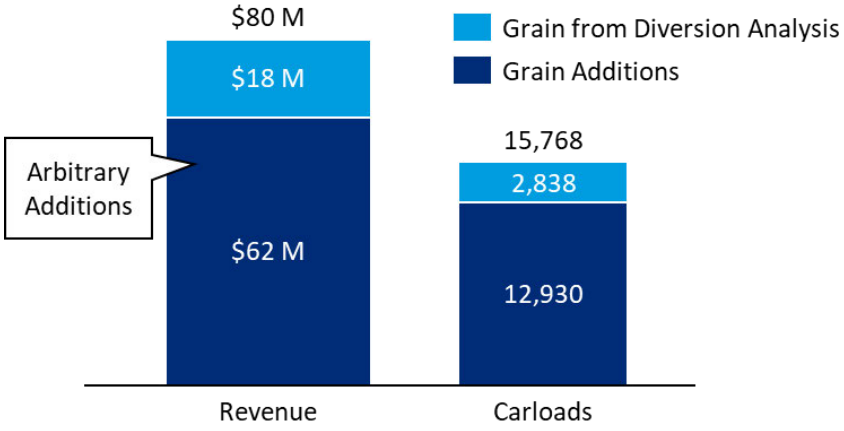
4.3 Diversion estimates include arbitrary and unsubstantiated additions for grain and lumber traffic that overstate revenue by $86 million

After applying an across-the-board percentage-based diversion approach to movement-specific rail-to-rail traffic diversion judgments, witnesses Brown and Zebrowski arbitrarily increased their post-merger diversion estimate by adding another $86 million in incremental revenue from grain and lumber traffic.

Specifically, they assumed that merger synergies would enable the merged CPKC system to capture a five percent increase in market share for cereal grain exports to Mexico (Exhibit 4-6).[39]

[36] FD 36500 – Work Paper – HC – 8 - Diversion Identification.xlsx, Calculations tab, Row ID = 2693.
[37] FD 36500 – Work Paper – HC – 8 - Diversion Identification.xlsx, Calculations tab, Row ID = 11979, column AD.
[38] FD 36500 – Work Paper – HC – 8 - Diversion Identification.xlsx, Calculations tab, Row ID 11979, column CL.
[39] Brown and Zebrowski, V.S., Application Vol. 2, ¶42.

Exhibit 4-6: Witnesses Brown and Zebrowski grain diversion breakdown[40]



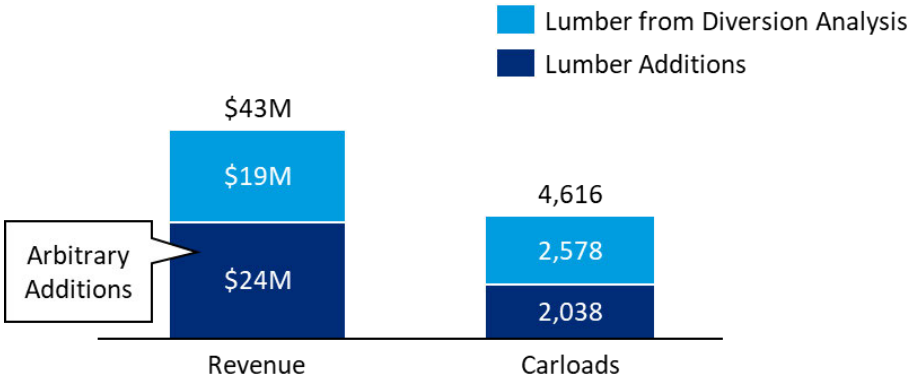
This (unexplained) assumption, *which increases total revenues from diverted grain shipments in the Brown and Zebrowski diversion model by more than 340 percent*, does not appear to be based on any movement-specific analysis. Indeed, witnesses Brown and Zebrowski do not even identify the specific origins and destinations between which these shipments would move. Rather, they simply assume that "For purposes of developing operating outputs for use in the Operating Plan, we estimate that these carloads would be distributed proportionally across the CP-served grain-supply regions that would be newly accessible via single-line routes."[41] There is no justification or evidentiary support for either this arbitrary increase in CPKC's post-merger grain traffic – which accounts for nearly 17 percent of all projected rail-to-rail traffic diversion revenues – or for the random distribution of this traffic across the grain producing regions that CP serves.

Witnesses Brown and Zebrowski likewise assume an arbitrary five percent market share increase on Canadian lumber exports to Dallas. They then apply a 15 percent growth rate to this market share gain to account for growth between 2019 and 2021 (Exhibit 4-7), despite all other

[40] FD 36500 – Work Paper – HC – 8 - Diversion Identification.xlsx, Results tab.
[41] Brown and Zebrowski V.S., p. 26, ¶42.

traffic in their study being based on Base Year 2019 volumes.[42] Witnesses Brown and Zebrowski provide no analysis or calculations to support these market share and growth assumptions. In total, these adjustments account for 2,038 additional carloads, or *56 percent of all incremental revenue from lumber diversions*.[43]

Exhibit 4-7: Witnesses Brown and Zebrowski lumber diversion overstatement[44]



Given the complete lack of analytical support for these "additional opportunities" (not to mention the methodological inconsistency of arbitrarily adding traffic and revenue that was not identified by Applicants' traffic diversion model in the first place), these incremental traffic and revenue gains should be excluded from any realistic evaluation of the rail-to-rail traffic likely to be captured by the merged CPKC system.

4.4 Applicants made a currency conversion error of Canadian dollars to US dollars that further inflated the revenues likely to be achieved from diverted traffic

In addition to the methodological errors and inconsistencies discussed above, witnesses Brown and Zebrowski made a significant calculation error that further inflated their revenue projections. A portion of the Canada traffic in the rail-to-rail diversion model contains a currency

[42] Brown and Zebrowski V.S., Application Vol. 2, p. 156, Table 23.
[43] FD 36500 – Work Paper – HC – 8 - Diversion Identification.xlsx, Results tab, Forest Products (Line 16) and Grain (Line 18).
[44] FD 36500 – Work Paper – HC – 8 - Diversion Identification.xlsx, Results tab.

conversion error that resulted in an overstatement of revenue. The average exchange rate in 2019 was 0.754 US dollars for one Canadian dollar.[45] Witnesses Brown and Zebrowski rounded this to 0.75. Their SQL code, shown below, states that if Currency = 'C' for Canadian, then divide the Tot_Rev by 0.75 and reassign the value to Tot_Rev.[46]

Set [Tot_Rev] = case when Currency = 'C' then [Tot_Rev]/.75

The problem is that *witnesses Brown and Zebrowski should have multiplied rather than divided*. One Canadian dollar *divided by* 0.75 incorrectly converts to 1.33 US dollars, not the correct value of 0.75 US dollars. This miscalculation inflated the revenues on shipments with a currency conversion by 78 percent. This error is illustrated in Exhibit 4-8, where witnesses Brown and Zebrowski calculate the incremental revenue for a movement as {{ }}, when the correct revenue in US dollars should be {{ }}.

Exhibit 4-8: Example of Brown and Zebrowski overstated revenue due to CAD to USD currency error[47]

Origin	Orig. RR	Destination	Dest. RR	Commodity	Incremental Revenue/Car	Corrected Revenue/Car
Saskatoon, SK	CP	Longview, TX	UP	{{ }}	{{ }}	{{ }}

The precise impact of this error on Applicants' overall incremental traffic revenue estimate is difficult to determine, because the error occurs at the data extraction step, prior to the estimation of diversions. To calculate the impact of the error would require a full rerunning of Brown and Zebrowski's SQL code and recreating their diversions.[48]

[45] The US Internal Revenue Service lists the average exchange rate in 2019 as 1.327 Canadian dollars for 1 US dollar, or 0.754 US dollars per Canadian dollar.
[46] Line shown is from FD 36500 – Work Paper – HC – 1 - Traffic Consolidation.sql, Line 584, shown in Oliver Wyman work paper HC- Currency Conversion Error.txt.
[47] FD 36500 – Work Paper – HC – 8 - Diversion Identification, tab Calculations, Row ID 922. Incremental revenue per car is from cell CL 927. Corrected Revenue/Car = ($11,012*0.75)*0.75 = $6,194.
[48] The error is contained in FD 36500 – Work Paper – HC – 1 - Traffic Consolidation.sql, lines 582 through 587.

5. Certain Additional Claimed Incremental Revenues of $386.7 Million Are Unsubstantiated or Unrelated to the Merger

Applicants took the unusual step of "supplementing" the traffic diversion studies conducted by their expert traffic witnesses with a verified statement sponsored by company witnesses Wahba and Naatz, who purport to identify a number of "additional revenue opportunities" for the merged CPKC system. Witnesses Wahba and Naatz claim that those opportunities will generate an additional $411 million in annual revenue for the merged CPKC. *This represents fully 40 percent of the total incremental revenue from traffic diversions identified in the Application*.

This incremental traffic and revenue is questionable in terms of why it was not identified in the diversion analyses presented by Applicants' experts. In addition, the supplemental traffic and revenue gains sponsored by witnesses Wahba and Naatz suffer from several conceptual and methodological errors that render their conclusions invalid. The vast majority of this claimed additional incremental revenue should be excluded from any realistic assessment of the traffic and revenue impact of the proposed CPKC merger for the following reasons, which are discussed in detail below:

- Nearly 40 percent of the revenue from additional traffic opportunities posited by witnesses Wahba and Naatz is attributable to traffic gains that are unrelated to the merger.
- Several supposed revenue opportunities involve impractical, circuitous, and complicated routes.
- Applicants' expert traffic witnesses did not divert the traffic identified by witnesses Wahba and Naatz.

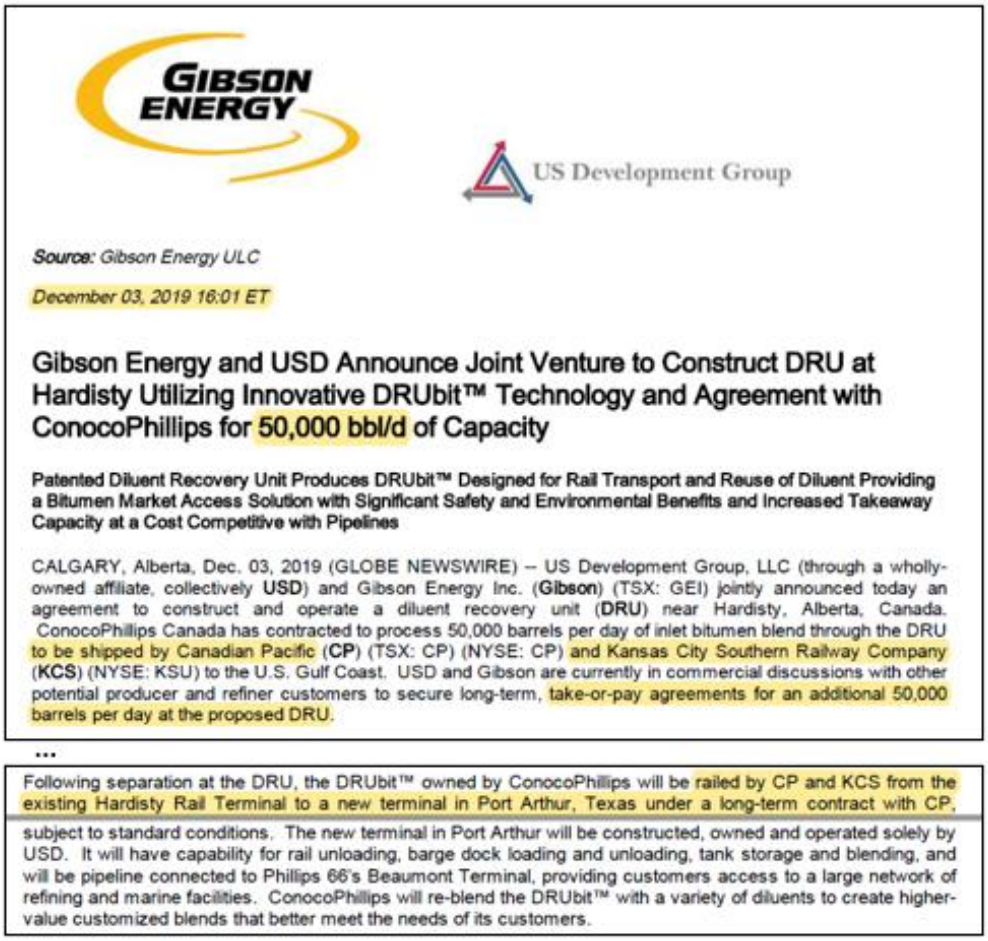
I estimate that in total, these assumptions, inconsistencies, and conceptual errors result in an overstatement of as much as $387 million (out of a total of $411 million) of the additional revenue opportunities posited by witnesses Wahba and Naatz.

5.1 Nearly $158.1 million (40 percent) of the revenue from additional traffic opportunities posited by witnesses Wahba and Naatz is attributable to traffic gains that are unrelated to the merger

The single largest "opportunity" cited by witnesses Wahba and Naatz (accounting for $158.1 million in incremental revenue) is a crude oil movement from Hardisty, AB to Port Arthur, TX.[49] However, as the press release reproduced as Exhibit 5-1 clearly indicates, that traffic opportunity pre-dates the merger. The plan for the new movement was made public by the shipper, Gibson Energy, *in December 2019*. According to witnesses Wahba and Naatz, "CP's evaluation of specific traffic growth opportunities thus *began* at the very outset of our pursuit of KCS *in late 2020*" – *nearly a year after the Gibson Energy press release*.[50] Witnesses Wahba and Naatz also state that discussions with customers regarding the additional traffic opportunities in their testimony did not occur until CP and KCS announced their plans in March 2021.[51] If that statement is true, merger-related discussions could not have occurred with Gibson Energy at the time of the 2019 press release.[52]

[49] FD 36500 – Work Paper – HC – Growth Initiative Calculations.xlsx.
[50] Verified Statement of Jonathan Wahba and Michael J. Naatz, ¶6.
[51] Wahba and Naatz V.S., ¶11.
[52] Wahba and Naatz V.S., ¶11.

Exhibit 5-1: Announced joint CP and KCS crude oil move from Hardisty, AB to Port Arthur, TX: December 2019 press release[53]



Source: Gibson Energy ULC

December 03, 2019 16:01 ET

Gibson Energy and USD Announce Joint Venture to Construct DRU at Hardisty Utilizing Innovative DRUbit™ Technology and Agreement with ConocoPhillips for 50,000 bbl/d of Capacity

Patented Diluent Recovery Unit Produces DRUbit™ Designed for Rail Transport and Reuse of Diluent Providing a Bitumen Market Access Solution with Significant Safety and Environmental Benefits and Increased Takeaway Capacity at a Cost Competitive with Pipelines

CALGARY, Alberta, Dec. 03, 2019 (GLOBE NEWSWIRE) -- US Development Group, LLC (through a wholly-owned affiliate, collectively **USD**) and Gibson Energy Inc. (**Gibson**) (TSX: GEI) jointly announced today an agreement to construct and operate a diluent recovery unit (**DRU**) near Hardisty, Alberta, Canada. ConocoPhillips Canada has contracted to process 50,000 barrels per day of inlet bitumen blend through the DRU to be shipped by Canadian Pacific (**CP**) (TSX: CP) (NYSE: CP) and Kansas City Southern Railway Company (**KCS**) (NYSE: KSU) to the U.S. Gulf Coast. USD and Gibson are currently in commercial discussions with other potential producer and refiner customers to secure long-term, take-or-pay agreements for an additional 50,000 barrels per day at the proposed DRU.

...

Following separation at the DRU, the DRUbit™ owned by ConocoPhillips will be railed by CP and KCS from the existing Hardisty Rail Terminal to a new terminal in Port Arthur, Texas under a long-term contract with CP, subject to standard conditions. The new terminal in Port Arthur will be constructed, owned and operated solely by USD. It will have capability for rail unloading, barge dock loading and unloading, tank storage and blending, and will be pipeline connected to Phillips 66's Beaumont Terminal, providing customers access to a large network of refining and marine facilities. ConocoPhillips will re-blend the DRUbit™ with a variety of diluents to create higher-value customized blends that better meet the needs of its customers.

In addition, Gibson Energy announced in December 2021 "the DRU Fully Operational, including shipment of DRUbit™ By Rail™" from the facility in Hardisty, AB to Port Arthur, TX.[54] Canadian Pacific shared that announcement on social media the same day, including a photograph of a CP train departing the Hardisty facility.[55] In short, this rail movement clearly predates the merger.

[53] Press release, Global Energy ULC, December 3, 2019.
[54] "Gibson Energy and US Development Group declare the DRU Fully Operational, including shipment of DRUbit™ By Rail™," PR Newswire, December 14, 2021.
[55] Canadian Pacific, Twitter @CanadianPacific, December 14, 2021.

The Gibson Energy announcement involved an agreement to ship 50,000 barrels per day with a take-or-pay for an additional 50,000 barrels per day, which is equivalent to approximately 50,000 annual tank cars.[56] Witnesses Wahba and Naatz claim that the fully phased in number of units is 51,840 annual tank cars – almost identical to the volume mentioned in the Gibson Energy press release of 2019.[57]

Because this incremental revenue opportunity was announced publicly more than a year before the CP-KCS merger was announced and is operational now, it clearly did not come to pass because of the proposed merger, and therefore cannot properly be considered a result of, or synergy generated by, the merger.

5.2 Additional diversion revenue opportunities of $107 million involve impractical, circuitous, and complicated routes

Certain other revenue opportunities claimed by witnesses Wahba and Naatz are implausible because they fail to account for the reality of global supply chains or the circuity of the longer rail and maritime routes that would make it difficult for CPKC to capture that traffic.

For example, the Application assumes that CPKC will capture incremental traffic and revenue by shifting international container traffic that currently moves via the Port of Los Angeles/Long Beach to destinations such as Chicago, New York, and Toronto to more complex and circuitous water and rail routes via the Port of Lazaro Cardenas (on the Mexican Pacific coast) and KCSM/KCS/CP. Witnesses Wahba and Naatz use a distorted map (reproduced in Exhibit 5-2) in an attempt to show that such a routing would be a viable competitive alternative

[56] A tank car can hold about 560 barrels of heavy crude oil. Wahba and Naatz claim tank cars can haul 20-30 percent more DRUbit, so (365 days x 100kbd/(560 bbl/0.75)) = 48,900 annual tank cars. The API gravity for Canadian heavy crude oil is 9º to 11º (*see* API Gravity, Oil Sands Glossary). A 10º API gravity weights 8.328 lbs./gallon, or 350 lbs./barrel at 42 gallons/barrel (*see* API Gravity (engineeringtoolbox.com)). A 195,900 lbs. net weight limit for a tank car would allow for 560 barrels of heavy crude oil.
[57] FD 36500 – Work Paper – HC – Growth Initiative Calculations.xlsx.

to the shorter routes over which the traffic already moves. This map misrepresents the operational challenge of routing international container traffic bound to US destinations via the Port of Lazaro Cardenas.

To test the Wahba and Naatz hypothesis, I used the industry standard software program PC*Miler|Rail to calculate the distance between the Port of Los Angeles/Long Beach and Chicago via BNSF and the distance between the Port of Lazaro Cardenas and Chicago on a hypothetical CPKC network. As shown in a more accurate map in Exhibit 5-3, the rail route from LA/Long Beach to Chicago is 2,195 miles long, while the rail route via KCSM/KCS/CP from Lazaro Cardenas would be 2,650 miles. The difference is 455 miles, or nearly a 21 percent increase in rail distance, making the route from Lazaro Cardenas slower, less economical, and less environmentally friendly.

Exhibit 5-2: CPKC map of proposed route from Port of Lazaro Cardenas, which distorts differences in distance versus the Port of Los Angeles[58]

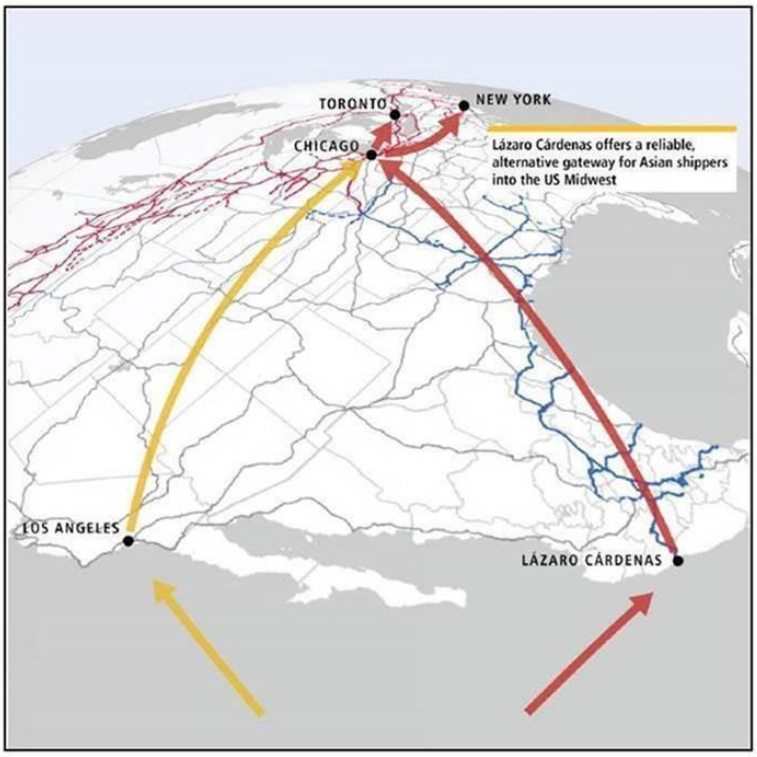
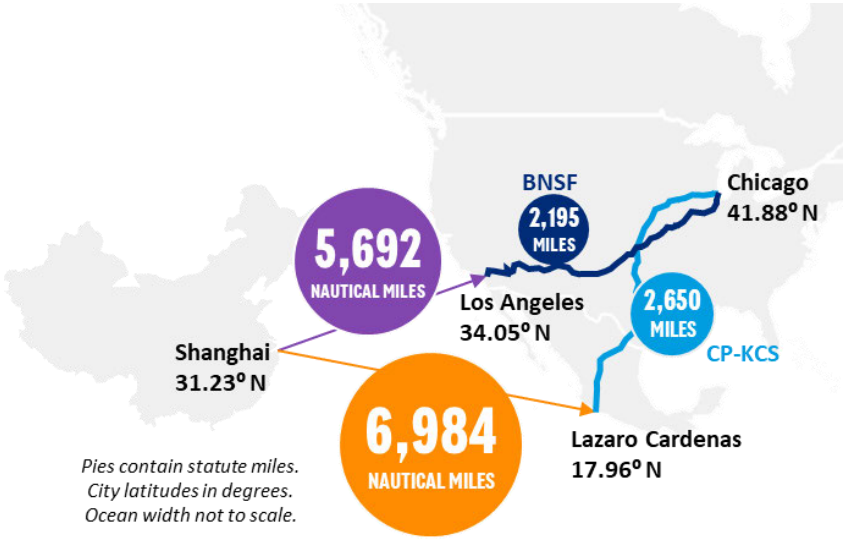


Exhibit 5-3: Oliver Wyman map of proposed route from Lazaro Cardenas, which better shows the 1,300 nautical-mile and 455 rail-mile differences when compared to the Port of Los Angeles[59]



[58] Wahba and Naatz V.S., p. 28, Figure 6. Two trains per day based on Wahba and Naatz claim of 130,000 containers per year.

[59] Shanghai to Los Angeles is 5,692 nautical miles and Shanghai to Lazaro Cardenas is 6,984 nautical miles, based on Portworld.com Distance Calculator from S&P Global Platts. Nautical miles converted to statute miles using 6,080 ft/5,280 ft. A "standard" nautical mile is 6,080 feet versus a statute mile of 5,820 feet, though this is an approximation, since distances vary by latitude (*see* Royal Museums Greenwich).

Witnesses Wahba and Naatz not only obscure the substantial *rail* routing circuity implied by their proposed diversion, they also fail to consider the additional length of the *maritime* route that would be required to divert intermodal traffic originating in East Asia to the Port of Lazaro Cardenas. Using Shanghai (the largest container port in the world[60]) as an example, a ship traveling to Los Angeles/Long Beach would travel approximately 5,692 nautical miles. By comparison, the journey from Shanghai to Lazaro Cardenas would cover 6,984 nautical miles. Thus, a container ship would need to travel an additional 1,292 nautical miles, an increase of 23 percent, to get from Shanghai to Lazaro Cardenas as compared to Los Angeles. This added distance over the ocean further undermines the economics, operational efficiency, and environmental merits of diverting intermodal traffic to Lazaro Cardenas, as posited by Applicants.

The noncompetitive nature of a proposed route involving an additional 1,292 nautical miles plus an additional 455 rail miles is underscored by the fact that *Lazaro Cardenas currently handles almost no traffic destined to any point in the United States*.[61] In any event, CP already has a better option to reach Chicago via the Port of Vancouver, which involves both a shorter rail route and a shorter maritime distance from East Asia than a route via Lazaro Cardenas.

The claimed diversion to Lazaro Cardenas of containers destined for Toronto and New York City posited by the Applicants is even less feasible. To reach Toronto from Lazaro Cardenas, traffic would:

[60] *See* "Shanghai port retains crown as the world's busiest container port," Seatrade Maritime News, January 6, 2021.
[61] CP-KCS waybill data provided by FTI, summarized in Oliver Wyman work paper HC- Lazaro Cardenas – USCanada Traffic.xlsx. Waybill records show **{{ }}** loaded containers from the Port of Lazaro Cardenas to Kendleton, TX and **{{ }}** empty cars between the Port of Lazaro Cardenas to/from the US and Canada in 2019.

- Incur 436 miles of additional rail distance compared to the shorter route from Los Angeles/Long Beach;[62]
- Then travel through some of the most congested rail segments in the nation (including the use of terminal railroads in the Chicago area, as well as several congested crossings);
- Then move via trackage rights on Norfolk Southern to reach the Detroit-Windsor tunnel (which has clearance restrictions for double stack containers), *or*
- Be transferred to CSX for movement (via haulage rights) to Buffalo, NY, where it would be interchanged back to CP for movement to Toronto.[63]

Needless to say, these options are vastly inferior to the available direct routings on either CP or CN from Vancouver, or via UP or BNSF from Los Angeles/Long Beach with an interchange to CN at Chicago.

Routing traffic from Lazaro Cardenas to New York City via CPKC also would be noncompetitive: Intermodal traffic originating on KCSM already has a more direct routing option over the Meridian Speedway to Norfolk Southern, instead of using any portion of the CP network. The route from Lazaro Cardenas to New York via the existing KCS-NS interchange at Meridian, MS is 489 miles shorter than a route from Lazaro Cardenas to New York involving a KCS-CP interchange at Kansas City.[64]

Finally, witnesses Wahba and Naatz quote Mr. Jonathan Sinton, Regional Head of Procurement of A.P. Moller-Maersk, as stating the KCS combination with CP promises to "open

[62] PC*Miler|Rail ver. 27. Distance for Long Beach-BNSF-Chicago-CP-Toronto is 2,722.4 miles, provided the traffic can use NS trackage rights in Michigan and has clearance to use the Detroit Tunnel. Distance for Lazaro Cardenas-KCSM-Laredo-KCS-Kansas City-CP-Toronto is 3,157.9 miles, with same assumptions about trackage rights and tunnel clearance.
[63] One of the two Detroit tunnel tubes in 1993 was enlarged to handle auto racks and international doublestack containers. But the tunnel cannot handle doublestacked domestic containers. So CP's current Montreal-Chicago intermodal trains, which include both international and domestic boxes, run via CSX between Buffalo, NY and Chicago. See: "CP sought to control its own destiny with Detroit tunnel purchase," Trains, October 20, 2020.
[64] PC*Miler|Rail ver. 27. Distance for Lazaro Cardenas-KCSM-Laredo-KCS-Meridian-NS-Oak Island is 3,073.9 miles versus Lazaro Cardenas-KCSM-Laredo-KCS-Kansas City-CP-Chicago-NS-Oak Island which is 3,562.6 miles.

up new options for efficient intermodal rail transportation all the way into America's Heartland."[65] However, witnesses Wahba and Naatz fail to mention Mr. Sinton's very next sentence, where he states, "*We don't expect these options to supplant the current options from ports on the U.S. West Coast*."[66] (Emphasis added.)

Witnesses Wahba and Naatz claim that traffic diverted from the Ports of Los Angeles/Long Beach to the Port of Lazaro Cardenas will generate 130,000 containers, totaling $107 million in annual merger-related revenue for CPKC.[67] They even attribute $21.1 million of the $107 million in merger-related benefits to Lazaro Cardenas – Kansas City diversions and another $22.9 million to Lazaro Cardenas-Dallas diversions, *routes where KCS could provide single-line service on a stand-alone basis today*.[68] The Port of Lazaro Cardenas is simply not a realistic alternative to Los Angeles/Long Beach, given the increased distances and the presence of more competitive alternatives, such as the Port of Vancouver.

5.3 Witnesses Wahba and Naatz claim approximately $122 million in diversions that were apparently "missed" by Applicants' diversion experts in LPG, grain, and perishable commodities

After engaging expert witnesses Brown and Zebrowski to estimate potential rail-to-rail traffic diversions and expert witness Mutén to analyze potential truck-to-rail diversions, Applicants took the unusual step of adding to their estimates of incremental traffic revenues the "additional revenue opportunities" discussed above. But Applicants offer no explanation as to why their outside traffic experts either "missed" such consequential traffic opportunities or failed to include them in their estimates of post-merger CPKC traffic.

[65] Wahba and Naatz V.S., Application Vol. 1, p. 273, ¶64.
[66] Letter from Mr. Jonathan Sinton, Application Vol. 3, p. 153.
[67] FD 36500 – Work Paper – HC – Growth Initiative Calculations.xlsx.
[68] FD 36500 – Work Paper – HC – Growth Initiative Calculations.xlsx.

An estimated $121.7 million in revenue for liquified petroleum gas (LPG), grain, and perishables was added by witnesses Wahba and Naatz, even though Applicants' witnesses Brown, Zebrowski, and Mutén analyzed the potential for diverting shipments of those commodities in their testimony.

LPG ($30.5 million): Witnesses Wahba and Naatz identified existing rail shipments of LPG as likely diversion candidates. This claimed "additional opportunity" accounts for 4,300 carloads of LPG – a volume that is nearly triple the 1,545 carloads that Brown and Zebrowski deemed divertible – and generates an additional $30.5 million in post-merger revenues for the CPKC system.[69] Applicants offer no explanation for, or reconciliation with, Brown and Zebrowski's findings regarding the sources and volumes of divertible LPG traffic. Witnesses Wahba and Naatz vaguely mention a possible CPKC investment in a new LPG origin facility, but that investment is not reflected in Applicants' capital expense evidence.[70] Moreover, 2,600 carloads of the LPG traffic that Wahba and Naatz identified move between Saskatchewan and Mexico. However, Applicants' own work papers indicate that there were only {{ }} total carloads of LPG traffic between Saskatchewan and Mexico in the Base Year[71] – which means that witnesses *Wahba and Naatz are claiming traffic that does not currently exist.* By comparison, *Applicants' outside traffic experts found only seven carloads of LPG between these locations to be divertible*.[72]

[69] FD 36500 – Work Paper – HC – Growth Initiative Calculations.xlsx; Brown and Zebrowski V.S., Application Vol. 2, p. 154, Table 21.
[70] Verified Statement of Elphick and Orr, Application Vol. 2, pp. 81-91, provides capital expenditures for track, yards, and terminals. There is no mention of any LPG facility investment for Canada.
[71] FD 36500 – Work Paper – HC – 4 - Traffic Screening.xlsx. On the CPKCS Combined Traffic Tapes tab, filtered column E as "SK," and column N to "MX," and column AD as "L.P.G." Summed column V to obtain {{ }}.
[72] FD 36500 – Work Paper – HC – 8 - Diversion Identification, tab Calculations, Row ID 877 and 878.

Grain ($36.7 million): Witnesses Wahba and Naatz projected an additional $36.7 million in incremental revenue from rail-to-rail grain diversions, consisting of 3,630 carloads of soybeans and 3,000 carloads of DDGs and sweeteners.[73] These diversions are in addition to the volumes of those commodities that Applicants' expert traffic witnesses identified as divertible (3,684 carloads of soybeans and 2,650 carloads of DDGs and sweeteners), effectively doubling the diversion total for each commodity.[74] Applicants offer no explanation for or reconciliation with witnesses Brown and Zebrowski's findings with respect to these grain shipments.

Perishables ($54.4 million): Witnesses Wahba and Naatz also project that CPKC will earn an additional $54.4 million in incremental revenues from perishables truck-to-rail diversions.[75] Specifically, they divert to the CPKC network 24,748 units of perishables in 53-foot refrigerated containers that move by truck from Michoacán/Veracruz, Mexico to Chicago, the Twin Cities, and Kansas City.[76] Applicants' own truck-to-rail diversion expert Mutén concluded that only a much smaller volume of this perishable traffic would be divertible: 374 units, with associated revenues of just $0.6 million.[77] Witness Mutén explained why he did not include the 24,748 units diverted by witnesses Wahba and Naatz: "Most of these volumes flow out of Mexico to intermediate destinations [sic] in border states and later move to the Midwest."[78] Witnesses Wahba's and Naatz's "analysis" of this "additional opportunity" appears to consist of (i) estimating that five million tons of produce moved from Mexico to wholesaler markets in border states, (ii) assuming that CPKC could capture ten percent of such traffic, and (iii) diverting that ten percent from truck to CPKC. Applicants do not explain why these shipments are divertible,

[73] FD 36500 – Work Paper – HC – Growth Initiative Calculations.xlsx.
[74] Brown and Zebrowski V.S., p. 26, Table 11 and p. 28, Table 12.
[75] FD 36500 – Work Paper – HC – Growth Initiative Calculations.xlsx.
[76] FD 36500 – Work Paper – HC – Growth Initiative Calculations.xlsx.
[77] Mutén V.S., p. 22.
[78] Mutén V.S., p. 22.

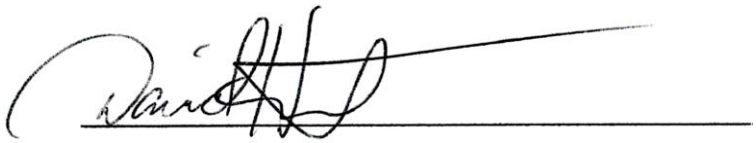
or why witness Mutén (who clearly was aware of the movements) did not judge them to be divertible.

In sum, witnesses Wahba and Naatz "found" an additional $121.7 million in diversion revenue that was not identified by Applicants' diversion experts, with no explanation or facts to support why these additional revenues are credible and should be included in the Application.

VERIFICATION

I, David Hunt, declare under penalty of perjury that the foregoing information is true and correct. Further, I certify that I am qualified and authorized to file this statement.

Executed on this 28th day of February, 2022.



David Hunt

Appendix A. Resume of David Hunt

Mr. Hunt, a Vice President in Oliver Wyman's Transportation & Service practice, has over 30 years of experience in the areas of transportation operations and strategic planning, national and regional transportation policy, and network modeling and operations research. Mr. Hunt focuses on projects involving regulatory and policy analysis, strategic planning, and operational improvements. His projects include:

- Developed a market share model that predicted truck/rail shares and volumes under various scenarios, including autonomous truck technologies and the potential responses by the rail industry.
- Worked with a Class I railroad to explore opportunities and the value of adopting predictive maintenance practices for their railcar fleet.
- Prepared several policy white papers filed with the US Department of Transportation, addressing issues such as positive train control and the use of electronically controlled pneumatic brakes.
- Called as an expert witness in rail capacity modeling as part of an international arbitration case in South America.
- Participated in discussions with the Mexican government that led to a favorable ruling for the rail industry regarding proposed regulatory action to promote competition through expanded interconnection of rail services.
- Managed the design and development of BlueNet, a facility location model used in network design.
- Developed a simulation model that showed the benefits of operating a nationwide railcar pool, the results of which were used in a Surface Transportation Board proceeding to reauthorize the operation of the pool.
- Worked with a rail industry supplier to restructure their support services, incorporating predictive maintenance tools for safer and more reliable operations.

Prior to joining Oliver Wyman, Mr. Hunt was a Senior Associate at Cambridge Systematics. Mr. Hunt also was a Vice President at ALK Associates. Mr. Hunt is active in the Institute for Operations Research and the Management Sciences (INFORMS), where he was the recipient of the 2017 INFORMS President's Award. He currently serves on the INFORMS Board of Directors as Treasurer and is a member of the Transportation Research Board's Railroad Operating Technologies Committee.

Mr. Hunt earned a BS in civil engineering from West Virginia University and a MSE from the Civil Engineering and Operations Research Department at Princeton University.

Exhibit 2

Verified Statement of Carl Van Dyke

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 36500

CANADIAN PACIFIC RAILWAY LIMITED; CANADIAN PACIFIC RAILWAY COMPANY; SOO LINE RAILROAD COMPANY; CENTRAL MAINE & QUEBEC RAILWAY US INC.; DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION; AND DELAWARE & HUDSON RAILWAY COMPANY, INC. – CONTROL – KANSAS CITY SOUTHERN, THE KANSAS CITY SOUTHERN RAILWAY COMPANY, GATEWAY EASTERN RAILWAY COMPANY, AND THE TEXAS MEXICAN RAILWAY COMPANY

CN'S COMMENTS ON APPLICATION AND REQUEST FOR CONDITIONS

Verified Statement of Carl Van Dyke

February 28, 2022

PUBLIC VERSION

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1. Qualifications

My name is Carl Van Dyke. I am a Senior Advisor to and a Partner Emeritus of Oliver Wyman, a global general management consulting firm with more than 60 offices in 31 countries. My office address is One University Square Drive, Suite 100, Princeton, NJ 08540.

I have been engaged in the design, development, and application of software tools to model, evaluate, and improve the operations of railroads for more than 40 years. I was a Vice President at ALK Associates, where I led the development of rail planning tools and the initial design and proof-of-concept of the algorithmic blocking system currently used by Norfolk Southern (NS) and Canadian Pacific (CP).

In 1992, I founded and became President of MultiModal Applied Systems. MultiModal developed the MultiRail family of software tools, which have been used in the modern redesign of virtually all major North American railroad operating plans, as well as those of many railroads in Europe, Africa, and Asia. While at MultiModal, I led teams in applying MultiRail to evaluate or develop operating plan designs for the Union Pacific-Southern Pacific, Illinois Central-Canadian National, Norfolk Southern-Conrail, and the proposed Canadian National-BNSF mergers. Both CP and Kansas City Southern (KCS) use MultiRail and are familiar with the software's functionality.

Oliver Wyman acquired MultiModal in 2006 and I became a Partner with the firm until my retirement in 2013. At Oliver Wyman, I continued to advance the use of MultiRail at numerous railroads and led engagements focused on improving railroad operations and the design of new software tools for railroad management.

Currently, I continue to be active in consulting to the industry. Most recently, I assisted two Class I railroads in the design of their next generation operations control systems and helped a

new technology start-up design and build the next generation of software tools for the management of freight rail operations.

I earned a BSE in mechanical engineering from the University of Pennsylvania, and an MS in civil engineering from the Massachusetts Institute of Technology. My full resume is provided in Appendix A.

2. Assignment and Summary of Findings

I have been asked to review the process by which Applicants developed the operating plan for the combined CP, KCS, and Kansas City Southern de Mexico (KCSM) system; the metrics generated through that process; and the process by which those metrics flowed through to the operations costing and capital planning processes.

Based on my review, I conclude that the operating plan presented in the Application fails to meet the Board's basic evidentiary requirements. The result is an incomplete and deeply flawed operating plan that cannot be relied upon in evaluating the impact of the proposed merger on CP-KCS operations, the operations of other railroads, or other stakeholders, such as shippers and communities. This is so for three basic reasons:

- **The operating plan was developed using one-month "samples" from different years, not on the Base Year**. Despite selecting 2019 as the "Base Year" for the Application (including the operating plan), Applicants actually based their operating plan on a mismatched set of data from multiple years. {{XXX}}[1],[2] Applicants provide no evidence that either of the selected one-month traffic samples is representative of any

[1] dwnld_Traffic_KCS.csv, provided as part of the accompanying attachments to Traffic File - Methodology.pdf, indicate the traffic data used is from October 2020; FD 36500 - Work Paper - HC - CP Bulk Cars Per Day By Sub.xlsx, and FD 36500 - Work Paper - HC - KCS KCSM Bulk Train Cars Per Day by Subdivision.xlsx, provided as part of the accompanying attachments to Trains Per Day - Methodology.pdf.
[2] HC - Remote Videotaped Deposition of Raymond A. Elphick and John F. Orr, STB Docket No. FD 36500, Elphick Deposition, pp. 187:17, Feb 18, 2022

full year (much less the Base Year of 2019), nor do they explain why they could not have utilized samples of manifest and intermodal traffic from the same month and year, or for full year 2019. Likewise, Applicants fail to demonstrate that the Q1 2021 train plans on which they relied are representative of Base Year (2019) operations.

Moreover, Applicants made other significant errors when processing the traffic data used to develop the operating plan. Based on my review of the data and the process used by the Applicants, and my experience in developing railroad operating plans, I conclude that using mismatched traffic data and a mismatched train plan distorted the Applicants' development of the Base Year blocking and routing plan, train plan, and the operating metrics, rendering the operating plan invalid and unusable.

- **The flawed operating plan does not produce reliable estimates of traffic density, train counts, or yards expected to experience growth**: It is my understanding that the Application was filed under the Board's "old" merger rules that were in effect in 1982, so the provisions of 49 CFR Part 1111.8(a)(2000) apply with respect to the operating plan. 49 CFR Part 1111.8(a)(1)(2000) requires applicants to provide three specific outputs for the operating plan for the year in which it will be fully implemented: 1) traffic density (tonnage) maps or tables for all main and secondary network line segments,[3] 2) train counts for main and secondary network line segments, and 3) the identity of all yards that are anticipated to experience growth in activity of 20 percent or more.

  Based on my review of the Application, I conclude:

  - The **traffic density** tables and maps contain material errors that render them meaningless and unusable. The exact causes of these errors are unknown, but likely are due to flawed traffic data and a convoluted and error-prone process used for their preparation.
  - The **train counts** are inaccurate because:

[3] 49 CFR Part 1111.8(a)(5)(2000) requires that historic traffic density data for all lines carrying one million gross ton-miles per mile per year or more be presented on a density map.

- The carload and intermodal operating plan is based on flawed traffic data drawn from inconsistent and unrepresentative samples.
- Unit trains are based on a non-representative sample of trains and were incorrectly input in some cases.
- Applicants deliberately chose to exclude any train that did not traverse at least 25 percent of the stations on a subdivision, thereby failing to account for an (unknown) number of local trains that were assigned traffic in Applicants' MultiRail modeling.[4]
- There are inconsistencies between the work papers and the actual values in the Application that leave one uncertain as to the accuracy of the Application.

– The analysis of which **yards** will experience an increase of activity greater than 20 percent is invalid because:
  - The operating plan is based on a flawed analysis of traffic data drawn from inconsistent and unrepresentative samples.
  - Applicants omitted originating/terminating unit train traffic from the MultiRail modeling process, thereby failing to include yard activity values for such traffic.
  - Applicants used the wrong operating plan for the base period in the comparison.
  - Applicants did not include in their calculation of yard activity "block swaps," an integral feature of precision scheduled railroading (PSR), upon which Applicants rely for a significant portion of their cost savings.
  - Not all yards that had significant changes in cars handled were disclosed in the operating plan.
  - Applicants miscounted intermodal cars.
  - In this area, too, there are multiple discrepancies between values in Applicants' work papers and the values in the Application.

Based on my knowledge of the operations planning process, the proper use of the MultiRail software supporting that process, and the material flaws I have described in

[4] Applicants note in FD 36500 – Work Paper – HC – Trains Per Day - Methodology.pdf that "The train must pass by at least 25% of the subdivision's segment stations in order to be counted on it."

the data, I conclude that Applicants have failed to meet the requirements of 49 CFR Part 1111.8(a)(1) and (5)(2000). Applicants have provided essentially meaningless responses to those provisions.

- **Applicants did not use their operating plan to calculate the merged railroad's operating metrics or expenses**: As described in this Verified Statement and in the Verified Statement of Hugh Randall,[5] in a customary operations planning process, metrics such as gross ton-miles (GTMs), train-miles, and cars switched are generated based on the operating plan, and are then used to drive the calculation of the merged railroad's operating expenses, equipment needs (required by 49 CFR Part 1111.8(a)(3)(2000)), and capital expenditures (required by 49 CFR Part 1111.8(a)(4)(2000)). Applicants failed to follow that customary procedure in this case. Instead, it appears that in calculating operating expenses, Applicants ignored the outputs of their MultiRail operations modeling, and instead used outputs generated by a simplistic spreadsheet model (which they call the "System Model" or "Cost Metrics Model"[6]).[7] This System Model is driven largely by estimated changes in GTMs that were not generated by the MultiRail operating plan.

  In fact, Applicants appear to have intentionally decided to develop their operating plan and operating expenses separately. Applicants' post-merger operating plan includes both "synergy growth" traffic from their traffic diversion studies and "organic growth" (growth resulting from general economic conditions unrelated to the proposed merger). On a systemwide basis, Applicants' post organic growth in traffic volumes of {{XXX percent}} increase from the Base Year to post-merger Year 3.[8] However, in calculating the merged CPKC's operating expenses, Applicants considered only "synergy growth traffic of 19.8" and excluded "organic growth" traffic.[9] It is not clear why Applicants

[5] *See* Verified Statement of Hugh Randall.
[6] FD 36500 – Work Paper – HC – System Model - Methodology.pdf, FD 36500 - Work Paper - HC - Cost Metrics Growth Model _ Base year 2019.xlsx.
[7] I state that Applicants "appear" to have calculated the costs based on outputs not generated by the operating model because I could not find anything in the work papers that demonstrated how the incremental operating costs in the financial statements were prepared, or even any linkage to the Applicants' "System Model/Cost Metrics Model."
[8] FD 36500 - Work Paper - HC - Cost Metrics Growth Model _ Base year 2019.xlsx (Reference tab).
[9] Application Vol. 1, p. 442 states that financials do not include any organic growth; Application Vol. 2, p. 286, ¶85 states that the operating plan includes organic growth.

took this inherently contradictory approach. What is clear is that the resulting operating expenses do not account for the cost of handling the {{XXX}} increase in "organic growth" traffic. As a result, their claimed operating expenses bear no relation to their operating plan.

- This disconnect is not insubstantial. For example, the operating plan produces an annual increase in train-miles of approximately {{XXX }}, while the costing process appears to be based on an assumed increase of only approximately {{XXX }} train-miles.[10]
- Similarly, the increase in GTMs based on Applicants' operating plan is {{XXX }}, while the costing process assumed an increase of only 76.3 billion GTMs, *less than half of the GTMs generated by Applicants' traffic studies inclusive of organic growth and by the operating plan*.[11]
- Other operating metrics customarily developed in the course of preparing an operating plan, such as train-miles, train-hours, and crew-starts, were also estimated without reference to the operating plan for purposes of estimating CPKC's post-merger operating expenses.[12]

Applicants' failure to generate a reliable set of operating statistics based on a unified and rigorous operations planning process, and to base their operating and capital expense calculations on such outputs from the operating plan, resulted in fatally flawed operating plan and operating expense evidence. Any conclusions reached by Applicants based on them are plainly unreliable. While Applicants attempt to leave the impression that they conducted a rigorous planning process, at the end of the day they essentially abandoned the outputs of this planning process in favor of a series of ad hoc calculations taken from a simplistic spreadsheet model.[13] The metrics generated by those ad hoc calculations are

[10] *See* HC – Oliver Wyman - Change in Train Miles and GTM from Base Year to Year 3.pdf for analysis and associated data sources.
[11] *See* HC – Oliver Wyman - Change in Train Miles and GTM from Base Year to Year 3.pdf for analysis and associated data sources.
[12] *See* HC – Oliver Wyman - Review of Operating Plan Statistics and Their Sources.pdf.
[13] FD 36500 – Work Paper – HC – System Model - Methodology.pdf, FD 36500 - Work Paper - HC - Cost Metrics Growth Model _ Base year 2019.xlsx, FD 36500 – Work Paper - STB Rail Road Control Application Model – Final.xlsx – Inputs – Revenues + Costs tab.

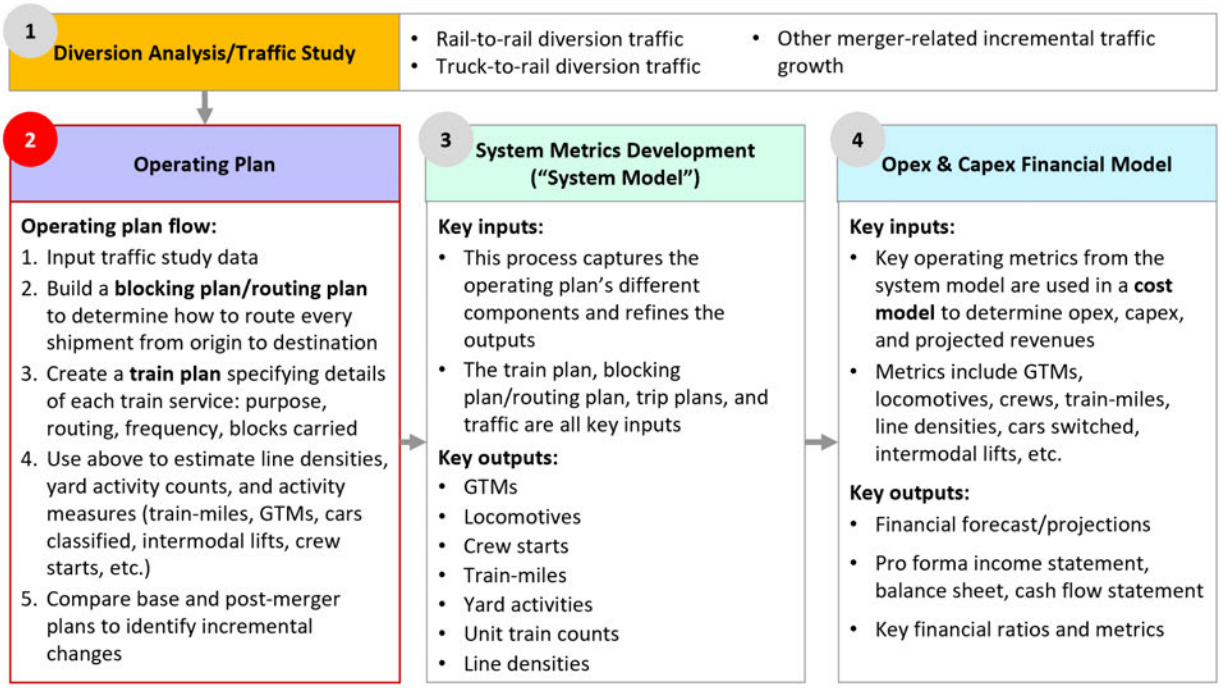
unreliable at best and distort Applicants' operating plan and both operating and capital expense calculations.

3. A Rigorous Operations Planning Process is a Key Element of a Reliable Merger Application

3.1 The operating plan plays a critical role in the application

Based on my direct experience in developing operating plans for prior merger applications, and the applications submitted in connection with those mergers, the Applicants in most recent Class I mergers generally have employed the process depicted in Exhibit 3-1. It is important to understand that this process for developing a merger application consists of a series of logical, interrelated steps: The **diversion analysis/traffic study** provides both revenue input to the financial plan and data concerning the anticipated volumes of carload, intermodal, and bulk commodity traffic that drive the development of an operating plan that is capable of accommodating that traffic. The **operating plan** is then used to generate key operating metrics that are used to calculate the merged carrier's operating and capital expenses. Those outputs, combined with the revenue estimate, drive the **financial plan**. Any failure to use reasonable inputs and/or generate accurate outputs at any step cascades through the process and renders the subsequent calculations invalid.

Exhibit 3-1: Elements of an adequate merger plan: The operating plan and system model provide outputs that drive calculation of operating and capital expenses and the financial plan[14]



The MultiRail software has been used in most recent Class I merger cases to develop the operating plan, including the car blocking and routing plan and train plan for the merged railroad. Based on that operating plan, Multirail generated operating metrics such as GTMs, train-miles, crew starts, and car handlings. Traffic was then carefully developed and tested to ensure that MultiRail would directly produce operating metrics for the base period that were consistent with historical values. For example, both the merger of Canadian National with the Illinois Central Gulf (CN-IC) and the merger of Norfolk Southern with Conrail (NS-CR) followed this process, and this approach is directly cited in their merger applications:

> CN-IC: "The pre-merger traffic flows were first determined, then the commercial and transportation plan teams worked with ALK and Reebie to determine the likely post-merger flows. MultiModal created a computer simulation of the combined rail system on its MultiRail model and the pre- and post-merger traffic was run through that

[14] This is the logic flow explicitly cited in the Canadian National-Illinois Central and Norfolk Southern-Conrail STB merger applications. Oliver Wyman was unable to find a statement indicating an explicit connection between operating plan and financial model in the Canadian Pacific-Kansas City Southern Application.

> simulation to assess train schedules, blocking patterns, and line and yard capacity. When the service design was complete, and the various related integration decisions were made, the MultiModal model produced a variety of operating statistics that were used…to assist the railroads in performing costing, benefits, and financial projections for the combined system. These and other operating statistics were also produced for the environmental and safety teams for their use in putting together environmental data and the Safety Integration Plan."[15]
>
> NS-Conrail: "To prepare the Operating Plan, I received traffic data, including new and diverted business, provided by NS's traffic consultants, and then applied that data to an operational modeling structure created by MultiModal, Inc. Our team then formulated the Plan, assisted by experienced NS operating and service management personnel. Outputs from the Plan were [used]…to estimate cost impacts of the Plan, and…for purposes of preparing the Environmental Report."[16]

In addition to generating the outputs needed for subsequent steps in the planning process, a normal operating plan modeling process supports development of a forward-looking operating plan, which is a specific requirement for the Application,[17] for the following reasons:

- To demonstrate the nature of the service to be provided and any service improvements or other benefits achieved during the first three years after the merger;
- To document the anticipated changes in activity levels for yards and lines, to show that sufficient capacity exists to handle the anticipated increase in traffic volumes (or to inform the capital planning process where investments in the physical plant are needed);
- To document the effects on labor due to changes in operations;
- To document that the merged railroad's locomotive and railcar fleets will be sufficient in light of changes in traffic volumes and operating strategy, and any associated capital requirement needs;
- To understand the changes in various operating metrics such as train-miles, crew-starts, and cars handled, which drive the process of estimating the incremental costs associated with the merger and any associated changes in volumes; and

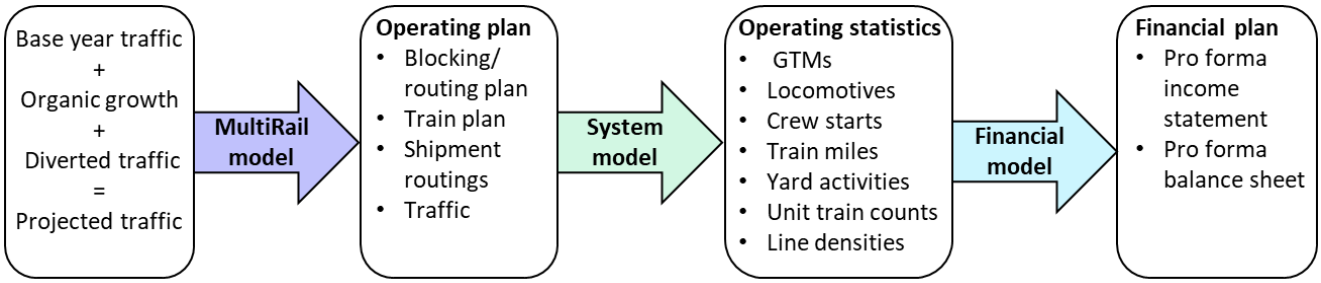
[15] Finance Docket No. 33556, Railroad Control Application, Surface Transportation Board, July 1998, Volume 2, pp. 5-6 (CN-IC merger).
[16] Finance Docket No. 33388, Railroad Control Application, Surface Transportation Board, June 1997, Volume 3B, p. 7 (Conrail merger).
[17] 49 CFR Part 1111 (2000).

- To provide information at a sufficiently granular level of detail on the changes to activity levels for lines and yards to support the assessment of environmental impacts.

3.2 Customary method for preparing an operating plan

The heart of the merger planning process is the development of the operating plan. As shown in Exhibit 3-2, in a customary and logical operating planning process for a merger, applicants utilize operations planning software, such as MultiRail, to flow projected traffic over a model of the merged railroad's network to develop the building blocks of the operating plan. Operating plan results are then processed to generate the operating statistics that are the key drivers of the merged railroad's operating and capital expense projections (i.e., the "System Model").

Exhibit 3-2: Logical operating plan development process



As the creator of the MultiRail software, I am keenly aware that the software relies on accurate traffic projections to produce reliable results. Traffic projections typically are based on a single, representative "base year" and include carload, intermodal, and unit train traffic for that year. Projections of organic growth and diverted traffic are then typically developed on a consistent basis and added to the base year traffic to develop a complete picture of the merged railroad's future traffic.

Typically, in prior recent mergers, applicants would build the network of the merged railroads into MultiRail and first flow **base year traffic** over that network using the applicants' pre-merger blocking and train service plans to verify that the model results are consistent with

actual operating results for the base year. Only then would applicants flow **projected traffic** for the merged railroads over the network, review the impact of this traffic on the operating plan, and adjust the operating plan both to accommodate changes in volumes and to leverage opportunities the merged network might provide. Based on this process, merger applicants can create consistent pre- and post-merger operating plans that include:

- A blocking and traffic routing plan that determines the route that each shipment will follow from its origin to its destination; and
- A train plan that specifies for each train its purpose, routing, service frequency, and the blocks it will carry.

The MultiRail model uses the traffic, blocking and traffic routing plan, and train plan to calculate line densities and yard activity counts. Merger applicants would then typically compare the base year and projected year densities and yard activity counts to identify line segments and yards that require additional investment to handle projected traffic. (Changes in line density also can be used as inputs to the environmental assessment of the merged system.) Once the operating plan is complete, a "system model" is then used to develop the key metrics for the plan, such as GTMs, train-miles, locomotives required, crew starts, and cars switched.

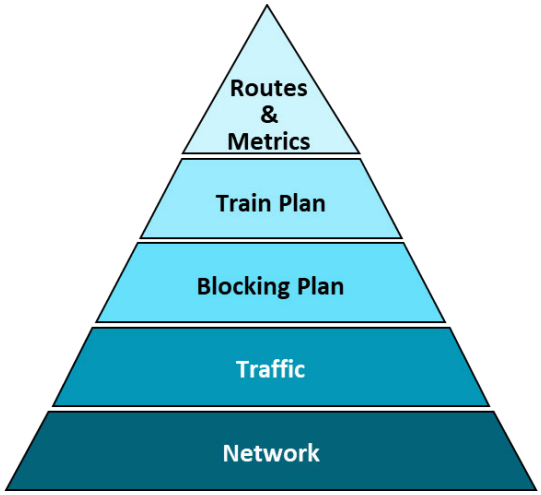
This process is clearly articulated, for example, in the Canadian National-Illinois Central merger application, including the development of the base case, creation of the post-merger case, development and refinement of the blocking plan, and generation of the changes in line volumes and yard activities.[18] That merger application provides explicit enumeration of details such as

[18] Finance Docket No. 33556, Railroad Control Application, Surface Transportation Board, July 1998, Volume 2, Exhibit 13, pp. 126-129.

block swap car volumes versus general switching activities,[19] and the explicit listing of passenger trains versus freight trains.[20]

Railroad operating plan modeling is essentially a "bottom up" process, in which each element of the plan is layered on the prior element, as depicted in Exhibit 3-3. The process begins with the network, followed by the traffic, blocking and routing plan, and train plan. If any foundational layer is flawed or incomplete, then each of the dependent layers are also flawed -- the adage "garbage in, garbage out" quickly comes to mind to describe the operating plan and key metrics based on inaccurate or unreliable inputs.

Exhibit 3-3: The operating plan modeling hierarchy



4. Applicants' Operations Planning Process

Applicants' operations planning process fails at nearly every level of the modeling hierarchy described above. The result is a set of modeling outputs that were so unreliable[21] that

[19] Finance Docket No. 33556, Railroad Control Application, Surface Transportation Board, July 1998, Appendix E to Exhibit 13, starting p. 255.
[20] Finance Docket No. 33556, Railroad Control Application, Surface Transportation Board, July 1998, Appendix F, starting p. 258.
[21] *See* Verified Statement of Hugh Randall for additional detail on operating and capital expense modeling outputs.

Applicants themselves disregarded their own operating plan outputs, including train-miles and GTMs – both of which are critical drivers of operating costs.

Instead, Applicants developed their incremental GTMs using manual calculations, based on the diversion analysis and (unsupported) estimates of car weights and distances traveled.[22] These externally estimated incremental GTMs did not include GTMs generated by Applicants' projected "organic growth" traffic – indeed, they were less than half of the incremental GTMs calculated in the operating plan.[23] Metrics such as incremental train-miles were computed in the Applicants' system model without reference to the operating plan by simply dividing the GTMs by an assumed average train weight value. As a result, the train miles in the Applicant's system model are roughly {{ }} of the incremental train-miles that resulted from the MultiRail operations modeling.[24] Similarly, the line densities from the MultiRail operating plan were significantly modified or "calibrated" to make it appear that the operating plan outputs were consistent with the system model at an aggregate level.[25]

4.1 Applicants have failed to produce reliable base year traffic or operating plan.

Based on my experience, a critical initial step in the operations modeling process for a merger is to create a "pre-merger plan," which involves flowing the merged railroads' base year traffic over the network, and a base period operating plan (once this has been coded into the

[22] FD 36500 - Work Paper - HC - 1.Proposed Final FTI Rail to Rail Diversion Results for Merger Application 10_21_20 Updat_Truck_Rev.
[23] *See* HC – Oliver Wyman - Change in Train Miles and GTM from Base Year to Year 3 Used in Cost Metrics/System Model and HC – Oliver Wyman - MultiRail Estimates – Methodology.pdf for analysis and associated work papers: FD 36500 - Work Paper - HC - Trains Per Day and Gross Ton Miles - 2021.10.22 - Working Copy with Haz Breakdown.xlsx, FD 36500 - Work Paper - HC - Cost Metrics Growth Model _ Base year 2019.xlsx.
[24] *See* HC – Oliver Wyman - Change in Train Miles and GTM from Base Year to Year 3 Used in Cost Metrics/System Model and HC – Oliver Wyman - MultiRail Estimates – Methodology.pdf.
[25] FD 36500 – Work Paper – HC – Gross Ton Miles, Train Miles, Train Weights and MGT – Methodology; FD 36500 - Work Paper - HC - Cost Metrics Growth Model _ Base year 2019; FD 36500 - Work Paper - HC - Trains Per Day and Gross Ton Miles - Working Copy with Haz Breakdown.xlsx.

operations planning software, such as MultiRail), to verify that the model produces realistic operating statistics. Once it is verified that the model is correctly coded, and that the traffic inputs are accurate, the process should produce modeled operating statistics within plus or minus 5 percent of the railroads' actual base year operating statistics. Typical statistics used in this process include car-miles by load/empty and major car type (intermodal, boxcar, covered hopper, etc.), train-miles by major train type (local, intermodal, unit, manifest), and GTMs. Volumes at key locations should also be spot checked. The MultiRail software's diagnostics capabilities also identify issues like highly circuitous moves that reveal areas where the base year plan may have errors. Where the statistics do not match, merger applicants should use the results of the validations to identify and correct problems with the coded network, traffic data, and base operating plan until a satisfactory outcome is achieved.

Based on my review of the Application and associated work papers, there is no evidence that Applicants tested their MultiRail operations planning model to ensure consistency with CP and KCS historic performance/metrics. Further, because unit train traffic was excluded entirely from the Applicants' MultiRail model,[26] any comparisons would have to be done using multiple sources for the statistics such as October 2020 for carload and intermodal traffic, and October 2019 for unit train traffic, and a train plan based on operations during Q1, 2021. The lack of validation is clearly demonstrated by the failure of the Applicants to recognize that their actual October 2020 traffic had almost no intermodal traffic out of Lazaro Cardenas due to labor actions near the port (see Section 5.2 for further details), which would have resulted in a depressed number of intermodal car-miles that should have been obvious in any validation

[26] *See* FD 36500 – Work Paper – HC – Trains Per Day – Methodology.pdf, sections 3.3-3.5. *See* also FD 36500 – Work Paper – HC – Traffic File - Methodology.pdf , Section 1: "Note that Bulk Train Design is completed outside of the MultiRail application…"

process. This is critical, because an accurate, representative base year traffic file – which incorporates all traffic types, including unit trains – is the foundational layer upon which all the other layers in the operations modeling process are dependent. Applicants have not provided parties either the operating plan model or the input files underlying their Application, so the accuracy of the base traffic or operating plan cannot be independently verified. But the fact that Applicants found it necessary to abandon the outputs of their MultiRail modeling and to introduce manual adjustments and "calibrations" suggests that the network, traffic, and base operating plan are incorrect.

4.2 Applicants' pre- and post-merger traffic file is flawed

Once the base period traffic and operating plan have been verified, applicants in the most recent Class I mergers would typically flow projected traffic for the merged railroad over the network to produce the post-merger operating plan.[27] The post-merger plan is typically a variation of the pre-merger plan, taking into account both the changes in traffic volumes that must be accommodated and the opportunities that are likely to arise from the merger. Based on the post-merger operating plan, the Year 3 line density and yard activity data required by 49 CFR Part 1111.8(a)(1) and 1111.8(a)(5)(2000) can be developed. Operating statistics that are critical to developing operating and capital expenses for the merged railroad (such as GTMs, train-miles, train starts, crew starts, and locomotives required) are also generated at this stage. It is critical that the projected traffic data that is the foundation for these calculations is as complete and accurate as possible.

[27] Finance Docket No. 33556, Railroad Control Application, Surface Transportation Board, July 1998; Finance Docket No. 33388, Railroad Control Application, Surface Transportation Board, June 1997.

The traffic data employed by Applicants in conducting their MultiRail modeling is anything but complete and accurate. This is true for many reasons, the most significant issues being as follows:

- **Applicants falsely claim that they were forced to use a representative month because MultiRail can accommodate only 28 days of traffic data.**[28] As the creator of MultiRail, I am uniquely qualified to state that this claim is false. The "days in period" functionality in the MultiRail software allows Applicants to accommodate up to 365 days of data. Furthermore, even if the 28-day limitation were true, it is a relatively easy task to take a full year of traffic and convert it to a set of representative (or "average") values for either a 7- or 28-day period. Applicants do not explain why they chose to rely entirely on a single month of data – with all the issues that creates – when they could have used a full year of data.[29]
- **Applicants chose to use traffic data from October 2020 to represent base year carload and intermodal traffic but used a month from a different year to represent base year unit trains.**[30] For unit trains, Applicants chose to use the actual trains operated during the month of October 2019 as a proxy for unit train operations during the base year (without examining or using the underlying traffic). October 2019 is a full year removed from the month of October 2020 that was used by the Applicants to support all other analytics. Applicants provide no explanation for why they chose a month from a different year than the base year to model their base carload and intermodal traffic volumes, and then and a completely different month/year for unit trains.[31] As noted above, there is nothing in the MultiRail software that would have prevented Applicants

[28] FD 36500 – Work Paper – HC – Traffic File - Methodology.pdf , Section 3. Process Detail notes that "CPRS chose to use October 2020 for a base month as MultiRail only can process 1 month at a time,"

[29] In Canadian Pacific Railway Limited, Et Al. – Control – Kansas City Southern, Et. Al. STB Docket No. FD 36500, Elphick and Orr Dep. 160:15–160:17, Feb. 18, 2022: {
}

[30] dwnld_Traffic_KCS.csv provided as part of the accompanying attachments to Traffic File - Methodology.pdf indicate the traffic data used was from October 2020; FD 36500 - Work Paper - HC - CP Bulk Cars Per Day By Sub.xlsx, and FD 36500 - Work Paper - HC - KCS KCSM Bulk Train Cars Per Day by Subdivision.xlsx provided as part of the accompanying attachments to Trains Per Day - Methodology.pdf.

[31] It is interesting to note that footnote 4 on p. 283 of Application Vol. 2 indicates that the "2019" base year operating plan CPKC chose to create in MultiRail actually reflects the Q1 2021 operating plan (with October 2019 unit trains, and October 2020 intermodal and carload traffic).

from modeling the full base year traffic using the correct year. The choice to use October 2020 for Applicants' base carload and intermodal traffic leads to significant flaws in traffic volumes in aggregate and by lane.[32] This has particularly large impacts for intermodal traffic originating at the Port of Lazaro Cardenas, which was largely closed in October 2020 due to labor issues.[33]

- **Applicants offer no evidence that their modeling of base year unit train traffic is accurate or reliable.**[34] Nothing in the Application explains Applicants' methodology for determining which bulk commodity traffic was unit train traffic, or why it was necessary to exclude unit trains from their MultiRail modeling. Based on my actual experience undertaking numerous efforts to identify unit train traffic in waybill data sets, it can be a challenging task to identify specific carloads that moved in a unit train, because loaded movements are not clearly delineated as "unit train traffic" in waybills, and empty moves do not always return to the origin of the loaded move and sometimes go on to diverse next destinations. For this reason, it is more accurate to undertake unit train modeling within MultiRail, so that the traffic that does not conform to unit train standards will drop through to the carload network and not get lost in a "gap" between the two modeling approaches.

- **Applicants correctly included organic growth in the post-merger traffic used to develop the operating plan in MultiRail but excluded that organic growth from the costing process**.[35] The contradiction in Applicants' use of "organic growth" projections indicates that Applicants did not use the results of the operating plan to drive the costing process. Consequently, train-miles, car-miles, and GTMs arising from the operating plan

[32] *See* work paper: FD 36500 – Work Paper – HC – Traffic File - Methodology.pdf , Section 3 (B). Section header indicates "desired month" was October, 2019, while details indicate that "XXX" In Canadian Pacific Railway Limited, Et Al. – Control – Kansas City Southern, Et. Al. STB Docket No. FD 36500, Elphick and Orr Dep. 160:15–160:17, Feb. 18, 2022: Deponent Elphick states: {"XXX"}

[33] "Rail blockade ends in Mexico," Freight Waves, December 2, 2020.

[34] FD 36500 – Work Paper – HC – Gross Ton Miles, Train Miles, Train Weights and MGT – Methodology.pdf, FD 36500 - Work Paper - HC - New Bulk Input w Year Splits 2021.10.20.xlsx, FD 36500 - Work Paper - HC - Trains Per Day and Gross Ton Miles - Working Copy with Haz Breakdown.xlsx, FD 36500 - Work Paper - HC - CP Bulk Cars Per Day By Sub.xlsx, FD 36500 - Work Paper - HC - KCS KCSM Bulk Train Cars Per Day by Subdivision.xlsx, FD 36500 – Work Paper – HC – Synergy Bulk Train Run Details - Year 1, 2, 3 with summary – Copy.

[35] Application Vol. 1, p. 442 states that financials do not include any organic growth; Application Vol. 2, p. 286, ¶85 states that the operating plan includes organic growth.

are more than twice the values Applicants ultimately used to develop their operating and capital expenses. As noted earlier, the operating plan produced an increase of {{XXX }} gross-ton-miles including organic growth, while Applicants' operating expense calculations are based on a value of 76.3 billion gross-ton-miles excluding organic growth.[36] Since organic growth is certain to occur (and was estimated by Applicants to be more than {{XXX }} by Year 3),[37] Applicants' financial projections clearly understate the costs and capital requirements associated with Year 3 operations.

Applicants' approach to projecting traffic introduced a multitude of opportunities for fundamental errors. Carload and intermodal traffic that moved in October 2020 is not representative of carload and intermodal traffic moved during October 2019 (much less the full Base Year). Likewise, Applicants introduced no evidence to support the assumption that bulk commodity traffic moved during October 2019 is representative of full Base Year bulk traffic. The nine hypothetical unit train pairs[38] created by Applicants may not accurately represent the merged railroads' new unit train grain traffic. Applicants' decision to include organic growth in the operations modeling process but then exclude it from the spreadsheet/costing model introduces major inconsistencies in Applicants' projections. Based on my review of the Application and work papers, Applicants provide no proof that their traffic estimates or the base operating plan are accurate or representative.

Applicants did not need to adopt such a complex and disjointed modeling approach. As part of developing the analysis of the proposed merger of Canadian National and KCS, I led a team

[36] The Summary Table tab of the work paper FD 36500 - Work Paper - HC - Cost Metrics Growth Model _ Base year 2019.xlsx presents an incremental GTM value of {{ }} when organic growth is included, and an incremental GTM value of 76.3 billion when organic growth is excluded (when annualized). See HC – Oliver Wyman - Change in Train Miles and GTM from Base Year to Year 3 Used in Cost Metrics/System Model and MultiRail Estimates – Methodology for analysis and associated data sources.

[37] The {{XXX}} percent organic growth is based on values provided in FD 36500 - Work Paper - HC - Cost Metrics Growth Model _ Base year 2019.xlsx, Reference tab.

[38] FD 36500 - Work Paper - HC - Trains Per Day and Gross Ton Miles - 2021.10.22 - Working Copy with Haz Breakdown.xlsx, Bulk Reference tab, shows nine new train pairs for loaded and empty traffic in the Train Symbol column.

that developed an operating plan using MultiRail software and full-year traffic data, including bulk commodity unit train traffic. The model was built on actual base year inputs and provided outputs in a consistent and rigorous fashion. There is no reason that Applicants could not have provided an operating plan based on the same rigorous process.[39] I also can state that based on personal experience with the CN-IC and Norfolk Southern-Conrail merger operating plans, both plans used full-year data that was from the same year as the base period.[40]

4.3 Applicants failed to correctly estimate line density, train counts, and yard activity

49 CFR Part 1111.8(a)(1) and 1111.8(a)(5)(2000) specifically require merger applicants to provide an estimate of post-merger traffic density and train counts on all main and secondary rail lines and to identify all yards that are projected to experience an increase in activity greater than 20 percent.[41] The operations planning process followed by Applicants does not provide sufficiently robust or accurate information to meet these requirements.

Accurate estimates of line density, train counts, and yard activities are critical to demonstrating that a merged railroad will be able to move the projected post-merger traffic over the network without degrading service. Research by the Association of American Railroads (AAR) has proven that as traffic on a railroad line approaches the line's practical capacity (which the AAR defines as 70 percent of its theoretical capacity[42]), the level of service on the line

[39] In workpaper FD 36500 – Work Paper – HC – Traffic File - Methodology.pdf Section 3 (B) Applicants state "FTI supplied CPRS with multiple years of data, but CPRS chose to use October 2020" from which one can infer that Applicants could instead have "chosen" to use the full year 2019 data to be consistent with the Applicant's selection of 2019 as their base year.

[40] Finance Docket No. 33556, Railroad Control Application, Surface Transportation Board, July 1998, Vol. 2, p. 127 (2.1 Base Period); Finance Docket No. 33388, Railroad Control Application, Surface Transportation Board, June 1997, Vol. 3B, p. 90 (2.1 Base Period).

[41] 49 CFR Part 1111.8(a)(1)(2000).

[42] {{XXX}} See: Canadian Pacific Railway Limited, Et Al. – Control – Kansas City Southern, Et. Al. STB Docket No. FD 36500, Elphick and Orr Dep. 60:25 – 61:16, Feb. 18, 2022

degrades.[43] Accurate line density data are essential in identifying line segments where degraded service will occur, therefore requiring the provision of capital investment to increase capacity.

Similarly, accurate estimates of yard activity are essential for identifying yards with insufficient capacity to handle post-merger switching activity. Failure to estimate post-merger yard activity correctly and to provide for the capital investment needed to keep yards fluid can lead to catastrophic network failures. For example, following the merger of the Union Pacific and Southern Pacific, Englewood Yard in Houston did not have enough capacity to handle the increase in traffic from the merger. The yard became overwhelmed, resulting in gridlock on Union Pacific routes in the Houston area, which then cascaded out into service disruptions across the railroad's network.[44]

Likewise, train counts and yard activity levels are central to the environmental review process. Clearly, developing accurate estimates of line and yard capacity is too important to be left to ad hoc and untested processes, particularly where, as here, Applicants had tools at hand, such as MultiRail, to develop estimates in a rigorous manner.

4.3.1 Line density

As previously discussed, in a customary operations planning process, all carload, intermodal, and bulk unit train traffic is flowed over the network and is coded into the operations planning software (i.e., MultiRail). The software develops estimates of traffic density and train counts by line segment and car handlings by yard. Applicants did not follow such a procedure. Instead, they employed an overly complex process to compute line density values that used a

[43] National Rail Freight Infrastructure Capacity and Investment Study, Association of American Railroads, September 2007, p. A-10, where it notes "Practical capacity is about 70 percent of the theoretical capacity and provides reliable service."
[44] "Problems in Wake of Merger Continue for Union Pacific," Wall Street Journal, October 2, 1997.

combination of (1) historic tonnage, (2) train counts (without weight values[45]) extracted from MultiRail for selected traffic and trains, and (3) a separate manual process for estimating tons for existing and new unit trains.[46] In addition to being based on inaccurate traffic data, including a purely statistical representation of organic growth-related changes in unit trains,[47] the Applicants' estimates do not include trains that operated over an arbitrarily determined subset of a line segment.[48]

As the designer of MultiRail, I know that this tool is fully capable of estimating the weights of trains. Once traffic has been loaded, and routed, the size of each train is estimated, including its weights. These weights are responsive to changes in the operating plan, such as train frequency and shipment routings. Thus, if you are trying to estimate train weights, and the effects of changing the operating plan design, it is far more effective to do this using MultiRail than by applying a set of fixed, historic train weights that are insensitive to the operating plan design.

In developing their line density analysis, Applicants chose to ignore tonnage values by line segment from MultiRail. Instead, they computed tonnage values using an aggregate tonnage spreadsheet model (which also was divorced from the tonnages in the system model).[49] Any differences between the aggregate tonnage spreadsheet model and the tonnages by line segment

[45] {XXX}. *See* Canadian Pacific Railway Limited, Et Al. – Control – Kansas City Southern, Et. Al. STB Docket No. FD 36500, Elphick and Orr Dep. 188:8 – 192:20, Feb. 18, 2022.
[46] FD 36500 - Work Paper - HC - Trains Per Day and Gross Ton Miles - 2021.10.22 - Working Copy with Haz Breakdown.xlsx.
[47] *See* Section 5.3.1 of this Verified Statement for details on the handling of unit trains.
[48] Applicants note in FD 36500 – Work Paper – HC – Trains Per Day - Methodology.pdf that "The train must pass by at least 25% of the subdivision's segment stations in order to be counted on it."
[49] FD 35600 - Work Paper - HC - 1.Proposed Final FTI Rail to Rail Diversion Results for Merger Application 10_21_20 Updat_Truk_Rev.xlsx.

were obfuscated by applying numerous "calibration factors" to the process.[50] These calibration factors had the effect of significantly distorting growth values in many cases, leading to further errors in density values. For example, while Applicants use an organic growth factor through Year 3 for KCS of approximately {{ in the system model, they instead applied the higher merged system average growth rate of {{ }} for the KCS subdivisions.[51] They then compounded this error through the use of "calibration factors" to cause the effective organic growth rate to exceed {{ }} on the Kansas City-Springfield line, more than double the correct value of {{ }}.[52] Applicants do not explain why they chose to use an untested (and unprecedented) process requiring a series of unorthodox adjustments, when the MultiRail software offered a much more transparent and integrated way to conduct the analysis thoroughly and accurately.

The Applicants' process produced line density (tonnage) results that are demonstrably incorrect on essentially every subdivision. In short, these values are wrong and cannot be used for any purpose.[53]

4.3.2 Yard activity

The Applicants' process for estimating changes in yard activity is similarly flawed. To begin with, any errors in traffic volumes and mix (e.g., due to it being for a non-representative time period[54] or due to processing errors in creating the MultiRail traffic data) carried through to the

[50] FD 36500 - Work Paper - HC - Trains Per Day and Gross Ton Miles - 2021.10.22 - Working Copy with Haz Breakdown.xlsx.
[51] *See* HC – Oliver Wyman - Review of Growth Factors in CPKC Application.pdf.
[52] *See* Sections 5.1 and 6.1 of this Verified Statement for specific examples; also see Section 5.3.1 for example of errors in unit train counts. *See* HC- Oliver Wyman - Review of Growth Factors in CPKC Application.pdf and HC - Oliver Wyman – Springfield Line 30 Percent Growth.pdf.
[53] *See* Sections 5.1 and 6.1 of this Verified Statement for specific examples of invalid line density values.
[54] *See* prior discussion of use of October 2020 for intermodal and carload traffic, and October 2019 for unit trains.

yard statistics in the Application. As shown in Exhibit 3-1 and previously discussed, in a customary operations planning process, activity per yard is a direct output of the MultiRail software. Applicants, however, produced values from MultiRail that excluded unit traffic, with no footnote on or explanation for the missing traffic.[55] Applicants then relied on a pieced-together combination of MultiRail outputs and manually calculated unit train traffic originating/terminating volumes by location to estimate yard activities for the purposes of the environmental filing.[56] The result is that *the yard activity values submitted by applicants to the Board in the environmental filing and the operating plan are not the same*. In addition, Applicants' estimate of yard activities intentionally excluded block swaps (a key element of the PSR efficiencies touted in the Application)[57] and underestimates intermodal yard counts by a factor of 2.5, using a non-standardized approach to counting intermodal platforms.[58]

Next, instead of providing the required comparison between the Base Year and Year 3 yard activity, Applicants provided a comparison between a so-called "optimized plan" and the post-merger plan in the main body of the Application, and an uninterpretable and mislabeled comparison of the optimized plan with the growth plan in an appendix.[59] Doing so does not comply with the Board's regulations.

[55] *See* Section 5.3.1 of this Verified Statement for discussion of Applicants' handling of unit trains and traffic.
[56] Based on file submitted to the Board by Venable LLP and CP under Comment ID "31353" (31353.pdf), which contains master segment and yard tables with information on environmental trains per day.
[57] Of the 21 new trains listed by Applicants in Application Vol 2., Appendix I, pp. 438-442, at least 20 appear to engage in block swaps, particularly at Shreveport, Sanchez, and Chicago.
[58] *See* HC – Oliver Wyman - Intermodal to RailCar Conversion Factor Source Compilation.pdf.
[59] Application Vol, 2, p. 292, ¶100 states that Appendix B "displays all yard volume changes under the Optimized Plan and Growth Plans" – as discussed in Section 6.3 of this Verified Statement, the reports in Appendix B are mislabeled, making it impossible to determine their exact content. The only tables in the main body of the Application are Table 3, on p. 297 of Vol. 2, which is strictly between the base plan and the optimized plan, and Table 5, on p. 305 of Vol. 2, which is between the optimized plan and the growth plan. A reliable, direct comparison between the base plan and the growth plan is not present in the Application.

Applicants also ignored the requirement to identify all yards that have a projected 20 percent or greater change in car handlings, leaving out the details of several highly impacted locations (Port Arthur, TX for example).

4.3.3 Train counts by subdivision

Applicants' train counts by subdivision also are unreliable due to a variety of factors, including the use of invalid base traffic (see Section 4.1), errors in estimating post-merger traffic volumes (particularly for intermodal – see Section 4.2), the exclusion of any train that did not traverse at least 25 percent of the stations on a line segment,[60] the use of a one-month sample period for unit trains,[61] errors in the entry of unit train counts,[62] and the failure to break out any passenger trains operating over a subdivision.[63] In addition, the source for the train counts used in the filing provided by Applicants in response to CN discovery request #115 does not match the values presented in the Application.[64]

One of the key "rules" applied by Applicants in developing the system model train counts was a decision to exclude all trains that traversed fewer than 25 percent of the "MultiRail nodes" in a subdivision.[65] MultiRail nodes are placed by the modeler based on topographic and operational characteristics of the network and bear no relationship to distance.[66] Thus, one pair

[60] Applicants note in FD 36500 – Work Paper – HC – Trains Per Day - Methodology.pdf that "The train must pass by at least 25% of the subdivision's segment stations in order to be counted on it."
[61] See FD 36500 – Work Paper – HC – Trains Per Day - Methodology.pdf.
[62] See Section 5.3.1 of this Verified Statement.
[63] No passenger trains are listed in Applicants' train counts by line segment tables (Application Vol. 2, Appendix A, pp. 363-368. In contrast, *see* Finance Docket No. 33556, Railroad Control Application, Surface Transportation Board, Vol. 2, July 1998, pp. 258-264, Appendix F (Train Densities) (CN-IC merger).
[64] *See* response #115, "Kansas City Southern and Canadian Pacific's Joint Responses and Objections to Canadian National Railway Company's First Set of Discovery Requests," p. 91.
[65] Applicants note in FD 36500 – Work Paper – HC – Trains Per Day - Methodology.pdf that "The train must pass by at least 25% of the subdivision's segment stations in order to be counted on it."
[66] In the MultiRail software, the physical rail network is represented as a series of node and links. Each node represents a station on the railroad or a location that plays a role in properly describing the railroad network, such as a junction point. Links are the tracks that connect nodes (stations).

of nodes could be one mile apart, and another pair could be 25 miles apart. To use node count as a screening criterion is improper and unreliable, as it is not truly a distance-based criterion. Furthermore, Applicants provide no rationale as to why trains should be excluded simply because they operate over only part of a subdivision. Indeed, Applicants' approach {{XXX}}.[67] The peak train count on a subdivision, even if it does not traverse the full subdivision, might be of more value than the average count of trains traversing the full subdivision, as the peak train count could be more important from a capacity and environmental perspective.

In Canadian Pacific Railway Limited, Et Al. – Control – Kansas City Southern, Et. Al. STB Docket No. FD 36500, Elphick and Orr Dep. 176:7 – 180:3, Feb. 18, 2022 deponent Elphick states that { } By witness Elphick's own admission, {XXX}.

4.4 Applicants largely abandoned their MultiRail operating plan in developing the merged carrier's operating expenses.

Compared to Class I merger filings since the mid-1990s,[69] Applicants' planning process is disjointed, resulting in misaligned, misleading, and erroneous outputs of such frequency and magnitude that Applicants apparently were unable to use their activity-based MultiRail operating statistics as the basis for projecting operating and capital costs to move Year 3 projected traffic.[70]

As noted previously,[71] in a customary merger planning process, current and projected traffic flows for the merging railroads are loaded into an operations model (such as MultiRail). Using the functionality included within the model, an operating plan is developed. This process

[67] HC - Remote Videotaped Deposition of Raymond A. Elphick and John F. Orr, STB Docket No. FD 36500, Elphick Deposition, pp. 178:22, Feb 18, 2022.
[68] HC - Remote Videotaped Deposition of Raymond A. Elphick and John F. Orr, STB Docket No. FD 36500, Elphick Deposition, pp. 178:9 – 178:10, Feb 18, 2022
[69] See discussion in Section 3 above.
[70] See discussion below and Verified Statement of Hugh Randall for additional detail on operating and capital expense modeling outputs.
[71] See Section 3.1 (Exhibit 3-1).

results in a blocking plan, train plan, a routing plan for each traffic movement, as well as resulting operating statistics. The operating statistics are then input into a financial model to develop operating costs. In this model, based on the historic relationships between operating statistics and each category of operating expense for the merging railroads, operating statistics are converted into estimated operating expenses for the combined railroad and become inputs to the post-merger financial projections for the merged railroad.[72]

While Applicants employed MultiRail as a first step in preparing their operating plan, Applicants did not follow the process used in past mergers that utilized the outputs of the MultiRail model to support the costing process.[73] For example, while Applicants included organic growth in the MultiRail traffic, they (inexplicably) chose to exclude it in developing post-merger operating expenses. As a result, it became impossible to use operating statistics such as train-miles from MultiRail in the costing process. This decision had a major (negative) impact on the reliability of Applicants' operating cost estimates. While MultiRail produced an estimated increase in train-miles of approximately {{ }} per year, the costing process was based on a "no organic growth" increase in train miles of only about {{ }} per year.[74] This lower value was generated by Applicants' system model, which incorporated various assumptions about efficiency gains, so as to produce a very low incremental increase in train-miles. None of those efficiency gains have been proven using MultiRail or any

[72] The verified statement by Kent and Klick in the CN-IC merger application provides an excellent example of the use of operating metrics to drive the costing process (see Finance Docket No. 33556, Railroad Control Application, Surface Transportation Board, July 1998, Verified Statement of Kent and Klick, starting on p. 289)

[73] Finance Docket No. 33556, Railroad Control Application, Surface Transportation Board, July 1998, Vol. 2, pp. 127-129, and Verified Statement of Kent and Klick, starting on p. 289; *See* also Finance Docket No. 33388, Railroad Control Application, Surface Transportation Board, June 1997, Volume 3B, pp. 90-92.

[74] *See* HC – Oliver Wyman - Change in Train Miles and GTM from Base Year to Year 3.pdf for associated analysis and workpapers.

other detailed operating analysis – to the contrary, they are based entirely on a set of externally provided assumptions.

Applicants obfuscate this fact by portraying metrics in their Application as if they were derived from the operating plan – for example, in Table 2 on page 28 of Volume 2 of the Application.[75] In fact, the metrics in Table 2 have little to do with the operating plan and were sourced instead from the previously cited system model.

In Canadian Pacific Railway Limited, Et Al. – Control – Kansas City Southern, Et. Al. STB Docket No. FD 36500, Elphick and Orr Dep. 180:8 – 184:22, Feb. 18, 2022, deponent Elphick is asked about Table 2, and the role of the system model. In response to a series of questions on whether MultiRail produced the statistics in Table 2 the following exchange took place:

{

}

In later questioning Elphick stated:

{ }

Exhibit 4-1 depicts my understanding of the process actually used by Applicants to generate the operating plan and metrics used for costing.

[75] *See* HC – Oliver Wyman - Review of Operating Plan Statistics and Their Sources.pdf.

Exhibit 4-1: Application operating plan flaws: no connection between the operating plan, system model, and financial projections

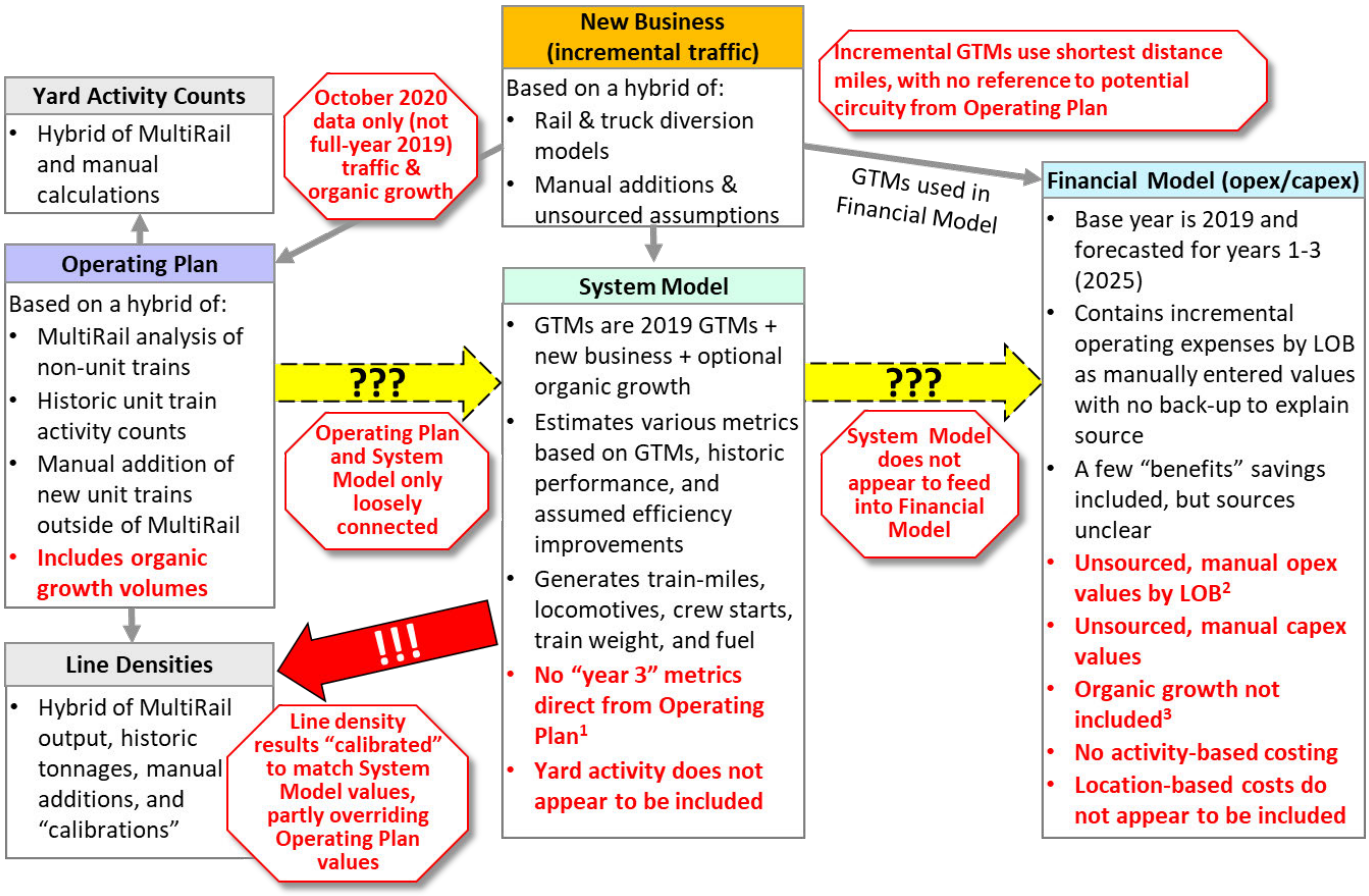


Exhibit 4-1 illustrates that the metrics used by the Applicants in the costing process are *not* based on the operating plan, but instead are based on a set of standalone assumptions about how various metrics will change in response to changes in volumes. In the system model, ton-miles are the key metric that drives the generation of almost all other metrics, such as changes in train-miles and crew starts. But the projected change in ton-miles in the system model was not based on the operating plan, but rather resulted from a process that does not utilize key considerations,

such as actual empty/loaded ratios and the effects of the operating plan on circuity – all of which are normally considered in the operating plan modeling process.[76]

Applicants have not explained why the metrics developed from their operating plan were not flowed through to the financial model, as they would in a typical merger application. As stated above, a review of the Application and associated work papers did not identify any links between the methodologies or Excel-based "models" that tied the operating plan to incremental operating expense costing. Applicants' projected operating costs are presented by line of business; a review of the Application and workpapers did not yield any statistics either in the operating plan or the system model that were organized in this manner.[77]

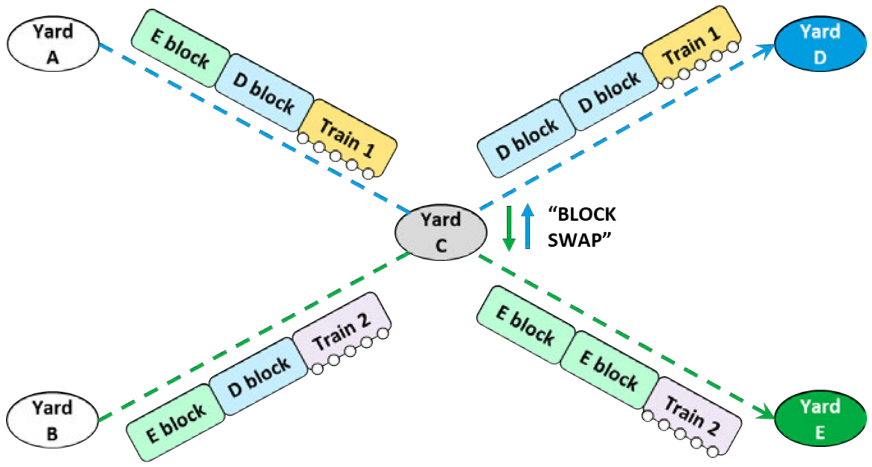
A central element of PSR and of the "optimized plan" presented by Applicants is a reduction in intermediate car classifications through the creation of more direct blocks closer to the origin of shipments and the increased use of block swaps. In point of fact, of the 21 new trains Applicants describe, my review indicates at least 20 of those trains are involved with block swaps, primarily at Shreveport, Sanchez, and Chicago.[78]

[76] FD 36500 - Work Paper - HC - 1.Proposed Final FTI Rail to Rail Diversion Results for Merger Application 10_21_20 Updat_Truck_Rev xlsx.
[77] *See* Verified Statement of Hugh Randall.
[78] Application Vol. 2, Appendix I, pp. 437-442.

A "block swap" refers to the movement of an intact group of cars from one train to another.

For example, consider the following diagram (Exhibit 4-2):

Exhibit 4-2: Block swap example



In this example, Yard A and Yard B each make blocks for D and E. When Train 1 leaves Yard A it carries both D and E blocks, and when Train 2 leaves Yard B it carries both D and E blocks. But Train 1 only goes to D (blue line) and Train 2 only goes to E (green line). However, since both trains travel via Yard C, they can "swap" blocks at that yard for the end points they do not serve: Train 1 can give its E block to Train 2, and Train 2 can give its D block to Train 1.

Such block swaps reduce the need to classify cars at Yard C into new blocks, while maximizing service quality to D and E. Note that while this does eliminate the need to do detailed switching of cars at Yard C for the cars traveling in these blocks, it does not eliminate the need to break apart both trains and set-off/pick-up cars at Yard C, which does impact the use of Yard C's capacity and environmental footprint.

Despite Applicants' reliance on block swaps to achieve efficiencies through implementation of PSR operating concepts, no mention is made of any activity measures related to yard switching activity, including intermediate switching, block swaps, or intermodal lifts in Applicants' system model, and nothing indicates that such measures were taken into account in

developing post-merger operating expenses. There is one small entry in the benefits section of the financial model that cites a reduction in "I&I Switching" of a few hundred thousand dollars per year.[79] This unexplained benefit is the only reference I could find to location-based car handling costs.

In sum, while the Application presents a veneer that somewhat resembles the type of operations planning process characteristic of the most recent Class I rail mergers, the processes they describe are, with apologies to Macbeth, "full of sound and fury, signifying nothing." In actuality, Applicants set aside the proven tools and models such as MultiRail in the costing process. Instead, Applicants embarked on a convoluted (and unprecedented) operating plan process that they never fully explain. Then, essentially abandoning their own operating plan, Applicants substituted operating costs derived from a simple, undocumented spreadsheet that accounted for less than half of the GTMs identified in the operating plan process – and used this as the critical driver of their operating and capital cost calculations.[80]

5. Specific Errors in Applicants' Analysis

Applicants' choices concerning traffic data and modeling raise serious issues concerning the credibility of their operating plan and operating metrics. In this section, I describe some of the more serious errors in Applicants' planning process, which are summarized in Exhibit 5-1. Beyond these more serious examples, there are a host of other issues with the operating plan, which are summarized in Section 6.

[79] FD 36500 – Work Paper - STB Rail Road Control Application Model – Final.xlsx, Inputs- Operating Benefits tab.

[80] Application Vol. 1, p. 442, ¶13 states organic growth was excluded from financials, Application Vol 2, p. 286, ¶85 states organic growth was included in the operating plan. *See also* FD 36500 - Work Paper - HC - System Model-Methodology.pdf; FD 36500 - Work Paper - HC - Cost Metrics Growth Model_Base year 2019.xlsx; and FD 36500 – Work Paper – STB Rail Road Application Model – Final.xlsx, Inputs - Revenues + Costs tab.

Exhibit 5-1: Summary of serious errors in Applicants' operating planning process[81]

Section	Description	Discussion
5.1	Traffic density on the main line between Sabula, IA and Airline Junction (Kansas City) is understated by up to 25 percent.	• The Sabula – Airline Junction line is the primary artery in the CP-KCS system and the only line linking the CP and KCS systems. • If Applicants use invalid or understated traffic volume estimates for this line, this in turn invalidates capital expense decisions and environmental assessments for this line. • Given the central role of the line, service issues arising from insufficient investment in capacity based on inaccurate traffic estimates might well spread to other portions of the system, as has occurred in past mergers.
5.2	Northbound intermodal traffic at Lazaro Cardenas is significantly understated in the Base Year, and the understatement carries forward into the Year 3 estimate.	• While the Base Year for the operating plan is 2019, Applicants chose to model carload and intermodal traffic based on traffic in October 2020. The Port of Lazaro Cardenas, however, was effectively closed during October 2020 by a blockade established by striking teachers. • The annualized October 2020 intermodal traffic at Lazaro Cardenas used by the Applicants is less than 10 percent of the actual 2019 traffic it is supposed to represent. This error in Base Year traffic carries forward into Year 3 and materially affects train design to and from the Port.
5.3	The train counts by subdivision are invalid and cannot be relied upon	• Merger regulations require Applicants to report the changes in trains per day on each line segment or subdivision between the pre- and post-merger operating plans – due to a variety of causes the train counts produced by the applicants are invalid and cannot be relied upon • Applicants' train counts are inherently unreliable in light of the numerous errors in the traffic on which Applicants' operating plan is based. • An unknown number of trains were arbitrarily excluded from train counts because they traversed fewer than 25 percent of the nodes on a line segment/subdivision. In all likelihood, this results in Base Year and Year 3 train counts that are understated. • Base Year unit trains were developed using one only month of data (October 2019). Applicants provided no analysis or other evidence to demonstrate that this period is representative of full-year 2019 unit train operations. • There is real potential that some traffic operated in unit trains was excluded from MultiRail and its train counts, but also not accounted for in the one-month snapshot of unit trains used by Applicants. • The trains per day values published in the Application do not match the work papers Applicants identified as being the source of those values.
5.4	The Application provides invalid data on car handling changes at yards and does not report numerous yards with projected growth in activity of more than 20 percent (as required by the Board's merger application	• Merger regulations require Applicants to report any yard at which they project activity will increase by more than 20 percent. This percentage is supposed to be measured between pre-merger operations and the steady-state post-merger case. • Applicants incorrectly use their so-called "Optimized Plan" as the starting point for measuring changes in yard activity, but that is a plan or scenario that can only be implemented beginning after the merger is consummated.

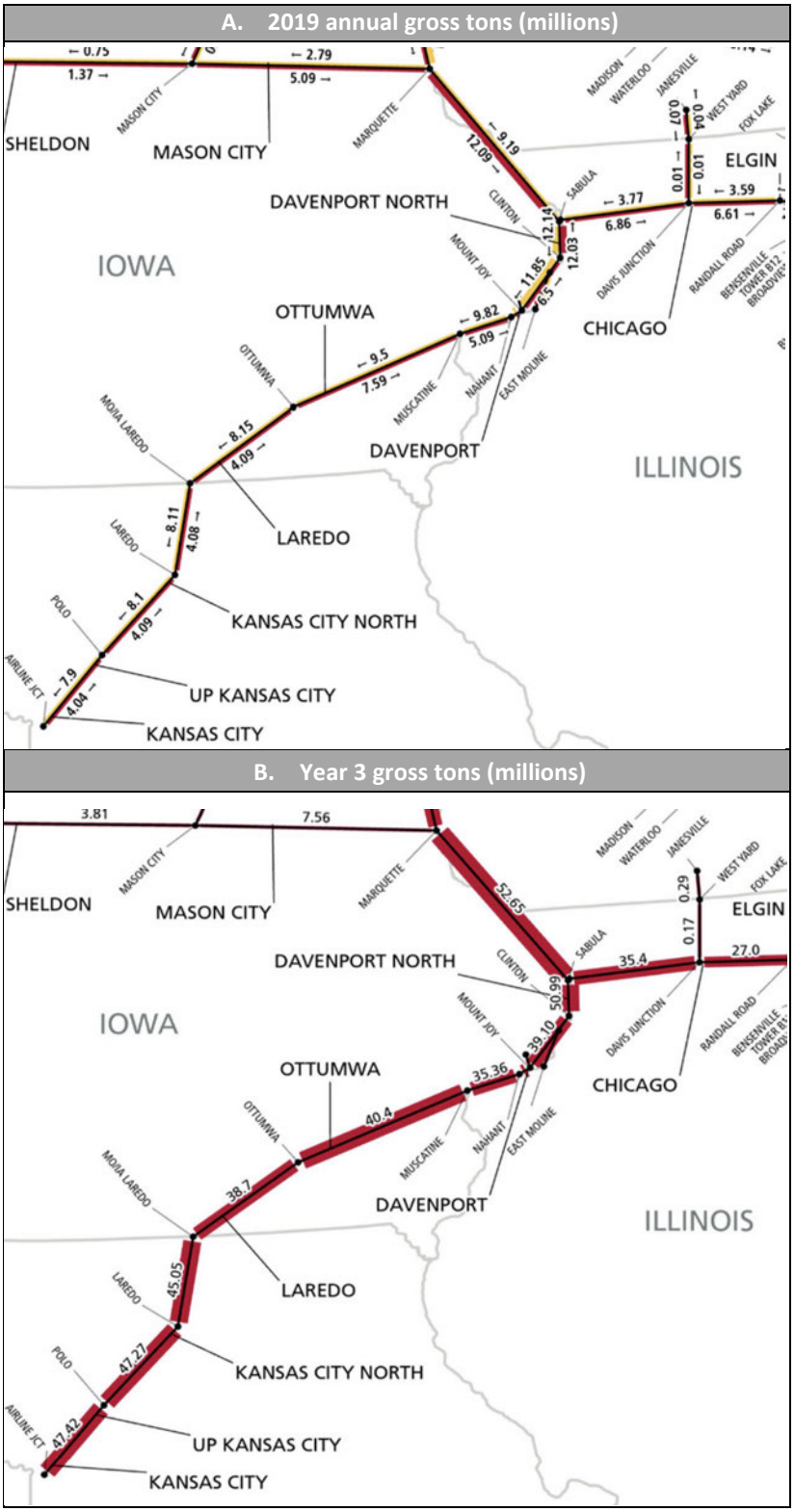
[81] Summary table only: All citations for error descriptions and discussion are provided in subsequent detail sections.

Section	Description	Discussion
	and environmental regulations).	• Applicants fail to include all yards that will experience an increase in activity of more than 20 percent, in part because they failed to include bulk traffic in their statistics. • Given experience in past mergers in which traffic exceeded a yard's capacity and triggered service disruptions, this requirement is an important cross-check of the Applicants' operating and capital plans.
5.5	Originating and terminating traffic estimated in the Application is out of balance at numerous locations.	• One of the primary methods to check the accuracy of a traffic base is to compare originations and terminations at each location, as originations and terminations by location should balance generally. • Numerous locations reported in the Application are out of balance, indicating that there likely are problems with the traffic data. • This in turn has a direct impact on the activity levels reported for yards, and likely has caused distortions in the blocking and train plans.

5.1 Traffic density between Sabula, IA, and Airline Junction, Kansas City

The line between Sabula, IA and Airline Junction near Kansas City is the sole artery that connects the CP and KCS systems and will be the CPKC network's critical north-south route. It is, therefore, essential that the tonnages projected for this line are accurate. Otherwise, Applicants are likely to fail to allocate sufficient capital to maintain capacity and keep this artery fluid. (Accurate tonnage also supports the environmental assessment process.) Exhibit 5-2 shows the tonnages reported in the Application for the Sabula-Airline Junction line, as well as the feeder lines into Sabula from the north. Exhibit 5-3 shows the underlying tonnage figures by line segment.

Exhibit 5-2: Base Year and Year 3 projected traffic for Sabula, IA-Airline Junction, Kansas City[82]



[82] Refer to Exhibit 14 traffic density maps in Volume 2 of Application, pp.508, 510.

Exhibit 5-3: Tonnage by line segment[83]

Line Segment	2019 Tonnage	Year 3 Tonnage	Difference
Nahant – Muscatine	14.91	35.36	20.45
Muscatine – Ottumwa	17.09	40.4	23.31
Ottumwa – MO/IA Laredo (state line)	12.24	38.7	26.46
MO/IA Laredo – Laredo	12.19	45.05	32.86
Laredo – Polo	12.19	47.27	35.08
Polo – Airline Junction	11.94	47.42	35.48

The 2019 tonnage demonstrates that traffic over the line, especially between Ottumwa and Airline Junction, varies very little, indicating that little traffic originates or terminates along this line. Yet, the Applicants project that in Year 3, tonnage on the line will vary widely between segments, from a low of 38.7 million tons to a high of 47.42 million tons (see Exhibit 5-3 above). To understand this anomaly, and to demonstrate that there are no significant new sources of traffic along this line in the Year 3 scenario, I conducted two location-specific analyses.

First, I conducted a manual review of all the diversion traffic identified in Applicants' Diversion Traffic Excel Workbook[84] and classified it either as traversing the line or not traversing the line. Because of the location of this line between the merging railroads, it is generally not affected by reroutes associated with extended hauls – and thus the analysis did not need to broadly consider potential volume adjustments where an extended haul move was already in the base (2019) traffic. "Extended haul" traffic was considered and counted only it if it was new to CP and would (for the first time) move over the Sabula – Airline Jct. line segment.[85] My analysis focused on the Muscatine-Ottumwa segment, with results as shown in Exhibit 5-4.

[83] Based on values from Exhibit 14: Density Charts in Volume 2 of Application, pp.461-504.
[84] *See* FD 35600 - Work Paper - HC - 1.Proposed Final FTI Rail to Rail Diversion Results for Merger Application 10_21_20 Updat_Truk_Rev.xlsx.
[85] *See* HC – Oliver Wyman - Evaluation of Ottumwa Line Segment (Muscatine - Ottumwa) Tonnage – Methodology.pdf for methodology and associated work papers.

Exhibit 5-4: Results of analysis of diverted traffic[86]

Line Segment	Applicants 2019 Tonnage	Applicants Year 3 Tonnage	Estimated Tonnage from Diversion	Organic Growth @{{XXX}}	Revised Estimated Tonnage	Percentage Under - Estimate
Muscatine-Ottumwa	17.09	40.40	{{XXX}}	{{XXX}}	{{XXX}}	{{ }}

The tonnage values for each shipment were directly based on the values Applicants presented in their system model.[87] The stated approach taken by Applicants was to compute tonnages by starting with base 2019 tonnages and then adding new business that is expected to result from the merger, plus an allowance for organic growth (here, Applicants used a {{XXX }} growth factor).[88] *The analysis revealed that the tonnages shown on the maps in the Application are {{XXX }} below the correctly calculated tonnages for this line segment.*[89]

Second, to test the fluctuation in traffic densities on the line segments between Ottumwa and Airline Junction shown in the Application, I loaded the diversion traffic into a version of MultiRail controlled by Oliver Wyman and flowed it across the network to develop the gross tonnage values for each line segment. This exercise both provided a cross-check to my analysis of the traffic on the Muscatine-Ottumwa segment and tested whether any traffic originates/terminates along the line. The result of my analysis, shown in Exhibit 5-5, is largely consistent with my earlier analysis. It demonstrates that, contrary to the data presented in the Application, there are no significant variations in tonnages between the segments.

[86] Applicant's 2019 and Year 3 tonnages are based on values provided in Exhibit 14: Density Charts in Volume 2 of Application, pp. 461-504. *See* HC – Oliver Wyman - Evaluation of Ottumwa Line Segment (Muscatine – Ottumwa) Tonnage - Methodology.pdf for analysis and associated sources to calculate the "Tonnage from Diversion."
[87] *See* FD 36500 – Work Paper – HC – System Model - Methodology.pdf.
[88] *See* FD 36500 - Work Paper - HC - Cost Metrics Growth Model _ Base year 2019.xlsx. (Organic growth is derived from the change in Year 3 and the Base year "Reference tab").
[89] *See* HC – Oliver Wyman - Evaluation of Ottumwa Line Segment (Muscatine - Ottumwa) Tonnage – Methodology.pdf for approach to analysis and how the 25 percent difference is calculated.

Exhibit 5-5: Results of MultiRail analysis of the line between Nahant and Airline Junction[90]

Line Segment	Applicants 2019 Tonnage	Applicants Year 3 Tonnage	Diversion Tonnage from OW MultiRail	Organic Growth @21%	Revised Estimated Tonnage	Estimated Percentage Error
Nahant - Muscatine	14.91	35.36	{{XXX}}	{{XXX}}	{{XXX}}	{{ %}}
Muscatine - Ottumwa	17.09	40.4	{{XXX}}	{{XXX}}	{{XXX}}	{{ }}
Ottumwa – MO/IA Laredo	12.24	38.7	{{XXX}}	{{XXX}}	{{XXX}}	{{ }}
MO/IA Laredo – Laredo	12.19	45.05	{{XXX}}	{{XXX}}	{{XXX}}	{{ }}
Laredo – Polo	12.19	47.27	{{XXX}}	{{XXX}}	{{XXX}}	{{ }}
Polo – Airline Junction	11.94	47.42	{{XXX }}	{{XXX}}	{{XXX}}	{{ }}

5.2 Base Year intermodal traffic at Lazaro Cardenas is understated

Exhibit 5-6 compares actual intermodal traffic during the full year 2019 with the 2019 Base Year intermodal traffic for Lazaro Cardenas that Applicants projected by annualizing traffic from the single month of October 2020.

Exhibit 5-6: Comparison of annualized intermodal units[91]

	From Lazaro Cardenas		To Lazaro Cardenas	
Annualized from	Loads	Empties	Loads	Empties
2019 Full Year Waybills	{{XXX}}	{{XXX}}	{{XXX}}	{{XXX}}
October 2020 Waybills	{{XXX}}	{{XXX}}	{{XXX}}	{{XXX}}

Exhibit 5-6 clearly illustrates the impact of Applicants' decision to rely entirely on October 2020 traffic data to create the Base Year operating plan for carload and intermodal traffic. The number of originating loaded containers in the annualized October 2020 data is less than 10 percent of the number of loaded containers in the actual 2019 full year data. This discrepancy is attributable largely to the fact that the Port experienced a blockade by striking teachers during

[90] Applicant's 2019 Tonnage and Year 3 Tonnage are based on values from Exhibit 14: Density Charts in Volume 2 of Application, pp. 461-504. Organic growth tonnage is calculated from multiplying the 2019 tonnage by 21 percent. *See* HC – Oliver Wyman - MultiRail Corridor Volume, Tonnage and Length Estimates for Diversion Traffic Methodology.pdf for how the "Diversion Tonnage" is obtained from MultiRail and associated outputs.

[91] *See* HC – Oliver Wyman - Comparison of Intermodal Traffic at Lazaro Cardenas between Oct 2020 and FTI 2019 Data – Methodology.pdf for associated analysis and sources.

October 2020.[92] (It is not clear whether Applicants were aware of that fact in selecting October 2020 as the sole source of carload and intermodal traffic for their Base Year MultiRail model.)

While most of the originating container traffic in the base period is local to Mexico, these missing container volumes must have had a material effect on the train design out of Lazaro Cardenas. The 2019 full year waybills equate to more than 10,000 feet of intermodal cars northbound per day, while the annualized October 2020 waybills generate less than 500 feet of intermodal cars northbound per day.[93] As a cross-check, I reviewed the number of cars originating/terminating in the base period at Lazaro Cardenas in the report contained in Volume 2, Appendix B of the Application,[94] and found the stated values to be consistent with the above finding. Moreover, the Applicants carried the erroneous estimate of Base Year traffic at Lazaro Cardenas forward into Year 3, likely distorting the Year 3 operating plan as well.

5.3 Application train counts are not reliable

The train counts by line (a specific filing requirement),[95] as published in the Application, are inaccurate due to the use of non-representative unit train data for the base period, intentional exclusion of other trains,[96] errors in how the operating plan was developed, and inconsistencies between the work papers and the values published in the Application.

Nothing in the regulations permits Applicants exclude from their operating plan (and environmental submission) selected trains that "only" touch a subset of the locations in a

[92] "Rail blockade ends in Mexico after 60 days of protests," Freight Waves, December 2, 2020.
[93] Uses CP standards for intermodal cars so formula is [Annual Containers]/[365 Days]/[4.7 Containers/Car]*[165 Feet/Car]. See HC – Oliver Wyman - Intermodal to Railcar Conversion Factor Source Compilation.pdf for sources.
[94] Application, Vol. 2, Appendix B: Change in Yard Volumes, p. 389 for Lazaro Cardenas has 8.4 originating cars per day; multiplying the figure by 4.7 * 365 yields 14,410 originating containers. See HC-Oliver Wyman - Intermodal to Railcar Conversion Factor Source Compilation.pdf for sources.
[95] CFR 49 Part 1111.8 (a)(1).
[96] FD 36500 – Work Paper – HC Trains Per Day - Methodology.pdf, p. 2.

division.[97] Yet, as discussed above, CP arbitrarily decided to remove from the train list generated by MultiRail any train that did not traverse at least 25% of the stations on any subdivision on which it operated. Combined with the known errors in the traffic included in Applicants' MultiRail modeling, it is virtually certain that the train counts in the Application are wrong.

In addition, *the train counts in the Application are inconsistent with the work papers cited by Applicants as being the source of those train counts*. In response to CN discovery request #115, Applicants stated that the FD 36500 – Work Paper – HC - Trains Per Day - Methodology.pdf is the file that explains how the trains per day shown in the Application were calculated and produced.[98] However, none of the corresponding Excel files cited in that methodology have figures that match the trains per day in the Application.

The only file where the identified level of trains per day even comes close is "FD 36500 – Work Paper – HC- Trains per Day and Gross Ton Miles – Working Copy with Haz Breakdown.xlxs," which provides a summary view of the trains per day by subdivision/segment (hereafter, the "Trains-per-Day Model").

The Trains-per-Day Model shows how trains were calculated/derived by providing data on Base Year non-unit and unit trains, growth year non-unit trains, unit train organic growth, and unit train synergy growth. (It is implied that the growth year non-unit train count includes both organic and synergy growth.) The materials indicate that:

- Non-unit train counts in the Trains-Per-Day Model were sourced from MultiRail, from which trains that traversed less than 25 percent of the MultiRail nodes in a subdivision were arbitrarily removed.[99]

[97] Applicants note in FD 36500 – Work Paper – HC – Trains Per Day - Methodology.pdf that "The train must pass by at least 25% of the subdivision's segment stations in order to be counted on it."
[98] FD 36500 – Work Paper – HC- Trains per Day.pdf; Application Volume 2, Appendix A. Trains per Day by Subdivision Review.
[99] *See* FD 36500 – Work Paper – HC – Trains Per Day - Methodology

- The Base Year unit trains were sourced from a set of operational snapshots that appear to be a one-month sample of unit trains operated during October 2019. Nothing in the Application or workpapers shows that these trains are representative of full year 2019 operations.[100]
- The organic growth in unit trains is a simple multiplier applied to the Base Year unit trains without regard to specific commodities.[101]
- The synergy growth in unit trains is based on a manual spreadsheet analysis of new unit trains to be operated based on the traffic diversion analysis (including traffic provided by witnesses Wahba and Naatz).[102]

Exhibit 5-7 demonstrates the discrepancies between the trains per day listed in the Application and the Trains-per-Day Model.

Exhibit 5-7: Trains per day from Application and Trains-per-Day Model[103]

Subdivision	Application[104]		Trains-Per-Day Model Values[105]		Difference	
	Current Trains/Day Base	Future Trains/Day Year 3	Current Trains/Day Base	Future Trains/Day Year 3	Base Period	Year 3
Ottumwa	4.2	18.4	{{XXX}}	{{XXX}}	{{XXX}}	{{XXX}}
Laredo CP	3.0	17.0	{{XXX}}	{{XXX}}	{{XXX}}	{{XXX}}
Kansas City	2.9	16.9	{{XXX}}	{{XXX}}	{{XXX}}	{{XXX}}
Shreveport	9.4	23.6	{{XXX}}	{{XXX}}	{{XXX}}	{{XXX}}
Greenville	5.5	7.0	{{XXX}}	{{XXX}}	{{XXX}}	{{XXX}}
Rosenberg[106]	8.5	17.7	{{XXX}}	{{XXX}}	{{XXX}}	{{XXX}}
Laredo KCS	10.5	19.4	{{XXX}}	{{XXX}}	{{XXX}}	{{XXX}}

[100] Based on FD 36500 – Work Paper – HC – 2019_Consolidated_Data_Master.txt.
[101] An organic growth rate of {{XXX}}% and {{XXX}}% is used for Year 3 and Year 5 for bulk traffic respectively. *See* HC – Oliver Wyman - Review of Growth Factors in CPKC Application.pdf.
[102] FD 36500 - Work Paper - HC - New Bulk Input w Year Splits 2021.10.20.xlsx, FD 36500 - Work Paper - HC - Summary of Volume Growth (Units) through Year 5 v4.xlsx.
[103] FD 36500 – Work Paper – HC- Trains per Day, Gross Ton Miles – Working Copy with Haz Breakdown; Application Vol. 2, Appendix A. Trains Per Day, pp. 364-368; and HC - Oliver Wyman - Train Counts Methodology.pdf
[104] Application Vol. 2, Appendix A. Trains Per Day by Subdivision, pp. 364-368.
[105] The highest number of trains per day by subdivision/segment are presented in the above table, data based on FD 36500 – Work Paper – HC- Trains per Day, Gross Ton Miles – Working Copy with Haz Breakdown.
[106] The trains per day listed in the filing for the Rosenberg subdivision match the trains per day summarized in the Excel file that is utilized for this analysis. It is the only subdivision from the list in the table above where both sources have trains per day that match.

Subdivision	Application[104]		Trains-Per-Day Model Values[105]		Difference	
	Current Trains/Day Base	Future Trains/Day Year 3	Current Trains/Day Base	Future Trains/Day Year 3	Base Period	Year 3
Saltillo	24.1	29.8	{{XXX}}	{{XXX}}	{{XXX}}	{{XXX}}
Caltzontzin	3.6	7.3	{{XXX}}	{{XXX}}	{{XXX}}	{{XXX}}

5.3.1 Non-Representative Unit Trains

The use of a non-representative set of unit trains for the Base Year plan, the application of global scaling factors for unit trains to estimate organic growth, and the potential that some traffic was not represented in either the bulk plan or carload plan raises further questions about the reliability of Applicants' train counts.

As an initial matter, *there is no bulk train operating plan provided at all in the Application*. Historic or "base" bulk trains are not identified at all – they are simply a statistical representation of line activities derived from a "snapshot," which appears to be from October 2019 for CP and from a 30-day sample for KCS with no specified time period.[107] Nothing demonstrates that these one-month snapshots are representative of full-year 2019 traffic patterns. The projected organic growth in these "bulk" trains is based on system average growth factors[108] that do not in any way tie back to Applicants' traffic studies.

The specific methodology Applicants used to calculate unit trains appears to be as follows:

- An operations monitoring type system was used to identify all unit trains that were operated by CP and KCS/KCSM during a one-month period. The route and consist (weight, length) of each was obtained, along with the train type.[109]

[107] FD 36500 - Work Paper - HC - CP Bulk Cars Per Day By Sub.xlsx; FD 36500 - Work Paper - HC - KCS KCSM Bulk Train Cars Per Day by Subdivision.xlsx.
[108] *See* HC – Oliver Wyman - Review of Growth Factors in CPKC Application.pdf for organic growth percentages used by CPKC.
[109] *See* FD 36500 – Work Paper – HC – Trains Per Day - Methodology.pdf and associated work papers: FD 36500 - Work Paper - HC - CP Bulk Cars Per Day By Sub.xlsx and FD 36500 - Work Paper - HC - KCS KCSM Bulk Train Cars Per Day by Subdivision.xlsx.

- Based on the routing of each observed unit train, the subdivisions each train traversed were identified, and the total train count and tons were tallied by subdivision. If a train had a hazardous materials designation (primarily crude oil and ethanol trains), then the traffic also was added to a hazardous materials car count.
- The resulting values by subdivision were divided by days in the time period covered by the sample (one month) and treated as the Base Year values for the operating plan.
- A global growth factor was applied to the unit train counts by subdivision to obtain organic growth in these trains. The same organic growth values of {{XXX}} percent for Year 3 and {{XXX}} percent for Year 5 were applied across all subdivisions, without consideration of the railroad, the commodity involved or the origin/destination of the traffic.[110]
- All of the "synergy" traffic was combined into nine (supposedly) representative train pairs.[111] The frequency of each train pair was set based on a target train size and forecasted diversion volume. The routings of these trains were then used to compute the additional train counts and tonnage associated with "synergy" traffic.
- Some final adjustments were made to "calibrate" these values. While no explanation of the reason for such "calibration" is set forth in the Application, it appears that this step was undertaken to make the overall values appear consistent with a simplistic spreadsheet model which the Applicants called the "System Model."[112]

If the train pairs used by Applicants are truly representative of the origins and destinations of new post-merger grain unit train movements, then I accept that the non-organic growth bulk trains for the post-merger scenario are likely accurate. But I question the accuracy of the Base Year unit train counts and organic growth unit train counts.

[110] *See* HC – Oliver Wyman - Review of Growth Factors in CPKC Application.pdf for organic growth percentages used by CPKC.
[111] FD 36500 - Work Paper - HC - Trains Per Day and Gross Ton Miles - 2021.10.22 - Working Copy with Haz Breakdown.xlsx, Bulk Reference tab, shows nine new train pairs for loaded and empty traffic in the "Train Symbol" column.
[112] FD 36500 – Work Paper – HC- Cost Metrics Growth Model Base year 2019.xlxs.

To determine whether the snapshot of unit trains is indeed representative, I examined the differences between the number of loads handled by KCS/KCSM for full-year 2019 versus October 2019 for selected commodities that move in unit trains.[113] Since I could not directly identify which moves were unit train moves from the data provided, I instead looked at volumes for grain, crude oil, and coal, assuming that differences in the volumes of these commodities between the full year and October 2019 would be consistent with differences in the number of unit trains operated. Among the findings from this analysis are the following:

Almost no crude oil traffic moved from Alberta to Texas or Louisiana during the month of October 2019. While {{XXX}} loaded cars were moved during all of 2019 (equivalent to {{XXX}} cars per month, or about {{XXX}} trains per month accounting for returning empty trains), I only found {{XXX}} such loaded car moves in October 2019.[114] To confirm this finding, I examined the number of crude oil trains Applicants identified in their October 2019 snapshot as transiting the Ottumwa to Laredo, MO segment of the line from Sabula to Airline Junction. All the crude oil traffic from Alberta would necessarily have to transit this line segment. What I found is a total of two trains, one southbound and one northbound – consistent with the low volumes that I identified.[115] Essentially, the Application is understating this very important element of the base CPKC operating plan by 85 percent in terms of train count ({{XXX}} versus {{XXX}} oil trains), and 92% in terms of cars ({{XXX}} versus {{XXX}} cars).

[113] *See* HC – Oliver Wyman - Evaluation of Bulk Traffic – Coal, Crude, and Grain Methodology.pdf for associated data and analysis.
[114] *See* HC – Oliver Wyman - Evaluation of Bulk Traffic – Coal, Crude, and Grain Methodology.pdf for associated data and analysis. A standard 115 cars per train conversion is used for crude oil, based on FD 36500 - Work Paper - HC - New Bulk Input w Year Splits 2021.10.20.
[115] FD 36500 - Work Paper - HC - CP Bulk Cars Per Day By Sub.xlsx.

To compound these errors, it appears that Applicants failed to capture this information properly in their analysis of line densities. In the same analysis in which I identified two crude oil trains transiting the Ottumwa-Laredo segment,[116] I found a total of {{XXX}} other unit trains also on the line in October 2019,[117] which translates to {{XXX}} unit trains per day on average.

Exhibit 5-8 shows the bulk train counts that Applicants used for part of the Sabula to Airline Junction line density analysis. Not only is the number of bulk trains understated on the Ottumwa to Laredo segment (it should be {{XXX}}, not {{XXX}}), all unit trains completely disappear on the segment between Clinton and Water Works. These findings indicate that the October 2019 "snapshot" of unit trains is not representative of full-year operations, and that errors in the recording of unit train counts mean that these counts cannot be relied upon.

Exhibit 5-8: Sabula, IA-Laredo, MO line segments: Application unit-train counts[118]

Line Segment	Base (2019) Unit Trains/Day
SABULA,IA - CLINTON,IA	{{XXX}}
CLINTON,IA - WATER WORKS,IA	{{XXX}}
WATER WORKS,IA - NAHANT,IA	{{XXX}}
NAHANT,IA - MUSCATINE,IA	{{XXX}}
MUSCATINE,IA - OTTUMWA,IA	{{XXX}}
OTTUMWA,IA - MO/IA LAREDO,MO	{{XXX}}
MO/IA LAREDO,MO - LAREDO,MO	{{XXX}}

Turning to organic growth of unit trains, a single, systemwide organic growth factor was applied to the base period unit train counts by line segment.[119] We know from history that different lines of business, such as coal and grain traffic, can have very different organic growth

[116] FD 36500 - Work Paper - HC - CP Bulk Cars Per Day By Sub, Crude tab, filtered for "Ottumwa" as Location.
[117] Based on review of FD 36500 - Work Paper - HC - CP Bulk Cars Per Day By Sub for all train types on Ottumwa division.
[118] FD 36500 – Work Paper – HC – Trains Per Day, Gross Ton Miles - Working Copy with Haz Breakdown .xlsx.
[119] *See* HC – Oliver Wyman - Review of Growth Factors in CPKC Application.pdf for organic growth percentages used by CPKC.

rates (for example, for coal in the current "anti-fossil fuel" regulatory environment).[120] Lane and geographic-based differences may also factor into growth rates. The use of undifferentiated global adjustment factors by the Applicants for organic growth completely ignores this issue.

Applicants developed an operating plan in MultiRail only for non-unit train operations. But, neither the Application or the workpapers explain how Applicants determined which Base Year traffic was "unit train" traffic and excluded from MultiRail. It is quite likely that there are gaps where some traffic excluded from MultiRail also was not captured in unit train counts.

It is also possible that some unit trains were not included in the "snapshot" of one month of data, as only specific train types were counted. Other unit trains would have been operated during the time period, such as military trains, trackage rights/haulage trains, rock/aggregate trains, etc. It is not clear if the traffic moving in these trains was included in the MultiRail Base Year operating plan, unit plan, or neither.

While nine train pairs were developed to account for new unit train traffic,[121] these trains are not documented in the formal Application, despite their significant volumes – particularly between Alberta and Texas for crude oil (approaching two trains/day in each direction), and between various points in Canada, the United States, and Mexico for grain. Given the significant percentage of CPKC trains that are "unscheduled" unit trains, Applicants' failure to describe these trains leaves a significant gap in their description of expected operations.

[120] Growth rates differed across commodities from 2015 to 2020, e.g., the amount of coal originated in the US by Class I railroads dropped by 45 percent, while grain loadings increased by 6 percent over the same period. *See* Growth Commodity Growth Rates 2015 - 2020 from AAR Class I Railroads Analysis.xlsx.

[121] FD 36500 - Work Paper - HC - Trains Per Day and Gross Ton Miles - 2021.10.22 - Working Copy with Haz Breakdown.xlsx, Bulk Reference tab, shows nine new train pairs for loaded and empty traffic in the "Train Symbol" column.

5.3.2 Conclusions

The train counts in the Application and in the Environmental Train Count Table[122] should not be relied upon for the following reasons:

- Applicants' train counts are inherently unreliable in light of the numerous errors in the traffic on which Applicants' operating plan is based. An unknown number of trains were arbitrarily excluded from train counts because they traversed fewer than 25 percent of the nodes on a line segment/subdivision. This results in Base Year and Year 3 train counts that are understated.
- Base Year unit trains were developed using one only month of data (October 2019). Applicants provided no analysis or other evidence to demonstrate that this period is representative of full-year 2019 unit train operations. Based on the clear distortions in the traffic data used for the operating plan, there is every reason to believe that similar distortions exist in the unit train counts.
- There is real potential that some traffic operated in unit trains was excluded from MultiRail and its train counts, but also not accounted for in the one-month snapshot of unit trains used by Applicants. The result would be that some of the traffic was not counted in Applicants' disconnected unit train planning process, causing distortions in unit train counts.
- To the extent that the number of unit trains is understated, investments required to increase line-of-road and yard capacity may be understated, jeopardizing Applicants' ability to provide the efficient single-line service levels needed to attract projected Year 3 traffic growth.
- The trains per day values published in the Application do not match the work papers Applicants identified as being the source of those values.

[122] Based on file submitted to the Board by Venable LLP and CP under Comment ID "31353" (31353.pdf), which contains master segment and yard tables, with information on environmental trains per day.

5.4 The Application fails to meet the requirement to identify all yards projected to experience more than a 20 percent increase in activity

The merger regulations require Applicants to identify any yard that will experience an increase in activity of 20 percent or more.[123] This information is important because, among other factors, it serves as a check to ensure that the capital expenditure plan considers situations in which added traffic will push yards to (or beyond) their practical capacity. In past mergers, an increase in traffic beyond a yard's practical capacity resulted in service failures that spread across the network.

My review of the Application and workpapers found that dozens of yards should have been reported were omitted from the Application. Some of these yards were small, so that even a small increase in traffic might generate a 20 percent increase in activity. Exhibit 5-9 focuses on the six largest yards with a projected increase in activity of greater than 20 percent that were not addressed in the Application. As Exhibit 5-9 indicates, the increase at several of the yards is quite substantial and may well exceed their current practical capacity. Some of these yards, such as Port Arthur, Hardisty, and Bruderheim, were not listed because Applicants failed to include unit traffic in their activity counts in the filing.

Exhibit 5-9: Six yards with a change of activity > 20 percent omitted from the Application[124]

Yard	Processed Cars Base	Processed Cars Year 3	Change	% Change
Port Arthur	{{XXX}}	{{XXX}}	{{XXX}}	85%
Hardisty	{{XXX}}	{{XXX}}	{{XXX}}	286%
Bruderheim	{{XXX}}	{{XXX}}	{{XXX}}	557%
Agincourt	{{XXX}}	{{XXX}}	{{XXX}}	41%
Jesus Maria	{{XXX}}	{{XXX}}	{{XXX}}	28%
Det Con Term	{{XXX}}	{{XXX}}	{{XXX}}	88%

[123] 49 CFR Part 1111.8(a)(1)(2000).
[124] *See* HC - Oliver Wyman - Yard Projections Methodology.pdf.

The Board's regulations require that Applicants compare pre-merger yard activity with post-merger yard volumes once the merged system has reached a steady state.[125] Applicants failed to satisfy this requirement, because they used the "Optimized Base Year" scenario (rather than the true Base Year) for pre-merger values. The Optimized Base scenario reflects the efficiencies CPKC hopes to achieve using precision scheduled railroading principles *after* the merger is consummated. As a result, the "Optimized Base Year" figures presented by Applicants do not actually reflect the pre-merger situation but instead represent a hypothetical intermediate stage between "Day 1" and Year 3 post-merger.

5.5 Originating and terminating railcar volumes are out of balance at many of the locations shown in the Application

One indicator of potentially inaccurate traffic data is the balance between originating and terminating cars by location. With few exceptions, the long-term trend should be for locations to be balanced in terms of originating versus terminating car counts. There may be some differences at interchanges due to directional agreements between a set of locations, but even these often trend toward statistical balance over longer periods of time. As a result, a clear lack of balance is often indicative of either the use of non-representative traffic or errors in deciphering (and correcting as necessary) the locations found in waybills. Such errors in the traffic data flow directly through to the activity counts for yards.

I examined the Base Year originating and terminating cars by location in Applicants' MultiRail yard volume comparison report.[126] While this report does not include unit train traffic, it provides a reasonable comparison of the originating and terminating volumes used by

[125] CFR Part 1111.8(a).
[126] Application Vol. 2, Appendix B Change in Yard Volumes Overall, pp. 369-403.

Applicants in creating their carload and intermodal operating plans. The results of my review are shown in Exhibit 5-10.

Exhibit 5-10: Originating and terminating cars/day for CPKC base period[127]

Location	Originating	Terminating	Balance	% Imbalance
Baton Rouge	47	93.6	46.6	33%
Detroit	71.2	138.5	67.3	32%
Heavener	11.5	32.3	20.8	47%
Lecheria	16.2	107.6	91.4	74%
Salinas Vic	96.3	74.9	-21.4	-13%
Shreveport	70.8	45.9	-24.9	-21%
St Paul	197.5	138.1	-59.4	-18%
Corpus Christi	95.6	166.5	70.9	27%
Robstown	159.3	49.7	-109.6	-52%
Total	**254.9**	**216.2**	**-38.7**	**-8%**
Intl Freight Gateway	31	16.1	-14.9	-32%
Kansas City	274.2	179.7	-94.5	-21%
Total	**305.2**	**195.8**	**-109.4**	**-22%**
Laredo	585.4	476.9	-108.5	-10%
Nuevo Laredo	4.5	101.2	96.7	91%
Total	**589.9**	**578.1**	**-11.8**	**-1%**
Bensenville	380.3	10.7	-369.6	-95%
Calumet	6	175	169	93%
Chicago Clearing	407.8	283.5	-124.3	-18%
Gibson	70.6	105.5	34.9	20%
Total	**864.7**	**574.7**	**-290**	**-20%**

- The first set of yards, Baton Rouge through St. Paul, reflect various levels of imbalance, which may well be indicative of issues with the underlying source data used by Applicants in MultiRail.
- Corpus Christie and Robstown are both interchanges with BNSF; while still out of balance when paired, at least the balance improves.
- International Freight Gateway and Kansas City show significant imbalances that, like the first set of yards, likely point to issues with the underlying data/limited time period used to develop the MultiRail traffic data.

[127] Application Vol. 2, Appendix B Change in Yard Volumes Overall, pp. 369-403. *See* Oliver Wyman - Rail Car Volumes methodology.pdf.

- Laredo and Nuevo Laredo point to (i) a likely failure in processing the traffic data to correct for how cross-border traffic is reported by KCS and KCSM, and (ii) some rebilling of traffic at the border. It is my understanding that very little traffic actually originates or terminates at Nuevo Laredo, so this is likely an error and most of the Nuevo Laredo traffic should have been remapped to Laredo. How this affected the representation of cross-border blocking and train operations is unclear – but it certainly caused an understatement of the switching activity at Laredo Yard (and a corresponding overstatement at Nuevo Laredo).
- Chicago also exhibits a significant amount of imbalance in its volumes, even when combining the most obvious locations that could have imbalanced interchanges. These differences raise significant doubts about the yard activity counts for Chicago and how representative Applicants' operating plan is for both the pre- and post-merger scenarios.

Once these imbalance issues are corrected using more representative traffic data or correction of waybill location mapping issues, the volumes at the locations as reported by the Applicants are likely to change, potentially changing the assessment of how the merger will affect yard operations.

6. Other Issues That Undermine the Validity of the Application

Other issues were found within the Application and associated work papers that call into question the validity of the operating plan, as shown in Exhibit 6-1. I conducted additional analysis of several of these issues. This section provides a summary of these additional issues, with further analysis added where appropriate.

Exhibit 6-1: Summary of additional issues related to the Application

Section	Description	Summary
6.1	Additional examples of bad line densities	Additional bad line densities were determined through the analysis of line density values (see subsection for details).

Section	Description	Summary
6.2	Critique of NS/CSX haulage/trackage rights volumes	No clear assessment of the volumes using the NS and CSX agreements for the movement of traffic from Chicago to Michigan and Buffalo was provided by Applicants. An assessment of these volumes was undertaken, which found that insufficient capacity exists to serve the Detroit intermodal market, and there will likely be periodic delays for cars waiting for space on CPKC capacity-controlled trains on NS. Depending on train length limits on CSX, there may also be issues to/from Eastern Canada during peak periods.
6.3	Review of carload volumes	There are several issues with carload volumes that undermine the validity of the operating plan (see subsection for details)

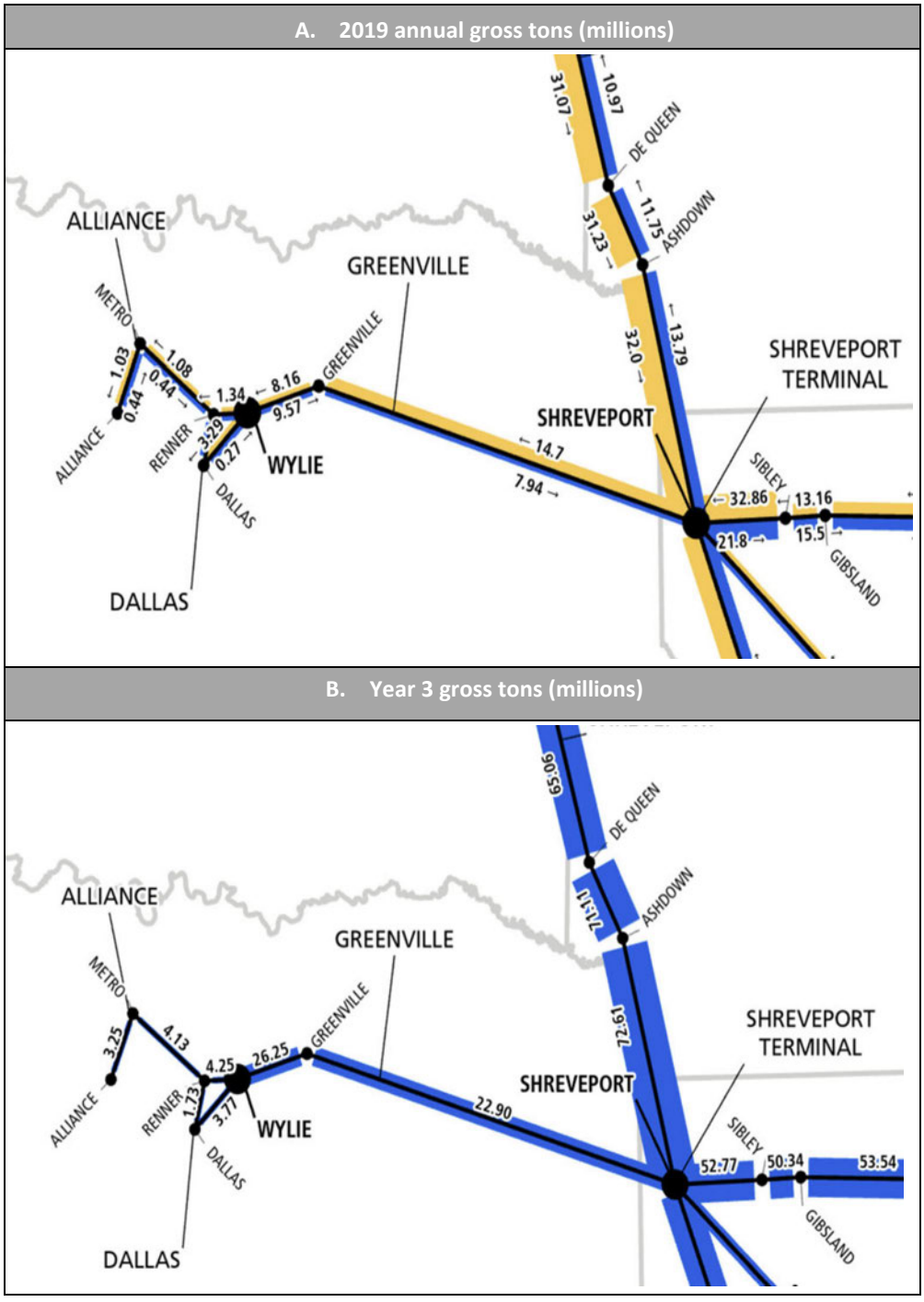
6.1 Detailed review of tonnages for additional line segments

Analyses are presented for the tonnages shown for the Shreveport-Wylie line and the main lines on KCSM. Both provide additional evidence that the tonnages on the line segments in the Application are incorrect.

6.1.1 Shreveport-Wylie

Density maps for Shreveport-Wylie are shown in Exhibit 6-2. I also performed a MultiRail analysis of tonnage on this line segment; the results are shown in Exhibit 6-3.

Exhibit 6-2: Shreveport-Wylie density maps[128]



[128] *See* Application Vol. 2, Exhibit 14 traffic density maps, pp. 512-513.

Exhibit 6-3: Shreveport-Wylie tonnage analysis[129]

Line Segment	Applicants 2019 Tonnage	Applicants Year 3 Tonnage	Estimated MultiRail Year 3 Tonnage From Diversion	Organic Growth @{{XXX}}%	Revised MultiRail Year 3 Estimated Tonnage	Percent Error
Shreveport – Greenville	22.64	22.9	{{XXX}}	{{XXX}}	{{XXX}}	{{XXX%}}
Greenville – Wylie	17.73	26.25	{{XXX}}	{{XXX}}	{{XXX}}	{{XXX%}}

The change of density at Greenville, from the location being a net terminator of traffic to a net originator of traffic, is significant. In 2019, for movement from Shreveport to Wylie, the tonnage drops at Greenville by 4.9 million gross tons ("MGT") in the westbound direction, but in Year 3 there is an increase of 3.4 MGT in the westbound direction. There is no evidence explaining why Greenville becomes a major generator of traffic in Year 3, particularly in the westbound direction. While Applicants' operating plan describes "large increases in IM volumes at Wylie,"[130] there is essentially no change in the tonnage over the entire Shreveport-Greenville segment between 2019 and Year 3. This inconsistency strongly suggests that the tonnage numbers developed by the Applicants are unreliable.

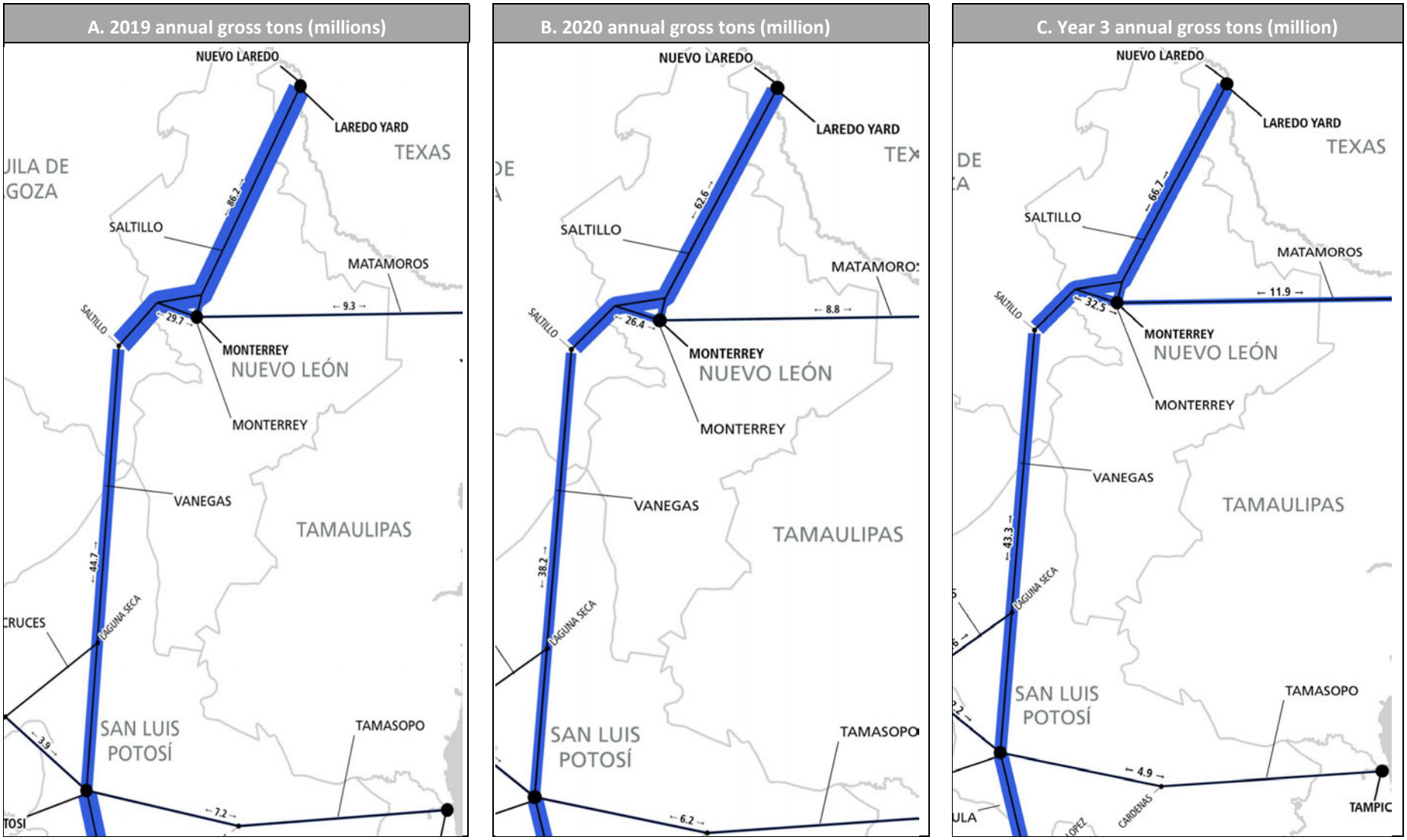
6.1.2 The post-merger traffic density of the KCSM main line is understated

Exhibit 6-4 shows the density charts in the Application for the Saltillo and Venegas divisions of KCSM. These are the northernmost divisions on the critical KCSM main line between Mexico City and the international crossing at Laredo. The Board's merger regulations specifically require that accurate density charts for main lines and secondary rail lines be

[129] Based on values from Application Vol. 2, Exhibit 14: Density Charts, pp. 461-504, and diversion traffic estimates from MultiRail (*see* HC – Oliver Wyman - MultiRail Corridor Volume, Tonnage and Length Estimates for Diversion Traffic Methodology for associated data and outputs).
[130] Based on Application Vol. 2, Table 10, "Intermodal Terminals have Adequate Capacity for Increased Handlings," p. 345.

included in the Application. Exhibit 6-5 lists the tonnages for these two divisions as reported by Applicants.

Exhibit 6-4: Density charts for the Saltillo and Venegas Divisions[131]



[131] Refer to Exhibit 14 traffic density maps in Volume 2 of Application, pp. 514-516.

Exhibit 6-5: Tonnage on the Saltillo and Vanegas Divisions[132]

Subdivision	2019 Tonnage	2020 Tonnage	Year 3 Tonnage	Difference 2019 – Year 3	Difference 2020 – Year 3
Saltillo	86.2	62.6	66.6	-19.6	4.0
Vanegas	44.7	38.2	43.3	-1.4	5.1

As Exhibit 6-5 shows, Applicants' operating plan assumes that traffic on the KCSM main line declined between 2019 and 2020, and that the tonnage will not recover by Year 3. This cannot be correct. It is my understanding that 2019 tonnage reflects official KCSM historic volumes, whereas 2020 tonnage and Year 3 tonnage reflect values computed by Applicants using a complex and error-prone estimation process.[133] These values would have been directly affected by the incorrect intermodal volumes at Lazaro Cardenas that resulted from Applicants' reliance on the single month of October 2020 traffic to estimate full-year values.[134]

The traffic density data detailed in Exhibit 6-5 demonstrates how incorrect inputs and erroneous methodologies at one stage of the operations planning process (e.g., traffic inputs and tonnage estimation) will invalidate the output of later stages (e.g., line segment traffic density calculations). This is not a trivial matter. As with the underestimate of density on the Sabula to Airline Junction segment, underestimated traffic continues through the planning process and becomes an incorrect input to the operating plan and capital expense plan. This can result in a distorted train and blocking plan, as well as an inadequate capital budget to make the investments in capacity required to keep this critical link in the KCSM network fluid.

[132] Based on values from Exhibit 14: Density Charts in Volume 2 of Application, pp. 502-504.
[133] FD 36500 - Work Paper - HC - Trains Per Day and Gross Ton Miles - 2021.10.22 - Working Copy with Haz Breakdown.xlsx.
[134] dwnld_Traffic_KCS.csv provided as part of the accompanying attachments to Traffic File - Methodology.pdf indicate the traffic data used was from October 2020.

Applicants' workpapers show that some of the original KCSM values for 2019 were in metric tons, which according to the methodology were incorrectly converted to imperial tons (also known as long tons), instead of being converted to short tons.[135] Correcting that error would make 2019 tonnage figures even higher. And it is insufficient to explain the scale of the differences between the various values for the given years in Exhibit 6-5.

6.2 The Applicants' operating plan may violate the constraints of the Michigan and Eastern Canada CSX and NS trackage/haulage rights

CP's existing agreements with NS and CSX impose limitations on the amount of traffic that CP can move beyond Chicago to Detroit and Eastern Canada. Applicants' operating plan does not appear to acknowledge the significant limitations on CP's current rights under those agreements. In the case of NS, CPKC is limited to two trains in each direction per day, with a maximum length of 12,000 feet, and a prohibition against the movement of automotive traffic (finished vehicles and parts) and of intermodal traffic not from legacy CP terminals.[136] In the case of CSX, which CPKC uses to get intermodal traffic to the Detroit area and Eastern Canada, CPKC is (and will continue to be) limited to a maximum of 2,500 feet to/from Detroit, and one train pair per day between Chicago and Buffalo/Toronto.[137] Furthermore, Applicant has indicated that {XXX}.[138]

Applicants are aware of this limitation, and cited the CSX limitation as affecting their diversion studies:

> "As a result of the service design analysis, certain capacity restraints were identified for intermodal shipments into and out of CP's Detroit intermodal terminal accessed via

[135] FD 36500 – Work Paper – HC – Methodology for Creating KCSM 2019 Density Chart and Map.pdf; FD 36500 - Work Paper - HC - KCSM 2019 density.xlsx.
[136] Application, Vol. 2, p. 272. See also Canadian Pacific Railway Limited, Et Al. – Control – Kansas City Southern, Et. Al. STB Docket No. FD 36500, Elphick and Orr Dep. 18:8 – 18:25, Feb. 18, 2022
[137] Application, Vol 2, pp. 268 and 272; *see* details of trains 142 & 143 in Application, Vol. 2, p. 438.
[138] See Canadian Pacific Railway Limited, Et Al. – Control – Kansas City Southern, Et. Al. STB Docket No. FD 36500, Elphick and Orr Dep. 19:14 – 18:21, Feb. 18, 2022

> CSXT trackage rights that include daily haul-length limits, and as a result we adjusted downwards our Detroit intermodal diversions by 55 percent."[139]

To provide an estimate of 2019 Base Year volumes, I examined the 2019 full year waybill data and identified all movements that originated in Mexico or from points in or west/south of Illinois on CP or KCS/KCSM and that terminated on CP in Michigan, Eastern Canada, and New York. Also included is intermodal traffic terminating in Michigan from CP intermodal terminals in British Columbia.

Domestic double-stacked traffic from eastern Canada, especially Montreal must also use the CSX routing to reach Detroit, while most international container moves will fit through the Detroit River Tunnel. Because we could not readily determine which of this traffic needed to use the CSX routing, to be conservative we assumed all of it would fit through the tunnel.

I divided this data between intermodal, multilevel, ethanol, and other carload traffic. I also identified the volumes of intermodal traffic moving to/from Michigan versus Eastern Canada and well as the traffic to/from British Columbia.[140]

Next, I examined the data from Applicants' traffic diversion studies and identified all traffic that would necessarily use the NS or CSX routes, using the same screening criteria as the 2019 base traffic. For the diverted carload traffic, I added allowances for empty moves, using the same empty/loaded ratios that Applicants use in their system model, and added empties that would balance the intermodal volumes in the backhaul direction.

I added Applicants' projected organic growth rate of {{ }} to the Base Year volumes and added in the diversions that CP projected to arrive at the total projected Year 3 volumes for both the NS and CSX lines.

[139] Application, Vol. 2, p. 145.
[140] *See* HC – Oliver Wyman – NS CSX Traffic Analysis – Methodology.pdf for associated data and analysis workpapers.

All of this traffic was loaded into an Oliver Wyman version of MultiRail and "flowed" across the network to generate the cars/containers, tons, and train-feet that would use each route.[141]

CSX-Chicago-Fostoria (North Baltimore)-Buffalo and CSX Fostoria (North Baltimore)-Detroit

I defined the base and growth CSX traffic as purely intermodal. Initially, I assigned the British Columbia to Michigan intermodal traffic to the CSX line as well. As will be shown below, capacity constraints preclude this traffic from using this route once the full CPKC intermodal diversion volumes are realized.

My analysis of current traffic volumes and Applicants' projection of future organic growth and traffic diversion volumes indicates that the average daily volume to Detroit will be about {{XXX}} feet, thus exceeding the current contractual limit of 2,500 feet.[142] The peak volume on the train going to Buffalo, prior to setting off/picking up the Detroit traffic, should be around {{XXX}} feet on average.[143] Depending on the maximum allowed length of this train, there could well be capacity issues during peak periods.

Not included in my analysis is the Quebec/Montreal to Detroit base intermodal volumes of {{XXX}} containers per year, which translates to an additional {{XXX}} feet per day.[144] Assuming these are international containers, they will have to be routed through the Detroit River tunnel, given the capacity constraints on the CSXT routing.

[141] *See* MultiRail Corridor Volume, Tonnage and Length Estimates for Diversion Traffic Methodology.pdf for associated outputs and how growth traffic was obtained.
[142] Application, Vol 2, pp. 268 and 272; see details of trains 142 & 143 in Application, Vol. 2, p. 438.
[143] *See* HC – Oliver Wyman – NS CSX Traffic Analysis – Methodology.pdf for associated data and analysis workpapers.
[144] *See* HC – Oliver Wyman – NS CSX Traffic Analysis – Methodology.pdf for associated data and analysis workpapers. *See also* HC – Oliver Wyman - Intermodal to Railcar Conversion Factor Source Compilation.pdf.

Exhibit 6-6 details the intermodal volumes to/from Detroit, and Exhibit 6-7 provides the estimated average train lengths for the three main segments of the CSX service.

Exhibit 6-6: Volume on the CSXT segment between Ohio and Detroit[145]

Traffic Group	Containers/ Day (Forward)	Containers/ Day (Reverse)	Feet/Day (Forward)	Feet/Day (Reverse)
British Columbia: Intermodal – Base	{{XXX}}	{{XXX}}	{{XXX}}	{{XXX}}
British Columbia: Intermodal – Growth	{{XXX}}	{{XXX}}	{{XXX}}	{{XXX}}
Intermodal – Projected	{{XXX}}	{{XXX}}	{{XXX}}	{{XXX}}
Total	{{XXX}}	{{XXX}}	{{XXX}}	{{XXX}}

Exhibit 6-7: Volume on CSXT corridor by segment, in feet[146]

Traffic Group	Chicago-Fostoria feet		Fostoria-Detroit feet		Fostoria-Buffalo feet	
Source	Forward	Reverse	Forward	Reverse	Forward	Reverse
Intermodal – Base	{{XXX}}	{{XXX}}	{{XXX}}	{{XXX}}	{{XXX}}	{{XXX}}
Intermodal – Growth	{{XXX}}	{{XXX}}	{{XXX}}	{{XXX}}	{{XXX}}	{{XXX}}
Intermodal – Projected	{{XXX}}	{{XXX}}	{{XXX}}	{{XXX}}	{{XXX}}	{{XXX}}
Total	{{XXX}}	{{XXX}}	{{XXX}}	{{XXX}}	{{XXX}}	{{XXX}}

The calculations for Detroit are based on an estimate of current container volumes to Detroit of about {{XXX }}/year, almost entirely originating in British Columbia. This is equivalent to {{XXX }} of train. Projected new business yields another {{XXX}} and {{XXX }} of train for the to and from Detroit directions, and Applicants' organic growth figure of {{XXX }} yields another {{XXX }}/{{XXX }} directionally. This totals to {{XXX }} in the peak direction.[148]

Since the traffic moving to Detroit exceeds the 2500-foot limit, we must then assume that the BC Intermodal to Michigan traffic would travel via the NS line. This lowers the project

[145] *See* HC – Oliver Wyman – NS CSX Traffic Analysis – Methodology.pdf for associated data and analysis workpapers.
[146] *See* HC – Oliver Wyman – NS CSX Traffic Analysis – Methodology.pdf for associated data and analysis workpapers.
[147] *See* HC – Oliver Wyman – Review of Growth Factors in CPKC Application.pdf.
[148] *See* HC – Oliver Wyman – NS CSX Traffic Analysis – Methodology.pdf for associated data and analysis workpapers.

traffic to Detroit to {{XXX }}, below the 2,500 feet limit. However, this is alarming considering:

- Most likely, part of the Quebec/Montreal intermodal traffic of {{XXX }} will be domestic containers and must travel on the same line.
- There is little room for daily traffic variations. Intermodal service will be affected if, say, 10% of the traffic from Montreal is domestic and must ride through Buffalo and onto the Fostoria-Detroit section, and on a given day there is volume of eastbound traffic 15% higher than average. This will create situations that routinely exceed the 2500-foot limit. In practice, the peaks and valleys of intermodal traffic are at least 20%, so reaching the length limit and causing service issues due to delaying shipments of intermodal traffic is highly likely.

NS-Chicago-Detroit

Next we examined the NS-Chicago-Detroit line. Due to the above analysis, I include the British Columbia to Michigan Intermodal traffic on the NS routing.

We initially calculated the number of daily trains using the 12,000 maximum feet allowed by agreement with NS for manifest trains[149]. For the bulk hazardous trains (Ethanol), we derived that the filing used {{XXX}} cars per train. This is based on their {{XXX}} trains per day and our calculation of {{XXX}} cars per day (including growth).

Exhibit 6-8: CPKC - NS-Chicago-Detroit carload traffic volumes[150]

Traffic Group	Cars/Day (Forward)	Cars/Day (Reverse)	Feet/Day (Forward)	Feet/Day (Reverse)	Trains/Day (Forward)	Trains/Day (Reverse)	Basis
Ethanol – Base	{{XXX}}	{{XXX}}	{{XXX}}	{{XXX}}	{{XXX}}	{{XXX}}	Applied {{XXX}}[151] cars/train
Ethanol – Growth	{{XXX}}	{{XXX}}	{{XXX}}	{{XXX}}	{{XXX}}	{{XXX}}	
Ethanol Total	{{XXX}}	{{XXX}}	{{XXX}}	{{XXX}}	{{XXX}}	{{XXX}}	
Other Carloads - Base	{{XXX}}	{{XXX}}	{{XXX}}	{{XXX}}	{{XXX}}	{{XXX}}	Applied 12000 feet/train
Other Carloads - Growth	{{XXX}}	{{XXX}}	{{XXX}}	{{XXX}}	{{XXX}}	{{XXX}}	

[149] Application, Vol. 2, p. 272. See also Canadian Pacific Railway Limited, Et Al. – Control – Kansas City Southern, Et. Al. STB Docket No. FD 36500, Elphick and Orr Dep. 18:8 – 18:25, Feb. 18, 2022

[150] *See* HC – Oliver Wyman – NS CSX Traffic Analysis– Methodology.pdf for associated data and analysis workpapers

[151] In FD 3500 Work Paper HC Trains Per Day and Gross Ton Miles – Working Copy with Haz Breakdown.xlsx, the applicants cite 0.67 trains per day including growth. Based on the waybill data, that resolves to approx. 95 cars per train.

Other Carloads - Projected	{{XXX}}	{{XXX}}	{{XXX}}	{{XXX}}	{{XXX}}	{{XXX}}	
Other Carloads – Total	{{XXX}}	{{XXX}}	{{XXX}}	{{XXX}}	{{XXX}}	{{XXX}}	
BC Intermodal			{{XXX}}	{{XXX}}	{{XXX}}	{{XXX}}	
Total Trains					**{{XXX}}**	**{{XXX}}**	

We note that the statistics that we derived using the 2019 waybills and the Applicants' diversion traffic appear to be consistent with the train counts in the CPKC filing. The Application's workpapers shows {{XXX}} trains/day[152], and we derived {{XXX}} trains per day. While we agree overall with the Application, it apparently averaged the two directions resulting in misleading conclusions.

Our analysis demonstrates there is a need to operate more than {{XXX}} trains per day towards Detroit and {{XXX}} trains per day from Detroit, including both ethanol and manifest trains. However, {{XXX}} trains/day towards Detroit is precariously close to the maximum allowed of 2 trains per day. We can also infer that in practice {{XXX}} trains per day – of smaller size – will be traveling in the reverse direction to keep crews and locomotives in balance.

It is doubtful that there is enough capacity under the current NS agreement to service the projected carload traffic volumes for three reasons: (1) not every manifest train will be filled out to exactly its maximum length, (2) there will be peaks in traffic volumes and (3) there is the need to try to coordinate unscheduled ethanol trains and scheduled manifest trains sharing the available capacity. This becomes a particular concern because CPKC will need more than one manifest train on some days to service the volumes it needs to handle. When the need arises to operate both manifest trains and an ethanol train, one of these trains will need to be delayed. We must also consider that some amount of manifest traffic (or intermodal) will have to be delayed

[152] *See* FD 36500 - Work Paper - HC - Trains Per Day and Gross Ton Miles - 2021.10.22 - Working Copy with Haz Breakdown.xlsx

when the primary manifest train is full, and the overflow train is not operating on that specific day – hardly an ideal approach under the principles of Precision Scheduled Railroading.

Operating a second, "overflow" manifest train is also challenging if one is basing one's plans on having every train be at its maximum length of 12,000 feet. While running in an over-subscribed manner can help ensure that the primary train will be full, the secondary train will more likely than not, be only partially filled. Thus, a more likely scenario might be to assume an average of 11,000 feet per manifest train, which would put the daily average train count over {{XXX}} trains in the head haul direction.

Exhibit 6-9: CPKC - NS-Chicago-Detroit train counts assuming 11,000 foot manifest trains

Traffic Group	Trains/Day (Forward)	Trains/Day (Reverse)	Basis
Ethanol – Base	{{XXX}}	{{XXX}}	Applied {{XXX}} cars/train
Ethanol – Growth	{{XXX}}	{{XXX}}	
Ethanol Total	{{XXX}}	{{XXX}}	
Other Carloads - Base	{{XXX}}	{{XXX}}	Applied 11000 feet/train
Other Carloads - Growth	{{XXX}}	{{XXX}}	
Other Carloads - Projected	{{XXX}}	{{XXX}}	
Other Carloads Total	{{XXX}}	{{XXX}}	
BC Intermodal	{{XXX}}	{{XXX}}	
Total Trains	**{{XXX}}**	**{{XXX}}**	

Add in natural peaks and valleys in volumes of approximately 20 percent, and the clear result will be ongoing capacity issues. Further, this arrangement will prove even less sufficient beyond 2025, if CPKC actually achieves all the organic growth that Applicants are projecting. In part this reflects the dangers of creating a solution based on averages that have no slack to take natural volume variations into account.

6.3 Assessment of carload traffic issues

The Lazaro Cardenas intermodal traffic is but one example of the significant errors that are present in the traffic data (see Section 5.2 for discussion of Lazaro Cardenas issues). I also show in Section 4.1 that Applicants' use of non-representative data from October 2020 and in Section

5.5 the location mapping errors resulted in unbalanced yard volumes and associated errors in the yard statistics.

In Section 5.3.1, I showed that the use of October 2019 for unit trains resulted in a failure to account for all the crude oil trains operating on the key Sabula to Airline Junction line. Several additional issues are presented in this section, including:

- Other effects of using non-representative traffic data;
- Inconsistent use of organic growth; and
- The need for empty modeling to be consistent and complete.

6.3.1 Impact of using non-representative traffic data to drive the plan

I conducted a focused investigation of two sets of car types that were not treated as unit train traffic: Multilevels (car type V), and boxcars (car types A, B, R). This was done by comparing the full year, 2019 CPKC waybills to the October 2020 CPKC waybills. Based on this analysis, I found that the annualized, loaded multilevels on KCS and KCSM for October 2020 were approximately {{XXX }} below 2019 volumes, and the annualized loaded boxcars on KCS and KCSM for October 2020 were approximately {{XXX }} below 2019 volumes.[153] These findings are not surprising, given the lingering effects of the COVID-19 pandemic throughout 2020. Both undercounts directly affect Applicants' pre- and post-merger yard activity estimates and projected line densities. It is also possible that applying the higher 2019 traffic volumes would necessitate material changes to the train plan, including (potentially) the need to operate additional trains.

Another error that arises from using non-representative traffic is that there can be changes in traffic patterns, which will cause a shift in train requirements between various routings. I

[153] *See* HC – Oliver Wyman - Multi-level and Boxcar Traffic Volume Comparison between Full Year 2019 and October 2020 – Methodology.pdf for associated analysis and data.

considered loaded multilevels going to Laredo, primarily for interchange to Union Pacific (representing well over half of all loaded multilevels on KCS-KCSM). Some of the more significant differences are shown in Exhibit 6-10 and suggest that train flow and traffic patterns are not likely to be properly estimated by Applicants' methodology, due to differences in traffic volumes between October 2020 and full year 2019 traffic patterns.

Exhibit 6-10: Differences in annualized volumes destined for Laredo[154]

Origin-Destination	2019 Full Year Waybill	October 2020 (Annualized)	Difference
Lecheria-Laredo	{{XXX}}	{{XXX}}	-7,894
Jesus Maria-Laredo	{{XXX}}	{{XXX}}	-2,703
Pesqueria-Laredo	{{XXX}}	{{XXX}}	-581
Derramadero-Laredo	{{XXX}}	{{XXX}}	577
Rojas-Laredo	{{XXX}}	{{XXX}}	2,186
Silao-Laredo	{{XXX}}	{{XXX}}	3,936
Panzacola-Laredo	{{XXX}}	{{XXX}}	7,818

The correction of the differences between the October 2020 traffic and the full-year 2019 traffic would lead directly to a shift in thousands of railcars between lanes, which clearly would affect line densities, yard volumes, and train sizes. Applicants stated that 2019 was their chosen Base Year. But, as Exhibit 6-14 graphically demonstrates, attempting to build a 2019 operating plan based on traffic data for a single month in a different year (2020) is likely to produce inaccurate results.

6.3.2 Inconsistent use of organic growth raises questions as to the accuracy of the post-merger plan

Applicants state that organic growth was included in the post-merger operating plan:

> "In order to confirm – and demonstrate to the Board – that the operation of the combined network will be fully resourced and capable of an efficient operation without congestion or service degradation. The traffic growth considered thus includes both

[154] *See* HC – Oliver Wyman - Multi-level and Boxcar Traffic Volume Comparison between Full Year 2019 and October 2020 – Methodology.pdf for associated analysis and data.

> anticipated volume growth for traffic currently handled by CP or KCS as well as volume growth that will be attracted by the combined network."[155]

Despite this assertion, there is no meaningful discussion in either the Application or the work papers explaining how organic growth traffic volumes were developed, or how they were input to the operating plan in MultiRail. Organic growth is a major element of post-merger traffic and revenue. As such, a credible operating plan must include a full explanation of the key assumptions made in developing organic traffic growth, and basis supporting any projected "organic" traffic increase. Applicants' "System Model"[156] contains unexplained and unsupported organic growth traffic values, as do a number of other work papers.[157] It appears that the growth values adopted by Applicants are generally "global" assumptions applied either to the entire CPKC network or applied differentially by predecessor railroad, in each case without regard to commodity or origin/destination.

A review of the work papers indicates that organic growth traffic was included in Applicants' MultiRail modeling,[158] and thus was reflected in the post-merger train counts and train-miles generated by MultiRail. However, the application of unexplained "calibration factors" to the GTM and train-mile values generated by MultiRail raises questions as to whether (or how) this organic growth traffic was ultimately reflected in the System Model that served as the foundation for Applicants' operating expense estimates. Without access to the actual pre- and post-merger MultiRail traffic files used to develop the operating plan, it is impossible to ascertain exactly how organic growth was handled. Based on the use of system averages, and the

[155] Application Vol. 2, pp. 286-287.
[156] FD 36500 - Work Paper - HC - Cost Metrics Growth Model _ Base year 2019.xlsx.
[157] FD 36500 - Work Paper - HC - Trains Per Day and Gross Ton Miles - 2021.10.22 - Working Copy with Haz Breakdown.xlsx applies organic growth parameters to the base period unit trains.
[158] FD 36500 - Work Paper - HC - Trains Per Day and Gross Ton Miles - 2021.10.22 - Working Copy with Haz Breakdown.xlsx.

overstatement of organic growth in the calculation of gross tons by line segment values,[159] I have no confidence that this growth was appropriately handled.

6.3.3 Empty modeling is inconsistent and incomplete

Because Applicants' modeling process included a mix of historic traffic and diverted traffic, empty car movements must be carefully considered in building a reliable operating plan. At a minimum, Applicants must account for sufficient empty movements for diverted traffic. However, it can be challenging to identify which empty movements should be adjusted in the case of extended haul traffic.

In some cases, particularly for grain and ad hoc unit trains, it also can be challenging to determine which empty moves correspond to loaded unit train movements when volume adjustments must be made. While in some cases one can identify unit train movements through multi-car waybills, one often needs to identify unit train moves by finding sets of cars with the same origin, destination, car type, commodity, load/empty status, and waybill date/time. This becomes a significant data analysis exercise. If the empty movements are treated similarly and are reverse routed to the loaded movement's origin after unloading, this is not too hard. But for commodities such as grain, the empty trains generally do not reverse route, but go to alternate loading sites instead. In addition, these unit trains are often broken up and the cars may then be moved to a variety of next loading sites. When this happens, figuring out which empty moves correspond to which loaded moves can become very tricky, and making volumetric adjustments to these empty moves when they are sent to multiple next loading sites can become almost impossible.

[159] *See* HC – Oliver Wyman - Review of Growth Factors in CPKC Application.pdf for details.

Therefore, to ensure consistency between loaded and empty movements for the pre- and post-merger operating plans, it is more reliable to actually model or generate empty movements, instead of using a mix of historic and generated empty movements. In particular, such an approach avoids the need to make complex adjustments to historic empty movements.

In developing empty movements, careful attention must be paid to historic directional traffic balance and empty/loaded ratios to ensure that the appropriate numbers of car-miles and ton-miles are associated with empty movements. Applicants elected to pursue the complex approach of making (supposedly) "surgical" adjustments to historic traffic for extended haul movements, while at the same time applying simplistic load/empty rules for key intermodal and automotive traffic.

As a result, I believe that the following errors were likely made by Applicants in the MultiRail modeling exercise:

- Empty multilevel volumes are understated. It appears that a {{XXX }} empty return ratio was used.[160] Examining the imbalance between loaded northbound and southbound moves from/to Mexico in Applicants' traffic diversion study reveals that the flow of loads is unidirectional in the northbound direction. This indicates that a much higher southbound empty return ratio ({{XXX-XXX}} percent) would be more appropriate for this traffic.[161]
- Empty intermodal container volumes are understated. It appears that a {{XXX }} empty return ratio was used for intermodal shipments.[162] Examining the imbalance between loaded northbound and southbound moves from/to Mexico in the traffic diversion study indicates that a southbound empty return ratio of approximately {{XXX

[160] Table on "Tonnage Assumptions" in FD 36500 – Work Paper – HC – System Model - Methodology.pdf, p. 4.
[161] *See* HC – Oliver Wyman - Evaluation of Load and Empty Ratios – Methodology.pdf for associated data and analysis.
[162] Table on "Tonnage Assumptions" in FD 36500 – Work Paper – HC – System Model - Methodology.pdf, p. 4.

}} would be more appropriate.[163] If one examines the volume of northbound containers from Mexico into the U.S., and compare this to the volume of southbound containers from the U.S. to Mexico in the CPKC traffic study you will find that for every {{XXX}} northbound loads there are about {{XXX}} southbound loads. Thus, to balance this movement of containers one needs to introduce {{XXX}} southbound empties for every {{XXX}} northbound loads, resulting in a {{XXX}} percent southbound empty return ratio.

- Certain other car types historically have an empty/loaded car-mile ratios that are greater than 1:1. This is particularly true of tank cars, which in the case of KCS have historic empty/loaded ratios of about {{XXX }}.[164]

All these errors result in an understatement of gross-ton-miles and car-miles and would also lead to an understatement of train-miles in the Applicants' "System Model."

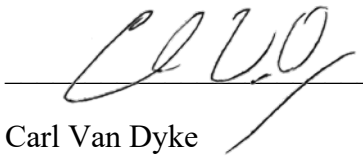
[163] 70% reverse route value is based on witnesses Wahba & Naatz's growth traffic data (FD 36500 – Work Paper – HC – Growth Initiative Calculations.xlsx), where they used an average value of 70% under "Assumed Backhaul" for the total intermodal volume at Lazaro Cardenas. *See* also HC – Oliver Wyman - Evaluation of Load to Empty Ratios.pdf

[164] *See* HC – Oliver Wyman - Evaluation of Load and Empty Ratios – Methodology.pdf for associated data and analysis.

VERIFICATION

I, Carl Van Dyke, declare under penalty of perjury that the foregoing information is true and correct. Further, I certify that I am qualified and authorized to file this statement.

Executed on this 28th day of February, 2022.



Carl Van Dyke

Appendix A. Carl Van Dyke Resume

Mr. Van Dyke is Managing Director of TransNetOpt, a consultancy focused on the use of computers to address transportation network planning and design issues. He is a retired Partner in the Surface Transportation Practice of Oliver Wyman, with a focus on improving the operations and general performance of transportation companies, and railroads in particular. He continues to undertake engagements on behalf of Oliver Wyman in the role of Senior Advisor. Mr. Van Dyke has spent over 40 years focused on the application of computers to transportation planning and operations issues, with particular emphasis on railroad network modeling, service design, train scheduling, line capacity analysis, and equipment management. In 1992, he founded MultiModal Applied Systems, which became part of Oliver Wyman in 2006.

He is best known for leading the design, creation, and application of the MultiRail planning products, including both the MultiRail-Passenger Edition and MultiRail-Freight Edition. The Freight Edition has been used by major freight railroads around the world, and has become the tool of choice for special studies such as mergers, privatization studies, operating plan redesigns, and routing/yard investment analysis. Over the past decade, Oliver Wyman-MultiModal has had a hand in the redesign of the operating plans of every major North American railroad, and is now pursuing a similar role in Europe, Africa, and the CIS.

Mr. Van Dyke has designed and implemented over a dozen freight rail, passenger rail, trucking, and container line operations planning models, many of which significantly advanced the state-of-the-art through the use of innovative algorithms and user interfaces. He also has played a key role in the adoption of algorithm-based methods for the real-time control of car routing and classification at a major North American carrier, and has led the development of a similar system which became the MultiRail-Enterprise Edition. Over the course of his career, he has provided technical assistance to dozens of railroads for the in-house use of MultiRail and other models, including all of the major North American carriers, and a number of commuter operators. The "scheduled railroad" operating plans deployed by five of the six Class I's were developed using MultiRail and Oliver Wyman-MultiModal's consulting services. Work with CP resulted in winning the 2003 Franz Edelman Prize in Operations Research from the Institute for Operations Research and Management Science (INFORMS).

An integral part of the modeling work undertaken by Mr. Van Dyke has been the analysis of traffic and operating plans related to mergers and reconfigurations of railroads. He first started undertaking this work by participating in the processing of the STB Waybill Sample and full waybill databases from individual railroads while at ALK Associates in the late 1980s. This work included traffic database processing, network traffic flow modeling, and diversion analysis. He went on to fill leading roles in traffic modeling and operating plan development efforts for the UP-SP, NS-Conrail, IC-CN, and CN-BNSF merger filings, as well as developing traffic models for the break-up of the Mexican railroads. Deep experience processing full-year proprietary railroad waybill databases was also gained through numerous projects including operating plan development efforts at Class I's in North America, and at a variety of railroads in countries such as Sweden, Switzerland, Italy, France, Kazakhstan, Germany, and South Africa.

Over the course of his career, Mr. Van Dyke has become very familiar with the computer systems that drive the operations and planning aspects of numerous railroads in both North

America and many other countries around the world. He has worked extensively with the IT departments at many of these railroads in the design and development of a wide variety of systems, and through this process has become familiar with the IT practices and organizations at these railroads. Examples include assistance to Class I's in the design of current production systems, development of roadmaps for systems improvement, and design and development of numerous planning systems.

Mr. Van Dyke's background in equipment management includes directing the design and development of a real-time, intermodal equipment management system for the rail industry, and adapting this model for use by a major steamship line. He also worked on the development of locomotive planning tools that have been applied to a number of major railways worldwide. While at ALK Associates, Mr. Van Dyke also served as President of Fleet Management, Inc., a company providing central management of railway car fleets. Mr. Van Dyke's other areas of expertise include the design and implementation of optimization and heuristic algorithms, logistics and market analysis, network rationalization, traffic analysis, and geographic information systems.

Mr. Van Dyke received an MS degree in civil engineering from MIT, with a concentration in transportation. He graduated *summa cum laude* from the University of Pennsylvania with a BSE in mechanical engineering. He has served on the National Council of the Transportation Research Forum, various Transportation Research Board committees, and was a charter member and former Chairman of the Rail Applications Special Interest Group of INFORMS. MultiRail, based on its impact on the rail industry, was named "technology of the decade" by *Trains Magazine* in November 2010. He is a co-author of a book on the use of operations research in the rail industry, which was published by Springer Verlag in 2015. He makes presentations and writes articles on a regular basis on various transportation analysis topics.

Exhibit 3

Verified Statement of Hugh Randall

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 36500

CANADIAN PACIFIC RAILWAY LIMITED; CANADIAN PACIFIC RAILWAY COMPANY; SOO LINE RAILROAD COMPANY; CENTRAL MAINE & QUEBEC RAILWAY US INC.; DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION; AND DELAWARE & HUDSON RAILWAY COMPANY, INC. – CONTROL – KANSAS CITY SOUTHERN, THE KANSAS CITY SOUTHERN RAILWAY COMPANY, GATEWAY EASTERN RAILWAY COMPANY, AND THE TEXAS MEXICAN RAILWAY COMPANY

CN'S COMMENTS ON APPLICATION AND REQUEST FOR CONDITIONS

Verified Statement of Hugh Randall

February 28, 2022

PUBLIC VERSION

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1. Qualifications

My name is Hugh Randall. I am a Senior Advisor to and a Partner Emeritus of Oliver Wyman, a global general management consulting firm with more than 60 offices in 31 countries. My office address is 1717 Main Street, Suite 4400, Dallas, TX 75201.

I have been engaged as a consultant to the transportation industry for the past 30 years and was formerly head of Oliver Wyman's global transportation consulting practice. In that capacity, I have directed consulting projects for railroads, airlines, trucking companies, parcel carriers, maritime shipping companies, freight forwarders, and contract logistics users and providers. Those studies have encompassed clients in North America, Europe, Asia, Latin America, and southern Africa.

Prior to joining Oliver Wyman, I held several senior management positions in the rail and trucking industries, including Assistant Vice President – Intermodal Planning, Assistant Vice President – Operations, and General Manager – Atlantic Region at Conrail; Executive Vice President and Chief Financial Officer at Ryder/PIE; and Managing Director of CSX/Sealand Logistics. I hold a BA degree from Antioch College and an MBA from Harvard University. My full resume is provided in Appendix F.

2. Assignment and Summary of Findings

I have been asked to review and comment on (1) Applicants' estimate of the capacity improvements and other capital expenditures that would be required to handle the additional traffic volumes projected by Applicants safely and efficiently, and (2) Applicants' projected

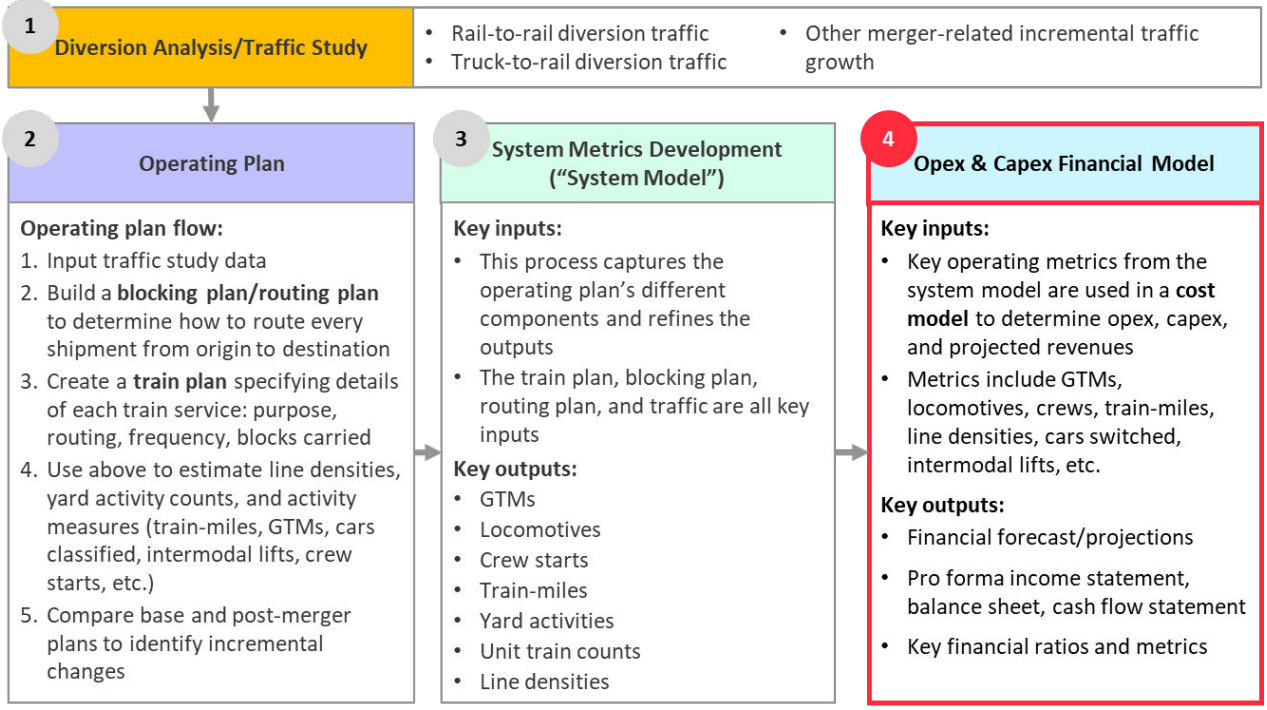
post-merger operating expenses, in each case as presented in the Application[1] and in the work papers of Applicants' witnesses. Solely for purposes of this Verified Statement, I have assumed that the envisioned merged railroad, CPKC, will achieve the traffic increases projected in the Application.

As shown in Exhibit 2-1, complete and accurate operating and capital expense plans are essential elements of the merger planning process. Accurate operating and capital expense plans, in turn, depend on accurate traffic projections and operating statistics (such as train-miles and gross ton-miles – "GTMs"). The capital and operating expense plans provide an essential cross-check to determine whether the Applicants have committed sufficient resources to execute their operating plan.

As CN witness Hunt demonstrates, Applicants' post-merger traffic projections are wildly inaccurate. CN witness Carl Van Dyke identifies numerous errors and omissions in Applicants' operating plan that render the resulting operating statistics invalid. As my testimony will demonstrate, these flaws in Applicants' traffic study and operating plan, and other errors described below, render the operating and capital expense estimates and post-merger financial exhibits set forth in the Application meaningless.

[1]The Application filed on October 29, 2021 by Canadian Pacific Railway Limited, Canadian Pacific Railway Company, and their US rail carrier affiliates (collectively, "CP") and Kansas City Southern and its US rail carrier affiliates (collectively, "KCS") seeking approval of the acquisition of control by CP of KCS. In this Verified Statement, I refer to CP and KCS collectively as "Applicants," and the proposed merged carrier as "CPKC."

Exhibit 2-1: Elements of a reliable merger plan: The financial model (operating and capital expense) is dependent on the accuracy of Applicants' traffic projections and post-merger operating plan[2]



3. Applicants' Capital Expenses Are Significantly Understated for Their Projected {{XXX }} Growth

Making adequate investment in infrastructure and equipment is essential to a railroad's ability to provide efficient and reliable service. The Board understands this linkage: The Board has focused on railroad service issues and the potential for service disruption on one railroad to impact other parts of the interconnected North American rail network, and has inquired whether

[2] This is the logic flow explicitly cited in the Canadian National-Illinois Central and Norfolk Southern-Conrail merger applications to the Board. *See* FD33556, Canadian National Railway Company, Grand Trunk Corporation, and Grand Trunk Western Railroad Incorporated – Control – Illinois Central Corporation, Illinois Central Railroad Company, Chicago, Central & Pacific Railroad Company, and Cedar River Railroad Company Railroad Control Application, Volume 2 of 4, Section 2.0. Oliver Wyman has been unable to find a statement indicating an explicit connection between the operating plan and financial model in the Canadian Pacific-Kansas City Southern Application.

railroads have adequate infrastructure and car supply to provide reliable service to their customers.[3]

The Board's pre-2001 merger regulations, which govern this proceeding, explicitly require the Applicants to address:

> "The anticipated equipment requirements of the proposed system, including locomotives, rolling stock by type, and maintenance-of-way equipment; plans for acquisition and retirement of equipment; projected improvements in equipment utilization and their relation to operating changes; and how these will lead to the financial and service benefits described in the summary."[4]

The Board again explicitly recognized the importance of a comprehensive capital expenditure plan when it promulgated the current service assurance plan requirement for Class I railroad mergers, which require:

> "Applicants must develop a capital improvement plan (to support the operating plan) for timely funding and completion of the improvements critical to transition of operations. They should also describe improvements related to future growth and indicate the relationship of the improvements to service delivery."[5]

These regulations describe the elements of an adequate capital investment plan. Exhibit 2-1 above shows the steps a railroad would typically follow to develop a capital expenditure plan using its projected traffic, operating plan, and system metrics to identify investments in track and facilities, rolling stock, and other assets required to accommodate the railroad's anticipated traffic. Capital investments logically are targeted to those projects and locations where additional capacity and/or resources are needed to ensure competitive transit times and service reliability. [6]

[3] *See*, for example, Ex Parte No. 724, which was initiated in response to service quality complaints concerning Canadian Pacific and led to weekly performance data reporting requirements for all Class I railroads.
[4] 49 CFR 1180.8(a)(3) (2000).
[5] 49 CFR 1180.10(d) (2001).
[6] Applicant railroads have likewise recognized that an accurate capital plan is essential to demonstrating that a merger will be operationally and financially viable. For example, in its application to control the Illinois Central, Canadian National provided the Board with a section

Here, Applicants have failed to present a detailed capital investment plan that makes adequate provision for additional track and yard capacity, bridge renewal and replacement, and rolling stock and resources at locations where they claim the proposed merger will generate substantial increases in traffic and train and yard activity. In particular:

- The Application does not contain the detailed, location-specific information required to assess the adequacy of Applicants' capital investment plan. While the Application asserts that Applicants will spend $5.7 billion in Years 1-3 for what is vaguely described as "capex," only about {XXX } of that sum is actually allocated to specific investments that are described in the Application.[7]
- Applicants state that their financial projections do not include revenues and expenses related to organic growth.[8] However, as confirmed in witness Van Dyke's Verified Statement, Applicants' operating plan outputs include the impact of {{XXX }} organic growth in GTMs by 2025 (the assumed Year 3 of the merged system) and 19.8 percent growth in GTMs as a result of the merger, for a total increase of {{XX }}

concerning "Line Infrastructure, New Construction, and Other Capital Investments." That section included subsections concerning line infrastructure, merchandise/unit train yards, intermodal/auto terminals, new and upgraded connections, locomotives, information systems, and a summary of capital investments. In each case, Canadian National identified the specific projects to be undertaken and the specific funds budgeted. (*See*, for example, FD33556, Canadian National Railway Company, Grand Trunk Corporation, and Grand Trunk Western Railroad Incorporated – Control – Illinois Central Corporation, Illinois Central Railroad Company, Chicago, Central & Pacific Railroad Company, and Cedar River Railroad Company Railroad Control Application, Volume 2 of 4, Section 7.0.)

[7] Verified Statement of John A. Orr and Raymond F. Elphick at p. 84 identify $276 million for one merger-related capital project, including new sidings and CTC on the mainline between Sabula Jct., IA and Beaumont, TX. For a second capital project, Verified Statement of James Clements at p. 9 identifies $138.6 million for IT and communications integration of the two railroads. For a third capital project, Orr and Elphick V.S. at p. 70 identify $45 million for locomotive rebuilds in Year 3. (Orr and Elphick V.S. at p. 70, identify $135 million for locomotive rebuilding but defer rebuilding of 90 locomotives in Years 1 and 2, saving $90 million. From this statement, I infer that Applicants will spend $45 million to rebuild 45 locomotives in Year 3). The sum of these three expenditures is $459 million, which is 8 percent of the $5.7 billion for capital improvements ($1.9 billion per year as identified in Appendix G of Application 1 for three years equals $5.7 billion).

[8] Verified Statement of Chris De Bruyn, p. 6.

in GTMs by Year 3.[9] It is unclear whether Applicants' average of $1.9 billion per year budgeted (but largely unspecified) capital investment funding, in their financial projections for each of Years 1-3, includes adequate funding for capacity improvements to handle organic and merger-related GTM growth of {{XXX }} by Year 3 of the merged system, as well as funding for the normal renewal of assets.

- Whether Applicants intend that the average $1.9 billion per year will cover both organic and merger-related growth, this amount of funding appears to be inadequate, especially when compared with Applicants' own pre-merger capital spending. Between 2014 and 2019, CP and KCS together made capital investments equal to, on average, 24.2 percent of their annual revenue.[10] In no year did the railroads spend less than 21.0 percent of their combined revenue on capital investments. Yet the Application indicates that the merged CPKC would spend only 19.3 to 20.6 percent of post-merger revenue during each of Years 1-3.

  In terms of dollars spent for capital expenditures during 2014-2019, CP and KCS in total spent an average of $1.9 billion per year.[11] During that period, the GTMs carried by CP and KCS combined grew by 3 percent.[12] The $1.9 billion per year budgeted for Years 1-3 is no more than the average annual spend for 2014-2019, even though post-merger annual GTMs are projected to increase by more than {{XXX }} from 2019 to Year 3.[13] Also, one would expect Applicants to dedicate a greater percentage of revenue to undertake capital projects in the early years, so as to prepare the network to handle increased volumes of post-merger traffic. Applicants' capital expenditure plan is insufficient to support just organic growth, much less the projected $1 billion in

[9] Application, Vol. 2, p. 287, Exhibit 13 Table 2; Oliver Wyman Capex worksheet No. 1, GTMs tab.
[10] Railroad Facts, 2015 to 2020 editions (which contain statistics for 2014 to 2019), Association of American Railroads. *See* HC - Oliver Wyman – HC - Capex Worksheet No. 1 for calculation.
[11] Railroad Facts, 2015 to 2020 editions, Association of American Railroads. *See* HC - Oliver Wyman - Capex Worksheet No. 1 for calculation.
[12] Based on data reported in CP's annual reports and KCS's Consolidated Investors' Reports, the combined GTM growth from 2014 to 2019 was 3 percent (371,526 million GTMs in 2014 to 382,543 million GTMs in 2019). (CP Annual Report 2014, p. 26 and 2019 Annual Report p. 57; KCS Consolidated Investors Report Q4 2014, p. 12 and Q4 2019 p. 13.) *See* HC - Oliver Wyman - Capex Worksheet No. 1, GTMs tab.
[13] *See* HC - Oliver Wyman - Capex Worksheet No. 1 – GTMs tab for GTM growth calculation.

additional merger-related traffic.[14] Applicants offer no explanation as to how the merged CPKC could handle a {{XXX }} increase in GTMs and maintain service levels, while not increasing the level of capital spending they have incurred in the normal course of business. In the absence of such an explanation, Applicants' capital plan is simply not credible.

- Applicants failed to provide for a number of capital projects that will almost certainly be required to accommodate their projected traffic growth. As discussed below, such improvements include expanding capacity of tracks, yards, intermodal terminals, and auto ramps at locations that will experience substantial increases in train activity; and providing sufficient locomotives and railcars to handle projected traffic volumes.

3.1 Applicants have failed to prove the adequacy of their committed capital investment funding

Applicants have not provided a detailed description of capital investments that will be made post-merger, nor have they shown that a merged CPKC will have adequate funding allocated to its capital plan, given projected traffic growth.

While the Application includes $5.7 billion in Years 1-3 for what is vaguely described as "capex," Applicants have allocated only about 8 percent of that sum for specific identifiable projects.[15] Nowhere in the Application or work papers do Applicants identify the nature or location of other specific capital projects that they propose to undertake during Years 1-3, much less the estimated cost and timing of such work. In the absence of such evidence, it is impossible for interested parties or the Board to assess the adequacy of Applicants' capital spending plans. Applicants also have not demonstrated that the amount of capital provided in their financial exhibits will be sufficient to accommodate merger-related and organic volume growth.

[14] Application Vol. 1, Appendix F, Income statement (Change in Revenue Between Year 3 and Base Year), pp. 131-142.
[15] Orr and Elphick V.S., pp. 70 and 84; Clements V.S., p. 9.

In the absence of project-specific information, benchmarks can be used to evaluate Applicants' capital plan.

Historical capital spending by CP and KCS prior to the merger. As shown in Exhibit 3-2, CP and KCS collectively averaged capital expenditures equal to 24.2 percent of revenue between 2014 and 2019. *In no year were their combined capital expenditures less than 21.0 percent of their combined revenue.* Yet the Application indicates that Applicants plan to spend only 20.6 percent of revenue in Year 1, 20.0 percent of revenue in Year 2, and 19.3 percent of revenue in Year 3 on capital projects, despite a projected increase of {{XX }} in GTMs by Year 3.[16]

Exhibit 3-2: CP and KCS (full system) combined capital spending, 2014-2019[17]

$ billions

	2014	2015	2016	2017	2018	2019	Avg. 2014-19
Revenue	$8.6	$7.7	$7.0	$7.6	$8.3	$8.7	$8.0
Capex	$2.3	$2.1	$1.5	$1.8	$2.0	$1.9	$1.9
Capex as % of revenue	27.4%	27.4%	21.0%	23.3%	23.7%	21.9%	24.2%

Dollars spent for capital expenditures is another relevant benchmark. During 2014-2019, CP and KCS together spent an average of $1.9 billion per year, while GTMs grew by 3 percent during that period.[18] Yet Applicants propose to spend the same $1.9 billion per year for Years 1-3 post-merger,[19] an amount that is woefully deficient in light of their projected increase of more than {{XXX }} in GTMs by Year 3 of the merger compared to 2019. It is simply not credible to assume that Applicants can adequately address the merged railroad's capital needs by

[16] Application Vol. 1, Appendix G, p. 143; Oliver Wyman Capex worksheet No. 1, Capex tab.
[17] Railroad Facts, 2015 to 2020 editions, Association of American Railroads; *see* HC - Oliver Wyman Capex Worksheet No. 1 for calculation. Includes all North American operations.
[18] Based on data reported in CP's annual reports and KCS's Consolidated Investors' Reports, the combined GTM growth from 2014 to 2019 was 3 percent (371,526 million GTMs in 2014 to 382,543 million GTMs in 2019). (CP Annual Report 2014, p. 26 and 2019 Annual Report, p. 57, KCS Consolidated Investors Report Q4 2014, p. 12 and Q4 2019, p. 13.) *See* HC - Oliver Wyman - Capex Worksheet No. 1, GTMs tab.
[19] Application Vol. 1, Appendix G, pp. 143-154, cash flow statement.

spending no more per year than they spent before the merger, while accommodating significantly higher traffic growth. Moreover, Applicants are asking the Board to accept this clearly inadequate capital plan with no detailed explanation as to how or where the $5.7 billion in capital expense funding would be deployed. The Applicants' capital plan is clearly completely inadequate in terms of describing the investment needs of the merged railroads.

3.2 Applicants have failed to make provision for capital projects that will be required to accommodate post-merger traffic volumes

To understand whether Applicants' proposed capital spending sufficiently accounts for the capacity that would be consumed by their projected traffic increases, I conducted the following analysis. I note that in many cases my analysis was constrained by the lack of detailed information that ordinarily would be provided in a capital planning process (for example, the Applicants did not provide a complete set of track or bridge condition reports until the week before opposing statements were due).

- I assessed the line-of-road and yard capacity increases that would be required to handle projected increases in carloadings, using CP's methodology for assessing capacity compared to expected demand.
- I compiled a list of locations (such as subdivisions, yards, at-grade crossings with other Class I railroads, and bridges) where Applicants did not identify any specific capital projects, but where the projected increase in trains per day (or, in the case of yards, car handlings per day) make it virtually certain that significant capital investment will be necessary to maintain fluid operations to serve customers. I also reviewed certain trackage rights agreements where CPKC as a tenant railroad may be required to expand capacity to accommodate an increase in its traffic, but where Applicants have not identified any specific capital allocation. Given the projected increases in trains and yard handlings in the Application, I identified a number of critical capital expenditures that were not identified in the Application, as shown in Exhibit 3-3 and described below.

Exhibit 3-3: Critical capital expenditures missing from the Application but likely required

Category	Potential capex issue	Resources impacted
Line of road	• Significant train delays and service disruptions are likely without additional capital spending • The number and location of long sidings to handle 10,000-foot trains are likely inadequate to prevent post-merger delays • No capital allocation for busy at-grade crossings controlled by other railroads • No capital allocation for increased traffic on lines accessed via trackage rights • No capital allocation for Mexican lines	• Seven subdivisions • Three at-grade UP/BNSF rail crossings • Two UP line segments used by CPKC under trackage rights agreements
Yards	• No capital allocated to handle increased workloads, except at Bensenville • Adequacy of Bensenville expansion cannot be determined from information provided	Yards located in: • Bensenville, IL • Schiller Park, IL • Shreveport, LA • Wylie, TX • St. Paul, MN
Automotive ramps/ intermodal terminals	• No capital allocated to handle increased workloads	• All auto ramps/intermodal terminals except Bensenville
Bridges	• No capital allocated for bridge expansion/ replacement to handle increased traffic	• Neches River Bridge • KCS Bridge at Laredo
Revenue cars	• Insufficient new cars being added to handle projected loadings, given projected retirements	• Insufficient gondolas and centerbeam flats for steel and forest products loadings
Locomotives	• Insufficient new and rebuilt locomotives to handle increased traffic	• Less than 1 percent increase in fleet size to move {{XXX }} more GTM's in Year 3 • 45 rebuilds per year (need 90)

3.2.1 Insufficient capital investment for expanded track capacity (line of road)

I assessed the ability of each CP and KCS/KCSM subdivision on the north-south post-merger route between CP's Marquette subdivision (south of St. Paul), on the one hand, and KCSM's Tula subdivision (north of Mexico City), on the other hand, to absorb the increase in train activity projected in the Application, *using Applicants' own approach to capacity analysis*.[20] As shown in Exhibit 3-4, Applicants project a large increase in trains per day for

[20] A description of my (and CP's) capacity assessment methodology is provided in Appendix D.

almost every one of those subdivisions, as well as an increasing number of trains that will require 10,000-foot sidings (which is CP's stated objective for non-bulk trains, to achieve its post-merger productivity assumptions).

Exhibit 3-4: Applicants' projected increase in trains per day by subdivision[21]

Subdivision	State	Base Trains/Day	Year 3 Trains/Day	% Growth	Base (Non-Bulk Trains)	Year 3 (Non-Bulk Trains)
Chicago	IL	2.9	11.1	283%	{{XXX}}	{{XXX}}
Marquette	IA	7.7	14.3	86%	{{XXX}}	{{XXX}}
Davenport	IA	7.1	21.6	204%	{{XXX}}	{{XXX}}
Ottumwa	IA	4.2	18.4	338%	{{XXX}}	{{XXX}}
Laredo	TX	3.0	17.0	467%	{{XXX}}	{{XXX}}
Kansas City	MO	2.9	16.9	483%	{{XXX}}	{{XXX}}
Pittsburg	KS	13.5	28.5	111%	{{XXX}}	{{XXX}}
Heavener	OK	11.3	25.9	129%	{{XXX}}	{{XXX}}
Shreveport	LA	9.4	23.6	151%	{{XXX}}	{{XXX}}
Beaumont	TX	8.9	20.3	128%	{{XXX}}	{{XXX}}
Rosenberg	TX	8.5	17.7	108%	{{XXX}}	{{XXX}}
KCS Laredo	TX	10.5	19.4	85%	{{XXX}}	{{XXX}}
Saltillo	MX	24.1	29.8	24%	{{XXX}}	{{XXX}}
Vanegas	MX	15.1	20.8	38%	{{XXX}}	{{XXX}}
Tula	MX	14.6	19.5	34%	{{XXX}}	{{XXX}}

As summarized below, even after spending $276 million in specific planned capacity-expanding line-of-road investments during Years 1-3, CPKC is likely to encounter significant train delays, due to a lack of capacity to handle the planned increase in trains on almost every subdivision. This appears to be the result of a disconnect in Applicants' operations planning processes, as described by CN witness Van Dyke in his Verified Statement. One of those

[21] Trains per Day, Base and Year 3: Application, Appendix A. Trains per Day by Subdivision, Vol 2, pp. 364-368; Non Bulk Base and Non Bulk Year 3: Oliver Wyman utilized the FD 36500 - Work Paper - HC - Trains Per Day and Gross Ton Miles - Working Copy with Haz Breakdown.xlsx file to get the percentage of trains that were bulk vs. non-bulk and applied it to the trains per day from Appendix A of the Application. *See* HC - Oliver Wyman Capex - Worksheet No. 2.

disconnects involves train counts by subdivision. The counts in Exhibit 3-4 include both organic and merger-related growth through Year 3 of the merger. However,the projected capital expenditures in Application's financial exhibits *exclude organic growth*. So, it is, at best, unclear whether Applicants' capital expenditure plan was sized to accommodate the {{XXX }} increase in GTMs resulting from organic and merger-related growth. What is clear, as described in Appendices B and C of this Verified Statement, is that Applicants' specified capital investment allocations to upgrade these lines is substantially inadequate. The result is that, by Year 3, CPKC is likely to experience significant train delays on most subdivisions.

In light of Applicants' projection that the combined CPKC system would see {{XXX }} growth in GTMs by Year 3, I could not understand why Applicants included *no capital expenditure for several lines where trains per day are scheduled to double*. From the joint deposition of CP witness Raymond Elphick and KCS witness John Orr,[22] the co-sponsors of Applicants' Operating Plan (Exhibit 13), I learned that {{XXX.}} Witness Elphick initially asserted that {XXX.}[23] However, upon further questioning, he {{XXX.}}

[22] HC - Remote Videotaped Deposition of Raymond A. Elphick and John F. Orr, STB Docket No. FD 36500, February 18, 2022. Terence M Hynes and Michael Rosenthal, representing Canadian National and Union Pacific, respectively, conducted the portions of the deposition cited in my testimony.

[23] HC - Remote Videotaped Deposition of Raymond A. Elphick and John F. Orr, STB Docket No. FD 36500, Elphick Deposition, pp. 71-74 and 93-97, Feb 18, 2022.

{XXX } Exhibit 3-5 sets forth a summary of the deposition testimony of witness Elphick regarding two of the subdivisions for which Applicants performed only such cursory capacity discussions. (*See* Appendix E for the full text of these discussions from the deposition.)

Exhibit 3-5: Elphick/Orr deposition extracts on the capacity assessment of KCS lines[25]

Rosenberg to Victoria		
{XXX}	{XXX}	{XXX}

Beaumont to Rosenberg		
{XXX}	{XXX}	{XXX}

[24] *Id.*
[25] *Id.*

Considering Applicants' planned investments to upgrade the St. Paul-Chicago-Beaumont line segment of their north-south line, I found that seven out of 15 subdivisions[26] and three at-grade crossings of busy BNSF or UP lines are likely to experience significant train delays and potential service disruptions without additional capital investment, for the following reasons:

- *More than {{XXX }} of the CPKC trains operating on {{XXX}} subdivisions will be 10,000 feet in length*.[27] This includes four subdivisions (the Chicago Subdivision and all three subdivisions in Mexico) on which *more than {{XXX }} of trains are*

[26] *See* Appendix C, subdivisions coded red in Tables B-1, B-3, and B-4.
[27] HC - Oliver Wyman - Capex Worksheet No. 2., s*ee* Summary tab.

projected to be 10,000 feet in length.[28] It is highly unlikely that those subdivisions currently have enough 10,000-foot sidings to maintain fluid service, given the anticipated increase in 10,000-foot trains, yet Applicants offer no specific plans to lengthen existing sidings or install additional sidings.

- The Application projects an *increase of 330 percent in trains operating on the Sabula to Kansas City mainline*, from an average of 4.3 trains per day at present to an average of 18.5 per day.[29] This line includes busy at-grade crossings with UP at Clinton, IA and with BNSF at Savannah, IL and Ottumwa, IA. UP and BNSF control those crossings, and each crossing is currently used by an average of 28-35 BNSF or UP trains per day.[30] Without capital investment to expand capacity at those locations, the massive increase in projected CPKC train movements at these busy crossings will threaten the fluidity of operations at each location.

- CPKC's planned route to/from Mexico, via the Laredo gateway, includes KCS trackage rights over two critical segments in Texas: UP's lines between Beaumont and Rosenberg, TX (a busy set of UP mainlines through Houston over which BNSF and Amtrak also operate trains) and between Victoria and Robstown, TX. *Applicants' operating plan contemplates that CPKC trains over these segments will more than double* – an increase from 7.7 trains per day to 16 trains per day between Beaumont and Rosenberg, and from 7.7 trains per day to 16.8 trains per day between Victoria and Robstown.[31] Applicants do not explain how CPKC will be able to add these trains on trackage they do not own (whether such increases are even permitted under the relevant trackage rights agreements and whether any additional capital investment would be required). Despite repeated requests, Applicants have not provided copies of the relevant trackage rights agreements with UP, which are necessary to determine whether CPKC will be permitted to double its daily trains over these lines without UP's concurrence, whether such concurrence has been granted, and, if so, what responsibility CPKC will have to fund capacity expansion of the lines to accommodate post-merger train activity. UP has expressed concern

[28] HC - Oliver Wyman - Capex Worksheet No. 2., *see* Summary tab.
[29] HC - Oliver Wyman - Capex Worksheet No. 1, *see* Other Calculations tab.
[30] Grade Crossing Inventory, FRA Office of Safety.
[31] Application Vol. 2, Appendix A, Trains Per Day by Subdivision, pp. 364-368.

regarding the Applicants' planned increase in traffic, stating that "their (the Applicants') Application, including their Operating Plan, should address all the consequences of the proposed transaction."[32]

Applicants' operating plan does not demonstrate that the increased CPKC traffic over the Beaumont-Rosenberg line will not interfere with operation of Amtrak's Sunset Limited intercity passenger service. Applicants are obligated to provide this proof.[33] UP echoes this concern, stating that "The Application does not support Applicants' claim that their proposed transaction will not adversely affect Amtrak."[34] Amtrak's Sunset Limited transits this busy corridor three times per week. With CPKC doubling its trains on this line segment and across the Neches River Bridge, there will be an increased risk of delaying this Amtrak train. CP's recent Agreement with Amtrak dated February 2022 does not address the Sunset Limited.[35]

- Despite the projected increase in post-merger traffic to and from Mexico, Applicants have *identified no planned capital projects to expand capacity on KCSM's lines in Mexico*. This is of particular concern because *more than {{XXX }} of CPKC trains, which will carry time-sensitive intermodal and automobile traffic, will move in 10,000-foot trains*. Additional siding capacity will be required to handle that traffic in Mexico.
- With the construction of Bensenville Yard not expected to be completed until 2025 (the presumed Year 3 of the CPKC merger), transfer movements between Bensenville and Schiller Park yards will likely increase significantly as (1) work is shifted to Schiller Park and back to Bensenville, to enable the rebuilding and expansion of Bensenville Yard; and (2) to accommodate the significant increase in Bensenville's workload due to organic and merger-related growth. Each transfer move between these two yards involves crossing the

[32] Union Pacific Railroad Company's Petition to Reject Application as Incomplete, STB Finance Docket 36500, p. 14.
[33] 49 CFR 1111.8(a)(2) (2000).
[34] Union Pacific Railroad Company's Petition to Reject Application as Incomplete, STB Finance Docket 36500, p. 15.
[35] Amtrak-Canadian Pacific Agreement, Section 6, conveyed to Cynthia T. Brown, Chief Section of Administration, Office of Proceedings, Surface Transportation Board, by letter from Sophia Ree, dated February 2, 2022.

tracks of two busy Metra commuter lines (the Milwaukee District West Service to Elgin and the North Central Service to Antioch) and a lengthy reverse move to Schiller Park. There is no evidence that any simulation studies were carried out to determine the impact of this increase in transfer movements on the quality of Metra's services, and in fact counsel for CP has said no modeling was done related to Metra. *See* Letter from David L. Meyer, Counsel for CP, to STB, Docket No. FD 36500 (filed Feb. 23, 2022). And there are no specified capital investment projects in Applicant's capital plan to mitigate or eliminate any impact on Metra's services.

- Other line segments have no planned investments. That includes line segments of the Springfield Line, for which CN is seeking a divestiture condition. When two railroads merge and have parallel lines, the concern is that the merged entity will concentrate investment on one, to the detriment of the other. That is what will happen here. CP is investing in its mainline between Kansas City and Chicago but has not identified *any* investments in KCS's parallel route between Kansas City and Springfield/East St. Louis.

3.2.2 Insufficient capital investment for yards, auto ramps/intermodal terminals, and bridges

Insufficient capital investment for key yards

The Application does not specifically allocate capital dollars during Years 1-3 to any yard in the CPKC system except CP's Bensenville Yard (and the amount of anticipated investment to expand Bensenville is not disclosed in the Application). However, *each of the following CPKC system yards is unlikely to have sufficient capacity to accommodate the increased workloads assigned to them* in Applicants' operating plan.

- Bensenville and Schiller Park (Chicago): Applicants' work papers project a completion date of 2025 for the rebuilding and expansion of Bensenville Yard and assert that the resulting capacity will be adequate to handle post-merger loading.[36] However, Applicants

[36] Kansas City Southern and Canadian Pacific's Joint Responses And Objections to Canadian National Railway Company's First Set Of Discovery Requests, Response to Request No. 100, STB Finance Docket 36500, p. 79.

provide no proof as to how they will handle a significant increase in post-merger yard work in a smaller space, following the sale of land to the Illinois Tollway to fund the rebuilding and expansion.

The merged system will be operating in Years 1-3 with Bensenville under construction and while the combined network is coping with an anticipated {{XXX }} in GTMs (including a 19.8 percent increase related to the merger). Much of this increase will consist of intermodal and automotive traffic that will flow through Bensenville and Schiller Park. There is no indication in the filing that Applicants did any capacity studies to see how Year 2 and 3 volumes would fit through the yard, how many additional transfers to Schiller Park would be required during this period, and, as mentioned above, how much delay this would cause for the two affected Metra lines.

- Shreveport: The operating plan indicates that Applicants plan to *more than double the number of trains moving through Shreveport, from 9.4 trains per day to 23.6 trains per day* (including originating, terminating, and through trains). The yard will be assigned 81 more cars to switch, 14 more blocks to make, and an unspecified increase in blocks to swap between trains. Through trains affect yard operations, because they occupy the mainline during crew changes.[37] It is virtually certain that the 30 yard tracks and mainlines at Shreveport in their current configuration will not be sufficient to handle the increase in workload (particularly in light of the fact that only one of the two mainlines adjacent to the yard can be used for originating/terminating and block swapping). Yet Applicants have not identified any planned capacity expansion at Shreveport yard.
- Wylie, Schiller Park, and St. Paul yards are each assigned more work in Applicants' post-merger operating plan. However, Applicants have not identified planned capacity expansion at any of those yards to accommodate the increased activity.

Further detail on the Bensenville, Wylie, Schiller Park, and St. Paul yards is provided in Appendix A.

[37] Orr and Elphick V.S., pp. 41, 43, 49, and 51

Insufficient capital investment for auto ramps and intermodal terminals

Applicants cite the ability to offer single-line service for northbound movements of imported containers and finished vehicles from Mexico as one of the primary benefits of the merger.[38] Yet the Application makes no provision for capacity expansion of any CPKC system auto ramps or intermodal facilities other than Bensenville and Schiller Park. Also, despite a projected increase in intermodal and automotive loadings from 27,272 and 4,364 pre-merger to 72,796 and 7,043 in Year 3 (168 percent and 62 percent increases, respectively), Applicants have designated no funding for expansion of their IFG intermodal and automotive terminal 24 miles south of Kansas City. Further detail on these intermodal and auto terminal expansion plans is provided in Appendix A.

Insufficient capital investment in key bridges

The Application does not identify capital spending for critical bridges that will be affected by projected traffic increases:

- KCS owns and operates a 20-mph single-track drawbridge over the Neches River in Beaumont, TX. The bridge is also used by BNSF, UP, and Amtrak trains. The Application projects that *CPKC daily train volume will more than double, from an average of 8.9 trains per day in the Base Year (2019) to 20.3 trains per day in Year 3*.[39] The need to replace this bridge – even at current traffic levels – has been noted by the

[38] Witnesses Brown & Zebrowski in their work papers show $125 million in autos from Mexico to Chicago interchange, Canada, Chicago, Twin Cities, and Kansas City. *See* the "Results" tab of HC - Diversion Identification work paper for Year 3 incremental revenue attached to their V.S.. They also have new moves of autos from Ontario to Kansas City and from the Gulf to Canada. Witnesses Wahba & Naatz in their work papers show an additional $16 million in autos from Guanajuato to Chicago interchange (35%), Chicago local (35%), Kansas City (10%), Toronto (10%), and Twin Cities (10%). *See* Row 10 in the HC - Growth Initiative Calculations work paper attached to their V.S.

[39] Application Vol. 2, Appendix A, Trains per Day by Subdivision, Beaumont Subdivision, pp. 364-368.

Texas Department of Transportation.[40] But the Application makes no provision for capital spending to increase the capacity of the existing bridge or to replace it.

- The KCS Bridge at Laredo, TX, which is used by both KCS and UP, is a critical link for traffic moving between Mexico and points in the United States and Canada. By Year 3, given the projected increase in trains crossing the bridge, congestion may become a problem. Construction of a second railroad bridge at Laredo has been approved by US Presidential permit, and KCSM believes the remaining three permits needed to begin construction will be obtained in time to begin construction at the start of 2023.[41] Yet the Application makes no provision for the cost of constructing a second bridge.

Applicants also make no mention of carrying out detailed capacity studies of the Neches Bridge to determine what capital investments will be needed to accommodate projected traffic growth.

3.2.3 Insufficient increase in revenue cars

The Application projects that CPKC will earn $1.021 billion of incremental revenues from: (1) post-merger traffic moving in {{XXX}} new units (carloads and containers) diverted from trucks and other railroads, and (2) {{XXX}} existing units that will have a longer length of haul.[42] These traffic diversions will generate a projected increase of 19.8 percent in GTMs.[43] Applicants posit that they will be able to handle this increase in GTMs with 2,002 fewer revenue cars, a 3.4 percent decrease.[44] Moreover, they plan to retire without replacement 833 general

[40] 2019 Texas Rail Plan, which cites bridge replacement as a long-range project (2023-2039), Texas Department of Transportation, Table 5-3, pp. 329-330.
[41] Federal Register:: Authorizing the Kansas City Southern Railway Company To Construct, Connect, Operate, and Maintain Railway Bridge Facilities at the International Boundary Between the United States and Mexico; "KCSM outlines projects for 2022," T21com.mx and Google Translate, January 11, 2022.
[42] HC - Oliver Wyman - Capex Worksheet No. 1, Carloads and containers growth tab.
[43] HC - Oliver Wyman - Capex Worksheet No. 1, GTM tab.
[44] Orr and Elphick V.S., pp. 71, 73-74, Calculation 2,002/59,405 =3.4%.

flatcars (including centerbeam flatcars) and 2,063 gondolas (including coil-steel cars), even as they experience an increase of 3,722 carloads[45] per year of forest products and 2,277 carloads per year of steel-related products.[46] In addition, no capital allocation has been made in the Application for revenue cars for projected organic growth. It seems unlikely that CPKC can accommodate a nearly {{XX }} increase in total GTMs from organic and merger-related growth simply by increasing the number of annual car turns with a smaller fleet, particularly given the significant increase in lengths of haul per load (and the need to return empties).[47]

3.2.4 Insufficient supply of new and rebuilt locomotives

The Application reflects an assumption that the merged CPKC will be able to move {{*XXX }} *more GTMs by Year 3* without acquiring any additional locomotives.[48]

The Application also appears to contemplate that *the average age of the combined CPKC locomotive fleet will increase significantly, from 16.5 years to 19.1 years*.[49] Applicants plan to continue with a locomotive rebuilding program. To maintain the current average fleet age of 16.5 years,[50] CPKC would need to rebuild approximately 90 road locomotives per year. However, Applicants' planned budget for locomotive rebuilding – one of the few specific capital projects identified in the Application – contemplates only 45 rebuilds per year. Moreover, Applicants plan to suspend their rebuilding program altogether during Years 1 and 2, and to reduce the pre-merger locomotive fleet by 135 units by temporarily storing the road locomotives that are the

[45] Orr and Elphick V.S., pp. 73-74. (124+73+1,397+372+97 = 2,063 gondolas) & (67+315+246+205 = 833 general flatcars).
[46] Brown and Zebrowski V.S., Application Vol. 2, pp. 157-158 (1,684+2,038 =3,722 carloads of forest products, 1,444+833 = 2,277 carloads of steel-related products).
[47] Orr and Elphick V.S., pp. 71 and 73-74.
[48] Orr and Elphick V.S., p. 68; HC - Oliver Wyman - Capex Worksheet No. 1, GTMs tab.
[49] HC - Oliver Wyman - Capex Worksheet No. 1, Locomotives tab.
[50] *Id.*

most expensive to operate during Years 1 and 2 – rather than rebuilding these units in anticipation of higher Year 3 traffic volumes. Applicants apparently plan to return 90 of these units (without rebuilding) to service in Year 3.[51] Taken together, these decisions will leave CPKC with a locomotive fleet that is older.[52] The likely consequence of this decision will be reduced locomotive reliability and increased maintenance expense.

In short, Applicants propose to handle an overall {{XXX }} increase in GTMs in Year 3 with a road locomotive fleet that is the same size as pre-merger,[53] but three years older than the current road locomotive fleet. With an older and less reliable locomotive fleet, Applicants' operating plan is likely to be more difficult to execute. While it may be possible to increase the length of some trains, depending on the length of sidings, the number of locomotives assigned to each train is a function of the weight of the train and ruling grades on a line, not the train's length in feet. Applicants' desire to increase many trains to a 10,000-foot configuration (the standard in CP's precision scheduled railroading (PSR) guidelines) might produce some increase in locomotive utilization, but only if trains are not currently using the full capacity of the locomotives assigned to them. In the work papers, Applicants appear to assume an increase in train speeds as the means to turn locomotives faster and improve utilization. But it is unlikely, even with an increase in train speeds, that the reduced locomotive fleet will be sufficient to handle a {{XXX }} increase in GTMs.[54]

[51] Orr and Elphick V.S. at p. 70 identify $45 million for locomotive rebuilds in Year 3. (Orr and Elphick V.S. at p. 70 identify $135 million for locomotive rebuilding but defer rebuilding of 90 locomotives in Years 1 and 2, saving $90 million. From this statement, I infer that the Applicants will spend $45 million to rebuild 45 locomotives in Year 3.)
[52] HC - Oliver Wyman - Capex Worksheet No. 1, Locomotives tab.
[53] Fleet size of 1,615 from Orr and Elphick, V.S., Table 6, p. 68.
[54] Orr and Elphick V.S., footnote 9 on p. 68; HC - Oliver Wyman - Capex Worksheet No. 1, GTMs tab.

4. Applicants Significantly Understate Operating Expenses By At Least $2 Billion and Project an Operating Ratio of 30 Percent for Merger-Related Traffic

Determining whether the incremental post-merger operating expenses projected by Applicants are in line with the projected increase in post-merger traffic is another important factor that the Board must assess in reviewing the viability of the proposed transaction. In past merger applications, applicants have employed a standardized modeling process to generate operating expenses based on projected changes in workload. Here, however, Applicants used a flawed and inaccurate approach to cost analysis and financial projections. As a result, Applicants have not shown that their operating expense estimates accurately reflect the cost of post-merger operations.

Indeed, Applicants' projected operating expenses for the first three post-merger years are understated by approximately $2.47 billion when compared to the operating expenses actually incurred by CP US and KCS US during the 2015-2019 period.[55] When compared to the average operating expenses incurred by the four largest Class I railroads (BNSF, UP, CSX, NS) between 2015 and 2019, Applicants' post-merger operating expense estimates appear to be understated by approximately $2.0 billion.[56] This represents an understatement of the merged railroad's operating expenses of approximately 10.7 to 12.9 percent of total operating expenses for those years.

The most significant flaws in Applicants' operating expense estimate include the following:

- Applicants did not base their estimate of incremental operating expenses on the analyses or outputs of their operating plan or system model. Instead, Applicants based their

[55] Analysis of US Class I Railroads – years 2015 to 2019, Association of American Railroads. *See* Oliver Wyman Opex Worksheet.
[56] *Id.*

estimate solely on a table of incremental operating expenses that is hard-coded into an unsourced spreadsheet in Applicants' work papers.[57] In other words, while Applicants submitted the veneer of an operating expense development process (including a purported MultiRail analysis of post-merger operations), the operating expenses reflected in the Application are nothing more than assumptions that are unsupported by documentation or analysis.

- Applicants' incremental post-merger operating expenses are clearly not credible, given their projected increase in post-merger traffic volumes. Comparing Base Year 2019 to Year 3 of the merged system, Applicants claim that the merged CPKC will incur only $306.3 million[58] in incremental operating expenses, an increase of only 5.67 percent over the Base Year, even though they project an increase of 19.8 percent in GTMs in Year 3.[59]

- Applicants project that this new business will generate $1,021.9 million in additional revenues.[60] Based on their projected incremental operating expenses of $306.3 million, this equates to a 70 percent flow-through of revenue to operating income, or a *projected operating ratio of only 30 percent for the incremental traffic*.[61] That is far lower than any operating ratio ever achieved by any Class I railroad in North America on either baseload or incremental traffic.[62] This strongly suggests that Applicants' operating expenses are greatly understated.

- Applicants' claimed operating cost savings are projected to occur in an unrealistically accelerated time frame. Specifically, *Applicants assume that $93.5 million, or 80.8 percent, of the total projected $115.7 million savings in operating expenses will be*

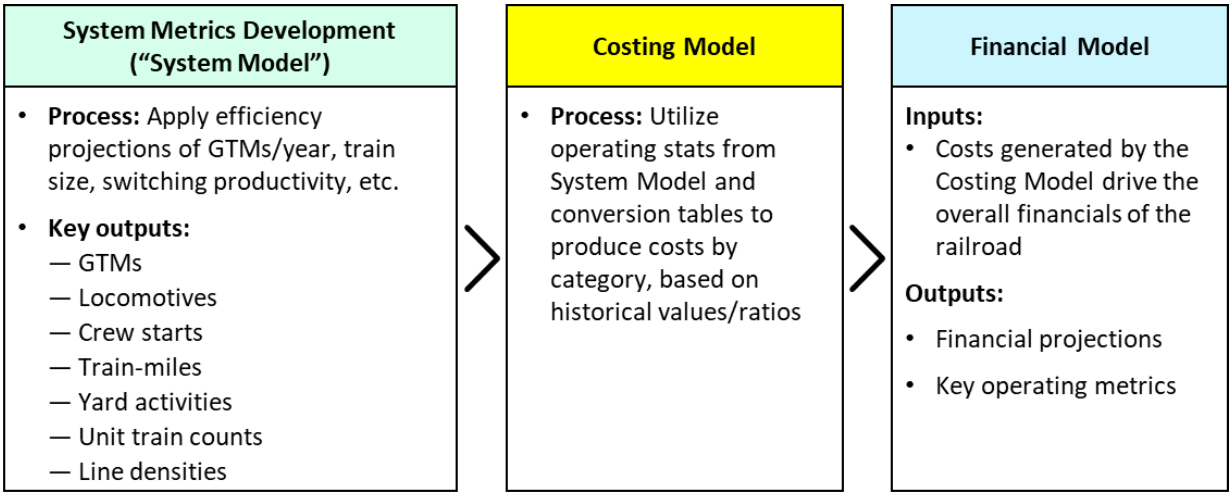
[57] FD 36500 – Work Paper - STB Rail Road Control Application Model – Final.xlsx, Inputs – revenues + costs tab.
[58] *See* Application Vol. 1 at 427. Elsewhere in the Application (Vol. 1 at 140), Applicants state that Year 3 operating expenses would be even lower, at $282 million. Nowhere in the filing is this discrepancy explained.
[59] Application Vol. 2, Table 2, p. 287. Base Plan GTMs = 385.6 billion, Growth Plan GTMs = 461.9 billion, Growth =19.8 percent. The 5.67% increase was calculated by dividing $306.3M by $5.4 billion. *See* Oliver Wyman Opex worksheet for calculation.
[60] Application Vol. 1, Appendix B. Summary of Benefits, p. 74.
[61]The 30 percent incremental traffic operating ratio is calculated by taking $306.3 million divided by 1,021.9 million.
[62] 2020 operating ratio range for Class I railroads: 60.7 to 73.6 percent, from Railroad Facts, 2020 Edition, Association of American Railroads. *See* Oliver Wyman Opex Worksheet.

achieved in Year 1 post-merger. For transportation, fuel-related, and locomotive leasing/depreciation cost savings, Applicants assume that fully 96.5 percent will be realized in Year 1.[63] Since CP cannot begin to physically integrate its network with KCS or influence KCS operations until the merger is approved, it is unlikely that Applicants would be able to implement all of the operating changes required to generate virtually all of the achievable operating expense savings in the first post-merger year.

4.1 The methodology employed by Applicants to estimate post-merger operating expenses is flawed and opaque

Exhibit 4-1 illustrates the logical and typical sequence of steps involved in preparing complete and accurate operating expense projections.

Exhibit 4-1: Logical process for developing accurate post-merger operating statistics and financial projections



As described in Exhibit 4-1, in past merger proceedings, applicants:

- First produced estimates of **traffic growth**, which were then added to the carriers' pre-merger traffic base to produce an estimate of traffic that would be handled by the merged railroad.
- The estimated post-merger traffic file was then input into an **operations planning model** to develop an operating plan for the merged railroad. (MultiRail, which Applicants

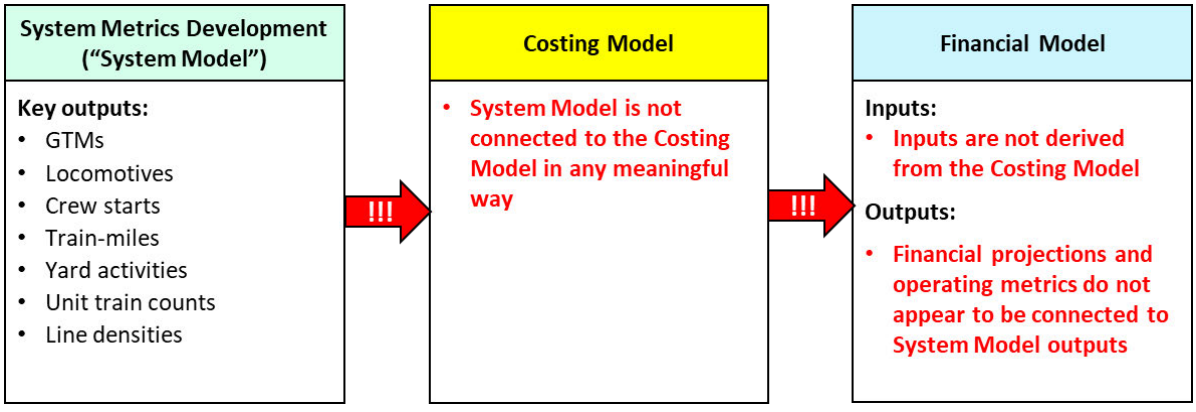
[63] FD 36500 – Work Paper - STB Rail Road Control Application Model – Final.xlsx, CPKC Summary of Benefits tab; Oliver Wyman Opex worksheet.

purport to have used in planning for this merger, is one such model that has been used for that purpose in many prior merger proceedings.) The resulting operating plan identifies the number of trains and the level of yard activity required to handle post-merger traffic efficiently.

- Prior merger applicants then used a **system model** to derive operating statistics (such as GTMs, train-miles, crew starts, etc.) from the operating plan.
- The operating statistics produced by the system model were then input to a **costing model**, where they were converted into projected operating expenses based on the historic relationship of each category of operating expense with projected changes in operating activity, as represented by projected changes in GTMs.
- The projected operating expenses, in turn, were input to a **financial model** to develop pro forma financial statements for the post-merger period.

As illustrated in Exhibit 4-2, Applicants here did not apply a logical process capable of producing credible and complete operating expenses for the merged CPKC system. As a result, Applicants have failed to prove that they have adequately accounted for the incremental operating costs that they would incur in moving their projected {{XXX }} increase in GTMs by the end of Year 3.

Exhibit 4-2: Applicants' approach to developing projected post-merger operating statistics and financial projections



As CN witness Van Dyke describes in greater detail, Applicants' operating plan, from which operating expenses should have been derived, is seriously flawed.[64] In the normal planning process, the merged carrier's projected traffic is flowed through a model of the railroad's network (for example, in MultiRail) to project post-merger train-miles, car handlings, etc., which are the fundamental building blocks used to estimate railroad operating expenses. However, Applicants did not follow that logical (and time-tested) process here. Instead, final values for each incremental operating expense category simply appear as hard-coded numbers in a table found in Applicants work papers (shown in Exhibit 4-3).[65]

[64] As witness Carl Van Dyke explains, "Applicants appear to have intentionally decided to develop their operating plan and operating expenses separately. Applicants' post-merger operating plan includes both 'synergy growth' traffic from their traffic diversion studies and 'organic growth' (growth resulting from general economic conditions unrelated to the proposed merger). On a systemwide basis, Applicants' posit organic growth in traffic volumes of {{XXX}} percent increase from the Base Year to post-merger Year 3.However, in calculating the merged CPKC's operating expenses, Applicants considered only 'synergy growth of 19.8%' traffic and excluded 'organic growth' traffic. It is not clear why Applicants took this inherently contradictory approach. What is clear is that the resulting operating expenses do not account for the cost of handling the {{XXX }} increase in 'organic growth' traffic. As a result, their claimed operating expenses bear no relation to their operating plan." Verified Statement of Van Dyke at 5.

[65] FD 36500 – Work Paper - STB Rail Road Control Application Model – Final.xlsx, inputs – revenues + costs tab.

Exhibit 4-3: Hard-coded CPKC traffic, revenue, expense, and profit projections[66]

	Year 1 (2023)	Year 2 (2024)	Year 3 (2025)
Diverted Carloads/Units			
Automotive	{{XXX}}	{{XXX}}	{{XXX}}
Energy, chemicals, and plastics	{{XXX}}	{{XXX}}	{{XXX}}
Forest products	{{XXX}}	{{XXX}}	{{XXX}}
Grain	{{XXX}}	{{XXX}}	{{XXX}}
Domestic intermodal	{{XXX}}	{{XXX}}	{{XXX}}
International intermodal	{{XXX}}	{{XXX}}	{{XXX}}
Metals, minerals, and consumer products	{{XXX}}	{{XXX}}	{{XXX}}
Total	**195,093**	**351,620**	**509,490**
Incremental Revenues			
Automotive	{{XXX}}	{{XXX}}	{{XXX}}
Energy, chemicals, and plastics	{{XXX}}	{{XXX}}	{{XXX}}
Forest products	{{XXX}}	{{XXX}}	{{XXX}}
Grain	{{XXX}}	{{XXX}}	{{XXX}}
Domestic intermodal	{{XXX}}	{{XXX}}	{{XXX}}
International intermodal	{{XXX}}	{{XXX}}	{{XXX}}
Metals, minerals, and consumer products	{{XXX}}	{{XXX}}	{{XXX}}
Total	**$418.0M**	**$726.7M**	**$1021.9M**
Incremental Costs			
Automotive	{{XXX}}	{{XXX}}	{{XXX}}
Energy, chemicals, and plastics	{{XXX}}	{{XXX}}	{{XXX}}
Forest products	{{XXX}}	{{XXX}}	{{XXX}}
Grain	{{XXX}}	{{XXX}}	{{XXX}}
Domestic intermodal	{{XXX}}	{{XXX}}	{{XXX}}
International intermodal	{{XXX}}	{{XXX}}	{{XXX}}
Metals, minerals, and consumer products	{{XXX}}	{{XXX}}	{{XXX}}
Total	**$129.2M**	**$217.8M**	**$306.3M**
Incremental Profits			
Automotive	{{XXX}}	{{XXX}}	{{XXX}}
Energy, chemicals, and plastics	{{XXX}}	{{XXX}}	{{XXX}}
Forest products	{{XXX}}	{{XXX}}	{{XXX}}
Grain	{{XXX}}	{{XXX}}	{{XXX}}
Domestic intermodal	{{XXX}}	{{XXX}}	{{XXX}}
International intermodal	{{XXX}}	{{XXX}}	{{XXX}}
Metals, minerals, and consumer products	{{XXX}}	{{XXX}}	{{XXX}}
Total	**$288.9M**	**$508.8M**	**$715.6M**

[66] *Id.*

Applicants provide no explanation in the Application or supporting work papers describing how these total incremental operating expense figures were derived. All that can be discerned from Applicants' submission is that witness Baranowski's costing assumptions (see Section 4.2 below) result in an extremely low level of incremental operating costs per GTM in relation to projected incremental revenues.

4.2 Applicants' operating expense estimate omits some expenses and underestimates others

Applicants' Verified Statement of witness Baranowski describes how he estimated incremental operating expenses for the merged railroad.[67] According to witness Baranowski, Applicants' outside experts and internal marketing executives collectively estimated the number of incremental carloads that would be added to the merged railroad's traffic base during the first three years following the merger.[68] To estimate Year 1-3 incremental operating expenses, witness Baranowski then employed a costing methodology that assigned only *short- and medium-term* incremental operating expenses to the projected *long-term* increase in traffic. Specifically, witness Baranowski excluded depreciation from his operating expense calculations. This is a major flaw in Applicants' operating cost calculations, given that depreciation accounted for fully 19 percent of Class I railroad expenses in 2020.[69]

[67] Baranowski describes his costing methodology in Electronic Work Paper "Incremental URCS Unit Costs.xlsx," which describes his allocation of Transportation, Mechanical and MOW expenses to activity statistics; Electronic Work Paper "URCS Diversion Costing Metrics Adjustments.xlsx," which describes his methodology for deciding what costs to include in his definition of incremental costs to handle incremental carloads, and Electronic Work Paper "URCS Phase III Calculation for Growth Traffic.xlsx, Tab Final Summary."
[68] A description of these traffic growth projections, also prepared by Applicants using a deeply flawed process, is provided in the Verified Statement of David Hunt.
[69] Railroad Facts 2021, Association of American Railroads, p. 11.

The incremental operating expenses for Years 1-3 developed using the methodology employed by witness Baranowski[70] are artificially low due to his omission of depreciation and certain other recognized categories of operating expenses (summarized as "Unspecified" in Exhibit 4-4 below). As a result of those omissions, the unreasonably low level of operating expenses projected by Applicants are highly unlikely to be achieved during any year of the merger, and certainly will not be sustainable over the long term. The unrealistic nature of the amounts and allocation of incremental operating expenses for each functional category developed by witness Baranowski can be seen by comparing witness Baranowski's calculations with the allocation of operating expenses by Class I railroads as a group, by CP (for its US operations), and by KCS (for its US operations), as shown in Exhibit 4-4. Neither Applicants (nor witness Baranowski) attempt to explain how (or why) the merged CPKC's operating costs would be so markedly different from industry norms – *including the Applicants' own real-world experience*.

Exhibit 4-4: Comparison of allocation of incremental operating expense by function [71]

Category	CPKC Year 3		2015-2019 Average % for:		
		% of Total	US Class I's	CP (US)	KCS (US)
Maintenance of way	$38.8M	13%	21%	30%	23%
Maintenance of equipment	$37.0M	12%	20%	11%	22%
Transportation	$230.5M	75%	46%	43%	41%
Unspecified	$0M	0%	13%	16%	14%
Total	$306.3M	100%	100%	100%	100%

[70] Application Vol. 1, p. 427.
[71] Verified Statement of Michael Baranowski, Application Vol. 1, p. 427; Source for CP US, KCS US, Class I's (includes all US Class I's): Analysis of US Class I Railroads – years 2015 to 2019, Association of American Railroads. Calculations are included in the Oliver Wyman Opex Worksheet.

As the breakdown of operating expenses in Exhibit 4-4 clearly demonstrates, *witness Baranowski's calculations ignored general and administrative expenses altogether and significantly underestimated maintenance of way and maintenance of equipment expenses*. As discussed above, he also accounted only for short- to medium-term operating expenses, thereby omitting depreciation. While witness Baranowski does not provide an explanation for his functional allocation of operating expenses, it is likely that omitting depreciation contributed to his underestimate of maintenance of way and maintenance of equipment expenses. Both of those categories account for a disproportionate share of depreciation expense relative to other railroad operating expense categories.[72]

In an asset-intensive business such as the railroad industry, projecting an increase in long-term revenues without also accounting for the associated long-term expenses (including depreciation) required to renew the railroad's assets will ultimately lead to the demise of the business. Applicants' flawed approach, which assumes $306.3 million in incremental operating expenses, equal to only 30 percent of incremental revenues, results in a projected 70 percent flow-through to operating income, a level of performance that (I believe) has never been achieved by any North American Class I railroad.

4.3 Large operating expense savings claimed for the first year of the merger are unlikely to be realized

Applicants' estimated operating expense savings attributable to the merger are unrealistically front-loaded, which has the effect of inflating Applicants' projection of operating income. Specifically, Applicants assume: (1) that 80.8 percent of the total three-year merger-

[72] 2020 Class I average: Maintenance of way: 25%, Maintenance of equipment: 20%, Transportation: 41%, Unspecified: 13%. *See* Oliver Wyman Opex Worksheet.

related savings of $115.7 million (including 96.5 percent of assumed transportation/fuel/locomotive savings of $92.5 million) will be achieved in the first year of the merger as KCS's operations are "optimized" and integrated with CP's, and (2) that subsequent productivity improvements of $23.1 million (primarily purchasing efficiencies) will be realized in Years 2 and 3 of merged operations.[73]

Without identifying what specific expense reduction measures would be implemented in Year 1, witness Baranowski assumes that CPKC will realize this extremely high percentage of total projected operating expense savings during the first year of the merger, (supposedly) by implementing CP's precision scheduled railroading (PSR) on KCS.[74] This aggressive assumption ignores the fact that a significant portion of the implementation of PSR has *already been realized by KCS without the merger*. Beginning in January 2019, KCS commenced an aggressive initiative to implement PSR, which helped to reduce its operating ratio from 69.1 percent in 2019 to 62.2 percent in 2020.[75] As stated in KCS's Q4 2020 Consolidated Investor Report:

> "During 2020, the KCS network experienced a rapid decline in volumes followed by an unprecedented volume rebound, forcing the Company to quickly adjust its service model to match customer demand while optimizing its cost structure. These actions resulted in significant improvements to train length and fuel efficiency, improving 12% and 5%, respectively. *PSR initiatives also contributed directly to operating expense savings of $96 million in 2020 and are projected to deliver incremental savings of $50 million in 2021.*"[76]

Given that KCS has largely implemented PSR, , and that CP already employs PSR on its own network, it is simply not realistic to assume that the merged CPKC can realize an additional

[73] Baranowski V.S., Table 9, p. 11. Calculations are included in Oliver Wyman Opex Worksheet.
[74] Orr and Elphick, V.S., p. 38, where they state that "CP's long experience with PSR….informed the approach to designing a consolidated plan for CP/KCS."
[75] "Kansas City Southern Announces EVP Precision Scheduled Railroading Sameh Fahmy Will Leave the Company," Business Wire, October 13, 2021; KCS Consolidated Investor Report Q4, Kansas City Southern, January 22, 2021, p. 6.
[76] Consolidated Investor Report Q4, Kansas City Southern, January 22, 2021, p. 3.

$92.5 million in transportation, fuel, and locomotive savings from the merger, much less almost entirely during Year 1. Changes in operations (and related operating expense savings) do not happen overnight. Whatever additional incremental PSR efforts might be launched on Day 1 of the merged operations will almost certainly take months to implement – indeed, rushing the implementation of major operational changes could lead to substantial service failures, as has happened in connection with previous Class I mergers, such as the UP/SP merger.

As described in the operating plan, key claimed cost savings will require operating changes that will need to be planned and implemented, such as:

- Work will need to be transferred from Kansas City to Shreveport and St. Paul.[77]
- Clerical and dispatching activities will need to be moved from St. Paul to Kansas City.[78]
- Labor agreements and crew rosters will almost certainly need to be adjusted and/or renegotiated before changes to workloads and work activities can be implemented.[79]
- T&E and Mechanical personnel will need to be relocated and qualified to operate over new territories.[80]
- New blocking plans will need to be developed and put in place.[81]
- New locomotive distribution, servicing, and fueling plans will need to be implemented.[82]

[77] Orr and Elphick V.S., pp. 34-36.
[78] Verified Statement of Dean Vargas, p. 5.
[79] Verified Statement of Myron W. Becker, p. 10; Exhibit E of the Operating Plan (pp. 350-361) shows the pre- and post-merger locations of each category of employee.
[80] Orr and Elphick V.S., pp. 40-52 describe CPKC's changes in train and yard operations post-merger, many of which will require changes in domiciles for T&E and Mechanical personnel.
[81] Orr and Elphick V.S., p. 34.
[82] Orr and Elphick V.S., pp. 40-52 and 67 describe the many changes in train operations for CPKC operations. In preparation for implementation of merged operations, locomotive domiciles will need to be changed so they will align with new train plans, Mechanical personnel will need to be repositioned so that they are aligned with the train plan's fueling and locomotive servicing requirements. Exhibit E of the Operating Plan shows the locations of operating employees pre- and post-merger.

Given these and other measures that must be undertaken to merge the operations of CP and KCS, Applicants' claim that fully 80 percent of the total operating expense savings will be achieved during Year 1 is simply not credible. In my opinion, Applicants' assumption that the merged system can realize 80 percent of total three-year operating expense savings during the first post-merger year is unrealistic, especially given that KCS has already largely implemented PSR.

4.4 Applicants' projected Year 1-3 operating expense projections are further belied by industry benchmarks

To further assess the reasonableness of Applicants' projected operating expenses, I examined the historical relationship between operating expenses, gross-ton miles, and revenues for the four largest Class I railroads (BNSF, CSX, NS, and UP) and for CP's US operations and KCS's US operations based on the 2015-2019 period. I compared those figures to the projected revenues, GTMs, and operating expenses for the combined CPKC (as reflected in the Application and work papers).[83] As Exhibit 4-5 shows, when compared to the average operating expenses per GTM achieved by the four largest Class I railroads – *and by Applicants themselves in their real-world operations* – the projected operating expense per GTM for CPKC of $0.0126 during the first three post-merger years is well below historical benchmarks.

[83] Analysis of US Class I Railroads – years 2015 to 2019, Association of American Railroads; FD 36500-Work Paper- HC- Cost Metrics Growth Model_ Base year 2019; FD 36500 – Work Paper - STB Rail Road Control Application Model – Final.xlsx.

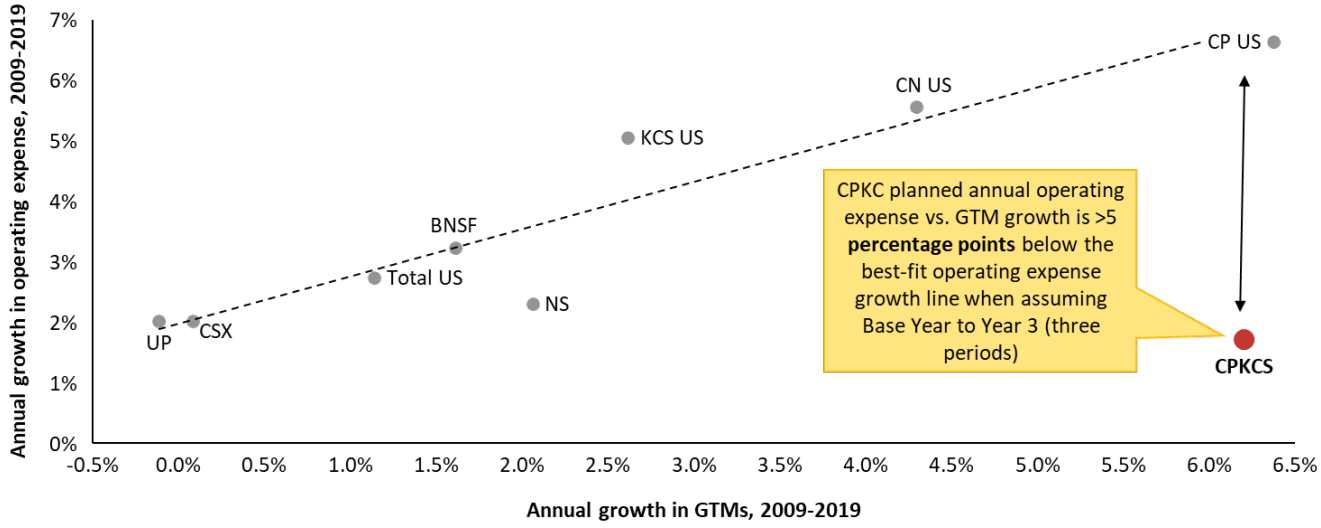
Exhibit 4-5: Operating expense per GTM comparison[84]

Railroads	Average Operating Expense per GTM 2015-2019	Projected Operating Expense per GTM	Percentage Difference
US Four Largest Class I's (BNSF, CSX, NS, UP)	$0.0141	$0.0126	10.7% Less
CP (US) and KCS (US)	$0.0145	$0.0126	12.9% Less

Another way to illustrate the unrealistically low operating expense per GTM posited by Applicants is shown in Exhibit 4-6, which shows changes in operating expense per GTM for all of the Class I railroads between 2009 and 2019. Again, this analysis strongly suggests that Applicants have significantly underestimated the operating expense per GTM that the combined CPKC system is likely to experience.

Exhibit 4-6: Change in operating expense vs. change in GTMs, CPKC plan vs. historical data for US Class I railroads[85]

CPKC: Scatterplot measures change between Year 0 (2019) and Year 3; Class I benchmark measures change between 2009 and 2019. CPKCS: 3-Year CAGR; benchmarks: 10-Year CAGR



[84] Analysis of US Class I Railroads – years 2015 to 2019, Association of American Railroads; FD 36500-Work Paper- HC- Cost Metrics Growth Model_ Base year 2019; FD 36500 – Work Paper - STB Rail Road Control Application Model – Final.xlsx. Operating expense includes amortization and depreciation. Calculations are included in the Oliver Wyman Opex Worksheet.
[85] FD 36500-Work Paper- HC- Cost Metrics Growth Model_ Base year 2019; FD 36500 – Work Paper - STB Rail Road Control Application Model – Final.xlsx Analysis of US Class I Railroads

In addition to operating expense per GTM, another common way to measure financial performance in the rail industry is the operating ratio (operating expense as a percentage of revenue). As shown in Exhibit 4-7, the implied operating ratio for CPKC's post-merger incremental traffic (based on the incremental revenues and operating expenses set forth in the Application) is far below the historic norms for the US operations of Applicants themselves, and for the US Class I railroads as a group.

Exhibit 4-7: Comparison of historic average operating ratios with Applicants' projection[86]

Railroads	Average Operating Ratio 2015-2019	CPKC Projected Operating Ratio	Percentage Difference
Four Largest Class I's (BNSF, CSX, NS, UP)	67%	58%	13.3% Less
CP (US) and KCS (US)	69%	58%	16.2% Less

4.5 The shortfall in Applicants' projected operating expenses is substantial

As shown in Exhibit 4-5 above, the operating expense per GTM estimated by witness Baranowski and incorporated in the Application is well below "real-world" levels achieved by the Class I railroads and by CP and KCS themselves. Based on these benchmarks, Applicants' total projected operating expenses for the first three years of operation are greatly understated.

– years 2015 to 2019, Association of American Railroads; Oliver Wyman analysis. Total for US Class I's includes CSX, UP, BNSF, NS, KCS (US), CP (US), CN (US). Calculations are included in Oliver Wyman Opex Worksheet.

[86] Note: Applicants projected operating expense by year: $5.4 billion in Year 1, $5.56 billion in Year 2, and $5.69 billion in Year 3. FD 36500-Work Paper- HC- Cost Metrics Growth Model_ Base year 2019; FD 36500 – Work Paper - STB Rail Road Control Application Model – Final.xlsx; Analysis of US Class I Railroads – years 2015 to 2019, Association of American Railroads. Calculations are included in the Oliver Wyman Opex Worksheet.

Exhibit 4-8: Adjustments to Application operating expenses based on comparison to four largest Class I's and CP (US and KCS (US), 2015-2019[87]

Railroads	Project Operating Expense CPKCS	Dollar Understated	Percentage Understated
US Four Largest Class I's (BNSF, CSX, NS, UP)	$16.70B	$2.00B	-10.7%
CP (US) and KCS (US)	$16.70B	$2.47B	-12.9%

Indeed*, as Exhibit 4-8 shows, based on Applicants' own pre-merger operations, operating expenses for the CPKC system in the US during Years 1-3 are understated by $2.47 billion.* This benchmark is the best benchmark, because it reflects the particular characteristics of Applicants' networks and traffic bases in the United States.

[87] FD 36500-Work Paper- HC- Cost Metrics Growth Model_ Base year 2019; FD 36500 – Work Paper - STB Rail Road Control Application Model – Final.xlsx; Analysis of US Class I Railroads – years 2015 to 2019, Association of American Railroads. Calculations are included in the Oliver Wyman Opex Worksheet.

VERIFICATION

I, Hugh Randall, declare under penalty of perjury that the foregoing information is true and correct. Further, I certify that I am qualified and authorized to file this statement.

Executed on this 28th day of February, 2022.

Hugh Randall

Hugh Randall

Appendix A. Yard Capacity Assessment

- Bensenville (Chicago): The Applicants do not provide sufficient information concerning the redesign of Bensenville Yard on less land (some having been sold to the Illinois Tollway) to prove that it will be able to handle:
  - For manifest trains, the switching of 112 additional cars/day (an 11 percent increase from the Base Case) and the preparation of four more blocks per day.[88]
  - For intermodal trains, construction of a high-volume terminal capable of handling 10,000-foot trains; the grounding/loading of 274 intermodal cars, a 213 percent increase; and an increase in lifts of 548 per day.[89]
  - For finished autos, construction of a new facility to handle 76 multilevel autoracks per day, compared to three autoracks per day in the optimized plan,[90] including the storing of hauled automobiles until they can be moved out of the yard by auto-carrier trucks.
- Wylie: The capital plan assumes that Wylie's volume will increase by 52 percent (292 cars/containers per day).[91] The Applicants do not provide sufficient information to prove that the existing facility will be able to handle this increase in volume.
- Schiller Park East (Chicago): The capital plan includes new intermodal trains connecting Mexico with Detroit and Eastern Canada. The trains to/from Mexico will originate/terminate in Bensenville Yard; the trains to/from Detroit/Eastern Canada will originate/terminate in Schiller Yard, 4.5 miles from Bensenville. Moving blocks between these yards is very complex, involving a simultaneous crossing of two Metra lines and carrying out a reverse move for more than a mile.[92] The Application is silent as to the number of additional transfers that will be needed and the volumes of intermodal cars that will need to be moved. The Applicants fail to demonstrate that, given their plan for

[88] Orr and Elphick V.S., p .49.
[89] Orr and Elphick V.S., p. 49 Lifts equals 274 cars times 2 containers per car.
[90] Orr and Elphick V.S., p. 49.
[91] Orr and Elphick V.S., p. 89.
[92] Google Maps; CN Timetable No. 3 for Central Division, July 1, 2020.

handling intermodal traffic, Schiller Park Yard will have the capacity to handle this increased workload without capital expenditure. The Applicants also fail to demonstrate that the planned increase in intermodal units being transferred will not adversely affect Metra's commuter operations, as required by 49 CFR 1111.8(a)(2) (2000).

- St. Paul: While the yard tracks may be able to handle the proposed increase in switching of 69 cars/day,[93] the Applicants do not provide the information necessary to prove that the yard will have enough mainline and receiving/departure tracks to handle an increase of:
  - {{XXX }} in non-bulk trains/day to be made up and taken apart (from an average of {{XXX}} in 2019 to an average of {{XXX}} in Year 3); and
  - {{XXX }} in bulk (largely oil and grain) unit trains/day in each direction moving between Western Canada, the Gulf of Mexico, and Mexico (from an average of {{XXX}} in 2019 to an average of {{XXX}} in Year 3), whose crews will need to change adjacent to St. Paul Yard.[94]

[93] Orr and Elphick V.S., p. 49.
[94] HC - Oliver Wyman - Capex Worksheet No 2, Summary tab.

Appendix B. Subdivision Capacity Assessment

B.1 CP Line: St. Paul, MN/Elgin, IL to Kansas City, MO

This CP line, used infrequently pre-merger, ends in Kansas City, the only place where CP and KCS connect. It will become a critical link in the route that CPKC plans to use to operate new single-line services between Mexico and the Gulf Coast to the Upper Midwest and Eastern and Western Canada. To move the more than {{XXX}} new units of freight that CPKC projects will be diverted from trucks and other railroads through the merger,[95] *train volumes on this route are expected to increase by 330 percent*, from 4.3 per day to an average of 18.5 per day.[96] To handle this massive increase in trains, CP plans to invest more than $276 million to upgrade this line,[97] as well as the KCS line from Kansas City to Beaumont, TX, with most of this investment being allocated to extending existing sidings and building new sidings. The planned increase in train volumes is expected to consist of approximately {{XXX }} of 10,000-foot intermodal/automotive/merchandise trains and {{XXX }} of 7,300-foot unit oil and grain trains.[98]

Using CP's methodology for estimating line capacity (described in Appendix C), I assessed the post-merger and post-capex operating capacity for each of the six subdivisions on the line. The results of my capacity simulations, using the same methodology applied by CP, are summarized in the exhibits below, with the relative severity of each subdivision's capacity issues, based on the projected increase in Year 3 trains per day, color-coded (**red** = most severe –

[95] HC - Oliver Wyman - Capex Worksheet, No. 1, Carloads and Containers Growth tab.
[96] HC - Oliver Wyman - Capex Worksheet No. 1, Other Calculations.
[97] Orr and Elphick V.S., p. 84.
[98] HC - Oliver Wyman - Capex Worksheet No. 1, Other Calculations.

will exceed practical capacity; **orange** – will be at practical capacity; **green** – will be less than practical capacity).

Exhibit B-1: CP Line from Elgin, IL/St. Paul, MN to Kansas City

Subdivision	Miles[99]	Speed Limits (mph)[100]	Base Year Trains/Day[101] % Bulk vs Non-Bulk	Year 3 Trains/Day[102] % Bulk vs Non-Bulk	Year 3 CPKC Capacity Issues
Chicago	101	Avg: 33 Max: 40	2.9 {{XXX }} {{XXX }}	11.1 {{XXX }} {{XXX }}	11.1 trains/day = 100% of estimated practical capacity in this subdivision
Special Considerations	CP crosses a BNSF mainline in Savanna, IL. BNSF controls this "first-come, first-served" automated crossing; speed for both RR's at the crossing is 25 mph; 32 BNSF trains/day.[103] Large increase in CPKC trains likely to cause more train delays				
Marquette	159	25-35	7.7 {{XXX }} {{XXX }}	14.3 {{XXX }} {{XXX }}	27 miles between Eckard &Harpers Ferry, practical capacity 13.3 trains/day 45 miles between Harpers Ferry & Brownsville, practical capacity 8.9 trains/day
Special Considerations	CP operates over CN for 1.6 miles in Dubuque, IA; speed limit of 25 mph; CN's train volume was 11/day in 2016.[104] With CPKC's increase in train frequency, delays likely to increase				
Davenport	55	40	7.1 {{XXX }} {{XXX }}	21.6 {{XXX }} {{XXX }}	27 miles Camanche to Bettendorf with a practical capacity of 13.7 trains/day
Special Considerations	7.3 mile segment between Camanche and Deer Creek, including crossing of UP mainline in Clinton, IA; 20 mph limit across 6 of these 7 miles, UP operates 33-35 trains/day[105] and controls this crossing. Large increase in CPKC trains/day likely to result in increased train delays				
Ottumwa	107	40	4.2 {{XXX }} {{XXX }}	18.4 {{XXX }} {{XXX }}	Estimated practical capacity for the entire subdivision is 16.7 trains/day
Special Considerations	CP crosses BNSF at Ottumwa. BNSF dispatcher controls this crossing and BNSF operates 26 trains/day; Amtrak operates an additional 2 trains/day.[106] Addition of CPKC trains likely to increase train delays				
Laredo	102	40	3 {{XXX }} {{XXX }	17 {{XXX }} {{XXX }}	39.2 mile segment between Moravia & Powersville with a practical capacity of 12.2 trains/day

[99] Oliver Wyman CP Capacity Analysis Worksheet.
[100] *Id.*
[101] HC - Oliver Wyman - Capex Worksheet No. 2, Summary tab.
[102] *Id.*
[103] *See* FRA Office of Safety – Grade Crossing Inventory document.
[104] *See id.*
[105] *See id.*
[106] *See id.*

Subdivision	Miles[99]	Speed Limits (mph)[100]	Base Year Trains/Day[101] % Bulk vs Non-Bulk	Year 3 Trains/Day[102] % Bulk vs Non-Bulk	Year 3 CPKC Capacity Issues
Kansas City	94	40	2.9 {{ }} {{ }}	16.9 {{ }} {{ }}	25.8 mile segment between MP 431 to Polo with a practical capacity of 18 trains/day

Exhibit B-2: KCS Line from Kansas City to Beaumont, TX

Subdivision	Miles[107]	Speed Limits (mph)[108]	Base Year Trains/Day[109] % Bulk vs Non-Bulk	Year 3 Trains/Day[110] % Bulk vs Non-Bulk	Year 3 Capacity Issues
Pittsburg	123	55	13.5 {{ }} {{ }}	28.5 {{ }} {{ }}	Operating 29.1 trains will utilize 96% of the line's capacity in the 20.4 miles between Jaudon and Drexel and more than 80% between Amsterdam & Mulberry
Heavener	209	55	11.3 {{ }} {{ }}	25.9 {{ }} {{ }}	Even for 7,300-foot trains, capacity will be 96% utilized for 18 miles between Marble City & Gans and 89% utilization for 15.8 miles between Joplin and Dalby
Shreveport	209	55	9.4 {{ }} {{ }}	23.6 {{ }} {{ }}	In the 24-mile section between Rich Mountain & Potter, capacity will be at 95% utilization; between Jury and Sandra, utilization will reach 87%
Beaumont	205	55/59	8.9 {{ }} {{ }}	20.3 {{ }} {{ }}	In the 28-mile section between Hollywood & Mansfield, 20.3 trains/day will utilize 92% capacity; the 25-mile section between Neame/Singer capacity will reach 85%

B.2 KCS Line – Beaumont, TX to Laredo, TX

KCS's route from Beaumont to Laredo includes two line segments over which KCS operates using trackage rights over UP lines. These operations occur between Beaumont and Rosenburg, TX and between Victoria and Robstown, TX. The route also includes two line segments on KCS-owned track between Rosenburg and Victoria, TX and between Robstown and

[107] Oliver Wyman KCS Capacity Analysis Worksheet.
[108] *Id.*
[109] HC - Oliver Wyman - Capex Worksheet No. 2, Summary tab.
[110] *Id.*

Laredo, TX. In addition to the capacity constraints that CPKC will encounter on these two owned line segments (shown in the exhibit below), the process of moving between KCS owned and UP trackage rights introduces additional capacity issues, such as waiting for dispatcher approval to move between KCS and UP trackage and vice-versa. At present, there are no sidings on KCS's single-track line at either Robstown or Victoria, two of the entry points to the UP trackage rights lines. Despite train volumes projected to double by Year 3, the Application does not allocate any capital expenditure funding to increase capacity on either of the two subdivisions or on the UP trackage rights segments over which CPKC proposes to double KCS's current train operations.

Exhibit B-3: Beaumont to Laredo – CPKC operating on its own tracks

Subdivision	Miles[111]	Speed Limits[112](mph)	Base Year Trains/Day % Bulk vs Non-Bulk[113]	Year 3 Trains/Day % Bulk vs Non-Bulk[114]	Capacity Issues
Rosenberg	87	55/59	8.5 {{ }} {{ }}	17.7 {{ }} {{ }}	Even if the new 10,000-foot siding between Kendleton and Louise is built, capacity on this line will be limited to 16 – 10,000-foot trains/day
Special Considerations	KCS operates over UP trackage between Beaumont and Rosenberg. Discussed in detail above				
Laredo	205	55/59	10.5 {{ }} {{ }}	19.4 {{ } {{ }}	Even with the one additional siding that is expected to be built, capacity to move 10,000-foot trains will be limited to 14.7/day. Additional sidings may be required at three locations
Special Considerations	KCS operates over UP trackage between Rosenburg and Victoria. Discussed in detail above				

[111] Oliver Wyman KCS Capacity Analysis Worksheet.
[112] *Id.*
[113] HC - Oliver Wyman - Capex Worksheet No. 2, Summary tab.
[114] *Id.*

B.3 KCSM Line – Laredo, TX to Metro Mexico City, MX

Applicants allocated no capital in their plan for capacity expansion in Mexico, even with significant projected volume increases and significant constraints on the ability to handle trains of the maximum 10,000-foot length specified in the operating plan. This is of particular concern because CPKC's growth volumes consist primarily of time-sensitive intermodal and automotive traffic, which tends to move in longer, lighter tonnage trains. Clearly, additional sidings and (perhaps) siding length extensions will be required to keep the network fluid for the projected train volumes and to handle the larger 10,000-foot maximum train sizes proposed by CPKC. My capacity assessments of the three districts where additional (or expanded) 10,000-foot sidings will be needed are shown in the exhibit below.

Exhibit B-4: KCSM Line from Nuevo Laredo to Mexico City

District	KMs[115]	Speed Limits[116] (mph)	Base Year Trains/Day % Bulk vs Non-Bulk[117]	Year 3 Trains/Day % Bulk vs Non-Bulk[118]	Capacity Issues
Saltillo	387	59	24.1 {{ }} {{ }}	29.8 {{ }} {{ }}	The current siding lengths limit the capacity for long trains to 16 per day. Several new 10,000-foot sidings will likely be needed. Capacity between Brazil & Rodriguez is projected to be slightly above 80%.
Vanegas	345	59	15.1 {{ }} {{ }}	20.8 {{ }} {{ }}	The current capacity for long trains on this line is less than 12 (6 each way per day) compared to a projected 20.8, so only about 56% of the trains can be long trains per day. Several new 10,000-foot sidings will likely be needed.
Tula	439	59	14.6 {{ }} {{ }}	19.5 {{ }} {{ }}	The segment from Ahorcado to Puerto Carrozas is 55KM between viable passing sidings and is projected to be operating at 96% of capacity post-merger. An additional siding may be needed.

[115] Oliver Wyman KCSM Capacity Analysis Worksheet.
[116] *Id.*
[117] HC - Oliver Wyman - Capex Worksheet No. 2, Summary tab.
[118] *Id.*

Appendix C. Description of Rail Crossings Assessment

The CPKC operating plan does not address potential difficulties in moving large volumes of additional traffic over at-grade crossings with other railroads. To determine the service impact of increasing CPKC trains moving over these crossings, Applicants should have performed a detailed rail capacity simulation for the following crossings:[119]

- Ottumwa, IA: An average of 26 BNSF and two Amtrak daily trains move over this crossing, which BNSF controls. For CP today, this is an operationally difficult, capacity-consuming crossing. Southbound trains must ease down a 1.6 percent grade so they can stop if needed before the crossing. Northbound, CP trains also must ease up to the crossing in case they have to stop. Just beyond the crossing, northbound CP trains must immediately climb a 1.6 percent grade. *CPKC train movements through this crossing are projected to grow by more than 400 percent, from an average of 4.2 in 2019 to 18.4 in Year 3*. BNSF has a speed limit of 30 mph and CP has a speed limit of 20 mph.
- Clinton, IA: This crossing of UP's E-W mainline requires CP trains to operate on UP trackage for seven miles through the town of Clinton. Six of the seven miles are subject to a speed restriction of 20 mph (which at this speed uses up 79 percent of the capacity of the CP line). While Applicants are investing in two sidings at the approaches to the UP crossing, my capacity analysis indicates that this investment will be insufficient to overcome projected capacity problems in the Davenport Subdivision. UP controls this crossing and 33-35 UP trains move through Clinton daily. With CPKC planning an increase of trains from 7 to 21.6 per day in Year 3, congestion will increase and UP and CP trains will be delayed.
- Savanna, IL: CP crosses a BNSF mainline in Savanna, IL. This is currently an automatic, first-come first-served crossing, which has a 25-mph speed restriction for both railroads; 32 BNSF trains per day move across this crossing. With an increase in CPKC train frequency from 3 to 11 daily, an increase in delays is likely.

[119] The source for all train volumes moving through these three crossings is the FRA Office of Safety, Grade Crossing Data Inventory.

Appendix D. Methodology for Estimating Capacity

Estimating the capacity of a line is a function of a variety of factors, including the number of tracks, siding length, distance between sidings, train speed, the size of trains, and the number of trains per day. The best-in-class method of capacity analysis employs a tool called the Berkeley Simulation Software Rail Traffic Controller (RTC) Model, which includes a train performance calculator to evaluate train schedules input by the user. Here, Applicants instead used a "spreadsheet model" based on train running times between sidings, plus a delay for entering and leaving the passing siding. From these data a theoretical capacity can be calculated.

The practical capacity of a line is 70 percent of its theoretical capacity, to accommodate track maintenance activities, recovery from disruptions (which can include mechanical failures, derailments, and weather-related issues), bunching rather than smooth timing of trains (often caused by mixing unscheduled unit trains into the network along with scheduled intermodal and manifest trains), and switching activities at customer facilities along the route.[120] This methodology is consistent with the spreadsheet work papers provided by Applicants for the KCS lines in the United States and the CP lines from Kansas City to Chicago and St. Paul. This is especially important in a merger filing, where everything is considered based on an "average" day. There are day-of-week variations in train numbers as well as seasonal variations which in real life operations must be handled without significant delays.

Applicants provided capacity worksheets for the KCS lines in the United States using this methodology, but their analysis included all sidings regardless of length, without considering the sizes of the specific trains to be operated. While the operating plan calls for a 10,000-foot

[120] National Rail Freight Infrastructure Capacity and Investment Study, Association of American Railroads, September 2007, p. A-10, where it notes "Practical capacity is about 70 percent of the theoretical capacity and provides reliable service."

maximum train length, Applicants used many sidings that are well short of 10,000 feet in calculating line capacity. Moreover, their analysis of the KCS-owned lines between Rosenberg and Laredo assumed the existence of sidings that are not in the provided timetable and also are not identified as post-merger capital projects in the Application.

For KCSM lines in Mexico, no capacity analysis was done, and no capital plans were disclosed. However, service issues between Mexico City and Laredo will adversely impact traffic destined into the US at Laredo, TX. My analysis suggests that, unless some capital is spent to improve capacity, it is likely that CPKC will experience congestion issues on the Mexican portion of the network, especially given that most of the projected traffic growth for Applicants in Mexico is intermodal and finished automobiles, and CPKC plans to run this traffic with 10,000-foot trains, as with all non-bulk traffic.

Appendix E. Deposition Quotes on Capacity Analysis for KCS Lines[121]

Rosenberg to Victoria
{XXX}

[121] HC - Remote Videotaped Deposition of Raymond A. Elphick and John F. Orr, STB Docket No. FD 36500, Elphick Deposition, pp. 71-74 and 93-97, Feb 18, 2022.

Beaumont to Rosenberg
{XXX}

{XXX}

{XXX}

Appendix F. Hugh L. Randall Resume

Mr. Randall, a Partner Emeritus in Oliver Wyman's Transportation & Services practice and previously head of its global transportation consulting practice, has directed consulting projects for railroads, airlines, trucking companies, parcel carriers, maritime shipping companies, freight forwarders, and contract logistics users and providers. These studies have encompassed clients in North America, Europe, Asia, Latin America, and southern Africa.

Mr. Randall has carried out a wide range of projects in the areas of post-merger integration, due diligence/transactions, business strategy, market entry, operations improvement, and organizational realignment.

Relevant rail assignments directed by Mr. Randall in North America include the following:

- For a Class I railroad, Mr. Randall led a comprehensive and intensive examination of seven major business processes, to determine how best to change such processes to enable cost reduction and efficiency improvement. The project was carried out and implemented successfully, resulting in a savings in excess of $150 million.
- For a Class I railroad, Mr. Randall led an intermodal strategy study and an extended reach initiative. Both these projects were implemented successfully, enabling the railroad to increase market share, revenues, and profitability.
- For a Class I railroad, Mr. Randall directed a comprehensive extended reach initiative, exploring ways to expand the revenue base through increased use of transloading, rail-truck partnerships, intermodal services, and other initiatives. This project resulted in an increase in revenue, market share, and profitability for the railroad.
- For a Class I railroad, Mr. Randall directed a confidential M&A study examining the feasibility of acquiring another Class I railroad.
- At the request of a Class I CEO, Mr. Randall presented an assessment of the international container shipping industry and intermodal services to the Board of Directors.

Before joining Oliver Wyman, Mr. Randall held a series of senior management positions in railways, trucking, and consulting. At Consolidated Rail Corporation (Conrail), for the chairman and CEO, he oversaw five-year strategic planning for the railroad's freight and passenger services. Mr. Randall also served as General Manager of Conrail's Atlantic region and Assistant Vice President – Operations, with responsibility for developing and managing Conrail's operations improvement program.

At Ryder PIE Nationwide, Mr. Randall was Executive Vice President and Chief Financial Officer. In that position, he was responsible for the financial, planning, and administrative functions of a billion-dollar LTL trucking company. And as a Vice President at Booz•Allen and Hamilton, Mr. Randall directed consulting projects involving railways, trucking companies, and logistics functions throughout the world.

Mr. Randall received a BA in accounting and administration from Antioch College and an MBA from the Harvard Graduate School of Business Administration.

Exhibit 4

Verified Statement of
Mark E. Zmijewski

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 36500

CANADIAN PACIFIC RAILWAY LIMITED; CANADIAN PACIFIC RAILWAY COMPANY; SOO LINE RAILROAD COMPANY; CENTRAL MAINE & QUEBEC RAILWAY US INC.; DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION; AND DELAWARE & HUDSON RAILWAY COMPANY, INC. – CONTROL – KANSAS CITY SOUTHERN, THE KANSAS CITY SOUTHERN RAILWAY COMPANY, GATEWAY EASTERN RAILWAY COMPANY, AND THE TEXAS MEXICAN RAILWAY COMPANY

CN'S COMMENTS ON APPLICATION AND REQUEST FOR CONDITIONS

Verified Statement of Mark E. Zmijewski

February 28, 2022

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Exhibit B-I: Canadian Pacific Railway (CP) Recreated Pro-Forma Income Statement

Exhibit B-II: Canadian Pacific Railway (CP) Recreated Pro-Forma Balance Sheet

Exhibit B-III: Canadian Pacific Railway (CP) Recreated Pro-Forma Statement of Cash Flows

Exhibit B-IV: Kansas City Southern (KCS) Recreated Pro-Forma Income Statement

Exhibit B-V: Kansas City Southern (KCS) Recreated Pro-Forma Balance Sheet

Exhibit B-VI: Kansas City Southern (KCS) Recreated Pro-Forma Statement of Cash Flows

Exhibit B-VII: Canadian Pacific Railway (CP) and Kansas City Southern (KCS) Recreated Pro-Forma Consolidated Income Statement

Exhibit B-VIII: Canadian Pacific Railway (CP) and Kansas City Southern (KCS) Recreated Pro-Forma Consolidated Balance Sheet

Exhibit B-IX: Canadian Pacific Railway (CP) and Kansas City Southern (KCS) Recreated Pro-Forma Consolidated Statement of Cash Flows

Exhibit B-X: Canadian Pacific Railway (CP) and Kansas City Southern (KCS) Recreated Summary of CP/KCS Claimed Efficiencies

Exhibit B-XI: Canadian Pacific Railway (CP) and Kansas City Southern (KCS) Recreated Pro-Forma Consolidated Income Statement Including the Effects of the Claimed Efficiencies

Exhibit B-XII: Canadian Pacific Railway (CP) and Kansas City Southern (KCS) Recreated Pro-Forma Consolidated Balance Sheet Including the Effects of the Claimed Efficiencies

Exhibit B-XIII: Canadian Pacific Railway (CP) and Kansas City Southern (KCS) Recreated Pro-Forma Consolidated Statement of Cash Flows Including the Effects of the Claimed Efficiencies

I. INTRODUCTION AND CONCLUSIONS

1. My name is Mark E. Zmijewski. I specialize in the areas of accounting, economics, and finance as they relate to financial analysis, valuation, and securities analysis, or more generally, financial economics. I am Professor Emeritus at The University of Chicago Booth School of Business. I am also a Senior Consultant to Charles River Associates. In my practice, I have consulted in matters related to assessment of the valuation, financial performance, capital structure/financial leverage, and financial health of companies and in merger and acquisition transactions. I have also taught courses on these topics as part of my academic career (financial accounting, mergers and acquisition accounting, financial analysis, corporate valuation, and financial strategy). I discuss my qualifications and present my curriculum vitae in Appendix A.

2. This matter arises from the acquisition of Kansas City Southern ("KCS") by Canadian Pacific Railway Limited ("CP") (collectively, the "Merging Parties") on December 14, 2021.[1] As of the close of the acquisition, CP owned KCS via a voting trust, "which ensures KCS will operate independently of CP, [and which] will remain in effect until the U.S. Surface Transportation Board ('STB') issues its decision on the companies' joint railroad control application."[2] In October 2021, CP and KCS submitted an application ("CP/KCS Application")[3] to the STB, which seeks permission from the STB to dissolve the voting trust structure: "The STB's approval of CP's control of KCS would create

[1] Kansas City Southern, Form 8-K, dated December 14, 2021.

[2] Kansas City Southern, Form 8-K, dated December 14, 2021.

[3] Before the Surface Transportation Board, Finance Docket No. 36500, Railroad Control Application, October 29, 2021, vol. 1-4.

Canadian Pacific Kansas City Limited ('CPKC'), the only single-line railroad linking the United States, Mexico and Canada."[4]

3. As part of the CP/KCS Application, Dean Vargas, a Managing Director of Revenue Planning for CP, submitted a verified statement ("Vargas VS") dated October 28, 2021.[5] In that verified statement, Mr. Vargas stated that he prepared pro forma financial statements for CP that "show the financial impact of the Transaction on a forward-looking basis over the three-year period during which the Transaction will be implemented and in a normal post-implementation year."[6] These forecasts include Base Year financial statements for the standalone CP and KCS ("Base Year CP" and "Base Year KCS"), and pro forma financial statements for CPKC on a consolidated basis ("Pro Forma Exhibits"), including the potential transaction benefits claimed by CP ("Claimed Efficiencies").[7, 8] Based on the forecasts in the Vargas VS, I developed an alternative set of forecasts that exclude the effects of the Claimed Efficiencies ("Conservative Forecasts").

4. CP also submitted a verified statement of Chris De Bruyn, Managing Director – Investor Relations and Treasury for CP ("De Bruyn VS"), which claims to "explain: (a) the

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[4] Kansas City Southern, Form 8-K, dated December 14, 2021.

[5] Verified Statement of Dean Vargas before the Surface Transportation Board, dated October 28, 2021. Finance Docket No. 36500.

[6] Vargas VS, ¶22.

[7] Vargas VS. The Pro Forma Exhibits include Income Statements, Balance Sheets, and Cash Flow Statements for each of the companies. See, CP/KCS Application, vol. 1, Appendix E (Exhibit 16), Appendix F (Exhibit 17), and Appendix G (Exhibit 18).

[8] The potential revenue and cost benefits in a merger and acquisition transaction are called synergies or efficiencies. I use the *Horizontal Merger Guidelines* issued by the U.S. Department of Justice & Federal Trade Commission to analyze the potential revenue and cost benefits claimed by the Merging Parties in this transaction and I refer to those potential benefits as "Claimed Efficiencies," which is consistent with the term used in the *Horizontal Merger Guidelines*. See, U.S. Department of Justice & Federal Trade Commission's *Horizontal Merger Guidelines*, dated Aug. 19, 2010, Section 10.

financial terms of CP's proposed acquisition of control of Kansas City Southern ('KCS'); (b) CP's ability to repay transaction-related debt while simultaneously increasing its network investment; and (c) the fairness of the consideration to be paid by CP to KCS from the financial perspective of CP's shareholders."[9]

5. Notably, the CP/KCS Application does not include a verified statement from Nadeem Velani, CP's Chief Financial Officer ("CFO"), even though previously, on June 28, 2021, Mr. Velani submitted a verified statement[10] that analyzed the proposal by Canadian National Railway Company ("CN") to acquire KCS ("Velani VS on CN's Acquisition of KCS"). The Velani VS on CN's Acquisition of KCS concluded, "CN's proposal to acquire KCS is fraught with risk to a wide range of stakeholders"[11] and "CN's targeted rate of return will not be achieved based on the synergies CN forecasts, which will place pressure on CN to boost returns in other ways, such as through cost-cutting, or – more plausibly – reaping the benefits of reduced competition ...."[12] The De Bruyn VS did not conduct the same analyses or apply the same standards to CP's acquisition of KCS that were used in the Velani VS on CN's Acquisition of KCS to evaluate CN's proposed acquisition of KCS. Yet, as I show in this verified statement, the criticisms of CN's proposed acquisition of KCS in the Velani VS on CN's Acquisition of KCS equally apply to, and are equally valid for, CP's acquisition of KCS.

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[9] Verified Statement of Chris De Bruyn before the Surface Transportation Board, dated October 28, 2021. Finance Docket No. 36500.

[10] On June 28, 2021, CP filed a Reply to CN and KCS's Motion For Approval of Voting Trust, including a Verified Statement by CP's Chief Financial Officer Nadeem Velani attached as Exhibit 2 to CP Reply. See, Canadian Pacific's Reply to CN and KCS Joint Motion For Approval of Voting Trust, STB Finance Docket No. 36514, filed June 28, 2021 by Canadian Pacific Railway.

[11] Velani VS on CN's Acquisition of KCS, p. 2.

[12] Velani VS on CN's Acquisition of KCS, p. 11.

6. I have been asked by Sidley Austin LLP to address two aspects of the acquisition of KCS by CP:

   a. Analyze the financial effects of CP's acquisition of KCS on CP, including an analysis of the De Bruyn VS, and conducting the analyses and applying the standards previously used by CP to evaluate the proposed acquisition of KCS by CN;[13] and

   b. Assess the verifiability of CP's Claimed Efficiencies from the perspective of the *Horizontal Merger Guidelines* ("*Merger Guidelines*")[14] provided by the U.S. Department of Justice ("DOJ") and Federal Trade Commission ("FTC").[15]

7. In this verified statement I show the following regarding the De Bruyn VS:

   a. None of the analyses in the De Bruyn VS is based on the Pro Forma Exhibits, but, instead, the De Bruyn VS uses more optimistic forecasts: "CP and KCS as they are today and with ongoing economic growth moving forward."[16]

   b. The estimated 3.8x 2021 pro forma leverage ratio for CP in the De Bruyn VS does not represent the leverage ratio that CP would ever report in 2021 because the De Bruyn VS calculated the pro forma leverage ratio by combining CP and KCS, when, in fact, in 2021 and for some time afterwards, KCS will be held in a trust and operate independently. That leverage ratio without combining KCS in 2021 using the data used in the De Bruyn VS is 4.5x versus the 3.8x estimated pro forma leverage ratio for 2021 in the De Bruyn VS.

   c. The estimated 2021 pro forma leverage ratio for CP in the De Bruyn VS is substantially lower than CP's actual pro forma leverage ratio for 2021 (3.8x in the De

[13] Although I do not agree with the usefulness or economic foundation of certain analyses, standards, and conclusions in the Velani VS on CN's Acquisition of KCS, I nonetheless, utilize these analyses and standards to analyze CP's acquisition of KCS; and I show that the key criticisms in the Velani VS on CN's Acquisition of KCs equally apply to, and are equally valid for, CP's acquisition of KCS.

[14] U.S. Department of Justice & Federal Trade Commission's *Horizontal Merger Guidelines*, dated Aug. 19, 2010.

[15] I understand that the *Merger Guidelines* are not legally applicable to the Transaction, but they nevertheless provide a reasonable and appropriate framework to analyze the Claimed Efficiencies from the perspective of a financial economist.

[16] De Bruyn VS, p. 6. Although the De Bruyn VS does not provide a source of the forecasts used, the forecasts appear to be the same forecasts that were disclosed in the CP/KCS November 3, 2021 Proxy Statement/Prospectus, p. 101, which was filed with the U.S. SEC by both companies as KCS Schedule 14A ("Proxy Statement") and CP Form 424B3 ("Prospectus"). The forecasts for CP and KCS on a standalone basis are referred to in the Proxy Statement/Prospectus as "KCS management unaudited CPRL projections" and "KCS management unaudited KCS projections," respectively. These forecasts are used in the BMO Transaction Model (CP-HC-00007073.xlsx) that also incorporates the Claimed Efficiencies into the forecasts. I refer to the forecasts underlying the BMO Transaction Model as "Proxy/Transaction Model Forecasts." De Bruyn VS appears to use the Proxy/Transaction Model Forecasts.

Bruyn VS versus CP's actual pro forma leverage ratio, 4.0x), indicating that CP's forecast for 2021 was optimistic.

d. Using the data in the De Bruyn VS, CP's estimated 2021 leverage ratio (without combining KCS), which is the leverage ratio CP would report based on its actual financial statements, is 4.5x. Based on its actual financial results for 2021,[17] CP's actual 2021 leverage ratio is 4.8x not 4.5x, again, indicating that CP's forecast for 2021 was optimistic.

e. The De Bruyn VS claims that CP will attain its target leverage ratio of 2.5x within four years. Had the De Bruyn VS used either CP's Pro Forma Exhibits or the Conservative Forecasts, CP would not attain its target leverage ratio within four years.

f. The De Bruyn VS conducted no analysis of CP's post-acquisition ROIC, which was a primary criticism that the Velani VS made about a potential CN-KCS transaction. Based on CP's actual financial results for 2021, or either CP's Pro Forma Exhibits or the Conservative Forecasts, CP's ROIC for 2021 and the following four years is substantially below – less than one-half – of its historical and target ROIC of 15% in every year. (See ¶9.a - ¶9.b.)

g. Based on credit rating thresholds used in the De Bruyn VS, CP's credit rating is likely to fall below investment grade if CP experiences a substantial downturn in its financial performance.

8. The Velani VS on CN's Acquisition of KCS concluded that "CN Will Take on a Very High Level of Debt,"[18] and "CN's proposal to acquire KCS is fraught with risk to a wide range of stakeholders."[19] In this verified statement, when I apply the leverage analyses and standards used in the Velani VS on CN's Acquisition of KCS to CP's acquisition of KCS, I show that:

a. CP took on a high level of debt that will substantially increase CP's leverage and, thus, its financial risk.

b. Based on either CP's Pro Forma Exhibits or the Conservative Forecasts, CP would not attain its target leverage ratio within four years. Based on CP's Pro Forma

[17] CP 2021 SEC Form 10-K, p. 79.

[18] Velani VS on CN's Acquisition of KCS, p. 6.

[19] Velani VS on CN's Acquisition of KCS, p. 2.

Exhibits, CP would only attain a leverage ratio of 2.8x in four years; and based on the Conservative Forecasts, CP would only attain a leverage ratio of 3.8x in four years.

c. Based on the analysis in the Velani VS on CN's Acquisition of KCS, CP's leverage will be "materially higher" than that of any other Class I railroad over the last decade. "As of 2020, the highest leverage amongst other Class I railroads is 3.0 times Adjusted Debt / EBITDA,"[20] which is substantially lower than 4.8x Adjusted Debt / EBITDA for CP in 2021.

d. Based on CP's Pro Forma Exhibits, CP has no margin of error in its forecasts so that it can repay its debt over the next four years, and based on the Conservative Forecasts, CP will have a cash flow deficit of over $2 billion over the next four years.

9. Based on an analysis of CN's post-acquisition ROIC, the Velani VS on CN's Acquisition of KCS concluded that CN's post-acquisition ROIC would be substantially lower than CN's historical ROIC and target ROIC. In this verified statement, I conduct that same analysis of CP's post-acquisition ROIC and show that CP's post-acquisition ROIC will be substantially lower than CP's historical ROIC and target ROIC in the 15% range:

a. Based on its actual financial results for 2021, CP's actual ROIC for 2021 is 8.2%,[21] which is substantially below its historical and target ROIC of 15%.

b. Based on CP's Pro Forma Exhibits, CP's ROIC for the next four years has a range of 7.0% to 7.3%; and based on CP's Conservative Forecasts, CP's ROIC for the next four years has a range of 5.7% to 6.3%, which, again, are substantially below – less than one-half – of its historical and target ROIC of 15% in every year.

10. Lastly, in this verified statement, my assessment of the verifiability of CP's Claimed Efficiencies from the perspective of the *Merger Guidelines* shows that most of the Claimed Efficiencies are not verifiable and many are not merger-specific; and thus, the majority of the Claimed Efficiencies would not meet the standards to be cognizable based on the *Merger Guidelines*.

[20] Velani VS on CN's Acquisition of KCS, pp. 8 – 9.

[21] CP 2021 SEC Form 10-K, p. 75.

11. The remainder of this verified statement is organized as follows. In Section II, I discuss my analysis of the financial effects of CP's acquisition of KCS on CP, including an analysis of the De Bruyn VS and an analysis of the CP acquisition of KCS by applying the same analyses and standards previously used by CP to evaluate the proposed acquisition of KCS by CN. In Section III, I assess the verifiability of CP's Claimed Efficiencies from the perspective of the *Merger Guidelines*. In Appendix A, I provide my curriculum vitae; and in Appendix B, I present CP's Pro Forma Exhibits.

II. ANALYSIS OF THE FINANCIAL EFFECTS OF CP'S ACQUISITION OF KCS ON CP

12. In this section, I first describe CP's Pro Forma Exhibits and the Conservative Forecasts. Then, in the remainder of this section, I analyze the financial effects of CP's acquisition of KCS on CP, including an analysis of the De Bruyn VS. I conduct the same analyses and apply the same standards previously used by CP to evaluate the proposed acquisition of KCS by CN.

A. CP's Forecasts Submitted to the STB and the Alternative More Conservative Forecasts

13. As I noted in the introduction, the Pro Forma Exhibits in the CP/KCS Application included forecasts of CPKC (CP and KCS combined) and the potential efficiencies claimed by CP.[22] As I explain later in this section, I adjusted the Pro Forma Exhibits to develop more conservative forecasts of CP's acquisition of KCS (Conservative Forecasts). In this section, I describe these two sets of forecasts.

[22] Vargas VS, ¶22. See, CP/KCS Application, vol. 1, Appendix E (Exhibit 16), Appendix F (Exhibit 17), and Appendix G (Exhibit 18).

1. CP's Pro Forma Exhibits

14. The Vargas VS stated that CP's Pro Forma Exhibits were prepared to "show the financial impact of the Transaction on a forward-looking basis over the three-year period during which the Transaction will be implemented and in a normal post-implementation year. All impacts are shown relative to the base year pro forma financial statements of CPKC for 2019."[23] In other words, each year in the Pro Forma Exhibits is based on CP's adjusted 2019 reported financial statements plus the Claimed Efficiencies, which are assumed to be realized during the three-year period (one-third realized each year). I replicated these forecasts and present them in Appendix B, Exhibits B-I through B-XIII.[24]

15. CP's Pro Forma Exhibits include a 2019 Base-Year forecast, forecasts for Year 1 through Year 3, and a forecast for a Normal Year beyond Year 3 (four years of forecasts). The 2019 Base-Year forecast for CP does not include CP's acquisition of KCS. I adjusted the 2019 Base-Year forecast for CP's acquisition of KCS to create a CP Unconsolidated Base-Year Forecast, which is how CP will report its acquisition of KCS in the years KCS is held in the trust and operates independently.[25] In the following table, I present various financial items derived from the forecasted income statement (Revenues, EBITDA,[26] and

[23] Vargas VS, ¶22.

[24] See, CP/KCS Application, vol. 1, Appendix E (Exhibit 16), Appendix F (Exhibit 17), and Appendix G (Exhibit 18).

[25] I assume that: (1) KCS will pay CP a dividend; (2) CP will incur debt to finance the KCS acquisition and pay interest on that debt; (3) CP will not repurchase any shares but rather use that cash to repay its debt; (4) CP's common shares (and the dividend paid on those shares) include the amount of shares issued to finance the KCS acquisition; and (5) CP will record purchase accounting adjustments to its assets and liabilities following the KCS acquisition similar to those that CP recorded in December 2021. All adjustment amounts used are from the Forecasts Submitted to the STB.

[26] EBITDA is equal to earnings before interest, taxes, depreciation and amortization.

Interest Expense), the balance sheet (Total Debt and Invested Capital[27]), and the cash flow statement (Cash Flow from Operations, Capital Expenditures, and Unlevered Free Cash Flows[28]). The table presents five years of information, the CP Unconsolidated Base-Year ("CP Unconsol"), Year 1 through Year 3 forecasts ("Year 1," "Year 2," and "Year 3," respectively), and the Normal Year ("Year 4"); the table also presents the compound average growth rate ("CAGR") over Years 1 to 4 in the last column of the table.

Table 1
Pro Forma Exhibits
Selected Financial Statement Measures

	CP Unconsol	Year 1	Year 2	Year 3	Year 4	Yr 1-Yr 4 Total	Yr 1 - Yr 4 CAGR
Panel A: Income Statement							
TOTAL REVENUES	$5,999	$9,283	$9,592	$9,887	$9,887	$38,649	*2.1%*
EBITDA	$3,383	$5,064	$5,311	$5,534	$5,534	$21,443	*3.0%*
NET INTEREST EXPENSE	536	652	637	607	575	$2,471	
Panel B: Balance Sheet							
TOTAL DEBT	$15,416	$18,669	$17,366	$15,843	$14,267		
TOTAL INVESTED CAPITAL	$36,240	$44,601	$45,497	$46,319	$47,078		
Panel C: Cash Flow Statement							
CASH PROVIDED BY OPERATING ACTIVITIES	$2,303	$3,506	$3,804	$4,016	$4,059	$15,385	
CASH USED IN INVESTING ACTIVITIES	($1,254)	($1,946)	($1,950)	($1,942)	($1,930)	($7,768)	
UNLEVERED FREE CASH FLOWS	$1,459	$2,046	$2,329	$2,526	$2,557	$9,458	*7.7%*

Sources: CP/KCS Application, vol. 1, Appendix E (Exhibit 16), pp. 3-4; Appendix F (Exhibit 17), pp. 1-2; Appendix G (Exhibit 18), pp. 1-2; CRA calculations.

16. As seen from the above table, the CAGR over Years 1 through 4 (the period when the parties expect to realize their Claimed Efficiencies) for the consolidated revenue,

[27] Invested Capital is equal to Total Debt plus Shareholders Equity plus Non-Controlling Interest. Total Debt equals Long-Term Debt plus Current Maturities of Long-Term Debt.

[28] Unlevered Free Cash Flows is equal to Cash Flow from Operating Activities plus After-Tax Interest Expense minus Capital Expenditures.

EBITDA and Unlevered Free Cash Flows are 2.1%, 3.0% and 7.7%, respectively. Over that period the consolidated CPKC is projected to generate approximately $38.6 billion in Revenue, $21.4 billion in EBITDA, and S15.4 billion in Operating Cash Flows, of which $7.8 billion are expected to be reinvested as capital expenditures. The Merged Company[29] also expects to generate about $9.5 billion of Unlevered Free Cash Flows and use that cash to pay dividends and reduce its debt from roughly $19 billion in Year 1 to $14 billion in Year 4.

2. Conservative Forecasts

17. The Velani VS on CN's Acquisition of KCS criticized the analyses submitted by CN to the STB related to CN's proposed acquisition of KCS. One criticism was not "stress testing" the forecasts used: "The biggest flaw in Mr. Houle's analysis is that he performs no stress testing of financial performance."[30] In response, I was asked by counsel for CN to "stress test" CN's proposed acquisition of KCS. To that end, I submitted a verified statement to the STB using a set of pessimistic forecasts ("Zmijewski VS on CN's Acquisition of KCS").[31] Based on the framework I developed in my previous verified statement, in this verified statement, I adjust the forecasts CP submitted to the STB for CP's acquisition of KCS and create a more conservative set of forecasts ("Conservative Forecasts").

18. The Conservative Forecasts assume that the 2019 Base-Year forecasts continue for the next four years, which excludes the Claimed Efficiencies from the forecasts CP submitted

[29] I use the term "Merged Company" to refer to an integrated CP and KCS, that is CPKC.

[30] Velani VS on CN's Acquisition of KCS, p. 18.

[31] Verified Statement of Mark E. Zmijewski before the Surface Transportation Board, dated July 6, 2021. Finance Docket No. 36514.

to the STB. The Conservative Forecasts are more conservative than the forecasts CP submitted to the STB and thus can "stress test" CP's acquisition of KCS. I note that the Conservative Forecasts are more optimistic forecasts than the pessimistic forecasts I used to "stress test" CN's proposed acquisition of KCS.[32] I present a summary of these forecasts in the following table (presenting the same financial measures as in the above table).

[32] I described the pessimistic forecasts I used in the Zmijewski VS on CN's Proposed Acquisition of KCS as follows (p. 15):

> In my analyses I used pessimistic forecasts (stress test) for both CN and KCS ("Pessimistic Forecasts"). The Pessimistic Forecasts:
>
> a. are based on the actual financial performance of CN and KCS in 2020, which, as is widely known, included the effects of a substantial downturn in the economy resulting from the COVID-19 pandemic;
>
> b. are adjusted to include the change in operating working capital of $0 (instead of being positive and a source of cash) and an increase in investment in capital expenditures at its pre-COVID-19 (pre-2020) levels;
>
> c. do not include the cash flows generated by CN or KCS while KCS is held in the Voting Trust, which could be used by CN to repay its debt and which will increase KCS's value while it is held in the Voting Trust; and
>
> d. do not include the realization of any synergies expected to result from the Merger.
>
> Thus, my analyses based on the Pessimistic Forecasts are conservative and provide a stress test of the Merger because they assume a continuation of the substantial economic downturn that occurred in 2020; they ignore the consensus forecast that the economy is expected to grow substantially over the next few years; they are adjusted for an increase in investments in capital expenditures; they do not include the cash flows generated by either company while KCS is held in the Voting Trust; and, if the Merger is ultimately approved by the STB, they ignore that CN and KCS, as well as financial analysts, expect the realization of substantial synergies to result from the Merger.

Table 2
Conservative Forecast
Selected Financial Statement Measures

	CP Unconsol	Year 1	Year 2	Year 3	Year 4	Yr 1-Yr 4 Total	Yr 1 - Yr 4 CAGR
Panel A: Income Statement							
TOTAL REVENUES	$5,999	$8,865	$8,865	$8,865	$8,865	$35,460	*0.0%*
EBITDA	$3,383	$4,646	$4,646	$4,646	$4,646	$18,584	*0.0%*
NET INTEREST EXPENSE	536	652	643	626	610	$2,531	
Panel B: Balance Sheet							
TOTAL DEBT	$15,416	$18,949	$18,167	$17,360	$16,530		
TOTAL INVESTED CAPITAL	$36,239	$44,612	$45,532	$46,401	$47,219		
Panel C: Cash Flow Statement							
CASH PROVIDED BY OPERATING ACTIVITIES	$2,302	$3,210	$3,263	$3,288	$3,313	$13,074	
CASH USED IN INVESTING ACTIVITIES	($1,254)	($1,930)	($1,930)	($1,930)	($1,930)	($7,720)	
UNLEVERED FREE CASH FLOWS	$1,458	$1,766	$1,812	$1,824	$1,837	$7,240	*1.7%*

Sources: CP/KCS Application, vol. 1, Appendix E (Exhibit 16), pp. 3-4; Appendix F (Exhibit 17), pp. 1-2; Appendix G (Exhibit 18), pp. 1-2; CRA calculations.

19. As seen from the above table, in Years 1 through 4, absent the Claimed Efficiencies, the parties' consolidated Revenue, EBITDA and Unlevered Free Cash Flows are essentially flat (with minimal increase in the Unlevered Free Cash Flows due to tax advantages of increased depreciation). Over that period the consolidated CPKC will generate approximately $35.5 billion in Revenue, $18.6 billion in EBITDA, and $13.1 billion in Operating Cash Flows of which $7.7 billion will be reinvested as capital expenditures. The consolidated company will generate about $7.2 billion of Unlevered Free Cash Flows and use that cash to pay dividends and reduce its debt from roughly $19 billion in Year 1 to $16.5 billion in Year 4. Thus, if none of the Claimed Efficiencies are realized,

CP will generate about $2.2 billion less of Unlevered Free Cash Flows and pay off about $2.2 billion less of debt.[33]

B. Analysis of CP's Post Acquisition Financial Risk (Debt Burden)

20. In this section, I analyze CP's post-acquisition financial risks based on the analyses of the company's leverage ratio and free cash flow used in the Velani VS on CN's Acquisition of KCS. Based on these analyses, the Velani VS on CN's Acquisition of KCS concluded that "CN Will Take on a Very High Level of Debt,"[34] "[t]he proposed transaction will increase CN's leverage to levels that CN has not incurred in the recent past,"[35] and "CN's leverage will be materially higher than that of any other Class 1 railroad over the last decade."[36] My analyses show that the criticisms by Mr. Velani about CN's proposed acquisition of KCS equally apply to, and are equally valid for, CP's acquisition of KCS. Namely, that CP is taking on a high level of debt that will substantially increase CP's leverage and, thus, its financial risk. I also conduct a credit rating analysis of CP post acquisition and find that the results of that analysis further corroborate the conclusion of substantially increased financial risk.

1. Comparison of the De Bruyn VS 2021 Estimated CP Leverage Ratio to CP's Actual 2021 Leverage Ratio

21. The De Bruyn VS presents a comparison of CP's historical leverage ratios (Adjusted Net Debt to Adjusted EBITDA) from 2011 through 2020 and CP's estimated leverage ratios

[33] Year 4 debt of $14.3 billion in the Pro Forma Exhibits versus Year 4 debt of $16.5 billion in the Conservative Forecasts. See Tables 1 and 2.

[34] Velani VS on CN's Acquisition of KCS, p. 6.

[35] Velani VS on CN's Acquisition of KCS, p. 8.

[36] Velani VS on CN's Acquisition of KCS, p. 8.

in 2021 through 2024, assuming CP's acquisition of KCS occurred in the Q4 2021.[37] For 2021, the De Bruyn VS calculates CP's leverage ratio on a "pro forma" basis, which assumes CP and KCS are combined. However, if CP's acquisition of KCS occurred in Q4 2021, CP would not combine (and did not combine) KCS because KCS would be held in a trust and operate independently from CP. Thus, De Bruyn's "pro forma" leverage ratio for CP in 2021 is not what CP would report in 2021 because KCS would be held in a trust.

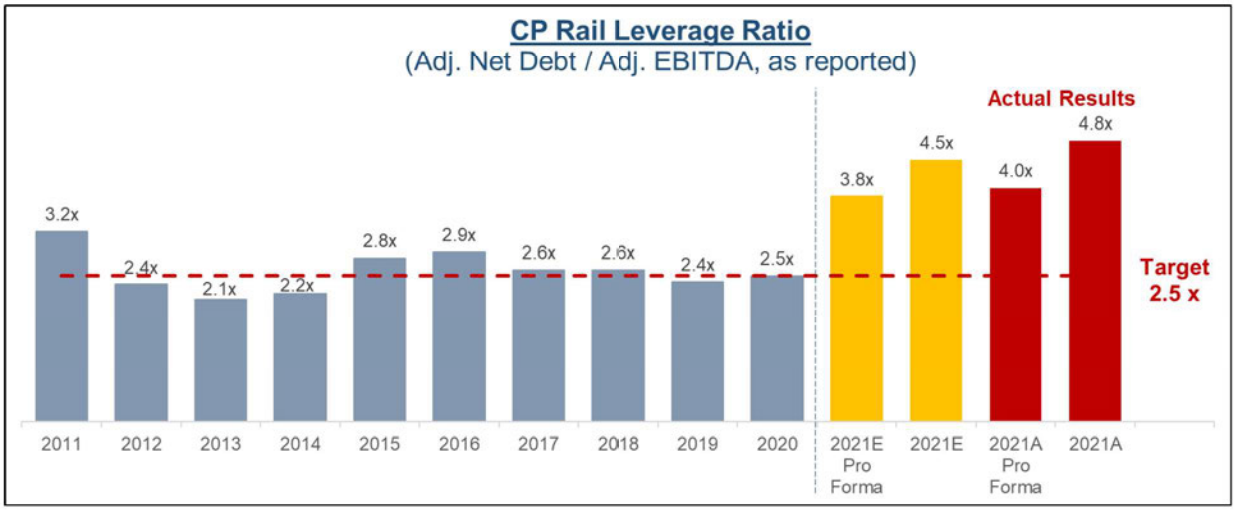
22. In the following figure, I reproduce CP's leverage ratios from the De Bruyn VS through 2021. The 2011-2020 ratios (blue-gray bars) are as reported by CP in the company's Form 10-K filings with the U.S. SEC. The De Bruyn VS presents CP's expected 2021 leverage ratio (orange bar, 3.8x) on a pro forma basis (CP and KCS combined). In the same figure, I also show CP's expected 2021 leverage ratio (orange bar, 4.5x) based on the financial statements CP would report (that is, KCS is not consolidated but reported as an equity investment because it is held in a trust and operates independently). The two red bars show CP's actual leverage ratios: (i) CP's actual 2021 leverage ratio (red bar, 4.8x) based on CP's 2021 actual financial statements;[38] and (ii) CP's actual pro forma 2021 leverage ratio (red bar, 4.0x).[39]

[37] De Bruyn VS, Figure 1, p. 5.

[38] CP 2021 SEC Form 10-K, p. 79.

[39] CP's actual pro forma 2021 leverage ratio is calculated using debt and EBITDA figures for KCS as reported in the company's 2021 Form 10-K filed with the U.S. SEC (see KCS Form 10-K for the period ended December 31, 2021).

Figure 1
De Bruyn VS 2021 Estimated CP Leverage Ratio
Compared to CP's Actual 2021 Leverage Ratio



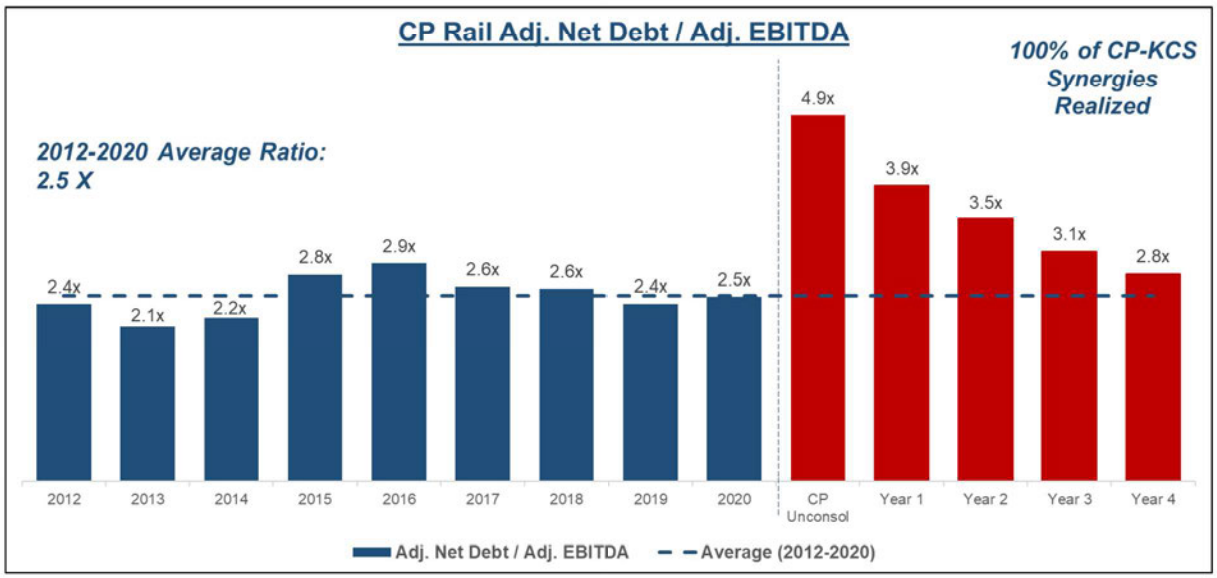
Sources: CP 2013-2021 SEC Forms 10-K; De Bruyn VS, Figure 1; CRA calculations.

23. As is seen from the above figure, the estimated 2021 CP leverage ratio in the De Bruyn VS was 3.8x on a pro-forma basis while its actual leverage ratio was 4.0x on a pro-forma basis, which is about 5% higher than the estimate in the De Bruyn VS. I also note that CP's 2021 leverage ratio on a standalone basis was 4.8x which is more than 90% higher than CP's 2020 standalone leverage ratio of 2.5x and CP's target leverage ratio of 2.5x. These results show not only that CP's leverage ratios are higher than its historical leverage ratios, but also that CP's forecasts for 2021 were optimistic.

2. CP's Post-Acquisition Leverage Ratios

24. In the following figure, I present CP's leverage ratios (Adjusted Net Debt to Adjusted EBITDA)[40] pre-acquisition from 2012 through 2020 (blue bars) and post-acquisition (red bars: CP Unconsol, Year 1, …, Year 4) based on the Pro Forma Exhibits.

Figure 2
CP's Leverage Ratios Based on the Pro Forma Exhibits



Sources: CP 2013-2020 SEC Forms 10-K; De Bruyn VS, Figure 1; CP/KCS Application, vol. 1, Appendix E (Exhibit 16), pp. 3-4; Appendix F (Exhibit 17), pp. 1-2; Appendix G (Exhibit 18), pp. 1-2; CRA calculations.

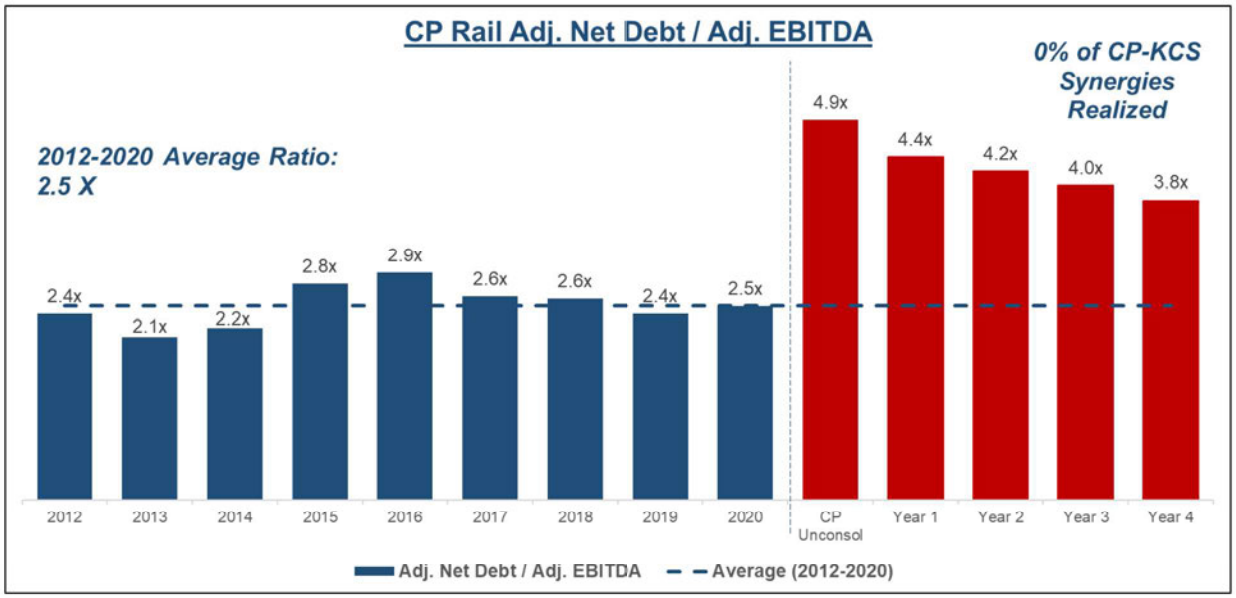
25. As is seen from the above figure, CP's leverage ratio ranged between 2.1x and 2.9x over the 2012-2020 period and averaged about 2.5x (which is also CP's Target Leverage Ratio). Following the KCS acquisition and while KCS is held in trust, CP's leverage ratio increases to 4.9x mostly due to the increased debt incurred to finance the acquisition. In Years 1 to 4 when CP expects STB to approve the KCS acquisition and

[40] For definitions of Adjusted Net Debt and Adjusted EBITDA, see, for example, 2020 CP Form 10-K, pp. 68-69. Adjusted Net Debt is defined as Long-term debt including long-term debt maturing within one year + Pension plan deficit + Operating lease liabilities – Cash and cash equivalents. Adjusted EBITDA is defined as Adjusted EBIT + Operating lease expense + Depreciation and amortization – Other components of net periodic benefit recovery. I assume that Pension plan deficit, Operating lease liabilities, Operating lease expense, and Other components of net periodic benefit recovery in Years 1 to 4 are as reported by CP in the Base Year (2019).

KCS will be consolidated with CP, the leverage ratio declines from 3.9x in Year 1 to 2.8x in Year 4. Thus, CP does not attain its 2.5x target leverage ratio within four years after the merger.

26. In the figure below, I also present CP's leverage ratios (CP Rail Adjusted Net Debt to CP Adjusted EBITDA) pre-acquisition from 2012 through 2020 (blue bars) and post-acquisition (red bars: CP Unconsol, Year 1, …, Year 4) based on the Conservative Forecasts.

Figure 3
CP's Leverage Ratios Based on the Conservative Forecasts



Sources: CP 2013-2020 Forms 10-K; De Bruyn VS, Figure 1; CP/KCS Application, vol. 1, Appendix E (Exhibit 16), pp. 3-4; Appendix F (Exhibit 17), pp. 1-2; Appendix G (Exhibit 18), pp. 1-2; CRA calculations.

27. As is seen from the above figure, in Years 1 to 4 when CP expects the STB to approve the KCS acquisition and KCS will be consolidated with CP, the leverage ratio declines from 4.4x in Year 1 to 3.8x in Year 4. Thus, CP does not attain its 2.5x target leverage ratio within four years after the merger.

28. The Velani VS on CN's Acquisition of KCS criticized CN stating, "Further, CN's leverage will be materially higher than that of any other Class I railroad over the last decade. As of 2020, the highest leverage amongst other Class I railroads is 3.0 times Adj. Debt / EBITDA, materially lower than the contemplated 4.8 times Adj. Debt / EBITDA for CN."[41] As seen from the above figures, the CP Unconsol leverage ratios are as high as CN's leverage ratios, and based on both sets of forecasts, CP's leverage ratios are higher than the Target Leverage Ratio of 2.5x.[42] Thus, my analyses show that the criticisms by Mr. Velani about CN's proposed acquisition of KCS equally apply to, and are equally valid for, CP's acquisition of KCS.

3. All of CP's Free Cash Flow Will be Used to De-Lever the Company Post Acquisition

29. The Velani VS on CN's Acquisition of KCS criticized CN for the use of its excess cash flow to service the company's debt in a manner that Mr. Velani argued "leaves no margin for error."[43] The Velani VS on CN's Acquisition of KCS demonstrated that "the comparison between (a) projected total free cash flow (calculated as cash from operations, less capital expenditures and investing activities) generated by both CN and KCS … inclusive of some synergies … and (b) cash flow required to pay CN's dividend and repay the amount of CN's debt required to achieve its target Leverage Ratio … [implies that] CN is pursuing a strategy that leaves itself very little margin of error."[44]

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[41] Velani VS on CN's Acquisition of KCS, pp. 8 – 9.

[42] I note that using the Proxy/Transaction Model Forecasts, CP's post-acquisition leverage ratios in 2022-2025 are {{ }}, respectively (see also De Bruyn VS, Figure 1). Using the Proxy/Transaction Model Forecasts and assuming none of the Claimed Efficiencies is realized, CP's post-acquisition leverage ratios in 2022-2025 are {{ }}, respectively.

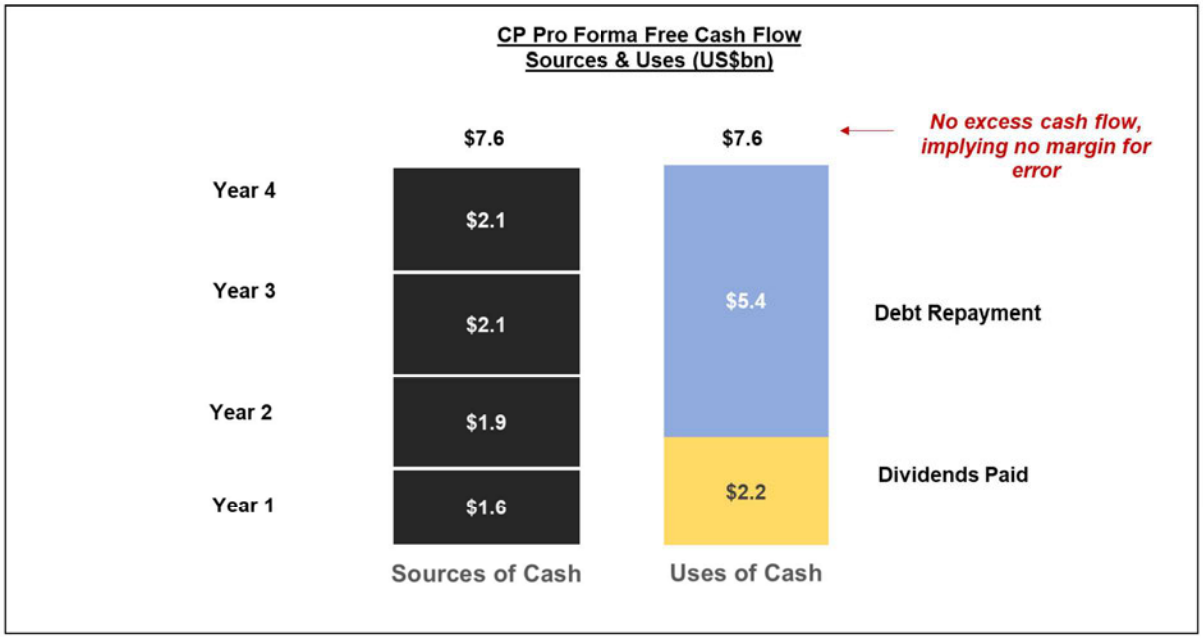
[43] Velani VS on CN's Acquisition of KCS, p. 10.

[44] Velani VS on CN's Acquisition of KCS, pp. 10-11 and Figure 6.

30. I conduct the same analysis for the CP acquisition of KCS and compare the sources and uses of CP's Free Cash Flows; or stated alternatively I compare "(a) projected total free cash flow (calculated as cash from operations, less capital expenditures and investing activities) … [and] …(b) cash flow required to pay … dividend and repay the amount of … debt."[45]

31. In the following figure, I present CP's sources and uses of Free Cash Flow based on the Pro Forma Exhibits.

Figure 4
CP's Post Acquisition Sources and Uses of Free Cash Flow
Based on the Pro Forma Exhibits



Sources: Velani VS on CN's Acquisition of KCS, Figure 6; CP/KCS Application, vol. 1, Appendix E (Exhibit 16), pp. 3-4; Appendix F (Exhibit 17), pp. 1-2; Appendix G (Exhibit 18), pp. 1-2; CRA calculations.

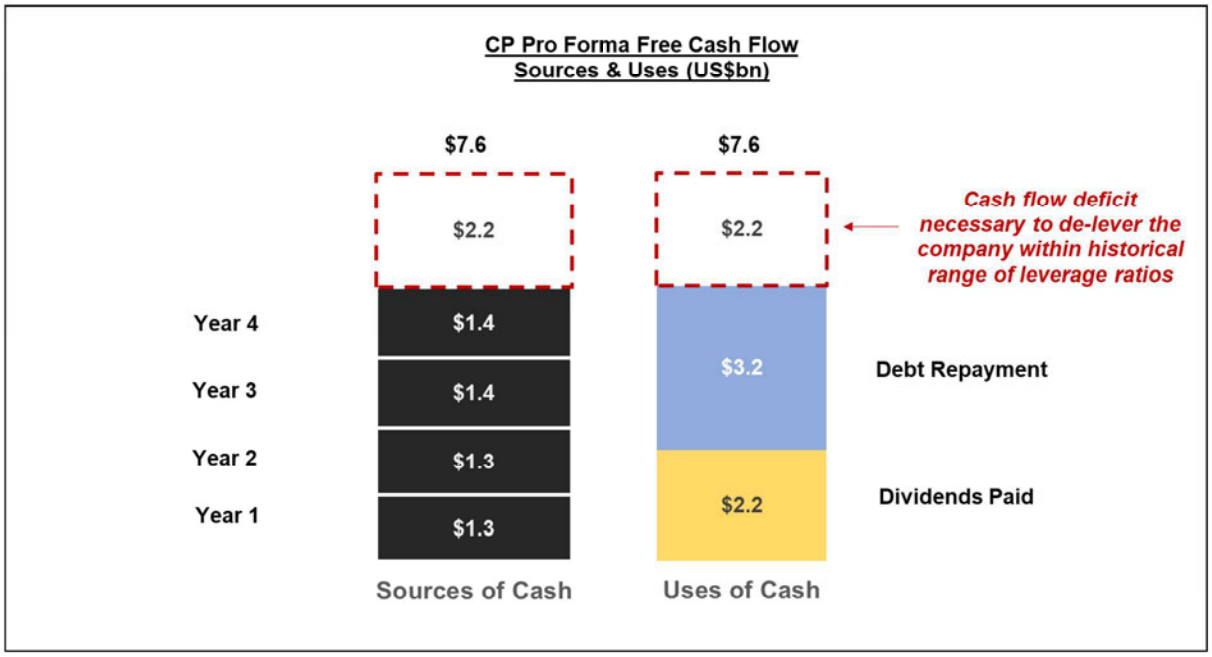
32. As is seen from the above figure, in order to de-lever the company by Year 4 and achieve leverage ratio of 2.8x, which is still above its 2.5x target leverage ratio (see Figure 2), CP uses all of the $7.6 billion Free Cash Flows that the company is expected to generate

[45] Velani VS on CN's Acquisition of KCS, pp. 10-11 and Figure 6.

from Year 1 to Year 4 to pay dividends ($2.2 billion) and repay debt ($5.4 billion), thus, according to the Velani VS on CN's Acquisition of KCS, CP has no margin for error.

33. In the following figure, I present CP's sources and uses of Free Cash Flow based on the Conservative Forecasts.

Figure 5
CP's Post Acquisition Sources and Uses of Free Cash Flow
Based on the Conservative Forecasts



Sources: Velani VS on CN's Acquisition of KCS, Figure 6; CP/KCS Application, vol. 1, Appendix E (Exhibit 16), pp. 3-4; Appendix F (Exhibit 17), pp. 1-2; Appendix G (Exhibit 18), pp. 1-2; CRA calculations.

34. As is seen from the above figure, if none of the Claimed Efficiencies is realized, CP will generate about $5.4 billion free cash flows from Year 1 through 4, an amount sufficient to pay the $2.2 billion dividend and repay only $3.2 billion of debt. Thus, CP would be $2.2 billion short of the free cash flow that is necessary to de-lever the company by Year 4 to a level consistent with CP's historical leverage.[46]

[46] I note that using the Proxy/Transaction Model Forecasts, CP is projected to generate post-closing approximately $3.8 billion excess cash flows ($12.3 billion free cash flows less $8.5 billion of dividend and debt payments)

4. CP's Post-Acquisition Credit Rating

35. Although the Velani VS on CN's Acquisition of KCS raised various criticisms of the amount of debt that CN would have issued in the acquisition of KCS, it failed to acknowledge that CN's post-acquisition credit rating was expected to be investment grade and close to CP's pre-acquisition credit rating.[47] Moreover, CP's post-acquisition credit rating Baa2/BBB+[48] is the same as CN's expected post-acquisition credit rating had CN acquired KCS. I illustrate the effect of CP's acquisition of KCS on its credit rating using the De Bruyn VS credit rating thresholds, which are based on CP's leverage ratio.[49] Typically, a credit rating below Baa3/BBB- is considered non-investment grade.[50]

36. In the following figure, I present CP's post-acquisition leverage ratios as measured by the Debt to EBITDA ratio (CP Unconsol, Year 1, …, Year 4) relative to the credit rating thresholds for the various investment grade credit ratings using the Pro Forma Exhibits.

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between 2022 and 2025. Using the Proxy/Transaction Model Forecasts and assuming none of the Claimed Efficiencies is realized, CP is projected to generate post-closing approximately $2.5 billion excess cash flows ($11.0 billion free cash flows less $8.5 billion of dividend and debt payments) between 2022 and 2025.

[47] See Zmijewski VS on CN's Acquisition of KCS, pp 11 – 13.

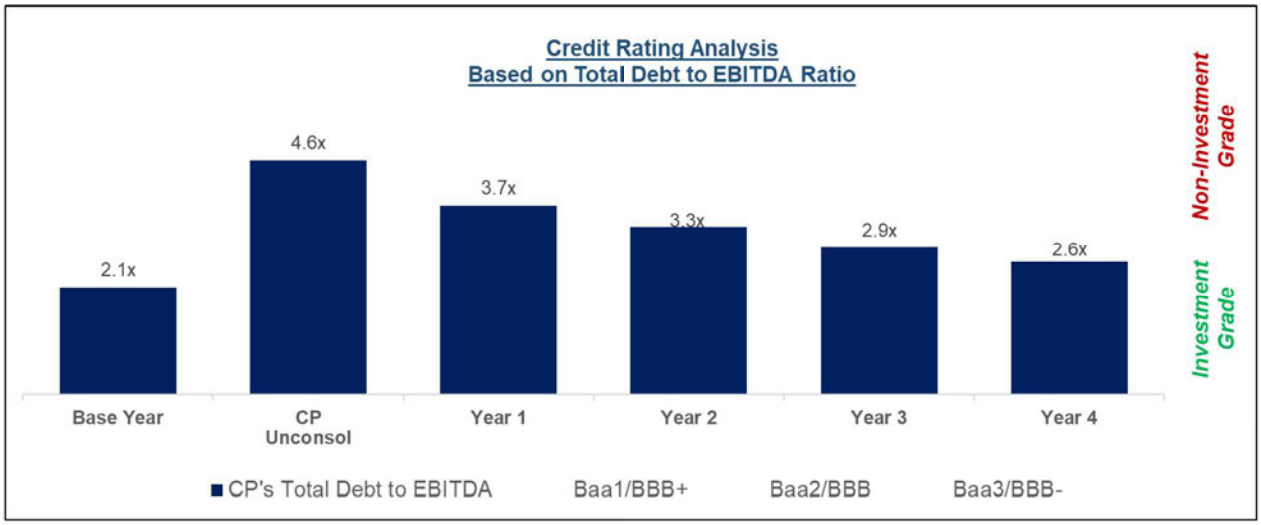
[48] Moody's and S&P Global.

[49] The De Bruyn VS support workpapers, FD 36500 – Work Paper – HC – Debruyn - Excel Back-up.xlsx, Tab "23.2" (Rating Agency - Credit Rating Summary Matrix) indicates that credit ratings Baa1/BBB+, Baa2/BBB, and Baa3/BBB- are associated with Debt/EBITDA ratios below {{ }}, respectively.

[50] See Zmijewski VS on CN's Acquisition of KCS, pp 11 – 13. See also Charles Schwab *Guide to Sub-Investment Grade/High Yield Bonds,* p. 2, "Sub-investment grade/high yield bonds are bonds with a credit rating below investment grade (Baa3 or BBB-), as judged by the bond ratings assigned by one of the major rating agencies: Moody's Investors Service (Moody's) and Standard & Poor's. The ratings are the opinion of the agency. They are not a guarantee of credit quality, probability of default, or recommendation to buy or sell." Available at https://www.schwab.com/public/file/p-4635483/.

Figure 6
Illustration of CP's Credit Ratings
Based on the Pro Forma Exhibits

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Sources: FD 36500 – Work Paper – HC – Debruyn - Excel Back-up.xlsx, Tabs "21.2" and "23.2"; CP/KCS Application, vol. 1, Appendix E (Exhibit 16), pp. 3-4; Appendix F (Exhibit 17), pp. 1-2; Appendix G (Exhibit 18), pp. 1-2; CRA calculations.

}}

37. The above figure illustrates how the addition of $8.2 billion acquisition debt to the company's balance sheet pushes the leverage ratio above the thresholds associated with investment grade credit rating. This evidence is consistent with an increased financial risk for CP following the KCS acquisition. The ability to successfully manage that risk depends on CP's ability to de-lever the company by Year 4 by aggressively repaying its debt. A strategy that in the CP CFO's own words "leaves no margin for error."[51]

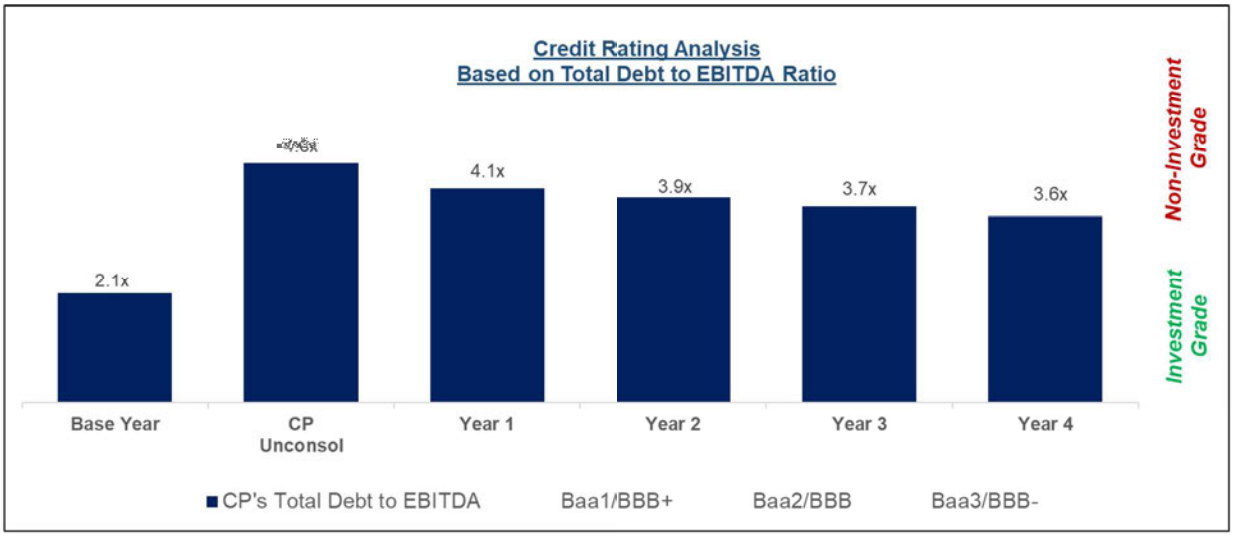
38. In the following figure, I present CP's post-acquisition leverage as measured by the Debt to EBITDA ratio (CP Unconsol, Year 1, …, Year 4) relative to the credit rating

[51] Velani VS on CN's Acquisition of KCS, p. 10.

thresholds for the various investment grade credit ratings based on the Conservative Forecasts.

Figure 7
Illustration of CP's Credit Ratings
Based on the Conservative Forecasts

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Sources: FD 36500 – Work Paper – HC – Debruyn - Excel Back-up.xlsx, Tabs "21.2" and "23.2"; CP/KCS Application, vol. 1, Appendix E (Exhibit 16), pp. 3-4; Appendix F (Exhibit 17), pp. 1-2; Appendix G (Exhibit 18), pp. 1-2; CRA calculations.

}}

39. As discussed earlier, CP generates about $2.2 billion less of free cash flows under the Conservative Forecasts and repays about $2.2 billion less of debt, thus, the company's leverage remains higher relative to the leverage under the Conservative Forecasts. This implies higher debt burden and more pressure on the company's investment grade credit rating. The above figure illustrates that if CP experiences a substantial downturn in its

financial performance, CP's debt levels remain relatively high even by Year 4 and its credit rating is likely to fall below investment grade.[52]

C. Analysis of CP's Return on Invested Capital (ROIC)

40. Based on an analysis of CN's post-acquisition ROIC, the Velani VS on CN's Acquisition of KCS concluded that CN's post-acquisition ROIC would be substantially lower than CN's historical ROIC and target ROIC.[53] In this section, I conduct that same analysis of CP's post-acquisition ROIC and show it will be substantially lower than CP's historical ROIC and target ROIC of roughly 15%.

41. In the remainder of this section, I first discuss the lack of ROIC analysis in the De Bruyn VS. I then follow the approach in the Velani VS on CN's Acquisition of KCS that identified CN's target ROIC based on CN's historical ROICs, management compensation, and statements by CN's Chief Financial Officer Ghislain Houle.[54, 55] Lastly, I show CP's 2021 reported ROIC and calculate CP's ROIC based on the forecasts in the Pro Forma Exhibits and the Conservative Forecasts.

1. The De Bruyn VS Did Not Analyze ROIC

42. CP states that its adjusted ROIC is also an important measure of the company's financial performance: "Adjusted ROIC is a performance measure that measures how productively the Company uses its long-term capital investments, representing critical indicators of

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[52] I note that using the Proxy/Transaction Model Forecasts, CP's post-acquisition Debt/EBITDA ratios in 2022-2025 are {{ }}, respectively. Assuming none of the Claimed Efficiencies are realized, CP's post-acquisition Debt/EBITDA ratios in 2022-2025 are {{ }}, respectively.

[53] Velani VS on CN's Acquisition of KCS, Section IV, pp. 15 – 16.

[54] Velani VS on CN's Acquisition of KCS, Section IV, pp. 11 – 18.

[55] I note that Mr. Houle responded to the allegations of Mr. Velani and explained how Mr. Velani mischaracterized his statements. See Verified Statement of Ghislain Houle before the Surface Transportation Board, dated July 6, 2021. Finance Docket No. 36514, pp. 7-9.

good operating and investment decisions made by management, and is an important performance criteria in determining certain elements of the Company's long-term incentive plan."[56] Tellingly, even though Adjusted ROIC is an important measure of financial performance used by CP, and even though the Velani VS on CN's Acquisition of KCS analyzed and made conclusions about CN's proposed acquisition of KCS, the De Bruyn VS conducts no analysis and provides no discussion of the effect of the KCS acquisition on CP's post-acquisition ROIC.

2. CP's Target ROIC Has Been in the 15.3% and 15.5% Range (Roughly 15%)

43. CP explains Adjusted ROIC as:

> Adjusted ROIC is calculated as Adjusted return divided by Adjusted average invested capital. Adjusted return is defined as Net income adjusted for interest expense, tax effected at the Company's adjusted annualized effective tax rate, and significant items in the Company's Consolidated Financial Statements, tax effected at the applicable tax rate. Adjusted average invested capital is defined as the sum of total Shareholders' equity, Long-term debt, and Long-term debt maturing within one year, as presented in the Company's Consolidated Financial Statements, each averaged between the beginning and ending balance over a rolling 12-month period, adjusted for the impact of significant items, tax effected at the applicable tax rate, on closing balances as part of this average ….[57]

44. In the following figure, I present CP's historical ROIC from 2016 through 2020, which I extracted from CP's 2020 SEC Form 10-K filing.[58]

[56] CP 2021 SEC Form 10-K, p. 73.

[57] CP 2020 SEC Form 10-K, p. 64.

[58] CP 2020 SEC Form 10-K, p. 66.

Figure 8
CP's Historical ROIC (2016 – 2020)

(in millions of Canadian dollars, except for percentages)	For the year ended December 31				
	2020	2019	2018	2017	2016
Adjusted return	**$ 2,748**	$ 2,626	$ 2,421	$ 2,013	$ 1,896
Adjusted average invested capital	**$ 16,443**	$ 15,547	$ 14,953	$ 13,672	$ 13,541
Adjusted ROIC	**16.7 %**	16.9 %	16.2 %	14.7 %	14.0 %

45. As is seen from the above figure, between 2016 and 2020, CP earned an ROIC in the range of 14.0% to 16.9%.

46. In the next figure, I present the target ROIC for Management's Performance Share Units ("PSUs").[59]

[59] In CP's annual report for the 2020 fiscal year, it stated (p. 118):

> During 2020, the Company issued 97,998 PSUs with a grant date fair value of approximately $ 34 million and 10,029 PDSUs with a grant date fair value, including value of expected future matching units, of approximately $ 4 million. PSUs and PDSUs attract dividend equivalents in the form of additional units, based on dividends paid on the Company's Common Shares, and vest approximately three years after the grant date contingent upon CP's performance ("performance factor"). The fair value of these PSUs and PDSUs is measured periodically until settlement using closing share price on the date of measurement. The fair value of units that are probable of vesting based on forecasted performance factors over the three-year performance period is recognized as expense in the Consolidated Statements of Income. Vested PSUs are settled in cash. Vested PDSUs are settled in cash pursuant to the DSU plan and are eligible for a 25 % match if the holder has not exceeded their share ownership requirements, and are paid out only when the holder ceases their employment with CP.
>
> The performance period for PSUs and PDSUs issued in 2020 is January 1, 2020 to December 31, 2022, and the performance factors are Return on Invested Capital ("ROIC"), Total Shareholder Return ("TSR") compared to the S&P/TSX 60 Index, and TSR compared to Class I railways.

Figure 9
CP's Target ROIC for Management Performance Share Units[60]

2019 PSU performance measures	Why the measure is important	Threshold (50%)	Target (100%)	Exceptional (200%)	Weighting
PSU three-year average return on invested capital (ROIC) Net operating profit after tax divided by average invested capital	Focuses executives on the effective use of capital as we grow Ensures shareholders' capital is employed in a value-accretive manner	15.3%	16%	16.4%	70%
Total shareholder return Measured over three years. The percentile ranking of CP's TSX Compound Annual Growth Rate (CAGR) relative to the companies that make up the S&P/TSX 60	Compares our TSR on the TSX to the broader S&P/TSX60 to reflect our progress relative to the Canadian market Aligns long-term incentive compensation with long-term shareholder interests	25th percentile	50th percentile	75th percentile	15%
Total shareholder return Measured over three years. The ordinal ranking of CP's NYSE CAGR relative to the Class 1 Railroads	Compares our TSR on the NYSE to the publicly traded Class 1 Railroads to ensure we are competitive against our primary competitors. Aligns long-term incentive compensation with long-term shareholder interests	4th	3rd	1st	15%

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47. CP awards PSUs to its executives to "focus executives on achieving medium-term goals within a three-year performance period."[61] As is seen from the above figure, ROIC is an important metric that is used to evaluate management performance because it represents about 70% weight in the overall score. The minimum threshold for ROIC is 15.3%.

48. Lastly, I show an excerpt from CP's internal management presentation to the company's Board of Directors in the following figure.

[60] CP 2020 Management Proxy Circular, p. 39.

[61] CP 2020 Management Proxy Circular, p. 39.

Figure 10
CP's ROIC in Internal Management Presentation to the Board of Directors[62]

{{



}}

49. As is seen from the above figure, the CP management envisioned about {{ }}% average ROIC in the 2021-2024 period based on the company's standalone multiyear 2022-2024 Plan.

50. Based on my review of these documents, I conclude that CP's Target ROIC has been in the 15.3% and {{ }}% range (roughly 15%).

3. CP's Actual 2021 Post-Acquisition ROIC

51. In the following figure, I present CP's reported 2021 ROIC disclosed in its SEC Form 10-K filing.[63]

[62] CP Standalone Multi Year Plan 2022 – 2024, Board of Directors Presentation, September 2021, p. 2 (17.2.32 CP-HC-00007424).

[63] CP 2021 SEC Form 10-K, p. 75.

Figure 11
CP's Actual 2021 Post-Acquisition ROIC

Calculation of Adjusted ROIC

(in millions of Canadian dollars, except for percentages)	For the year ended December 31 2021	2020	2019
Adjusted return	$ **2,899**	$ 2,748	$ 2,626
Adjusted average invested capital	$ **35,383**	$ 16,443	$ 15,547
Adjusted ROIC	**8.2 %**	16.7 %	16.9 %

52. As is seen from the above figure, CP achieved 16.9% ROIC in 2019, 16.7% ROIC in 2020, and 8.2% in 2021 following the KCS acquisition.

4. CP's Post-Acquisition ROIC Based on the Forecasts

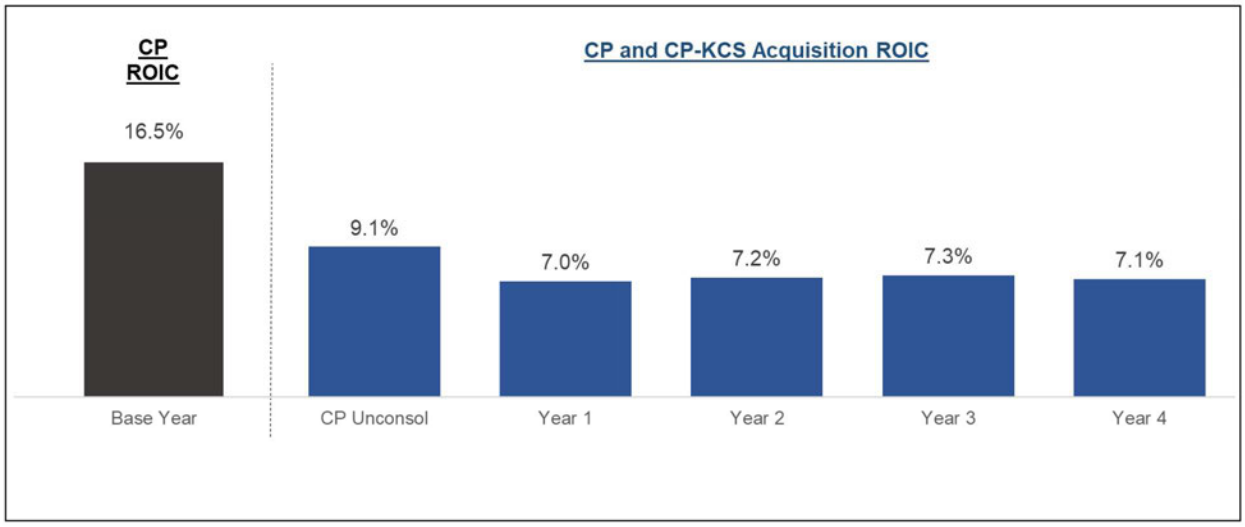
53. The Velani VS on CN's Acquisition of KCS conducted an ROIC analysis of CN post acquisition and found that "[e]ven after factoring in the $1 billion in annual synergies that CN forecasts for the KCS combination, it appears that CN's return on invested capital for this transaction will fall well short of … target range."[64]

54. I conduct similar ROIC analysis using both the Pro Forma Exhibits (with the full amount of Claimed Efficiencies) and the Conservative Forecasts (with no Claimed Efficiencies).

55. In the following figure, I present CP's ROIC post acquisition (CP Unconsol, Year 1, …, Year 4) based on the Pro Forma Exhibits.

[64] Velani VS on CN's Acquisition of KCS, Section IV, p. 15.

Figure 12
CP's Post-Acquisition ROIC Based on the Pro Forma Exhibits

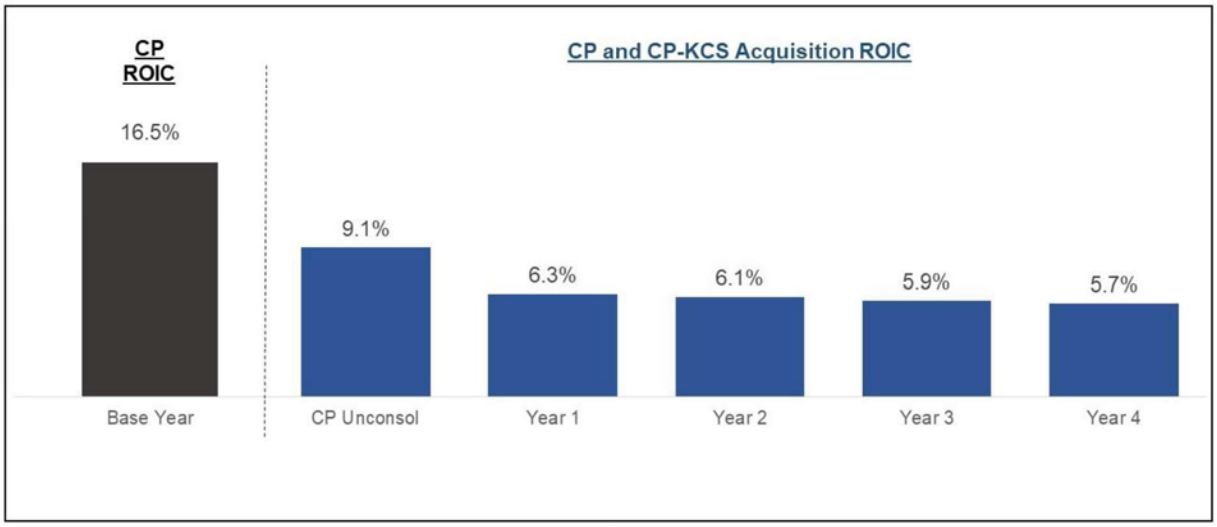


Sources: Velani VS on CN's Acquisition of KCS, Figure 9; CP/KCS Application, vol. 1, Appendix E (Exhibit 16), pp. 3-4; Appendix F (Exhibit 17), pp. 1-2; Appendix G (Exhibit 18), pp. 1-2; CRA calculations.

56. As is seen from the above figure, the expected ROIC in the post-acquisition period ranges between 7.0% and 9.1% and is well below CP's 15% target ROIC even with a full credit of the Claimed Efficiencies. The expected ROIC is about 7.0% to 7.3% in Year 1 to 4 when CP claims that it will realize the Claimed Efficiencies. Thus, in order to achieve an ROIC close to its target, holding its invested capital (ROIC denominator) constant, CP will have to more than double its unlevered earnings.

57. In the following figure, I present CP's ROIC post acquisition (CP Unconsol, Year 1, …, Year 4) based on the Conservative Forecasts.

Figure 13
CP's Post-Acquisition ROIC Based on the Conservative Forecasts



Sources: Velani VS on CN's Acquisition of KCS, Figure 9; CP 2013-2020 Forms 10-K; CP/KCS Application, vol. 1, Appendix E (Exhibit 16), pp. 3-4; Appendix F (Exhibit 17), pp. 1-2; Appendix G (Exhibit 18), pp. 1-2; CRA calculations.

58. As is seen from the above figure, again, the expected ROIC in the post-acquisition period, Years 1 to 4, falls even lower, to the 5.7% to 6.3% range, in the absence of the Claimed Efficiencies.[65]

5. Conclusions – CP's Post-Acquisition ROIC

59. The Velani VS on CN's Acquisition of KCS concluded, for example, "[m]y analysis in Section IV demonstrates that the implicit ROIC for CN's huge investment in KCS does not meet CN's own stated ROIC targets based on the $1 billion in transaction synergies CN has estimated. This means that CN must have based its investment decision on some unstated set of strategic benefits CN expects to realize. The most plausible explanation is that CN's investment is justified by CN's anticipated increase in market power –giving it

[65] I note that using the Proxy/Transaction Model Forecasts, CP's post-acquisition ROIC in 2022-2025 are {{ }}, respectively. Using the Proxy/Transaction Model Forecasts and assuming none of the Claimed Efficiencies are realized, CP's post-acquisition ROIC in 2022-2025 are {{ }}, respectively.

greater pricing power …."[66] My analyses show that the criticisms by Mr. Velani about CN's proposed acquisition of KCS equally apply to, and are equally valid for, CP's acquisition of KCS.

III. ASSESSMENT OF CP'S CLAIMED EFFICIENCIES

60. In this section, I assess the verifiability of the CP's Claimed Efficiencies from the perspective of the DOJ/FTC *Merger Guidelines*. My analysis of CP's Claimed Efficiencies shows that most of the Claimed Efficiencies are not verifiable, and many are not merger-specific; thus, the overwhelming majority of the Claimed Efficiencies would not meet the standards to be cognizable based on the *Merger Guidelines*.

61. While I understand that the *Merger Guidelines* are not legally applicable to CP's acquisition of KCS, the *Merger Guidelines* nevertheless provide a reasonable and appropriate framework to analyze the Claimed Efficiencies from the perspective of a financial economist. Based on the *Merger Guidelines*, assessing whether the efficiencies claimed by the Merging Parties are cognizable requires assessing whether they are: (1) merger-specific, (2) verifiable, and (3) not the result of anticompetitive reductions in output or service.[67] I summarize my conclusions in the following table, which I also present as Exhibit III-1.

[66] Velani VS on CN's Proposed Acquisition of KCS, pp. 26 – 27.

[67] *Merger Guidelines*, § 10 at 30. I note that I have not been asked to comment on whether the Claimed Efficiencies are the result of anticompetitive reductions in output or service.

Table 3
Summary of the Assessment of CP's Claimed Efficiencies

SUMMARY OF BENEFITS	Assessment of Verification	Assessment of Merger Specificity
Benefit Component		
OPERATING REVENUE GAINS		
Revenue Increase from Traffic Gains		
Rail-to-Rail Diversions (Brown/Zebrowski)	Not verified	Merger specific
Truck-to-Rail Diversions (Mutan)	Not verified	Merger specific
Attract New Rail Traffic (Wahba/Naatz)	Not verified	Partially merger-specific
Cost of Handling Added Traffic:		
Engineering - Maintenance of Way	Not verified	Merger specific
Mechanical	Not verified	Merger specific
Transportation	Not verified	Partially merger-specific
Equipment Requirements & Utilization	Not verified	Merger specific
Intermodal Operations	Not verified	Merger specific
OPERATING BENEFITS		
Mechanical	Not verified	Not merger-specific
Transportation	Not verified	Partially merger-specific
Equipment Requirements	Not verified	Partially merger-specific
Purchasing (Procurement)	Not verified	Partially merger-specific
G&A Savings		
Personnel Savings	Not verified	Merger specific
Non-Personnel Savings		
Non-Personnel Expenditures	Not verified	Merger specific
IT (Licensing/Subscriptions/Contract Services)	Not verified	Merger specific
Facilities	Verified	Merger specific
Audit & Listing Fees	Partially verified	Merger specific

Source: CP/KCS Application, Vol I, p. 74 (Appendix B - Summary of Benefits Exhibit)

62. Regarding the Revenue Increase from Traffic Gains component, none of the categories within this component is verifiable . Most, but not all, of these revenue increases are merger-specific. Regarding the Cost of Handling Added Traffic, none of the categories within this component is verifiable but these costs are merger-specific. CP's Claimed Operating Benefits efficiency has five components: 1) Mechanical; 2) Transportation; 3)

Equipment Requirements & Utilization; 4) Purchasing (Procurement); and 5) General and Administrative (G&A).

a. None of the claimed Mechanical Operating Benefits is verifiable and they are not merger-specific.
b. None of the claimed Transportation Operating Benefits is verifiable and they are only partially merger-specific.
c. None of the claimed Equipment Requirements Operating Benefits are verifiable and they are only partially merger-specific.
d. None of the claimed Procurement Operating Benefits are verifiable and they are only partially merger-specific.
e. One of the five categories of General and Administrative Benefits is verifiable and one category is partially verifiable; all categories are merger-specific.

63. In sum, in this verified statement, my assessment of the verifiability of CP's Claimed Efficiencies from the perspective of the *Merger Guidelines* shows that most of the Claimed Efficiencies are not verifiable and many are not merger-specific; and thus, the majority of the Claimed Efficiencies would not meet the standards to be cognizable based on the *Merger Guidelines*.

64. In what follows, I describe the framework and methodology I use in my assessment of CP's Claimed Efficiencies based on the *Merger Guidelines*, I describe each of the categories of CP's Claimed Efficiencies, and I provide my analysis of each of the categories of CP's Claimed Efficiencies to assess whether they are cognizable.

A. Framework and Methodology to Assess Merger Efficiencies

65. In this section, I analyze CP's Claimed Efficiencies. More specifically, I assess whether CP's Claimed Efficiencies are cognizable from the perspective of the *Merger*

Guidelines[68] provided by the DOJ and FTC. I understand that the *Merger Guidelines* are not legally applicable to CP's acquisition of KCS, but the *Merger Guidelines* nevertheless provide a reasonable and appropriate framework to analyze the Claimed Efficiencies from the perspective of a financial economist.

66. The DOJ and the FTC ("Agencies") issued updated *Merger Guidelines* on August 19, 2010.[69] The *Merger Guidelines* outline how the Agencies view efficiencies that result from a merger and set forth criteria of whether Claimed Efficiencies will be deemed cognizable. The *Merger Guidelines* state, "[c]ognizable efficiencies are merger-specific efficiencies that have been verified and do not arise from anticompetitive reductions in output or service. Cognizable efficiencies are assessed net of costs produced by the merger or incurred in achieving those efficiencies."[70]

67. The *Merger Guidelines* state that the Agencies assess whether cognizable efficiencies will reverse the potential anticompetitive effects of a proposed merger in the relevant market:[71]

> The Agencies will not challenge a merger if cognizable efficiencies are of a character and magnitude such that the merger is not likely to be anticompetitive in any relevant market. To make the requisite determination, the Agencies consider whether cognizable efficiencies likely would be sufficient to reverse the merger's potential to harm customers in the relevant market, e.g., by preventing price increases in that market ... In adhering to this approach, the Agencies are mindful that the antitrust laws give competition, not internal operational efficiency, primacy in protecting customers.

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[68] *Merger Guidelines*.

[69] *Merger Guidelines*.

[70] *Merger Guidelines*, § 10 at 30.

[71] *Merger Guidelines*, § 10 at 30-31 (footnotes omitted).

68. The analysis of the cognizable efficiencies claimed by the Merging Parties in the *Merger Guidelines* requires assessing whether they are: (1) merger-specific, (2) verifiable, and (3) not the result of anticompetitive reductions in output or service (collectively, "*Merger Guidelines Efficiencies Criteria*").[72] I note, however, that I have not been asked to comment on whether the Claimed Efficiencies are the result of anticompetitive reductions in output or service and I do not discuss this consideration further.

1. Methodology for Verifying Efficiencies

69. The *Merger Guidelines* state, "[e]fficiency claims will not be considered if they are vague, speculative, or otherwise cannot be verified by reasonable means."[73] The *Merger Guidelines* also state:[74]

> Efficiencies are difficult to verify and quantify, in part because much of the information relating to efficiencies is uniquely in the possession of the merging firms. Moreover, efficiencies projected reasonably and in good faith by the merging firms may not be realized. Therefore, it is incumbent upon the merging firms to substantiate efficiency claims so that the Agencies can verify by reasonable means the likelihood and magnitude of each asserted efficiency, how and when each would be achieved (and any costs of doing so) ...

70. While the *Merger Guidelines* do not prescribe specific standards, methods, or tests that should be used to verify efficiency claims, the 2006 *Commentary on the Horizontal Merger Guidelines*[75] ("Commentary on the Horizontal Merger Guidelines") provides

[72] *l Merger Guidelines*, § 10 at 30.

[73] *Merger Guidelines*, § 10 at 30.

[74] *Merger Guidelines*, § 10 at 30.

[75] U.S. Department of Justice & Federal Trade Commission's *Commentary on the Horizontal Merger Guidelines*, dated Mar. 2006.

guidance on the documentation the DOJ and FTC look for to substantiate efficiency claims, and the process they use to verify those claims.

71. The *Commentary on the Horizontal Merger Guidelines* notes that, "[t]he best way to substantiate an efficiency claim is to demonstrate that similar efficiencies were achieved in the recent past from similar actions. Documentation must be based on appropriate methods and realistic assumptions, and ideally would be grounded on actual experience."[76] It naturally follows that in order for an extrapolation of the cost savings experienced from a previous merger to form the basis of cognizable efficiencies in a subsequent merger, the cost savings from the previous merger must also be cognizable (verifiable, and merger-specific, and not the result of anticompetitive reductions in output or service).[77]

72. The *Commentary on the Horizontal Merger Guidelines* also describes the verification process, stating:[78]

> After the parties have presented substantiation for their claimed merger-specific efficiencies, the Agencies attempt to verify those claims. The verification process usually includes, among other things, an assessment of the parties' analytical methods, including the accuracy of their data collection and measurement, an evaluation of the reasonableness of assumptions in the analysis, and scrutiny into how well the parties' conclusions stand up to modifications in any assumptions (i.e., the "robustness" of the parties' analysis).

[76] U.S. Department of Justice & Federal Trade Commission's *Commentary on the Horizontal Merger Guidelines*, dated Mar. 2006, § 4 at 53.

[77] *See generally Merger Guidelines*, § 10 at 30.

[78] U.S. Department of Justice & Federal Trade Commission's *Commentary on the Horizontal Merger Guidelines*, dated Mar. 2006, § 4 at 52.

73. Consistent with the *Merger Guidelines*, the *Commentary on the Horizontal Merger Guidelines* summarized above, and the basic principles in accounting, economics, and finance, I assess whether the Claimed Efficiencies can be verified by analyzing whether the Merging Parties have:

a. Provided adequate documentation to support and explain each of the Claimed Efficiencies;

b. Used standard, widely accepted and reliable principles, methods, and analyses to measure the Claimed Efficiencies and employed them appropriately; and

c. Used facts and data, the foundation of any economic analyses, to support the inputs and assumptions used in these analyses.

74. This framework and methodology are consistent with the *Merger Guidelines*, the *Commentary on the Horizontal Merger Guidelines*, and basic principles in accounting, economics, and finance.

2. Assessing Merger-Specificity of Efficiencies

75. The *Merger Guidelines* define "merger-specific efficiencies" as "those efficiencies likely to be accomplished with the proposed merger and unlikely to be accomplished in the absence of either the proposed merger or another means having comparable anticompetitive effects."[79] As discussed in the *Commentary on the Horizontal Merger Guidelines*, an efficiency may be "merger-specific," even if it theoretically could be achieved without a merger, if for example, the other means were not practically feasible or would impose substantial transaction costs.[80] The *Merger Guidelines* further explain

[79] *Merger Guidelines*, § 10 at 30.

[80] U.S. Department of Justice & Federal Trade Commission's *Commentary on the Horizontal Merger Guidelines*, dated Mar. 2006, § 4. Specifically, the *Commentary on the Horizontal Merger Guidelines* states, "[t]hat an efficiency theoretically could be achieved without a merger—for example, through a joint venture or contract—does not disqualify it from consideration in the analysis. Many joint venture agreements or contracts may not be practically feasible or may impose substantial transaction costs (including monitoring costs). In their assessment of

that, "[t]he Agencies will not deem efficiencies to be merger-specific if they could be attained by practical alternatives that mitigate competitive concerns, such as divestiture or licensing. If a merger affects not whether but only when an efficiency would be achieved, only the timing advantage is a merger-specific efficiency."[81]

76. The *Commentary on the Horizontal Merger Guidelines* further states: [82]

> [T]he parties may believe that they can reduce costs by adopting each other's "best practices" or by modernizing outdated equipment. But, in many cases, these efficiencies can be achieved without the proposed merger. The presence of other firms in the industry unilaterally adopting similar "best practices" would suggest that such cost savings are not merger-specific. By contrast, if a "best practice" is protected by intellectual property rights, then it could be the basis for a merger-specific efficiency claim.

In other words, the "best practices" portion of an efficiency that could be practically achievable through other means and is not protected by intellectual property rights is generally not merger-specific.[83]

77. This framework and methodology are consistent with the *Merger Guidelines*, the *Commentary on the Horizontal Merger Guidelines*, and basic principles in accounting, economics, and finance.

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proffered efficiency claims, the Agencies accord appropriate weight to evidence that alternatives to the merger are likely to be impractical or relatively costly." (U.S. Department of Justice & Federal Trade Commission's *Commentary on the Horizontal Merger Guidelines*, dated Mar. 2006, § 4 at 50).

[81] *Merger Guidelines*, § 10 at 30 n.13.

[82] U.S. Department of Justice & Federal Trade Commission's *Commentary on the Horizontal Merger Guidelines*, dated Mar. 2006, § 4 at 50-51.

[83] I note that if a merger can speed the adoption of best practices by the merging parties, then best practices may be a cognizable efficiency, but only for the limited time period until the merging parties could have developed best practices independently.

3. Concluding Comments on the Framework and Methodology

78. As I stated above, the analysis of the cognizable efficiencies claimed by the Merging Parties in the *Merger Guidelines* requires assessing whether the Claimed Efficiencies are: (1) merger-specific, (2) verifiable, and (3) not the result of anticompetitive reductions in output or service.[84] It is widely accepted that accounting, economic, financial analysis, and valuation experts analyze efficiencies claimed in mergers to assist the trier of fact in assessing whether efficiencies are cognizable based on these criteria.[85]

79. Lastly, I note that a finding that a claimed efficiency is not verifiable does not mean that the claimed efficiency does not exist (has a $0 value); rather, it means that the merging parties have not provided sufficient foundation to substantiate the magnitude of the claimed efficiency or to assess the likelihood that a meaningful efficiency will be realized. Said differently, the information provided by the merging parties does not allow a third party to distinguish the magnitude of the claimed efficiency from, for example, 0% or 1% of the amount claimed and 200% or 300% of the amount claimed.

B. Summary of CP's Claimed Efficiencies

80. In this section, I provide a summary of the CP Claimed Efficiencies. CP presented a summary of the Claimed Efficiencies in Appendix B ("Summary of Benefits Exhibit") of Volume 1 of the CP/KCS Application (Total Merger Benefits in the CP/KCS Application). The Summary of Benefits Exhibit partitions the Claimed Efficiencies into two main components: (i) Operating Revenue Gains; and (ii) Operating Benefits. In

[84] *Merger Guidelines*, § 10 at 30. I note that I have not been asked to comment on whether the Claimed Efficiencies are the result of anticompetitive reductions in output or service at this time.

[85] I note that the *Merger Guidelines* state, "[t]he Commentary on the Horizontal Merger Guidelines issued by the Agencies in 2006 remains a valuable supplement to these Guidelines." *Merger Guidelines*, § 1 at 1 n.1.

Exhibit III-2 and presented in the table below, I provide a summary of the Summary of Benefits Exhibit presented by the CP.

Table 4
Summary of Benefits (CP's Claimed Efficiencies)

USD million

SUMMARY OF BENEFITS	NORMAL YEAR
Benefit Component	
OPERATING REVENUE GAINS	
Revenue Increase from Traffic Gains	1,021.9
Cost of Handling Added Traffic:	(306.3)
Net Revenue Gains	**715.6**
OPERATING BENEFITS	
Mechanical	19.9
Transportation	62.5
Equipment Requirements	12.8
Purchasing (Procurement)	20.5
Subtotal	115.7
Support Functions (G&A)	57.1
Total Operating Benefits	172.8
Employee Separation/Relocation	-
Total Merger Benefits	**888.4**

Source: CP/KCS Application Vol I, p. 74 (Appendix B - Summary of Benefits Exhibit)

81. I discuss each of these components below.

1. Operating Revenue Gains

82. In this section, I summarize the Claimed Efficiencies related to the Operating Revenue Gains.

i. Revenue Increase from Traffic Gains

83. The first component of the Operating Revenue Gains is the assumed estimated increase in revenue from traffic gains ("Revenue Increase from Traffic Gains"). CP claims it will achieve $1.0 billion of additional revenue from traffic gains in a "Normal Year."[86] The $1.0 billion Revenue Increase from Traffic Gains is made up of three components of additional revenue: (i) $513.1 million from rail-to-rail diversions; (ii) $98.2 million from truck-to-rail diversions; and (iii) $411.4 million from attracting new rail traffic.

84. The $513.1 million of additional revenue from rail-to-rail diversions is addressed and estimated in the Verified Statement of Richard Brown, a consultant in the Network Industry Strategies practice at FTI, and Nathaniel S. Zebrowski, managing director in the Network Industry Strategies practice at FTI ("Brown and Zebrowski VS").[87] The Brown and Zebrowski VS explains, "[a]s part of the assessment of the market impacts of Canadian Pacific Railway's ('CP') proposed acquisition of control of Kansas City Southern ('KCS'), we have been asked by CP to estimate the amount of railroad traffic that would shift from movement on other railroads to the combined CP/KCS system as a result of the new service offerings, more efficient single-line services, and other changes

[86] STB, Volume I, p. 74 (Summary of Benefits Exhibit).

[87] Verified Statement of Richard W. Brown and Nathaniel S. Zebrowski before the Surface Transportation Board, dated October 28, 2021. Finance Docket No. 36500.

resulting from the Transaction. Such traffic shifts are commonly referred to as rail-to-rail diversions."[88]

85. The $98.2 million of additional revenue from truck-to-rail diversions is addressed and estimated in the Verified Statement of Bengt Muten, Consulting Principal at IHS Markit, ("Muten VS").[89] The Muten VS explains that he was asked "to estimate the expected diversions of current truck traffic to intermodal services the combined Canadian Pacific ('CP') and KCS system will offer."[90]

86. The $411.4 million of additional revenue from attracting new rail traffic is addressed and estimated in the Verified Statement of Jonathan Wahba, Vice President of Commercial Integration at CP, and Michael J. Naatz, Executive Vice President and Chief Marketing Officer at KCS ("Wahba and Naatz VS").[91] The Wahba and Naatz VS explains, "[i]n this statement, we drill down to describe in more detail – and on a commodity-by commodity basis – some of the key opportunities CPKC intends to pursue to bring the benefits of the Transaction to customers across North America."[92]

ii. Costs of Handling Added Traffic

87. CP claims that there will be additional costs related to the Revenue Increase from Traffic Gains in the amount of $306.3 million ("Costs of Handling Added Traffic").[93] The Costs

[88] Brown and Zebrowski VS, p. 4.

[89] Verified Statement of Bengt Mutén before the Surface Transportation Board, dated October 28, 2021. Finance Docket No. 36500.

[90] Muten VS, pp. 2-3.

[91] Verified Statement of Jonathan Wahba and Michael J. Naatz before the Surface Transportation Board, dated October 29, 2021. Finance Docket No. 36500.

[92] Wahba and Naatz VS, p. 4.

[93] STB, Volume I, p. 74 (Summary of Benefits Exhibit).

of Handling Added Traffic are discussed and estimated in the Verified Statement of Michael Baranowski, Sr. Managing Director at FTI, ("Baranowski VS"),[94] which "develop[s] the total dollar value of the operating savings resulting from the Canadian Pacific ('CP')/Kansas City Southern ('KCS') combination, as quantified in the Operating Plan (Exhibit 13 to the Application) and … estimate[s] the additional costs, revenues, and net revenues that would be associated with the additional traffic the CP/KCS system would attract as a result of the merger through extended hauls, rail-to-rail diversions, and truck-to-rail diversions."[95]

88. The Costs of Handling Added Traffic have the following components and amounts:[96]

a. Engineering – Maintenance of Way: $38.8 million
b. Mechanical: $23.4 million
c. Transportation: $204.8 million
d. Equipment Requirements & Utilization: $13.6 million
e. Intermodal Operations: $25.7 million

89. These costs are calculated by multiplying the number of diverted units by the applicable costs for those units (for example, the number of diverted automotive units times the mechanical cost per additional unit).[97]

2. Operating Benefits

90. The Operating Benefits ("Claimed Operating Benefits") include Mechanical, Transportation, Equipment Requirement & Utilization, Purchasing Claimed Efficiencies, which total $115.7 million, which are addressed and estimated in the Baranowski VS.

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[94] Verified Statement of Michael R. Baranowski before the Surface Transportation Board, dated October 28, 2021. Finance Docket No. 36500.

[95] Baranowski VS, p. 3 (footnotes omitted).

[96] Baranowski VS, p. 26.

[97] See FD 36500 – Work Paper – HC – URCS Phase III Calculation For Growth Traffic.

The remainder of the Claimed Operating Benefits consist of general & administrative ("G&A") savings of $57.1 million and are primarily addressed in the Verified Statement of Dean Vargas, the Managing Director of Revenue Planning at CP, ("Vargas VS").[98] I discuss each of these components below.

i. Mechanical

91. The Baranowski VS calculates mechanical savings ("Claimed Mechanical Savings") by calculating claimed operating metrics savings of $52.6 million[99] and allocating a portion of those claimed savings to mechanical operations.[100] The Baranowski VS calculates the claimed operating metrics savings by multiplying the reduction in each operating metric which it identifies (train miles, locomotive unit miles, locomotive gross ton miles, and I&I switches) by "the dollar savings attributable to the operating metric reductions … [based] upon relevant unit costs from the URCS [Uniform Rail Costing System]."[101] Of the total $52.6 million of claimed operating metrics savings, the total Claimed Mechanical Savings are $19.9 million.

ii. Transportation

92. The Baranowski VS calculates transportation savings ("Claimed Transportation Savings") by adding together claimed fuel savings and the claimed operating metrics

[98] Vargas VS.

[99] Baranowski VS, p. 6.

[100] The remaining claimed operating metrics savings are allocated to transportation operations, which I discuss in the next section.

[101] Baranowski VS, p. 5.

savings that were not allocated to the Claimed Mechanical Savings.[102] To calculate the claimed fuel savings, the Baranowski VS states, "I calculated the difference between the number of gallons that would have been consumed … at the base year consumption rate for KCSR and KCSM, and the gallons at the revised consumption rates at each year's projected volumes. I then multiplied the KCS difference by an average price per gallon of $2.04 … and the KCSM difference by an average price of $3.08."[103] The claimed fuel savings are $29.8 million, and the total Claimed Transportation Savings are $62.5 million.

iii. Equipment Requirements & Utilization

93. The Baranowski VS estimates $12.8 million of claimed equipment requirements & utilization costs savings ("Claimed Equipment Savings"), which is equal to the expected savings from the claimed locomotive depreciation and lease annual expense plus the claimed freight cars expense. The Baranowski VS explains the process by which the claimed locomotive depreciation and lease annual expense was calculated:[104]

> The reduction in locomotive unit miles between the base and optimized operating plan will achieve savings for locomotive depreciation and lease costs. I calculated these savings by applying the URCS locomotive depreciation and lease costs per locomotive unit mile and per gross ton mile to the locomotive unit miles saved between the base and the optimized operating plan and the equivalent affected gross ton miles.

[102] While the Baranowski VS calculates the components that make up the Claimed Transportation Savings, the Baranowski VS never specifically identifies the Claimed Transportation Savings; rather, the Claimed Transportation Savings is identified in the Summary of Benefits Exhibit (Appendix B to the CP/KCS Application).

[103] Baranowski VS, p. 7.

[104] Baranowski VS, p. 8.

94. The Baranowski VS also explains the process by which the claimed freight cars expense was calculated:[105]

> CP personnel identified specific reductions in locomotive and freight car counts for the combined system before any extended hauls or traffic diversions … Applicants have determined that full service lease costs for the types of freight cars identified … average $4,800 annually. Based on this number, I calculated the cumulative cost savings attributable to freight cars.

iv. Purchasing (Procurement)

95. The Baranowski VS estimates $20.5 million of claimed procurement savings ("Claimed Procurement Savings"). The Baranowski VS explains the process by which the Claimed Procurement Savings were determined: [106]

> CP identified the total spend by major expense category for which prices are negotiated routinely as part of the procurement process. For each category, CP reviewed the scope of the combined CP/KCS spend and identified opportunities for savings. These opportunities range from increased overall purchase volumes that allow for negotiation of lower rates to the extension of existing favorable terms or best practices to the other carrier. CP then determined the estimated percentage savings from 2019 spend levels that could be achieved in future negotiations by the combined CP/KCS.

v. General & Administrative

96. The Vargas VS summarized "the general and administrative ('G&A') cost savings that CP/KCS expects to realize from the Transaction and describe how these savings were developed."[107] The Vargas VS estimates G&A savings of $57.1 million, which is

[105] Baranowski VS, pp. 9-10.

[106] Baranowski VS, p. 10.

[107] Vargas VS, p. 2.

comprised of personnel savings of $43.7 million and non-personnel savings of $13.4 million ("Claimed G&A Savings").[108]

97. The headcount reductions upon which the personnel savings of $43.7 million are based are addressed in the verified statement of Chad Rolstad, the Vice President of Human Resources and Chief Culture Officer of CP, ("Rolstad VS"),[109] which "explain[s] the steps CP anticipates taking to manage the small number of changes in the non-agreement labor force that will result from implementing the proposed combination of CP and KCS under CP control."[110]

98. The non-personnel savings of $13.4 million estimated in the Vargas VS are comprised of the following components:

- Non-personnel expenditures ($2.0 million): "non-personnel expenditures that will decrease with a reduction in personnel levels, such as business travel and meals, training, and mobile communication."[111]
- IT (Licensing/Subscriptions/Contract Services) ($8.1 million): "These saving [*sic*] will be achieved through … rationalizing IT software licensing and subscription fees, and insourcing of outsourced IT contract services."[112]
- Facilities ($1.4 million): "These saving will be achieved through consolidating the CP and KCS U.S. operating headquarters in Kansas City, eliminating a duplicative IT data center in Minneapolis."[113]
- Audit and listing fees ($1.8 million): "... from eliminating duplicative fees and expenses related to reporting as a publicly traded company, given that the two

[108] Vargas VS, pp. 5-6.

[109] Verified Statement of Chad Rolstad before the Surface Transportation Board, dated October 28, 2021. Finance Docket No. 36500.

[110] Rolstad VS, p. 2.

[111] Vargas VS, p. 6.

[112] Vargas VS, pp. 6-7.

[113] Vargas VS, pp. 6-7.

railroads will report financial results as a single consolidated company. Examples of these duplicative costs include audit and stock exchange listing fees."[114]

C. Analysis of Claimed Efficiencies

99. In this section, I provide my assessment of whether the Claimed Efficiencies are cognizable (verifiable and merger-specific). In my analysis and assessment of the Claimed Efficiencies, I rely on several of the verified statements prepared by experts from Oliver Wyman, a global management consulting firm, that was asked to review certain of the Claimed Efficiencies. Specifically, I have reviewed and rely upon the following verified statements:

- Verified Statement of David T. Hunt related to the expected revenues achievable by the Merged Company ("Hunt VS");[115]
- Verified Statement of Hugh Randall related to the operating costs on the incremental revenue and the forecasted capital expenditures ("Randall VS");[116] and
- Verified Statement of Carl Van Dyke related to the operating plan of CP and KCS ("Van Dyke VS").[117]

1. Revenue Increase from Traffic Gains

100. In this section, I assess the verifiability of claimed revenue efficiencies. I understand that the Hunt VS has also analyzed CP's claimed revenue efficiencies from the perspective of a railroad industry expert, and "review[ed] and comment[ed] on Applicants' testimony regarding the traffic diversions and associated revenues that are

[114] Vargas VS, pp. 6-7.

[115] Verified Statement of David T. Hunt before the Surface Transportation Board, dated February 28, 2022. Finance Docket No. 36500.

[116] Verified Statement of Hugh Randall before the Surface Transportation Board, dated February 28, 2022. Finance Docket No. 36500.

[117] Verified Statement of Carl Van Dyke before the Surface Transportation Board, dated February 28, 2022. Finance Docket No. 36500.

likely to be achieved by the merged CPKC as a result of the proposed transaction."[118] I review the Hunt VS and provide additional analysis interpreting its findings from the perspective of a financial economist and the *Merger Guidelines*.

i. The Baseline Forecasted Market Share that the Merged Company Will Achieve from Rail-to-Rail Diversions Is Not Verifiable

101. The Brown and Zebrowski VS explains the methodology it used to estimate rail-to-rail diversions: "We applied the starting point diversion percentages shown in Table 7 below to project the amount of traffic that will divert to CP/KCS, but as noted below our diversion estimates considered further individualized factors that led us to apply adjustments."[119] As shown in Table 7 of the Brown and Zebrowski VS, the "starting point diversion percentages" are 25% for "[t]raffic moves via single-line option via other carriers," 50% for "[t]raffic moves via interline service via other carriers," 50% or 75% for "CP or KCS participates in traffic via interline service with other carriers," and 75% for "[t]raffic moves in interline service via two interchanges, with CP and KCS at origin or destination and a third bridge carrier."[120]

102. I am not aware of any quantitative analysis or foundation substantiating these baseline diversion percentages. Therefore, given the lack of foundation to support the inputs and assumptions used in this analysis, while it is likely that the Merged Company may achieve some diversions, these claimed diversion percentages cannot be verified.

103. I understand that the Hunt VS has also analyzed the expected incremental revenue per unit from the perspective of a railroad industry expert. The Hunt VS states: "Witnesses

[118] Hunt VS, Section 2.

[119] Brown and Zebrowski VS, p. 22.

[120] Brown and Zebrowski VS, p. 22.

Brown and Zebrowski apply fixed diversion percentages of 25, 50, or even 75 percent that are unsupported by any credible rationale."[121] The Hunt VS's conclusion that the diversion percentages are "unsupported by any credible rationale" provides additional evidence that the revenue per incremental unit of rail-to-rail diversions is not verifiable.

ii. The Forecasted Revenue per Diverted Rail-to-Rail Carload Is Not Verifiable

104. The Brown and Zebrowski VS explains how it estimates incremental revenue per unit: "In light of the factors noted above, and the incentives that incumbent carriers will have to seek to retain the traffic in which they currently participate, we considered it appropriate to assume that CP/KCS would be required to offer rate reductions averaging five percent in order to attract traffic away from existing single-line service to CP/KCS single-line service."[122] I am not aware of any quantitative analysis or foundation that substantiates this 5% reduction in rates is sufficient to realize the forecasted diversions. Therefore, these rates cannot be verified.

105. I understand that the Hunt VS has also analyzed the expected incremental revenue per unit from the perspective of a railroad industry expert. The Hunt VS concluded that "Revenue for post-merger diverted traffic is overstated by $47.4 million due to errors."[123] Specifically, the Hunt VS explains that "the revenue gain for CPKC from diverted traffic should logically reflect the approximate revenue that would be lost by the railroads that currently haul that traffic"[124] and notes that the Brown and Zebrowski VS "considered it

[121] Hunt VS, Section 3.

[122] Brown and Zebrowski VS, p. 21.

[123] Hunt VS, Section 4.2.

[124] Hunt VS, Section 4.2.

appropriate to assume that CP/KCS would be *required to offer rate reductions averaging five percent in order to attract traffic away* from existing single-line service."[125] However, the Hunt VS shows that, due to errors in the Brown and Zebrowski VS's analysis, "the incremental revenue per diverted carload claimed by witnesses Brown and Zebrowski in many cases exceeds the rates currently charged by the incumbent carrier."[126] The Hunt VS concludes that "[i]f Brown and Zebrowski's revenue estimates are accurate, it is hard to see how Applicants can claim that diverting this traffic will be beneficial to shippers, who (according to Brown and Zebrowski's revenue assumptions) would be charged significantly more than the current 'going rate' to move those shipments over longer, more circuitous routes."[127] Thus, these errors identified in the Hunt VS provide additional evidence that the revenue per incremental unit of rail-to-rail diversions is not verifiable.

iii. The Additional Rail-to-Rail Diversions are not Verifiable

106. Additional rail-to-rail diversions are also not verifiable.

Grains

107. Regarding grains, the Wahba and Naatz VS states: "Given our knowledge of the market and our customers, we expect the Transaction to lead to at least a five percent increase in the CP/KCS share of all grains exported from the United States to Mexico."[128] The

[125] Brown and Zebrowski VS, p. 21, ¶32 (emphasis added).

[126] Hunt VS, Section 4.2.

[127] Hunt VS, Section 4.2.

[128] Wahba and Naatz VS, p. 11.

Brown and Zebrowski VS corroborates this claim with its own professional judgement.[129] I am not aware of any quantitative analysis or foundation, however, that substantiates this 5% increase in market share. Therefore, while it is likely that the Merged Company may achieve some increase in market share, this increase in market share cannot be verified.

108. I understand that the Hunt VS has also analyzed the expected increase in market share from the perspective of a railroad industry expert. The Hunt VS states: "This (unexplained) assumption, which increases total revenues from diverted grain shipments in the Brown and Zebrowski diversion model by more than 340 percent, does not appear to be based on any movement-specific analysis … There is no justification or evidentiary support for … this arbitrary increase in CPKC's post-merger grain traffic."[130] This provides additional evidence that the increase in market share is not verifiable.

Lumber

109. Regarding lumber, the Brown and Zebrowski VS states: "In addition to CP/KCS's increased ability to attract Canadian lumber traffic that CP currently hands off to other U.S. carriers, CP/KCS's new single-line routes will also enable it to originate a larger share of lumber from Canadian mills served by both CP and CN (and where CN dominates). We estimate this additional traffic by identifying lumber mills CP can access in Alberta, British Columbia, Ontario, and Quebec, and assuming CP increases its share by five percentage points and moves that traffic to destinations in Dallas and other destinations to either displace existing supply or accommodate future growth."[131] I am

[129] Brown and Zebrowski VS, pp. 25-27.

[130] Hunt VS, Section 4.3.

[131] Brown and Zebrowski VS, p. 44.

not aware of any quantitative analysis or foundation, however, that substantiates this 5% increase in market share. Therefore, while it is likely that the Merged Company may achieve some increase in market share, this increase in market share cannot be verified.

110. I understand that the Hunt VS has also analyzed the expected increase in market share from the perspective of a railroad industry expert. The Hunt VS states: "Witnesses Brown and Zebrowski provide no analysis or calculations to support these market share and growth assumptions. In total, these adjustments account for 2,038 additional carloads, or 56 percent of all incremental revenue from lumber diversions."[132] This provides additional evidence that the increase in market share is not verifiable.

iv. Additional Incremental Revenues Forecasted by the Wahba and Naatz VS Are Not Verifiable

111. The Wahba and Naatz VS identifies additional incremental revenues beyond those identified in the Brown and Zebrowski VS and the Mutén VS. These additional incremental revenues are calculated by identifying the average revenues per car at 2019 levels for certain routes and multiplying that revenue by an estimate of fully phased in units.[133] The Wahba and Naatz VS does not provide an explanation of how almost all of the additional fully phased in units are calculated. With one exception,[134] the values of fully phased in units are either hardcoded[135] or come from calculations that are based on

[132] Hunt VS, Section 4.3.

[133] FD 36500 – Work Paper – HC – Growth Initiative Calculations.xlsx.

[134] FD 36500 – Work Paper – HC – Growth Initiative Calculations.xlsx, cell E23. The one exception is the domestic perishables from Michoacan/Veracruz to Chicago/Twin Cities/Kansas City-2. With regards to perishables, the Hunt VS states, "Applicants do not explain why these shipments are divertible, or why witness Mutén (who clearly was aware of the movements) did not judge them to be divertible." (Hunt VS, Section 5.3).

[135] See, for example, FD 36500 – Work Paper – HC – Growth Initiative Calculations.xlsx, cells E6, E9, and E21.

hardcoded and/or unexplained values.[136] Therefore, while it is possible that the Merged Company may achieve some additional incremental revenues, the total additional incremental revenues forecasted by the Wahba and Naatz VS are not verifiable.

112. I understand that the Hunt VS has also analyzed the expected additional incremental revenues forecasted by the Wahba and Naatz VS from the perspective of a railroad industry expert. The Hunt VS states, "These additional traffic volumes and revenues – which account for $411 million or 40 percent of the total incremental revenue gains set forth in the Application – are based on unrealistic assumptions and unsupported claims."[137] The Hunt VS additionally states: "witnesses Wahba and Naatz are claiming [LPG] traffic that does not currently exist."[138] The Hunt VS's conclusion that the claimed additional incremental revenues lack foundation provides additional evidence that the additional incremental revenues forecasted by the Wahba and Naatz VS are not verifiable.

v. Additional Incremental Revenues Forecasted by the Wahba and Naatz VS Are Not Merger-specific

113. Additional rail-to-rail diversions forecasted by the Wahba and Naatz VS are not merger-specific.

Crude oil

114. Regarding crude oil, the Wahba and Naatz VS states: "The new single-line service unlocked by the CP/KCS Transaction will support the investments needed to accelerate

[136] See, for example, FD 36500 – Work Paper – HC – Growth Initiative Calculations.xlsx, cells E4, E5, and E12.

[137] Hunt VS, Section 3.

[138] Hunt VS, Section 5.3.

the transition away from traditional crude-by-rail and towards the movement of Alberta crude in private cars in non-hazardous DRUbit form."[139] I understand from the Hunt VS, however, that "a crude oil movement from Hardisty, AB to Port Arthur, TX … was made public by the shipper, Gibson Energy, in December 2019" and therefore "this rail movement clearly predates the merger."[140] If incremental revenues can be realized without a merger, then it logically follows that a merger is unnecessary to realize these specific benefits. The incremental revenues from crude oil are not merger-specific and are not cognizable.

Diversions that exclusively utilize the KCS network

115. I understand from the Hunt VS that the Wahba and Naatz VS "attribute[s] $21.1 million … in merger-related benefits to Lazaro Cardenas – Kansas City diversions and another $22.9 million to Lazaro Cardenas-Dallas diversions, routes where KCS could provide single-line service on a stand-alone basis today."[141] I am aware of no reason that has been provided as to why KCS could not realize these diversions as an independent company, and therefore, based on the conclusions presented in the Hunt VS, these diversions are not merger-specific.

2. Cost of Handling Added Traffic

116. In this section, I assess the verifiability of the Claimed Cost of Handling Added Traffic. I understand that the Randall VS has analyzed CP's Claimed Cost of Handling Added Traffic from the perspective of a railroad industry expert, and that it "review[ed] and

[139] Wahba and Naatz VS, p. 43.

[140] Hunt VS, Section 5.1.

[141] Hunt VS, Section 5.2.

comment[ed] on … Applicants' projected post-merger operating expenses."[142] The Randall VS concludes that "Applicants' projected operating expenses for the first three post-merger years are understated by approximately $2.47 billion when compared to the operating expenses actually incurred by CP US and KCS US during the 2015-2019 period."[143]

117. Below, I provide an analysis of the Costs of Handling Added Traffic, which interprets the related verified statements from the perspective of a financial economist and the *Merger Guidelines*.[144]

i. The Cost for Diverted Units Is Not Verifiable

118. The Baranowski VS explains that it calculates the incremental cost per diverted unit by "develop[ing] a model that replicates certain of the relevant URCS costing procedures for the cost components that are affected directly by the traffic shifts that are not accounted for in other analyses undertaken by CP."[145] The Randall VS explains, however, that "Applicants did not base their estimate of incremental operating expenses on the analyses or outputs of their operating plan or system model. Instead, Applicants based their estimate solely on a table of incremental operating expenses that is hard-coded into an

[142] Randall VS, Section 2. The Randall VS explains, "Solely for purposes of this Verified Statement, I have assumed that the envisioned merged railroad, CPKC, will achieve the traffic increases projected in the Application" (Randall VS, Section 2).

[143] Randall VS, Section 4.

[144] I note that the Randall VS "review[s] and comment[s] on … Applicants' estimate of the capacity improvements and other capital expenditures that would be required to handle the additional traffic volumes projected by Applicants safely and efficiently" and concludes that "Applicants' [c]apital [e]xpenses [a]re [s]ignificantly [u]nderstated" (Randall VS, Sections 2-3). I note that to the extent that the Randall VS is correct that the Merged Company underestimates its required capital expenditures, that is further evidence that the costs of revenue efficiencies are understated and not verifiable.

[145] Baranowski VS, p. 15.

unsourced spreadsheet in Applicants' work papers"[146] and that "operating expenses reflected in the Application are nothing more than assumptions that are unsupported by documentation or analysis."[147] Consistent with the finding presented in the Randall VS, I am aware of no facts, calculations, or detailed methodology for the Baranowski VS's calculation of the incremental cost per diverted unit. Therefore, given the lack of sufficient documentation and foundation underlying these assumptions and consistent with the *Merger Guidelines*, I find that the cost per diverted unit is not verifiable.

119. The Baranowski VS calculates the total cost for diverted units by multiplying the incremental cost per diverted unit by the total number of diverted units of each type.[148] As I discussed in Section III.C.1, however, the total number of diverted units is not verifiable. Therefore, neither the cost per unit, nor the number of units, is verifiable and the total cost for diverted units is also not verifiable.

3. Operating Benefits

120. In this section, I assess the claimed Operating Benefits of the Transaction.[149] Those claimed Operating Benefits are divided into Claimed Mechanical Savings, Claimed

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[146] Randall VS, Section 4.

[147] Randall VS, Section 4. In addition, I understand that the Randall VS opines that certain categories of costs were inappropriately excluded from the calculations of the cost of handling additional traffic (Randall VS, Section 4.2).

[148] FD 36500 – Work Paper – HC – URCS Phase III Calculation For Growth Traffic.xlsm, tab Incremental Costs by Category.

[149] I note that the Randall VS has analyzed the speed at which the Claimed Operating Benefits will be realized. The Randall VS states: "Since CP cannot begin to physically integrate its network with KCS or influence KCS operations until the merger is approved, it is unlikely that Applicants would be able to implement all of the operating changes required to generate virtually all of the achievable operating expense savings in the first post-merger year" (Randall VS, Section 4). This provides additional evidence that the rate at which certain claimed cost efficiencies will be realized is not verifiable, further reducing the extent to which these efficiencies are cognizable. See also the *Merger Guidelines*, which explain that "Delayed benefits from efficiencies (due to delay in the achievement of, or the realization of customer benefits from, the efficiencies) will be given less weight because they are less proximate and more difficult to predict" (*Merger Guidelines*, § 10 at 31 n.15).

Transportation Savings, Claimed Equipment Savings, Claimed Procurement Savings, and Claimed G&A Savings.[150]

i. Mechanical

121. As I discussed in Section III.B.2.i, the Claimed Mechanical Savings are equal to a portion of the total claimed operating metrics savings calculated by the Baranowski VS. The Baranowski VS explains that its calculations of the claimed operating metrics savings "reflect[] the operations of a consolidated CP/KCS network … It does this in two phases: first, by identifying the operational efficiencies that arise from operating a larger, fully integrated and optimized network that *adopts the best practices of both railroads*, and second, by planning for and assessing the operations (including capacity additions) that would accommodate the increased traffic the combined system will attract."[151] As I explained Section III.A.2, savings from "best practices" are not merger-specific and thus would not be considered cognizable efficiencies. Therefore, to the extent that the Claimed Mechanical Savings are expected to be realized via adoptions of best practices, they are not cognizable efficiencies, or, at best, cognizable for a limited time period.[152]

122. In addition, I understand that some or all of the Claimed Mechanical Savings are due to implementation of precision scheduled railroading ("PSR").[153] However, the Randall VS

[150] I do not discuss claimed savings from Engineering – Maintenance of Way or Intermodal Operations because they do not have benefits in the Normal Year.

[151] Baranowski VS, pp. 4-5 (emphasis added).

[152] As I explained above when I discussed the framework and methodology to assess merger efficiencies, I note that if a merger can speed the adoption of best practices by the merging parties, then best practices may be a cognizable efficiency, but only for the limited time period until the merging parties could have developed best practices independently.

[153] Specifically, the Randall VS explains that "Without identifying what specific expense reduction measures would be implemented in Year 1, witness Baranowski assumes that CPKC will realize this extremely high percentage of total projected operating expense savings during the first year of the merger, (supposedly) by implementing CP's precision scheduled railroading (PSR) on KCS" (Randall VS, Section 4.3).

explains that "a significant portion of the implementation of PSR has already been realized by KCS without the merger. Beginning in January 2019, KCS commenced an aggressive initiative to implement PSR, which helped to reduce its operating ratio from 69.1 percent in 2019 to 62.2 percent in 2020."[154] Therefore, based on the criteria found in the *Merger Guidelines*, these claimed cost reductions are not merger-specific[155] and thus are not considered cognizable efficiencies.

123. Finally, I note that the expected reduction of train miles per day for KCS's US and Mexican railroads, which is the core input that allows the Merging Parties to realize the Claimed Mechanical Savings, are hardcoded values that are calculated by "{{ }}"[156] I have not seen any explanation for this calculation, and given the lack of foundation to support the inputs and assumptions used in these analyses, the Claimed Mechanical Savings are not verifiable.[157]

ii. Transportation

124. As I discussed in Section III.B.2.i, the Claimed Transportation Savings are equal to a portion of the claimed operating metrics savings calculated by the Baranowski VS plus the claimed fuel savings. I already discussed the reasons that the claimed operating

[154] Randall VS, Section 4.3.

[155] *Merger Guidelines*, § 10 at 30 ("… those efficiencies likely to be accomplished with the proposed merger and unlikely to be accomplished in the absence of either the proposed merger or another means having comparable anticompetitive effects").

[156] FD 36500 – Work Paper – HC – CP Operating Plan Output Cost Metrics Model.xlsx, tab Model, cells C33 and C49.

[157] I note that the reduction in I&I switches is a hardcoded value that cannot be tied directly to FD 36500 – Work Paper – HC – CP Operating Plan Output Cost Metrics Model.xlsx, despite being sourced to this file (see FD 36500 – Work Paper – HC – Base to Optimized Operating Plan Savings.xlsx, tab Base to Optimized Metrics). Therefore, even if the reduction in I&I switches is not related to PSR, it is unexplained and therefore not verifiable.

metrics savings are not cognizable (not verifiable and not merger specific) in the previous section, Section III.C.3.i, and I do not repeat myself here. The Claimed Transportation Savings related to the claimed fuel savings are calculated by applying a "regression of horsepower per ton and gross ton-miles [for CP to the] forecast of Years 1 through 3 gross ton-miles and extrapolat[ing] the results to forecasts of KCSR and KCSM."[158] While a regression is a reasonable process to calculate an efficiency, the forecasts of gross ton-miles are closely linked to the forecasts of incremental revenues, which as I explained in Section III.C.1 are not verifiable. Therefore, the claimed fuel savings are not verifiable.

iii. Equipment Requirements

125. I understand that some or all of the Claimed Equipment Savings, other than the reduction in the claimed freight car expense, are due to implementation of PSR.[159] I already discussed the reasons that the claimed savings related to PSR are not cognizable (not verifiable and not merger specific) in Section III.C.3.i, and I do not repeat myself here. The Claimed Equipment Savings related to the claimed freight car expense is calculated with hardcoded inputs sourced from the Operating Plan.[160] The Van Dyke Verified Statement, however, explains that the Operating Plan is "incomplete and deeply flawed" and "cannot be relied upon in evaluating the impact of the proposed merger on CP-KCS operations, the operations of other railroads, or other stakeholders, such as shippers and

[158] Baranowski VS, p 7.

[159] Specifically, the Randall VS explains that "Without identifying what specific expense reduction measures would be implemented in Year 1, witness Baranowski assumes that CPKC will realize this extremely high percentage of total projected operating expense savings during the first year of the merger, (supposedly) by implementing CP's precision scheduled railroading (PSR) on KCS" (Randall VS, Section 4.3).

[160] FD 36500 – Work Paper – HC – Freight Car Savings.xlsx.

communities."[161] Therefore, the Claimed Equipment Savings related to the reduction in total freight cars is therefore not verifiable.

iv. Purchasing (Procurement)

126. The Baranowski VS calculates the Claimed Procurement Savings by multiplying different categories of costs by assumed savings percentages, which range from {{ }}% to {{ }}%, and which are all hard-coded values that include no additional support or foundation and thus cannot be verified.[162]

127. In addition, as the Baranowski VS explains, some of the savings are expected to result "… from increased overall purchase volumes that allow for negotiation of lower rates to the extension of existing favorable terms or *best practices* to the other carrier."[163] As I explained above, savings from "best practices" are not merger-specific and thus would not be considered cognizable efficiencies or, at best, cognizable for a limited time period.[164] In addition, while savings achieved via pooling purchasing volumes and realizing bulk purchasing discounts are merger-specific, to the extent any expected savings are due to simply realizing another party's more favorable purchasing terms for similar orders, that expected savings is not merger-specific and is therefore not cognizable.

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[161] Van Dyke VS, Section 2.

[162] FD 36500 – Workpaper – HC – CPKCS Procurement Synergies Study.xlsx.

[163] Baranowski VS, p. 10 (emphasis added).

[164] As I explained above when I discussed the framework and methodology to assess merger efficiencies, I note that if a merger can speed the adoption of best practices by the merging parties, then best practices may be a cognizable efficiency, but only for the limited time period until the merging parties could have developed best practices independently.

v. General & Administrative

128. In this section, I assess the Claimed G&A Savings of the Transaction. Those claimed savings are divided into personnel savings and several categories of non-personnel savings: non-personnel expenditures, information technology ("IT") expenditures, facilities, and audit & listing fees.

Personnel Savings

129. The claimed personnel savings are calculated by determining the total cost per employee at each title and division at CP and KCS (for example, the cost of an executive in corporate risk at KCS) and multiplying that total cost for each of those employees by the number of employees terminated at that level in that division from that railroad. These savings are then summed to determine total personnel savings.[165]

130. In Exhibit III-3, I present an example of the calculation of a portion of the claimed personnel savings. Specifically, I show the calculation of the claimed personnel savings related to the elimination of executives in corporate risk from KCS. First, I show the calculation of the total corporate risk executive salary per employee at KCS. This is equal to the KCS corporate risk executive salary plus expected incentive compensation and expected fringe rates compensation. Incentive compensation is equal to {{ }}% of base salary and fringe rates compensation is equal to {{ }}% of base salary. The sum of these three values is the total KCS corporate risk executive compensation per employee of ${{ }} per year. This salary is then multiplied by the total number of KCS corporate risk executive employees to be terminated: {{ }}.

[165] FD 36500 – Work Paper – HC – summary of benefits SG&A.xlsx, tabs Summary, Comp & headcount.

Therefore, the total claimed savings per year are ${{ }}. In order to calculate the total claimed personnel savings efficiency, the Baranowski VS then conducts a similar calculation for each different class of employees (divided by title and division) at each of CP and KCS. The total savings are then summed and represent the total claimed personnel efficiency.

131. While it is likely that the Merged Company may achieve some personnel savings, the personnel savings are not verifiable because CP (and the Vargas VS and the Rolstad VS) rely on unfounded and unsupported assumptions and use business judgment for the headcount reduction assumptions underpinning this claimed efficiency. I have seen no calculations or underlying foundation that provides substantiation of the headcount reductions at each company or the total amount of reduced headcount.

Non-Personnel Expenditures

132. The Vargas VS explains that the claimed non-personnel expenditures savings will be realized because "non-personnel expenditures … will decrease with a reduction in personnel levels."[166] As examples of these expenditures, the Vargas VS lists "business travel and meals, training, and mobile communication."[167] In Exhibit III-4, I show the calculation of the claimed non-personnel expenditures savings. As shown in this exhibit, the Baranowski VS calculates non-personnel expenditures savings for KCS and CP separately. For each railroad, non-personnel expenditures savings are equal to variable G&A per employee times the expected headcount reduction. The total expected savings are ${{ }} and ${{ }} for KCS and CP, respectively. The

[166] Vargas VS, p. 6.

[167] Vargas VS, p. 6.

total expected savings for the Merged Company is the sum of these values, ${{

}}.

133. However, given that this calculation relies upon the expected headcount reduction that, as I discussed above, is not verifiable, this claimed amount of savings is not verifiable either.

IT Expenditures

134. The Vargas VS explains that claimed IT expenditures savings "will be achieved through consolidating the CP and KCS U.S. operating headquarters in Kansas City, eliminating a duplicative IT data center in Minneapolis, rationalizing IT software licensing and subscription fees, and insourcing of outsourced IT contract services."[168]

135. In Exhibit III-5, I show the calculation of this claimed efficiency. The claimed efficiency is equal to the sum of seven categories of claimed IT savings, each of which is a hardcoded value.[169] The savings for each of these categories involves professional or business judgement, however, and each category of savings is calculated by applying estimated, rounded percentages to determine increased demand on IT resources (for licensing and network costs) or net IT savings (for other categories of IT costs).[170]

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[168] Vargas VS, p. 6.

[169] Each of these values is hardcoded in terms of CAD, which is then transformed into a USD value by applying an exchange rate conversion to the expected CAD costs savings (FD 36500 – Work Paper – HC – summary of benefits SG&A.xlsx, tab Non – comp).

[170] Infrastructure licensing and network costs savings are calculated "{{ }}" and "{{ }}" "{{ }}" "{{ }}" "{{ }}" "{{ }}" "{{ }}" "{{ }}"

Therefore, there are no rigorous calculations or underlying foundation that provides substantiation of the inputs to this efficiency, and while it is likely that the Merged Company may achieve some IT expenditures savings, this efficiency is unverified.

Facilities

136. The claimed facilities costs savings is based on the assumption that "{{

}}"[171] These costs are factual and are verified.

Audit & Listing Fees

137. The claimed audit & listing fees costs savings is calculated "from eliminating duplicative fees and expenses related to reporting as a publicly traded company, given that the two railroads will report financial results as a single consolidated company. Examples of these duplicative costs include audit and stock exchange listing fees."[172] In Exhibit III-6, I show the calculation of this claimed efficiency. As shown in this exhibit, the claimed efficiency is equal to the sum of avoided listing fees of $ {{ }} and auditor fees of $ {{ }}.

}}" (FD 36500 – Work Paper – HC – summary of benefits SG&A.xlsx, tabs Summary, Non – comp.)

[171] FD 36500 – Work Paper – HC – summary of benefits SG&A.xlsx, tabs Summary, Non – comp.

[172] Vargas VS, p. 6.

138. Professional or business judgement was used to assume that audit fees would be reduced by "{{ }}"[173] Therefore, because the only foundation for this assumption is business judgement, while it is likely that the Merged Company may achieve some savings related to audit fees, the savings cannot be verified.[174]

4. The Operating Ratio of the Merged Company Provides Additional Evidence that the Claimed Efficiencies Are Not Verifiable

139. The Randall VS provides additional evidence that the Claimed Efficiencies are not verifiable by comparing the forecasted cost for the Merged Company to benchmarks. The Randall VS states that "the projected operating expense per GTM for CPKC of $0.0126 during the first three post-merger years is well below historical benchmarks."[175] The Randall VS also states that the "changes in operating expense per GTM for all of the Class I railroads between 2009 and 2019 … strongly suggest[] that Applicants have significantly underestimated the operating expense per GTM that the combined CPKC system is likely to experience."[176] Furthermore, the Randall VS states that "the implied operating ratio for CPKC's post-merger incremental traffic (based on the incremental revenues and operating expenses set forth in the Application) is far below the historic norms for the US operations of Applicants themselves, and for the US Class I railroads as a group."[177] The *Merger Guidelines* note that Claimed Efficiencies ideally "would be

[173] FD 36500 – Work Paper – HC – summary of benefits SG&A.xlsx, tabs Summary, Non – comp.

[174] The cost savings from the avoided listing fees, $798 thousand, is factual and is verified.

[175] Randall VS, Section 4.4.

[176] Randall VS, Section 4.4.

[177] Randall VS, Section 4.4.

grounded on actual experience."[178] In this instance, the "actual experience" provides evidence that the Merged Company will have greater costs than CP claims. Therefore, this is economic evidence that the expected cost for the Merged Company is not verifiable and may be understated.

[178] "The best way to substantiate an efficiency claim is to demonstrate that similar efficiencies were achieved in the recent past from similar actions. Documentation must be based on appropriate methods and realistic assumptions, and ideally would be grounded on actual experience … If the parties cannot point to similar efficiencies achieved in the recent past, they should use the best information available to substantiate their efficiency claims. For example, the parties might do an internal study and analysis of expected efficiencies using recent cost records and other pertinent objective data" (U.S. Department of Justice & Federal Trade Commission's *Commentary on the Horizontal Merger Guidelines*, dated Mar. 2006, § 4 at 53-54).

VERIFICATION

I, Mark E. Zmijewski, declare under penalty of perjury under the laws of the United States that the foregoing information is true and correct. Further, I certify that I am qualified and authorized to file this statement.

Executed on this 28th day of February, 2022.



Mark E. Zmijewski

Exhibit III-1
Assessment of Claimed Efficiencies

SUMMARY OF BENEFITS	Assessment of Verification	Assessment of Merger Specificity
Benefit Component		
OPERATING REVENUE GAINS		
Revenue Increase from Traffic Gains		
Rail-to-Rail Diversions (Brown/Zebrowski)	Not verified	Merger specific
Truck-to-Rail Diversions (Mutan)	Not verified	Merger specific
Attract New Rail Traffic (Wahba/Naatz)	Not verified	Partially merger-specific
Cost of Handling Added Traffic:		
Engineering - Maintenance of Way	Not verified	Merger specific
Mechanical	Not verified	Merger specific
Transportation	Not verified	Partially merger-specific
Equipment Requirements & Utilization	Not verified	Merger specific
Intermodal Operations	Not verified	Merger specific
OPERATING BENEFITS		
Mechanical	Not verified	Not merger-specific
Transportation	Not verified	Partially merger-specific
Equipment Requirements	Not verified	Partially merger-specific
Purchasing (Procurement)	Not verified	Partially merger-specific
G&A Savings		
Personnel Savings	Not verified	Merger specific
Non-Personnel Savings		
Non-Personnel Expenditures	Not verified	Merger specific
IT (Licensing/Subscriptions/Contract Services)	Not verified	Merger specific
Facilities	Verified	Merger specific
Audit & Listing Fees	Partially verified	Merger specific

Source: CP/KCS Application, Vol I, p. 74 (Appendix B - Summary of Benefits Exhibit)

Exhibit III-2
Summary of Benefits ("Claimed Efficiencies")

USD million

SUMMARY OF BENEFITS	NORMAL YEAR
Benefit Component	
OPERATING REVENUE GAINS	
Revenue Increase from Traffic Gains	1,021.9
Cost of Handling Added Traffic:	(306.3)
Net Revenue Gains	**715.6**
OPERATING BENEFITS	
Mechanical	19.9
Transportation	62.5
Equipment Requirements	12.8
Purchasing (Procurement)	20.5
Subtotal	115.7
Support Functions (G&A)	57.1
Total Operating Benefits	172.8
Employee Separation/Relocation	-
Total Merger Benefits	**888.4**

Source: CP/KCS Application Vol I, p. 74 (Appendix B - Summary of Benefits Exhibit)

Exhibit III-3
Claimed Personnel Savings
KCS Corporate Risk Executives

USD thousands

Description	Formula	Run Rate	Source	Verifiability
KCS corporate risk executive salary	[a]	{{ }}	FD 36500 – Work Paper – HC – summary of benefits SG&A.xlsx	Verifiable
Incentive compensation multiplier	[b]	{{ }}	FD 36500 – Work Paper – HC – summary of benefits SG&A.xlsx	Verifiable
Expected incentive compensation	[c] = [a] x [b]	{{ }}	Calculation	Verifiable
Fringe rates multiplier	[d]	{{ }}	FD 36500 – Work Paper – HC – summary of benefits SG&A.xlsx	Verifiable
Expected fringe rates compensation	[e] = [a] x [d]	{{ }}	Calculation	Verifiable
Total KCS corporate risk executive compensation per employee	[f] = [a] + [c] + [e]	{{ }}	Calculation	Verifiable
Number of KCS corporate risk executive employees terminated	[g]	{{ }}	FD 36500 – Work Paper – HC – summary of benefits SG&A.xlsx	Not verifiable
KCS corporate risk executive savings	[h] = [f] x [g]	{{ }}	Calculation	Not verifiable
Magnitude of verifiable run-rate savings	**n/a**	**-**	**Not verifiable**	

Notes and sources:
Source: FD 36500 – Work Paper – HC – summary of benefits SG&A.xlsx

Exhibit III-4
Claimed Non-Personnel Expenditures Savings

USD thousands

Description	Formula	Run Rate	Source	Verifiability
Variable KCS G&A per employee	[a]	{{ }}	FD 36500 – Work Paper – HC – summary of benefits SG&A.xlsx	Verifiable
KCS headcount reduction	[b]	{{ }}	FD 36500 – Work Paper – HC – summary of benefits SG&A.xlsx	Not verifiable
KCS non-personnel expenditures savings	[c] = [a] x [b]	{{ }}	Calculation	Not verifiable
Variable CP G&A per employee	[d]	{{ }}	FD 36500 – Work Paper – HC – summary of benefits SG&A.xlsx	Verifiable
CP headcount reduction	[e]	{{ }}	FD 36500 – Work Paper – HC – summary of benefits SG&A.xlsx	Not verifiable
CP non-personnel expenditures savings	[f] = [d] x [e]	{{ }}	Calculation	Not verifiable
Total non-personnel expenditures savings	[g] = [c] + [f]	{{ }}	Calculation	Not verifiable
Magnitude of verifiable run-rate savings	**n/a**	**-**	**Not verifiable**	

Notes and sources:
Source: FD 36500 – Work Paper – HC – summary of benefits SG&A.xlsx

Exhibit III-5
Claimed IT Savings

USD thousands

Description	Formula	Run Rate	Source	Verifiability
Infrastructure licensing	[a]	{{ }}	FD 36500 – Work Paper – HC – summary of benefits SG&A.xlsx	Not verifiable
Network	[b]	{{ }}	FD 36500 – Work Paper – HC – summary of benefits SG&A.xlsx	Not verifiable
SAP Licensing/maintenance rationalization and renegotiate	[c]	{{ }}	FD 36500 – Work Paper – HC – summary of benefits SG&A.xlsx	Not verifiable
Microsoft licensing rationalization and renegotiate	[d]	{{ }}	FD 36500 – Work Paper – HC – summary of benefits SG&A.xlsx	Not verifiable
ServiceNow licensing rationalization and renegotiate	[e]	{{ }}	FD 36500 – Work Paper – HC – summary of benefits SG&A.xlsx	Not verifiable
License rationalization and renegotiation of remainder of licenses not identified above	[f]	{{ }}	FD 36500 – Work Paper – HC – summary of benefits SG&A.xlsx	Not verifiable
Transition managed services to Insource	[g]	{{ }}	FD 36500 – Work Paper – HC – summary of benefits SG&A.xlsx	Not verifiable
IT Savings	[h] = [a] + [b] + [c] + [d] + [e] + [f] + [g]	{{ }}	Calculation	Not verifiable
Magnitude of verifiable run-rate savings	**n/a**	**-**	**Not verifiable**	

Notes and sources:
Source: FD 36500 – Work Paper – HC – summary of benefits SG&A.xlsx

Exhibit III-6
Claimed Audit and Listing Fees Savings

USD thousands

Description	Formula	Run Rate	Source	Verifiability
Listing fees	[a]	{{ }}	FD 36500 – Work Paper – HC – summary of benefits SG&A.xlsx	Verifiable
Auditor fees	[b]	{{ }}	FD 36500 – Work Paper – HC – summary of benefits SG&A.xlsx	Not verifiable
Audit & Listing Fees	[c] = [a] + [b]	{{ }}	Calculation	Not verifiable
Magnitude of verifiable run-rate savings	**[a]**	{{ }}	**Verifiable**	

Notes and sources:
Source: FD 36500 – Work Paper – HC – summary of benefits SG&A.xlsx

APPENDIX A – QUALIFICATIONS

1. I specialize in the areas of accounting, economics, and finance as they relate to valuation, financial analysis, and security analysis, or more generally, financial economics. I am Professor Emeritus at The University of Chicago Booth School of Business, and previously held the Charles T. Horngren Professorship and the Leon Carroll Marshall Professorship in my 30-year career at Chicago Booth. In addition to my faculty duties, I also held the positions of Deputy Dean and the PhD Program faculty director at Chicago Booth. I was also the faculty director of the University of Chicago's Center for Research in Security Prices, which is widely recognized for its expertise in building and maintaining historical, academic, research-quality stock market databases.

2. I earned my BS in 1976, MBA in 1981, and PhD (PhD with major in accounting and minors in economics and finance) in 1983, all from the State University of New York at Buffalo. In addition to The University of Chicago, I have taught at the State University of New York at Buffalo and at York University in Toronto, Canada. I have taught various courses in accounting (financial accounting, managerial accounting, and advanced accounting/mergers and acquisitions), finance (corporate finance, financial strategy and corporate transactions, financial analysis, and valuation of companies and corporate transactions), and entrepreneurship.

3. My research focuses on firm valuation, the pricing of securities, including publicly traded securities, and the ways in which various capital market participants use information to value securities. I have taught courses in financial and managerial accounting, mergers and acquisition accounting, financial analysis, corporate valuation, and financial strategy. I have published articles in academic journals in the areas of accounting and financial economics and also co-authored a textbook (with Professor Robert Holthausen of The

Wharton School of the University of Pennsylvania) on how to value companies, parts of companies, and the securities issued by companies, titled *Corporate Valuation: Theory, Evidence and Practice*. I have been an Associate Editor of *The Accounting Review* and have been on the Editorial Boards of both the *Journal of Accounting Research* and *The Accounting Review*.

4. I am a Senior Consultant to Charles River Associates, a consulting firm that provides economic, financial, and management consulting services. I am also a member of the Investment Committee at Patron Capital Partners (Funds IV and V), a private equity investment company with a focus on real estate related investments. I was a founding partner of Chicago Partners, LLC, which was acquired by Navigant Consulting. I am a former managing director of Navigant Economics (a subsidiary of Navigant Consulting) and a former member of the corporate executive committee of Navigant Consulting.

5. I have worked as a consultant or expert in litigation matters in U.S. state and federal courts, in the Supreme Court of Victoria in Australia, and in U.S. and international arbitrations. The issues on which I have worked include: business valuation and securities valuation (valuation of corporate transactions, companies, and parts of companies, intangible assets and intellectual property, and securities); securities litigation (Rule 10b-5, Section 11, Section 12, ERISA, Martin Act, effect of disclosures, analysis of how markets work, and insider trading); mergers and acquisitions (appraisals and price disputes, analyzing merger synergies, material adverse changes, corporate transactions, and the process of purchasing and selling companies); solvency and ability to pay (fraudulent conveyance, solvency assessment, and ability to pay government fines, analysis of debt covenants, renegotiation of terms of debt agreements, and debt

refinancing); antitrust litigation (analysis of merger efficiencies, failing firm defense, and financial analyses of alleged anticompetitive behavior); commercial and stockholder disputes (damages, accounting analyses, and economic assessment of transactions); accounting issues (measuring and analyzing revenue, cost structures, profitability, rates of return, interest rates, and other financial metrics and concepts); and creating and evaluating business plans. The frameworks and tools I use in my work are generally applicable to all industries, and I have applied my expertise in a broad range of sectors, including airline, auto, financial services, chemical, computer hardware and software, credit card and credit card security, energy, entertainment, for-profit education, health care, insurance, heavy and light manufacturing, pharmaceutical, retail, real estate investment funds, technology, telecommunications, transportation, investment companies/funds, investment advisory and brokerage companies, and others. My curriculum vitae, which is attached to this verified statement in Appendix A, details my qualifications, including my publications and testimonial experience within the last five years.

CRA Charles River Associates

Mark E. Zmijewski (Zme – yev' -ski) Bio

Professor Zmijewski specializes in the areas of accounting, economics, and finance as they relate to valuation, financial analysis, and security analysis, or more generally, financial economics. He is Professor Emeritus at The University of Chicago Booth School of Business, and previously held the Charles T. Horngren Professorship and the Leon Carroll Marshall Professorship in his 30-year career at the Booth. In addition to his research and teaching activities, Professor Zmijewski also held the positions of Deputy Dean, Associate Dean for PhD Studies, and the Faculty Director of the Center for Research in Security Prices (CRSP), all at the Booth School of Business. Professor Zmijewski is a Senior Consultant to Charles River Associates, a consulting firm that provides economic, financial, and management consulting services. He is also a Senior Advisor to, and a member of, the Investment Committee at Patron Capital Partners (Funds IV and V), a private equity investment company with a focus on real estate related investments. Professor Zmijewski was a Founding Partner of Chicago Partners, LLC, which was acquired by Navigant Consulting. He is the former Managing Director of Navigant Economics (a subsidiary of Navigant Consulting) and a former member of the Corporate Executive Committee of Navigant Consulting.

Professor Zmijewski earned his BS in 1976, MBA in 1981, and PhD with a major in accounting and minors in economics and finance in 1983, all from the State University of New York at Buffalo. In addition to The University of Chicago, he has taught at the State University of New York at Buffalo and at York University in Toronto, Canada. He has taught various courses in accounting (financial accounting, managerial accounting, and advanced accounting/mergers and acquisitions), finance (corporate finance, financial strategy and corporate transactions, financial analysis, and valuation of companies and corporate transactions), and entrepreneurship. Professor Zmijewski's research has focused on firm valuation and the ways in which various capital market participants use information to value securities. He has published articles in academic journals in the areas of accounting and financial economics and has co-authored a textbook (with Professor Robert Holthausen of The Wharton School of the University of Pennsylvania) on how to value companies, parts of companies, and the securities issued by companies, titled "Corporate Valuation: Theory, Evidence and Practice." He has been an Associate Editor of *The Accounting Review*, and has been on the Editorial Boards of both the *Journal of Accounting Research* and *The Accounting Review*.

Professor Zmijewski has worked as a consultant or expert in litigation matters in US state and federal courts, in the Ontario Superior Court of Justice in Canada, in the Supreme Court of Victoria in Australia, and in US and international arbitrations. The issues on which he has consulted include: business valuation and securities valuation (valuation of corporate transactions, companies, and parts of companies, intangible assets and intellectual property, and securities); securities litigation (10b-5, section 11, section 12, ERISA, Martin Act, and insider trading); material adverse changes; mergers and acquisitions (appraisals and price disputes, analyzing merger synergies, corporate transactions, and the process of purchasing and selling companies); solvency and ability to pay (fraudulent conveyance, solvency assessment, and ability to pay government fines); antitrust litigation (analysis of merger efficiencies, failing firm defense, and financial analyses of alleged anticompetitive behavior); commercial and stockholder disputes (measurement of damages, accounting analyses, and economic assessment of transactions); accounting issues (measuring and analyzing revenue, cost structures, profitability, rates of return, interest rates, and other financial metrics and concepts); and creating and evaluating business plans.

The frameworks and tools used in his work are generally applicable to all industries, and he has applied his expertise in a broad range of sectors, including the airline, auto, chemical, computer hardware and software, credit card, energy, entertainment, financial services, for-profit education, health care, insurance, heavy and light manufacturing, pharmaceutical, retail, real estate investment fund, technology, telecommunications, and transportation industries, among others.

CRA Charles River Associates

Mark E. Zmijewski (Zme-yev'-ski)

Senior Consultant

PhD, Accounting
State University of New York
at Buffalo

MBA, Accounting
State University of New York
at Buffalo

BA, Accounting
State University of New York
at Buffalo

Academic employment

1984–Present	The University of Chicago Booth School of Business
	Professor Emeritus (2018–Present)
	Charles T. Horngren Professor of Accounting (2015–2018)
	Leon Carroll Marshall Professor of Accounting (1999–2015)
	Deputy Dean (1996–2011)
	Professor of Accounting (1992–1999)
	Associate Dean for PhD Studies (1995–1996)
	Executive Director, Center for Research in Securities Prices (CRSP) (1992–1998)
	Associate Professor of Accounting (1988–1992)
	Assistant Professor of Accounting (1984–1988)
1980–1984	*Assistant Professor of Accounting*, State University of New York at Buffalo
1979–1982	*Course Director*, York University, Toronto Canada
1977–1980	*Teaching Assistant*, State University of New York at Buffalo

Honors and awards

Business Information Professional of the Year—Education, Beta Alpha Psi, 2007.

Hillel J. Einhorn Excellence in Teaching Award, The Executive MBA Program, The University of Chicago Graduate School of Business, 1999.

Emory Williams Award for Excellence in Teaching, The University of Chicago, 1988

Competitive Manuscript Award, American Accounting Association, 1984.

Beta Alpha Psi, Honorary Accounting Society, 1981.

Beta Gamma Sigma, Honorary Business Society, 1980.

Grants

Research Grant, SEC and Financial Reporting Institute, 1985.

University Fellowship, State University of New York at Buffalo, 1979.

Graduate Fellowship, State University of New York at Buffalo, 1976–1978.

Publications

Corporate Valuation: Theory, Evidence and Practice (textbook). With Robert W. Holthausen, Cambridge Business Publishers, LLC, 1st Edition, 2014; 2nd edition, 2020.

"Valuation with Market Multiples: How to Avoid Pitfalls When Identifying and Using Comparable Companies." With R. Holthausen. *Journal of Applied Corporate Finance*, Summer 2012.

"Pitfalls in Levering and Unlevering Beta and Cost of Capital Estimates in DCF Valuations." With R. Holthausen. *Journal of Applied Corporate Finance*, Summer 2012.

"Accounting and Disclosure Issues in Structured Finance." With Keith Bockus and W. Dana Northcut. In *Corporate Aftershock: The Public Policy Lessons from the Collapse of Enron and Other Major Corporations*, C.L. Culp and W.A. Niskanen, eds., Wiley, 2003.

"Discovery and the Financial Analyst." With Roger Hickey. *Litigation Services Handbook*, January 1995.

"How Useful Are *Wall Street Week* Stock Recommendations?" With P. Griffin and J. Jones. *Journal of Financial Statement Analysis*, Fall 1995.

"Contemporaneous Announcements of Dividends and Earnings." With R. Leftwich. *Journal of Accounting, Auditing, and Finance*, Autumn 1994.

"The Relative Informativeness of Accounting Disclosures in Different Countries." With A. Alford, J. Jones, and R. Leftwich. *Journal of Accounting Research*, Supplement, 1993.

"Extensions and Violations of the Statutory SEC Form 10-K Filing Requirements." With A. Alford and J. Jones. *Journal of Accounting and Economics*, 1993.

"SEC Form 10-K/10-Q Reports and Annual Reports to Shareholders: Reporting Lags and Squared Market Model Prediction Errors." With P. Easton. *Journal of Accounting Research*, Winter 1993.

The Phish Corporation: A Practice Case in Managerial Accounting, With R. Derstine, R. Huefner, and S. Gunn. McGraw-Hill, 1991.

"Cross-Sectional Variation in the Stock Market Response to the Announcement of Accounting Earnings." With P. Easton. *Journal of Accounting and Economics*, 1989.

"An Evaluation of Alternative Proxies for the Market's Expectation of Earnings." With L. Brown, P. Griffin, and R.L. Hagerman. *Journal of Accounting and Economics*, 1987.

"Predictive Value of Accounting Information." With P. Griffin. In *Usefulness to Investors and Creditors of Information Provided by Financial Reporting*, 2nd Edition, P. Griffin, ed. Financial Accounting Standards Board, 1987.

"Security Analyst Superiority Relative to Univariate Time-Series Models in Forecasting Quarterly Earnings." With L. Brown, P. Griffin, and R. Hagerman. *Journal of Accounting and Economics*, 1987.

"The Effect of Labor Strikes on Security Analysts' Forecast Superiority and on the Association between Risk-Adjusted Stock Returns and Unexpected Earnings." With L. Brown. *Contemporary Accounting Research*, 1987.

"Estimating Models with Binary Dependent Variables: Some Theoretical and Empirical Observations." With G. Gessner, W. Kamakura, and N. Malhotra. *Journal of Business Research*, 1987.

"Methodological Issues Related to the Estimation of Financial Distress Prediction Models." *Journal of Accounting Research*, 1984.

"The Association Between the Magnitude of Quarterly Earnings Forecast Errors and Risk-Adjusted Stock Returns." With R.L. Hagerman and P. Shah. *Journal of Accounting Research*, 1984.

"An Income Strategy Approach to the Positive Theory of Accounting Policy Setting/Choice." With R.L. Hagerman. *Journal of Accounting and Economics*, 1981. Reprinted in *The Economics of Accounting Policy Choice*, Ray Ball and Clifford Smith, Jr., eds. McGraw-Hill, 1992.

"A Test of Accounting Bias and Market Structure: Some Additional Evidence." With R.L. Hagerman. *Review of Business and Economic Research*, 1981.

"Some Economic Determinants of Accounting Policy Choice." With R.L. Hagerman. *Journal of Accounting and Economics*, 1979.

Comments on "Earnings Forecasting Research: Its Implications for Capital Markets Research." *International Journal of Forecasting*.

Dissertation committees

Sandip Madan, The University of Chicago, 1999, Member

Keith Bockus, The University of Chicago, 1998, Co-Chairperson

Beverly Walther, The University of Chicago, 1995, Member

Howard Bunsis, The University of Chicago, 1993, Co-Chairperson

Phillip Berger, The University of Chicago, 1992, Member

Stuart Essig, The University of Chicago, 1991, Member

Sherri Jarrell, The University of Chicago, 1991, Member

Andrew Alford, The University of Chicago, 1990, Chairperson

Mark Lang, The University of Chicago, 1990, Member

Laureen Maines, The University of Chicago, 1990, Member

Walter Teets, The University of Chicago, 1988, Member

Siew Teoh, The University of Chicago, 1988, Member

Kirsten Ely, The University of Chicago, 1988, Member

M. Daniel Beneish, The University of Chicago, 1987, Member

Pat O'Brien, The University of Chicago, 1986, Member

W. Forbes Cavanagh, State University of New York at Buffalo, 1985, Member

University activities

Accounting Advisory Counsel, State University of New York at Buffalo, 1993–1995.

Faculty Facilitator, Leadership, Education, and Development (LEAD) Program, The University of Chicago, Graduate School of Business, 1989, 1991.

Dean's Advisory Committee on MBA Students and Curriculum, The University of Chicago, 1988.

Executive Director, Management Development Council, State University of New York at Buffalo, 1981–1984.

Advisor, Center for Management Development, State University of New York at Buffalo, 1979–1980.

Editorial service and boards

Associate Editor, *The Accounting Review*, 1993–1997.

Editorial Board, *Journal of Accounting Research*, 1988–1993.

Editorial Board, *The Accounting Review*, 1985–1987.

Ad hoc referee

Journal of Accounting, Auditing, and Finance

The Accounting Review

Contemporary Accounting Research

The Financial Review

Journal of Accounting and Economics

Journal of Accounting Research

Journal of Banking and Finance

Journal of Business

Journal of Forecasting

International Journal of Forecasting

Management Science

Professional organizations

American Accounting Association

The American Finance Association

Testimony, declarations, and other court filings and submissions in the past five years

Cineplex, Inc., Plaintiff, v. Cineworld Group PLC and 1232743 B.C. Ltd., Defendants. In the Ontario Superior Court of Justice (Commercial List), Case No. CV-20-00643387-00CL. Expert Report July 15, 2021. Reply Expert Report August 16, 2021. Trial testimony October 4, 2021.

In the Matter of the Amalgamation Agreement Between JMH Investments Limited and JMH Bermuda Limited and Jardine Strategic Holdings Limited and In the Matter of Section 106 of the Companies Act 1981. In the Supreme Court of Bermuda Civil Jurisdiction (Commercial Court). Affidavit filed September 21, 2021.

Hollywood Firefighters' Pension Fund, West Palm Beach Firefighters' Pension Fund, and Sheet Metal Workers' Local Union No. 80 Pension Trust Fund, on behalf of themselves and all similarly situated v. John C. Malone, Gregory B. Maffei, Gregg L. Engles, Ronald A. Duncan, Donne F. Fischer, and Richard R. Green. In the Court of Chancery of the State of Delaware, Case No. 2020-0880-SG. Declaration filed September 14, 2021.

US Airways, Inc., for American Airlines, Inc., (as Successor and Real Party in Interest) v. Sabre Holdings Corporation; Sabre GLBL Inc.; and Sabre Travel International Limited. In the United States District Court Southern District of New York, Civil Action No. 1:11-cv-02725 (LGS). Deposition testimony August 24, 2021.

Joint Petition for Rulemaking to Modernize Annual Revenue Adequacy Determinations on Behalf of Canadian National Railway, Norfolk Southern Railway and Union Pacific Railroad Company. Before the Surface Transportation Board. Verified Statement of Professor Kevin M. Murphy and Professor Mark E. Zmijewski, September 1, 2020. Supplemental Verified Statement of Professor Kevin M. Murphy and Professor Mark E. Zmijewski, October 13, 2020. Reply Verified Statement of Professor Kevin M. Murphy and Professor Mark E. Zmijewski, August 16, 2021.

Ahmed D. Hussein, Plaintiff, v. Sheldon Razin et al., Defendants. In the Superior Court of the State of California For the County of Orange, Case No. 30-2013-00679600-CU-NP-CJC. Deposition testimony June 10, 2015. Deposition testimony October 28, 2020. Trial testimony July 23, 2021.

Fairbank Reconstruction Corp. v. Greater Omaha Packing Co. Inc. In the United States District Court for the Western District of New York, Case No. 1:13-cv-00907. Deposition testimony December 3, 2020.

Norman Leslie Wills and Jane Anne Danaher (as Trustees for the Minty Tin Superannuation Fund), v. Woolworths Group Ltd (formerly Woolworths Ltd), Respondent. In the Federal Court of Australia Victoria Registry, Case No. VID 1131/2018. Expert Report February 17, 2020, Expert Rebuttal Report October 30, 2020.

Railroad Revenue Adequacy – 2019 Determination. Before the Surface Transportation Board. Verified Statement of Professor Kevin M. Murphy and Professor Mark E. Zmijewski, October 21, 2020.

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Zantran Pty Limited, Applicant vs. Crown Resorts Limited, Respondent. In the Federal Court of Australia Victoria Registry, Case No. VID 1317/2017. Expert Report April 18, 2019, Expert Rebuttal Report March 27, 2020, Joint Expert Report June 18, 2020.

Alison Court, et al., Applicants vs. Spotless Group Holdings Limited, Respondent. In the Federal Court of Australia Victoria Registry, Case No. VID 561/2017. Expert Report December 22, 2019, Expert Rebuttal Report March 25, 2020.

In Re *American Realty Capital Properties, Inc. Litigation*. In the United States District Court for the Southern District of New York, C.A. No. 1:15-mc-00040-AKH. Deposition testimony July 26, 2019.

In Re *Appraisal of Jarden Corporation*. In the Court of Chancery of the State of Delaware, Consol. C.A. No. 12456-VCS. Deposition testimony May 2, 2018. Trial testimony June 26, 2018 and June 28, 2018. Affidavit July 26, 2019.

In Re *Bracket Holding Corp. Litigation*. In the Superior Court of the State of Delaware, Consol. C.A. No. N15C-02-233 WCC CCLD. Deposition testimony September 20, 2018. Affidavit July 25, 2019.

Nathan F. Brand et al. v. William A. Linton and Promega Corporation. State of Wisconsin Dane County Circuit Court, Case No. 2016CV001978. Deposition testimony November 14, 2018. Trial testimony July 22, 2019.

Precision Castparts Corp. and PCC Germany Holdings GMBH v. Schulz Holding GMBH & Co. KG, et al. International Centre For Dispute Resolution, American Arbitration Association, Case No. 01-18-0001-0115. First witness statement November 16, 2018. Second witness statement May 17, 2019. Arbitration testimony July 1, 2019.

Reynolds American Inc. v. Third Motion Equities Master Fund Ltd, et al. State of North Carolina Forsythe County. In the General Court of Justice, Superior Court Division, Case No. 17 CVS 7086. Deposition testimony April 17, 2019. Trial testimony June 17, 2019.

In Re *Appraisal of Stillwater Mining Company*. In the Court of Chancery of the State of Delaware. Consol. C.A. No. 2017-0385-JTL. Deposition testimony November 27, 2018. Trial testimony December 13, 2018.

In Re *Appraisal of Columbia Pipeline Group, Inc.* In the Court of Chancery of the State of Delaware, Consol. C.A. No. 12736-VCL. Deposition testimony August 14, 2018. Trial testimony November 2, 2018.

Federal Trade Commission v. Tronox Limited, et al. In the United States District Court for the District of Columbia, Docket No. D09377. Deposition testimony May 15, 2018. Trial testimony May 31, 2018.

Brian Jones, Applicant vs. Treasury Wine Estates Limited, Respondent. In the Federal Court of Australia District of New South Wales, Case No. NSD 660 of 2014. Expert Report February 4, 2017, Expert Rebuttal Report July 10, 2017, Supplemental Expert Rebuttal Report August 17, 2017.

Money Max Int Pty Limited (ACN 152 073 580), as a trustee for the Goldie Superannuation Fund, Applicant vs. QBE Insurance Group Limited (ACN 008 485 014), Respondent. In the Federal Court of Australia, Case No. VID 513 of 2015. Expert Report August 10, 2017.

United States of America v. Bumble Bee Foods, LLC. In the United States District Court, Northern District of California, San Francisco Division, Case No. 17-CR-00249 CRB. Presentations before the U.S. Department of Justice, Antitrust Division September 20, 2016 and January 9, 2017. Declaration filed July 18, 2017.

Authenticom, Inc. v. CDK Global, LLC and The Reynolds and Reynolds Company. In the United States District Court for the Western District of Wisconsin, Case No. 17-CV-318. Declaration filed June 16, 2017. Trial testimony June 28, 2017.

United States Securities and Exchange Commission v. ITT Educational Services, Inc. et al. In the United States District Court, Southern District of Indiana, Indianapolis Division, Case No. 15-CV-00758. Deposition testimony May 10, 2017.

In the matter of Determination of Rates and Terms for Making and Distributing Phonorecords (Phonorecords III). Before the Copyright Royalty Board Library of Congress, Washington, D.C., Docket No. 16-CRB-0003-PR (2018-2022). Trial testimony April 12, 2017.

PharMerica Corporation et al. v. AmerisourceBergen Drug Corporation v. BGS Pharmacy Holding Company et al. In the Jefferson Circuit Court Division Ten (10), Case No. 14-CI-004682. Deposition testimony April 4, 2017.

In Re *Caesars Entertainment Operating Company, Inc., et al. Chapter 11 Bankruptcy Case*. In the United States Bankruptcy Court for the Northern District of Illinois Eastern Division, Case No. 15-01145 (ABG). Declaration filed December 2, 2016.

APPENDIX B – CP'S PRO FORMA EXHIBITS

Exhibit B-I
Canadian Pacific Railway (CP)
Recreated Pro-Forma Income Statement

($ in Millions)	CP HISTORICAL 2019 AS REPORTED US GAAP $CDN (1)	ADJUSTMENTS $CDN (2)	CP BASE YEAR $CDN (3)	CP BASE YEAR $USD (4)
TOTAL REVENUES	$ 7,792	$ -	$ 7,792	$ 5,999
OPERATING EXPENSES	*3,962*	-	*3,962*	*3,050*
DEPRECIATION & AMORTIZATION	*706*	-	*706*	*544*
TOTAL OPERATING EXPENSES	4,668	-	4,668	3,594
OPERATING INCOME	$ 3,124	$ -	$ 3,124	$ 2,405
LESS: OTHER (INCOME) EXPENSES	(470)	94	(376)	(290)
INCOME BEFORE INTEREST AND INCOME TAXES	$ 3,594	$ (94)	$ 3,500	$ 2,695
EARNINGS BEFORE INTEREST, TAXES, DEPRECIATION & AMORTIZATION	*$ 4,300*	*$ (94)*	*$ 4,206*	*$ 3,239*
NET INTEREST EXPENSE	448	-	448	345
INCOME BEFORE INCOME TAX EXPENSE	3,146	(94)	3,052	2,350
INCOME TAX EXPENSE	706	56	762	587
LESS: NET INCOME ATTRIBUTABLE TO NONCONTROLLING INTEREST	-	-	-	-
NET INCOME	$ 2,440	$ (150)	$ 2,290	$ 1,763

NOTES TO PRO FORMA INCOME STATEMENT
CP
BASE YEAR

1. CP HISTORICAL 2019 AS REPORTED: Represents CP's 2019 income statement as reported under US GAAP in its 2019 Annual Report on Form 10-K.

2. ADJUSTMENTS: Represents adjustments made to eliminate effects on CP's income statement of the following non-recurring transactions as reported in 2019:
(1) a deferred tax expense of $24 million as a result of a provision for an uncertain tax item of a prior period;
(2) a deferred tax recovery of $88 million due to the change in the Alberta provincial corporate income tax rate;
(3) a net non-cash gain of $94 million ($86 million after $8 million deferred tax) due to foreign exchange translation of debt and lease liabilities.

3. CP BASE YEAR: Represents CP's 2019 income statement as reported in the 2019 Annual Report on Form 10-K revised to include the adjustments indicated in 2.

4. CP BASE YEAR $USD: Represents the CP Base Year stated in $CDN (3. above) converted to $USD using a conversion factor of $CDN 1 equals 0.7699, which was the exchange rate as of December 31, 2019 from the Bank of Canada.

Bank of Canada December 31, 2019 Exchange Rate		
	Canadian$/US$	1.2988
	US$/Canadian$	0.7699

Source: CP/KCS Application, vol. 1, Appendix F (Exhibit 17), pp. 1-2.

Exhibit B-II
Canadian Pacific Railway (CP)
Recreated Pro-Forma Balance Sheet

($ in Millions)	CP HISTORICAL 2019 AS REPORTED US GAAP $CDN (1)	ADJUSTMENTS $CDN (2)	CP BASE YEAR $CDN (3)	CP BASE YEAR $USD (4)
ASSETS				
CURRENT ASSETS				
CASH AND CASH EQUIVALENTS	$ 133	$ 909	$ 1,042	$ 802
ACCOUNTS RECEIVABLE, NET	805	-	805	620
MATERIALS AND SUPPLIES	182	-	182	140
OTHER CURRENT ASSETS	90	-	90	69
TOTAL CURRENT ASSETS	1,210	909	2,119	1,631
GROSS PROPERTIES	*27,255*	-	*27,255*	*20,985*
ACCUMULATED DEPRECIATION	*(8,099)*	-	*(8,099)*	*(6,236)*
PROPERTIES, NET	19,156	-	19,156	14,749
OTHER ASSETS	2,001	-	2,001	1,541
TOTAL ASSETS	$ 22,367	$ 909	$ 23,276	$ 17,921
LIABILITIES AND SHAREHOLDERS' EQUITY				
CURRENT LIABILITIES				
ACCOUNTS PAYABLE AND ACCRUED LIABILITIES	$ 1,693	$ -	$ 1,693	$ 1,304
LONG-TERM DEBT MATURING WITHIN ONE YEAR	599	-	599	461
TOTAL CURRENT LIABILITIES	2,292	-	2,292	1,765
LONG-TERM DEBT	8,158	-	8,158	6,281
DEFERRED INCOME TAXES	3,501	-	3,501	2,695
OTHER LONG-TERM LIABILITIES	1,347	-	1,347	1,037
TOTAL LIABILITIES	15,298	-	15,298	11,778
SHAREHOLDERS' EQUITY				
SHARE CAPITAL	1,993	-	1,993	1,535
ADDITIONAL PAID-IN CAPITAL	48	-	48	37
ACCUMULATED OTHER COMPREHENSIVE LOSS	(2,522)	-	(2,522)	(1,942)
RETAINED EARNINGS	7,550	909	8,459	6,513
TOTAL SHAREHOLDERS' EQUITY	7,069	909	7,978	6,143
NONCONTROLLING INTEREST	-	-	-	-
TOTAL LIABILITIES AND SHAREHOLDERS' EQUITY	$ 22,367	$ 909	$ 23,276	$ 17,921

NOTES TO PRO FORMA BALANCE SHEET
CP
BASE YEAR

1. CP HISTORICAL 2019 AS REPORTED: Represents CP's 2019 balance sheet as reported under US GAAP in its 2019 Annual Report on Form 10-K.

2. ADJUSTMENTS: Represents $US 700 million merger termination fee paid to CP in Q2 2021.

3. CP BASE YEAR: Represents CP's 2019 balance sheet as reported in the 2019 Annual Report on Form 10-K.

4. CP BASE YEAR $USD: Represents the CP Base Year stated in $CDN (3. above) converted to $USD using a conversion factor of $CDN 1 equals 0.7699, which was the exchange rate as of December 31, 2019 from the Bank of Canada.

Bank of Canada December 31, 2019 Exchange Rate	Canadian$/US$	1.2988
	US$/Canadian$	0.7699

Source: CP/KCS Application, vol. 1, Appendix E (Exhibit 16), pp. 1-2.

Exhibit B-III
Canadian Pacific Railway (CP)
Recreated Pro-Forma Statement of Cash Flows

($ in Millions)	CP HISTORICAL 2019 AS REPORTED US GAAP $CDN (1)	ADJUSTMENTS $CDN (2)	CP BASE YEAR $CDN (3)	CP BASE YEAR $USD (4)
OPERATING ACTIVITIES				
NET INCOME	$ 2,440	$ (150)	$ 2,290	$ 1,763
RECONCILIATION OF NET INCOME TO CASH PROVIDED BY OPERATING ACTIVITIES:				
DEPRECIATION AND AMORTIZATION	706		706	544
DEFERRED INCOME TAX	181	56	237	182
OTHER OPERATING ACTIVITIES, NET	(311)	94	(217)	(167)
CHANGE IN NON-CASH WORKING CAPITAL BALANCES RELATED TO OPERAT	(26)	-	(26)	(20)
CASH PROVIDED BY OPERATING ACTIVITIES	2,990	-	2,990	2,302
INVESTING ACTIVITIES				
ADDITIONS TO PROPERTIES	(1,647)	-	(1,647)	(1,268)
OTHER INVESTING ACTIVITIES	(156)	174	18	14
CASH USED IN INVESTING ACTIVITIES	(1,803)	174	(1,629)	(1,254)
FINANCING ACTIVITIES				
DIVIDENDS PAID	(412)	-	(412)	(317)
ISSUANCE OF COMMON SHARES	26	-	26	20
PURCHASE OF COMMON SHARES	(1,134)	-	(1,134)	(873)
ISSUANCE OF LONG-TERM DEBT (EXCLUDING COMMERCIAL PAPER)	397	-	397	306
REPAYMENT OF LONG-TERM DEBT (EXCLUDING COMMERCIAL PAPER)	(500)	-	(500)	(385)
NET ISSUANCE OF SHORT-TERM DEBT AND COMMERCIAL PAPER	524	-	524	403
OTHER FINANCING ACTIVITIES	(12)	-	(12)	(9)
CASH USED IN FINANCING ACTIVITIES	(1,111)	-	(1,111)	(855)
EFFECT OF FOREIGN CURRENCY FLUCTUATIONS ON FOREIGN-DENOMINATED CASH AND CASH EQUIVALENTS	(4)	-	(4)	(4)
NET INCREASE (DECREASE) IN CASH AND CASH EQUIVALENTS	$ 72	$ 174	$ 246	$ 189

NOTES TO PRO FORMA SOURCES AND APPLICATION OF FUNDS (STATEMENT OF CASH FLOWS)
CP
BASE YEAR

1. CP HISTORICAL 2019 AS REPORTED: Represents CP's 2019 sources and applications of funds as reported under US GAAP in its 2019 Annual Report on Form 10-K.
2. ADJUSTMENTS: Represents adjustments made to eliminate effects on CP's sources and applications of funds of the following non-recurring transactions as reported in 2019:
(1) a deferred tax expense of $24 million as a result of a provision for an uncertain tax item of a prior period;
(2) a deferred tax recovery of $88 million due to the change in the Alberta provincial corporate income tax rate;
(3) a net non-cash gain of $94 million ($86 million after $8 million deferred tax expense) due to foreign exchange translation of debt and lease liabilities;
(4) on December 30, 2019 CP invested $174 million towards the purchase of 100% of Central Maine & Quebec Railway.
3. CP BASE YEAR: Represents CP's 2019 sources and applications of funds as reported in the 2019 Annual Report on Form 10-K revised to include the adjustments indicated in 2.
4. CP BASE YEAR $USD: Represents the CP Base Year stated in $CDN (3. above) converted to $USD using a conversion factor of $CDN 1 equals 0.7699, which was the exchange rate as of December 31, 2019 from the Bank of Canada.

Bank of Canada December 31, 2019 Exchange Rate	Canadian$/US$	1.2988
	US$/Canadian$	0.7699

Source: CP/KCS Application, vol. 1, Appendix G (Exhibit 18), pp. 1-2.

Exhibit B-IV
Kansas City Southern (KCS)
Recreated Pro-Forma Income Statement

($US in Millions)	KCS HISTORICAL 2019 AS REPORTED US GAAP (1)	ADJUSTMENTS (2)	KCS BASE YEAR (3)
TOTAL REVENUES	$ 2,866	$ -	$ 2,866
OPERATING EXPENSES	*1,629*	*(169)*	*1,460*
DEPRECIATION & AMORTIZATION	*351*	-	*351*
TOTAL OPERATING EXPENSES	1,980	(169)	1,811
OPERATING INCOME	$ 886	$ 169	$ 1,055
LESS: OTHER (INCOME) EXPENSES	(18)	17	(1)
INCOME BEFORE INTEREST AND INCOME TAXES	$ 904	$ 152	$ 1,056
EARNINGS BEFORE INTEREST, TAXES, DEPRECIATION & AMORTIZATION	*$ 1,255*	*$ 152*	*$ 1,407*
NET INTEREST EXPENSE	116	-	116
INCOME BEFORE INCOME TAX EXPENSE	788	152	940
INCOME TAX EXPENSE	247	3	250
LESS: NET INCOME ATTRIBUTABLE TO NONCONTROLLING INTEREST	2	-	2
NET INCOME	$ 539	$ 149	$ 688

NOTES TO PRO FORMA INCOME STATEMENT
KCS
BASE YEAR

1. KCS HISTORICAL 2019 AS REPORTED: Represents KCS's 2019 income statement as reported under US GAAP in its 2019 Annual Report on Form 10-K.
2. ADJUSTMENTS: Represents adjustments made to eliminate effects on KCS's income statement of the following non-recurring transactions as reported in 2019:
   (1) restructuring charges: $169 million ($125 million after $44 million tax expense);
   (2) foreign exchange gain: $17 million ($12 million after $5 million tax expense);
   (3) foreign exchange component of income taxes: $36 million expense.
3. KCS BASE YEAR: Represents KCS's 2019 income statement as reported in the 2019 Annual Report on Form 10-K revised to include the adjustments indicated in 2.

Source: CP/KCS Application, vol. 1, Appendix F (Exhibit 17), pp. 3-4.

Exhibit B-V
Kansas City Southern (KCS)
Recreated Pro-Forma Balance Sheet

($US in Millions)	KCS HISTORICAL 2019 AS REPORTED US GAAP (1)	ADJUSTMENTS (2)	KCS BASE YEAR (3)
ASSETS			
CURRENT ASSETS			
CASH AND CASH EQUIVALENTS	$ 149	$ -	$ 149
ACCOUNTS RECEIVABLE, NET	274	-	274
MATERIALS AND SUPPLIES	151	-	151
OTHER CURRENT ASSETS	155	-	155
TOTAL CURRENT ASSETS	729	-	729
GROSS PROPERTIES	*11,496*	-	*11,496*
ACCUMULATED DEPRECIATION	*(2,690)*	-	*(2,690)*
PROPERTIES, NET	8,806	-	8,806
OTHER ASSETS	252	-	252
TOTAL ASSETS	$ 9,787	$ -	$ 9,787
LIABILITIES AND SHAREHOLDERS' EQUITY			
CURRENT LIABILITIES			
ACCOUNTS PAYABLE AND ACCRUED LIABILITIES	$ 473	$ -	$ 473
LONG-TERM DEBT MATURING WITHIN ONE YEAR	18	-	18
TOTAL CURRENT LIABILITIES	491	-	491
LONG-TERM DEBT	3,228	-	3,228
DEFERRED INCOME TAXES	1,128	-	1,128
OTHER LONG-TERM LIABILITIES	194	-	194
TOTAL LIABILITIES	5,041	-	5,041
SHAREHOLDERS' EQUITY			
SHARE CAPITAL	7	-	7
ADDITIONAL PAID-IN CAPITAL	844	-	844
ACCUMULATED OTHER COMPREHENSIVE LOSS	(29)	-	(29)
RETAINED EARNINGS	3,601	-	3,601
TOTAL SHAREHOLDERS' EQUITY	4,423	-	4,423
NONCONTROLLING INTEREST	323	-	323
TOTAL LIABILITIES AND SHAREHOLDERS' EQUITY	$ 9,787	$ -	$ 9,787

NOTES TO PRO FORMA BALANCE SHEET
KCS
BASE YEAR

1. KCS HISTORICAL 2019 AS REPORTED: Represents KCS's 2019 balance sheet as reported under US GAAP in its 2019. Annual Report on Form 10-K.
2. ADJUSTMENTS: No adjustments were necessary to represent KCS's base year balance sheet.
3. KCS BASE YEAR: Represents KCS's 2019 balance sheet as reported in the 2019 Annual Report on Form 10-K.

Source: CP/KCS Application, vol. 1, Appendix E (Exhibit 16), pp. 3-4.

Exhibit B-VI
Kansas City Southern (KCS)
Recreated Pro-Forma Statement of Cash Flows

($US in Millions)	KCS HISTORICAL 2019 AS REPORTED US GAAP (1)	ADJUSTMENTS (2)	KCS BASE YEAR (3)
OPERATING ACTIVITIES			
NET INCOME	$ 541	$ 149	$ 690
RECONCILIATION OF NET INCOME TO CASH PROVIDED BY OPERATING ACTIVITIES:			
DEPRECIATION AND AMORTIZATION	351	-	351
DEFERRED INCOME TAX	53	3	56
OTHER OPERATING ACTIVITIES, NET	168	(120)	48
CHANGE IN NON-CASH WORKING CAPITAL BALANCES RELATED TO OPERATIONS	(10)	-	(10)
CASH PROVIDED BY OPERATING ACTIVITIES	1,103	32	1,135
INVESTING ACTIVITIES			
ADDITIONS TO PROPERTIES	(626)	-	(626)
OTHER INVESTING ACTIVITIES	(50)	-	(50)
CASH USED IN INVESTING ACTIVITIES	(676)	-	(676)
FINANCING ACTIVITIES			
DIVIDENDS PAID	(144)	-	(144)
ISSUANCE OF COMMON SHARES	7	-	7
PURCHASE OF COMMON SHARES	(793)	-	(793)
ISSUANCE OF LONG-TERM DEBT (EXCLUDING COMMERCIAL PAPER)	848	-	848
REPAYMENT OF LONG-TERM DEBT (EXCLUDING COMMERCIAL PAPER)	(285)	-	(285)
NET ISSUANCE OF SHORT-TERM DEBT AND COMMERCIAL PAPER	-	-	-
OTHER FINANCING ACTIVITIES	(12)	-	(12)
CASH USED IN FINANCING ACTIVITIES	(379)	-	(379)
EFFECT OF FOREIGN CURRENCY FLUCTUATIONS ON FOREIGN-DENOMINATED CASH AND CASH EQUIVALENTS	-	-	-
NET INCREASE (DECREASE) IN CASH AND CASH EQUIVALENTS	$ 48	$ 32	$ 80

NOTES TO PRO FORMA SOURCES AND APPLICATION OF FUNDS (STATEMENT OF CASH FLOWS)
KCS
BASE YEAR

1. KCS HISTORICAL 2019 AS REPORTED: Represents KCS's 2019 sources and applications of funds as reported under US GAAP in its 2019 Annual Report on Form 10-K.

2. ADJUSTMENTS: Represents adjustments made to eliminate effects on KCS's sources and applications of funds of the following non-recurring transactions as reported in 2019:

(1) restructuring charges: $169 million ($125 million after $44 million tax expense), partially offset by $6M cash payments for restructuring charges;

(2) foreign exchange gain: $17 million ($12 million after $5 million tax expense);
(3) foreign exchange component of income taxes: $36 million expense;
(4) settlement of treasury lock agreements: $26 million.

3. KCS BASE YEAR: Represents KCS's 2019 sources and applications of funds as reported in the 2019 Annual Report on Form 10-K revised to include the adjustments indicated in 2.

Source: CP/KCS Application, vol. 1, Appendix G (Exhibit 18), pp. 3-4.

Exhibit B-VII
Canadian Pacific Railway (CP) and Kansas City Southern (KCS)
Recreated Pro-Forma Consolidated Income Statement

($US in Millions)	CP BASE YEAR (1)	KCS BASE YEAR (2)	PURCHASE ACCOUNTING ADJUSTMENT (3)	CP/KCS BASE YEAR (4)
TOTAL REVENUES	$ 5,999	$ 2,866	$ -	$ 8,865
OPERATING EXPENSES	*3,050*	*1,460*	-	*4,510*
DEPRECIATION & AMORTIZATION	*544*	351	-	*895*
TOTAL OPERATING EXPENSES	3,594	1,811	-	5,405
OPERATING INCOME	$ 2,405	$ 1,055	$ -	$ 3,460
LESS: OTHER (INCOME) EXPENSES	(290)	(1)	-	(291)
INCOME BEFORE INTEREST AND INCOME TAXES	$ 2,695	$ 1,056	$ -	$ 3,751
EARNINGS BEFORE INTEREST, TAXES, DEPRECIATION & AMORTIZATION	*$ 3,239*	*$ 1,407*	*$ -*	*$ 4,646*
NET INTEREST EXPENSE	345	116	-	461
INCOME BEFORE INCOME TAX EXPENSE	2,350	940	-	3,290
INCOME TAX EXPENSE	587	250	-	837
LESS: NET INCOME ATTRIBUTABLE TO NONCONTROLLING INTEREST	-	2	-	2
NET INCOME	$ 1,763	$ 688	$ -	$ 2,451

NOTES TO PRO FORMA INCOME STATEMENT
CP/KCS
BASE YEAR

1. CP BASE YEAR: Represents CP's 2019 income statement as reported under US GAAP in its 2019 Annual Report on Form 10-K, adjusted to eliminate the effects of non-recurring transactions, and converted from $CDN to $USD. See separate CP base year pro forma income statement included in this section of the Application.

2. KCS BASE YEAR: Represents KCS's 2019 income statement as reported under US GAAP in its 2019 Annual Report on Form 10-K, adjusted to eliminate the effects of non-recurring transactions. See separate KCS base year pro forma income statement included in this section of the Application.

3. PURCHASE ACCOUNTING ADJUSTMENTS: Represents the CP acquisition of KCS and related purchase accounting adjustments.

4. CP/KCS BASE YEAR: Represents the base year income statement for the combined CP/KCS entity.

Source: CP/KCS Application, vol. 1, Appendix F (Exhibit 17), pp. 5-6.

Exhibit B-VIII
Canadian Pacific Railway (CP) and Kansas City Southern (KCS)
Recreated Pro-Forma Consolidated Balance Sheet

($US in Millions)	CP BASE YEAR (1)	KCS BASE YEAR (2)	PURCHASE ACCOUNTING ADJUSTMENT (3)	CP/KCS BASE YEAR (4)
ASSETS				
CURRENT ASSETS				
CASH AND CASH EQUIVALENTS	$ 802	$ 149	$ (851)	$ 100
ACCOUNTS RECEIVABLE, NET	620	274	-	894
MATERIALS AND SUPPLIES	140	151	-	291
OTHER CURRENT ASSETS	69	155		224
TOTAL CURRENT ASSETS	1,631	729	(851)	1,509
GROSS PROPERTIES	20,985	11,496	-	32,481
ACCUMULATED DEPRECIATION	(6,236)	(2,690)	-	(8,926)
PROPERTIES, NET	14,749	8,806	-	23,555
OTHER ASSETS	1,541	252	23,580	25,373
TOTAL ASSETS	$ 17,921	$ 9,787	$ 22,729	$ 50,437
LIABILITIES AND SHAREHOLDERS' EQUITY				
CURRENT LIABILITIES				
ACCOUNTS PAYABLE AND ACCRUED LIABILITIES	$ 1,304	$ 473	$ 65	$ 1,842
LONG-TERM DEBT MATURING WITHIN ONE YEAR	461	18	549	1,028
TOTAL CURRENT LIABILITIES	1,765	491	614	2,870
LONG-TERM DEBT	6,281	3,228	9,142	18,651
DEFERRED INCOME TAXES	2,695	1,128	(66)	3,757
OTHER LONG-TERM LIABILITIES	1,037	194	-	1,231
TOTAL LIABILITIES	11,778	5,041	9,690	26,509
SHAREHOLDERS' EQUITY				
SHARE CAPITAL	1,535	7	17,881	19,423
ADDITIONAL PAID-IN CAPITAL	37	844	(844)	37
ACCUMULATED OTHER COMPREHENSIVE LOSS	(1,942)	(29)	29	(1,942)
RETAINED EARNINGS	6,513	3,601	(4,027)	6,087
TOTAL SHAREHOLDERS' EQUITY	6,143	4,423	13,039	23,605
NONCONTROLLING INTEREST	-	323	-	323
TOTAL LIABILITIES AND SHAREHOLDERS' EQUITY	$ 17,921	$ 9,787	$ 22,729	$ 50,437

NOTES TO PRO FORMA BALANCE SHEET
CP/KCS
BASE YEAR

1. CP BASE YEAR: Represents CP's 2019 balance sheet as reported under US GAAP in its 2019 Annual Report on Form 10-K converted from $CDN to $USD. See separate CP base year pro forma balance sheet included in this section of the Application.

2. KCS BASE YEAR: Represents KCS's 2019 balance sheet as reported under US GAAP in its 2019 Annual Report on Form 10-K. See separate KCS base year pro forma balance sheet included in this section of the Application.

3. PURCHASE ACCOUNTING ADJUSTMENTS: Represents the CP acquisition of KCS and related purchase accounting adjustments:

CASH AND CASH EQUIVALENTS - Adjustments represents cash on hand used to fund the cash consideration portion of the purchase price.

OTHER LONG-TERM ASSETS - Adjustment represents remainder of the total purchase price consideration. Once detailed valuations and related calculations are completed, a material portion of this amount could be attributable to properties, goodwill and intangible assets, other assets, other long-term liabilities, and the related deferred income tax balances.

ACCOUNTS PAYABLE AND ACCRUED LIABILITIES - Adjustment represents post transaction compensation adjustments, primarily retention payments.

LONG-TERM DEBT - Represents the net issuance of long-term debt required to fund the cash consideration of the purchase price, CN agreement termination payments, CP and KCS merger transaction costs, cash settlement of outstanding KCS compensation equity awards, and fair value increase of KCS long-term debt.

DEFERRED INCOME TAXES - Adjustment relates to the fair value adjustment of long-term debt and lease obligations.

TOTAL SHAREHOLDERS' EQUITY - Represents CP common shares issued as part of the purchase price, less KCS base year total shareholders' equity, CP merger transaction costs, and accounts payable and accrued liabilities purchase accounting adjustments.

4. CP/KCS BASE YEAR: Represents the base year balance sheet for the combined CP/KCS entity.

Source: CP/KCS Application, vol. 1, Appendix E (Exhibit 16), pp. 5-6.

Exhibit B-IX
Canadian Pacific Railway (CP) and Kansas City Southern (KCS)
Recreated Pro-Forma Consolidated Statement of Cash Flows

($US in Millions)	CP BASE YEAR (1)	KCS BASE YEAR (2)	PURCHASE ACCOUNTING ADJUSTMENT (3)	CP/KCS BASE YEAR (4)
OPERATING ACTIVITIES				
NET INCOME	$ 1,763	$ 690	$ -	$ 2,453
RECONCILIATION OF NET INCOME TO CASH PROVIDED BY OPERATING ACTIVITIES:				
DEPRECIATION AND AMORTIZATION	544	351	-	895
DEFERRED INCOME TAX	182	56	-	238
OTHER OPERATING ACTIVITIES, NET	(167)	48	-	(119)
CHANGE IN NON-CASH WORKING CAPITAL BALANCES RELATED TO OPERATIONS	(20)	(10)	-	(30)
CASH PROVIDED BY OPERATING ACTIVITIES	2,302	1,135	-	3,437
INVESTING ACTIVITIES				
ADDITIONS TO PROPERTIES	(1,268)	(626)	-	(1,894)
OTHER INVESTING ACTIVITIES	14	(50)	-	(36)
CASH USED IN INVESTING ACTIVITIES	(1,254)	(676)	-	(1,930)
FINANCING ACTIVITIES				
DIVIDENDS PAID	(317)	(144)	-	(461)
ISSUANCE OF COMMON SHARES	20	7	-	27
PURCHASE OF COMMON SHARES	(873)	(793)	-	(1,666)
ISSUANCE OF LONG-TERM DEBT (EXCLUDING COMMERCIAL PAPER)	306	848	-	1,154
REPAYMENT OF LONG-TERM DEBT (EXCLUDING COMMERCIAL PAPER)	(385)	(285)	-	(670)
NET ISSUANCE OF SHORT-TERM DEBT AND COMMERCIAL PAPER	403	-	-	403
OTHER FINANCING ACTIVITIES	(9)	(12)	-	(21)
CASH USED IN FINANCING ACTIVITIES	(855)	(379)	-	(1,234)
EFFECT OF FOREIGN CURRENCY FLUCTUATIONS ON FOREIGN-DENOMINATED CASH AND CASH EQUIVALENTS	(4)	-	-	(4)
NET INCREASE (DECREASE) IN CASH AND CASH EQUIVALENTS	$ 189	$ 80	$ -	$ 269

NOTES TO PRO FORMA SOURCES AND APPLICATION OF FUNDS (STATEMENT OF CASH FLOWS)
CP/KCS
BASE YEAR

1. CP BASE YEAR: Represents CP's 2019 sources and applications of funds as reported under US GAAP in its 2019 Annual Report on Form 10-K, adjusted to eliminate the effects of non-recurring transactions, and converted from $CDN to $USD. See separate CP base year pro forma sources and applications of funds included in this section of the Application.

2. KCS BASE YEAR: Represents KCS's 2019 sources and applications of funds as reported under US GAAP in its 2019 Annual Report on Form 10-K, adjusted to eliminate the effects of non-recurring transactions. See separate KCS base year pro forma sources and applications of funds included in this section of the Application.

3. PURCHASE ACCOUNTING ADJUSTMENTS: Represents the CP acquisition of KCS and related purchase accounting adjustments.

4. CP/KCS BASE YEAR: Represents the base year sources and applications of funds for the combined CP/KCS entity.

Source: CP/KCS Application, vol. 1, Appendix G (Exhibit 18), pp. 5-6.

Exhibit B-X
Canadian Pacific Railway (CP) and Kansas City Southern (KCS)
Recreated Summary of CP/KCS Claimed Efficiencies

($US in Millions)

BENEFIT COMPONENT	YEAR ONE ANNUAL	YEAR ONE ONE-TIME	YEAR TWO ANNUAL	YEAR TWO ONE-TIME	YEAR THREE ANNUAL	YEAR THREE ONE-TIME	NORMAL YEAR	TO 2025 NORMAL YEAR*
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
OPERATING REVENUE GAINS								
Revenue Increase from Traffic Gains	$ 418.0		$ 726.7		$ 1,021.9		$ 1,021.9	$ 1,150.8
Cost of Handling Added Traffic	$ (129.2)		$ (217.8)		$ (306.3)		$ (306.3)	$ (345.0)
Net Revenue Gains	$ 288.9		$ 508.8		$ 715.6		$ 715.6	$ 805.8
OPERATING BENEFITS								
Engineering - Maintenance of Way	$ -	$ (53.6)	$ -	$ (60.9)	$ -	$ (12.0)	$ -	$ -
Mechanical	$ 19.9	$ -	$ 19.9	$ -	$ 19.9	$ -	$ 19.9	$ 22.4
Transportation	$ 59.3	$ -	$ 60.9	$ -	$ 62.5	$ -	$ 62.5	$ 70.4
Equipment Requirements & Utilization	$ 10.1	$ 45.0	$ 11.9	$ 45.0	$ 12.8	$ -	$ 12.8	$ 14.4
Intermodal Operations	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Purchasing	$ 4.2	$ -	$ 12.1	$ -	$ 20.5	$ -	$ 20.5	$ 23.1
Subtotal	$ 93.5	$ (8.6)	$ 104.8	$ (15.9)	$ 115.7	$ (12.0)	$ 115.7	$ 130.3
Support Functions (G&A)	$ 36.0	$ (7.7)	$ 51.0	$ (3.8)	$ 57.1	$ -	$ 57.1	$ 64.3
Total Operating Benefits	$ 129.5	$ (16.3)	$ 155.8	$ (19.7)	$ 172.8	$ (12.0)	$ 172.8	$ 194.6
Employee Separation/Relocation	$ -	$ (42.6)	$ -	$ (3.3)	$ -	$ (6.1)	$ -	$ -
Total Merger Benefits	$ 418.4	$ (58.9)	$ 664.6	$ (23.0)	$ 888.4	$ (18.1)	$ 888.4	$ 1,000.4

* Normal year converted from 2019 to 2025 $US using an index factor of 1.1262 based on Railroad Cost Adjustment Factor All-Inclusive Less Fuel with Error Adjustment (All-LF) forecast.

Source: CP/KCS Application, vol. 1, Appendix B.

Exhibit B-XI
Canadian Pacific Railway (CP) and Kansas City Southern (KCS)
Recreated Pro-Forma Consolidated Income Statement Including the Effects of the Claimed Efficiencies

	CP/KCS BASE YEAR (1)	YEAR 1 ADJ (2)	CP/KCS PRO FORMA YEAR 1 (3)	YEAR 2 ADJ (4)	CP/KCS PRO FORMA YEAR 2 (5)	YEAR 3 ADJ (6)	CP/KCS PRO FORMA YEAR 3 (7)	NORMAL YEAR ADJ (8)	CP/KCS PRO FORMA NORMAL YEAR (9)
TOTAL REVENUES	$ 8,865	$ 418	$ 9,283	$ 727	$ 9,592	$ 1,022	$ 9,887	$ 1,022	$ 9,887
OPERATING EXPENSES	4,510	-	4,510	62	4,572	134	4,644	134	4,644
DEPRECIATION & AMORTIZATION	895	41	936	95	990	148	1,043	201	1,096
TOTAL OPERATING EXPENSES	5,405	41	5,446	157	5,562	282	5,687	335	5,740
OPERATING INCOME	$ 3,460	$ 377	$ 3,837	$ 570	$ 4,030	$ 740	$ 4,200	$ 687	$ 4,147
LESS: OTHER (INCOME) EXPENSES	(291)	-	(291)	-	(291)	-	(291)	-	(291)
INCOME BEFORE INTEREST AND INCOME TAXES	$ 3,751	$ 377	$ 4,128	$ 570	$ 4,321	$ 740	$ 4,491	$ 687	$ 4,438
EARNINGS BEFORE INTEREST, TAXES, DEPRECIATION & AMORTIZATION	$ 4,646	$ 418	$ 5,064	$ 665	$ 5,311	$ 888	$ 5,534	$ 888	$ 5,534
NET INTEREST EXPENSE	461	191	652	176	637	146	607	114	575
INCOME BEFORE INCOME TAX EXPENSE	3,290	186	3,476	394	3,684	594	3,884	573	3,863
INCOME TAX EXPENSE	837	49	886	102	939	153	990	148	985
LESS: NET INCOME ATTRIBUTABLE TO NONCONTROLLING INTEREST	2	-	2	-	2	-	2	-	2
NET INCOME	$ 2,451	$ 137	$ 2,588	$ 292	$ 2,743	$ 441	$ 2,892	$ 425	$ 2,876

NOTES TO PRO FORMA INCOME STATEMENT

CP/KCS

YEAR 1 THROUGH NORMAL YEAR

1. CP BASE YEAR (2019): Represents pro forma combined CP/KCS base year income statement, included separately in this section of the Application.

2. YEAR 1 THROUGH NORMAL YEAR ADUSTMENTS: Represents the effects on the combined CP/KCS pro forma base year income statement of cumulative net benefits arising from implementation of the operating plan, inclusive of one-time expenses related to combining operations, as well as interest expense on acquisition debt:

TOTAL REVENUES - Represents gross revenue gains from additional traffic.

TOTAL OPERATING EXPENSES - Represents net benefits from operating efficiencies, reduced by: (1) additional expenses incurred to handle increased traffic; and (2) increased depreciation expense arising from annual additions to properties (resulting from the base-year sources and applications of funds), and one-time capital expenditures to combine operations.

NET INTEREST EXPENSE - Represents the net increase in interest expense arising from debt incurred to finance the acquisition, net of interest expense reductions arising from debt repayment, and amortization of the fair value increase to KCS long-term debt included in the purchase accounting adjustment.

INCOME TAX EXPENSE - Represents the change in current and deferred income taxes resulting from the net adjustments to pretax earnings as outlined above.

Source: CP/KCS Application, vol. 1, Appendix F (Exhibit 17), pp. 7-11.

Exhibit B-XII
Canadian Pacific Railway (CP) and Kansas City Southern (KCS)
Recreated Pro-Forma Consolidated Balance Sheet Including the Effects of the Claimed Efficiencies

($US in Millions)	CP/KCS BASE YEAR (1)	YEAR 1 ACTIVITY (2)	CP/KCS PRO FORMA YEAR 1 (3)	YEAR 2 ACTIVITY (4)	CP/KCS PRO FORMA YEAR 2 (5)	YEAR 3 ACTIVITY (6)	CP/KCS PRO FORMA YEAR 3 (7)	NORMAL YEAR ACTIVITY (8)	CP/KCS PRO FORMA NORMAL YEAR (9)
ASSETS									
CURRENT ASSETS									
CASH AND CASH EQUIVALENTS	$ 100	$ -	$ 100	$ -	$ 100	$ -	$ 100	$ -	$ 100
ACCOUNTS RECEIVABLE, NET	894	-	894	-	894	-	894	-	894
MATERIALS AND SUPPLIES	291	-	291	-	291	-	291	-	291
OTHER CURRENT ASSETS	224	-	224	-	224	-	224	-	224
TOTAL CURRENT ASSETS	1,509	-	1,509	-	1,509	-	1,509	-	1,509
GROSS PROPERTIES	32,481	1,910	34,391	1,914	36,305	1,906	38,211	1,894	40,105
ACCUMULATED DEPRECIATION	(8,926)	(936)	(9,862)	(990)	(10,852)	(1,043)	(11,895)	(1,096)	(12,991)
PROPERTIES, NET	23,555	974	24,529	924	25,453	863	26,316	798	27,114
OTHER ASSETS	25,373	155	25,528	155	25,683	155	25,838	155	25,993
TOTAL ASSETS	$ 50,437	$ 1,129	$ 51,566	$ 1,079	$ 52,645	$ 1,018	$ 53,663	$ 953	$ 54,616
LIABILITIES AND SHAREHOLDERS' EQUITY									
CURRENT LIABILITIES									
ACCOUNTS PAYABLE AND ACCRUED LIABILITIES	$ 1,842	$ (65)	$ 1,777	$ (30)	$ 1,747	$ (30)	$ 1,717	$ (30)	$ 1,687
LONG-TERM DEBT MATURING WITHIN ONE YEAR	1,028	(549)	479	-	479	-	479	-	479
TOTAL CURRENT LIABILITIES	2,870	(614)	2,256	(30)	2,226	(30)	2,196	(30)	2,166
LONG-TERM DEBT	18,651	(461)	18,190	(1,303)	16,887	(1,523)	15,364	(1,576)	13,788
DEFERRED INCOME TAXES	3,757	225	3,982	238	4,220	251	4,471	249	4,720
OTHER LONG-TERM LIABILITIES	1,231	(25)	1,206	(25)	1,181	(25)	1,156	(25)	1,131
TOTAL LIABILITIES	26,509	(875)	25,634	(1,120)	24,514	(1,327)	23,187	(1,382)	21,805
SHAREHOLDERS' EQUITY									
SHARE CAPITAL	19,423	-	19,423	-	19,423	-	19,423	-	19,423
ADDITIONAL PAID-IN CAPITAL	37	-	37	-	37	-	37	-	37
ACCUMULATED OTHER COMPREHENSIVE LOSS	(1,942)		(1,942)	-	(1,942)	-	(1,942)	-	(1,942)
RETAINED EARNINGS	6,087	2,004	8,091	2,199	10,290	2,345	12,635	2,335	14,970
TOTAL SHAREHOLDERS' EQUITY	23,605	2,004	25,609	2,199	27,808	2,345	30,153	2,335	32,488
NONCONTROLLING INTEREST	323	-	323	-	323	-	323	-	323
TOTAL LIABILITIES AND SHAREHOLDERS' EQUITY	$ 50,437	$ 1,129	$ 51,566	$ 1,079	$ 52,645	$ 1,018	$ 53,663	$ 953	$ 54,616

NOTES TO PRO FORMA BALANCE SHEET

CP/KCS

YEAR 1 THROUGH NORMAL YEAR

1. CP/KCS BASE YEAR (2019) OR PRO FORMA FOR PRECEDING YEAR: For Year 1, represents the pro forma combined CP/KCS base year balance sheet. For Year 2 through Normal Year, represents the pro forma combined CP/KCS for the preceding year. See separate combined CP/KCS Year 1, Year 2, or Year 3 pro forma balance sheets included in this section of the Application.

2. YEAR 1 THROUGH NORMAL YEAR ACTIVITY: Represents the effects on the combined CP/KCS pro forma balance sheets of the operating results (earnings and cash flows) for the respective years, inclusive of adjustments to reflect implementation of the operating plan:

CASH AND CASH EQUIVALENTS - Represents the normal change in cash (resulting from the base year) as derived from the statement of sources and application of funds (statement of cash flows).

PROPERTIES, NET - Represents capital expenditures for each of the respective years, including capital expenditures necessary to combine operations of CP and KCS, less an allowance for depreciation for each year. All years reflect an increase in the normal allowance for depreciation resulting from the capital expenditures to combine operations of CP and KCS.

OTHER LONG-TERM ASSETS - Represents normal expenditures for other investing activities and normal annual other operating activities (base year).

ACCOUNTS PAYABLE AND ACCRUED LIABILITIES - Represents net cash flows from net changes in non-cash working capital balances related to operations, principally net changes in the balance of accounts payable and accrued liabilities.

LONG-TERM DEBT - Represents the net issuance or repayment of long-term debt for the respective years, as well as the amortization of the fair value increase to KCS long-term debt included in the purchase accounting adjustment. In any year where there is a net use of cash arising from the combination of CP and KCS and the implementation of the operating plan, long-term debt is assumed to be issued. In any year where there is a net source of cash arising from the combination and the operating plan, long-term debt is assumed to be repaid.

DEFERRED INCOME TAXES - Represents the net change in the deferred income tax liability resulting principally from different book and tax treatment for depreciation expense and for the depreciation or amortization of components of the excess purchase price resulting from the transaction.

OTHER LONG-TERM LIABILITIES - Represents normal proceeds from other financing activities (resulting from the base year), and effect of foreign currency fluctuations on foreign-denominated cash and cash equivalents, as derived from the statement of sources and application of funds (statement of cash flows).

RETAINED EARNINGS - Represents net earnings for the respective years, less dividends declared and paid to shareholders, and employee separation and relocation costs as a result of combining CP and KCS operations.

Source: CP/KCS Application, vol. 1, Appendix E (Exhibit 16), pp. 7-11.

Exhibit B-XIII
Canadian Pacific Railway (CP) and Kansas City Southern (KCS)
Recreated Pro-Forma Consolidated Statement of Cash Flows Including the Effects of the Claimed Efficiencies

($US in Millions)	CP/KCS BASE YEAR (1)	YEAR 1 ADJ (2)	CP/KCS PRO FORMA YEAR 1 (3)	YEAR 2 ADJ (4)	CP/KCS PRO FORMA YEAR 2 (5)	YEAR 3 ADJ (6)	CP/KCS PRO FORMA YEAR 3 (7)	NORMAL YEAR ADJ (8)	CP/KCS PRO FORMA NORMAL YEAR (9)
OPERATING ACTIVITIES									
NET INCOME	$ 2,453	$ 137	$ 2,590	$ 292	$ 2,745	$ 441	$ 2,894	$ 425	$ 2,878
RECONCILIATION OF NET INCOME TO CASH PROVIDED BY OPERATING ACTIVITIES:									
DEPRECIATION AND AMORTIZATION	895	41	936	95	990	148	1,043	201	1,096
DEFERRED INCOME TAX	238	(16)	222	(3)	235	10	248	8	246
OTHER OPERATING ACTIVITIES, NET	(119)	(58)	(177)	(17)	(136)	(20)	(139)	(12)	(131)
CHANGE IN NON-CASH WORKING CAPITAL BALANCES RELATED TO OPERATIONS	(30)	(35)	(65)	-	(30)	-	(30)	-	(30)
CASH PROVIDED BY OPERATING ACTIVITIES	3,437	69	3,506	367	3,804	579	4,016	622	4,059
INVESTING ACTIVITIES									
ADDITIONS TO PROPERTIES	(1,894)	(16)	(1,910)	(20)	(1,914)	(12)	(1,906)	-	(1,894)
OTHER INVESTING ACTIVITIES	(36)	-	(36)	-	(36)	-	(36)	-	(36)
CASH USED IN INVESTING ACTIVITIES	(1,930)	(16)	(1,946)	(20)	(1,950)	(12)	(1,942)	-	(1,930)
FINANCING ACTIVITIES									
DIVIDENDS PAID	(461)	(82)	(543)	(82)	(543)	(82)	(543)	(82)	(543)
ISSUANCE OF COMMON SHARES	27	(27)	-	(27)	-	(27)	-	(27)	-
PURCHASE OF COMMON SHARES	(1,666)	1,666	-	1,666	-	1,666	-	1,666	-
ISSUANCE OF LONG-TERM DEBT (EXCLUDING COMMERCIAL PAPER)	1,154	-	1,154	-	1,154	-	1,154	-	1,154
REPAYMENT OF LONG-TERM DEBT (EXCLUDING COMMERCIAL PAPER)	(670)	(1,476)	(2,146)	(1,770)	(2,440)	(1,990)	(2,660)	(2,045)	(2,715)
NET ISSUANCE OF SHORT-TERM DEBT AND COMMERCIAL PAPER	403	(403)	-	(403)	-	(403)	-	(403)	-
OTHER FINANCING ACTIVITIES	(21)	-	(21)	-	(21)	-	(21)	-	(21)
CASH USED IN FINANCING ACTIVITIES	(1,234)	(322)	(1,556)	(616)	(1,850)	(836)	(2,070)	(891)	(2,125)
EFFECT OF FOREIGN CURRENCY FLUCTUATIONS ON FOREIGN-DENOMINATED CASH AND CASH EQUIVALENTS	(4)	-	(4)	-	(4)	-	(4)	-	(4)
NET INCREASE (DECREASE) IN CASH AND CASH EQUIVALENTS	$ 269	$ (269)	$ -	$ (269)	$ -	$ (269)	$ -	$ (269)	$ -

NOTES TO PRO FORMA SOURCES AND APPLICATION OF FUNDS (STATEMENT OF CASH FLOWS)

CP-KCS

YEAR 1 THROUGH NORMAL YEAR

1. CP-KCS BASE YEAR (2019): Represents pro forma combined CP-KCS base year sources and application of funds (statement of cash flows), included separately in this section of the

2. YEAR 1 THROUGH NORMAL YEAR ACTIVITY: Represents the effects on the combined CP-KCS pro forma base year sources and application of funds of: (1) cumulative benefits arising from implementation o the operating plan; (2) one-time capital expenditures related to combining operations; and (3) the issuance or repayment of debt.

NET INCOME - Represents net adjustments to net income/(loss) in the respective years, as derived from the income statement.

DEPRECIATION AND AMORTIZATION - Represents the increased depreciation or amortization expense arising from: (1) annual additions to properties (resulting from the base year); and (2) one-time capital expenditures to combine operations.

DEFERRED INCOME TAX EXPENSE - Represents the adjustment to deferred income tax expense resulting from the net adjustment to pretax earnings.

OTHER OPERATING ACTIVITES, NET - Represents annual other operating activities (base year), one-time employee separation and relocation costs as a result of combining CP and KCS operations, and non-cash amortization of the fair value increase to KCS long-term debt included in the purchase accounting adjustment.

CHANGE IN NON-CASH WORKING CAPITAL BALANCES RELATED TO OPERATIONS - Represents annual changes to working capital accounts for each of the respective years, principally changes in accounts payable and accrued liabilities.

ADDITIONS TO PROPERTIES - Represents capital expenditures for each of the respective years, including one-time expenditures required to achieve the benefits of combining operations.

DIVIDENDS PAID - Represents dividend payments for CP's existing common shares outstanding and dividend payments for incremental CP common shares issued as part of the purchase price consideration.

LONG-TERM AND SHORT-TERM DEBT ISSUED / REPAID - Represents the issuance or repayment of long-term debt for the respective years. In any year where there is a net use of cash arising from the combination of CP and KCS and the implementation of the operating plan, long-term debt is assumed to be issued. In any year where there is a net source of cash arising from the combination and the operating plan, long-term debt is assumed to be repaid.

Source: CP/KCS Application, vol. 1, Appendix G (Exhibit 18), pp. 7-11.

Exhibit 5

Excerpts from Transcript of February 4, 2022 Deposition of John Brooks

WITHHELD FROM PUBLIC VERSION

Exhibit 6

Excerpts from Transcript of February 7, 2022 Deposition of W. Robert Majure, Ph.D.

WITHHELD FROM PUBLIC VERSION

Exhibit 7

Excerpts from Transcript of February 18, 2022 Deposition of Raymond A. Elphick and John F. Orr

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Exhibit 8

Excerpts from Transcript of February 22, 2022 Deposition of Patrick J. Ottensmeyer

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Exhibit 9

Excerpts from
2016 KCS
Annual Report

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2016 Annual Report



KANSAS CITY SOUTHERN

Kansas City Southern Lines

Kansas City Southern de México

Panama Canal Railway Company

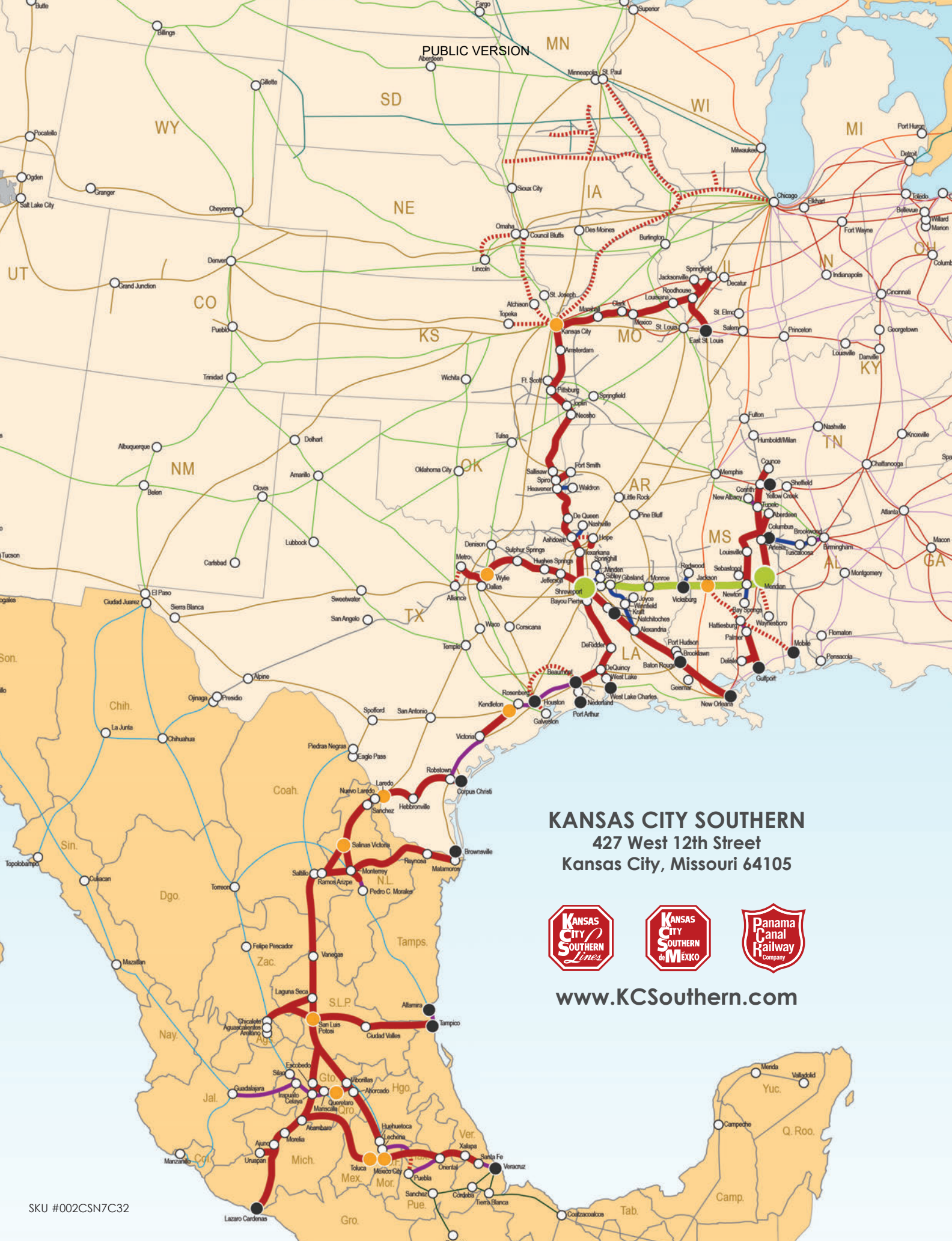

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KANSAS CITY SOUTHERN
427 West 12th Street
Kansas City, Missouri 64105
www.KCSouthern.com
SKU #002CSN7C32

Exhibit 10

Excerpts from
2017 KCS
Annual Report

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2017 Annual Report

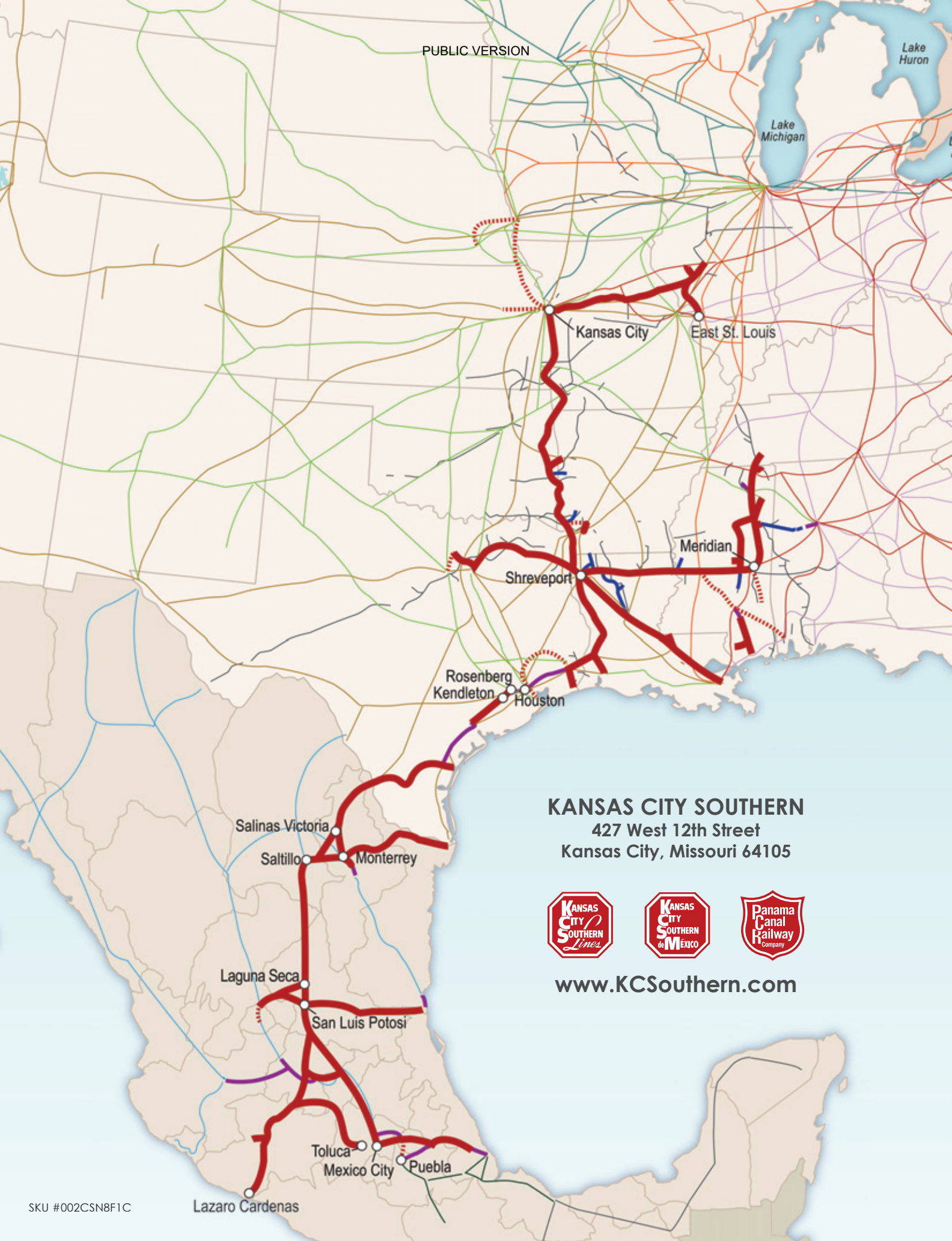


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Exhibit 11

December 3, 2019 Gibson Energy Press Release

Gibson Energy and USD Announce Joint Venture to Construct DRU at Hardisty Utilizing Innovative DRUbit™ Technology and Agreement with ConocoPhillips for 50,000 bbl/d of Capacity

Patented Diluent Recovery Unit Produces DRUbit™ Designed for Rail Transport and Reuse of Diluent Providing a Bitumen Market Access Solution with Significant Safety and Environmental Benefits and Increased Takeaway Capacity at a Cost Competitive with Pipelines

December 03, 2019 16:01 ET | Source: Gibson Energy Inc.

CALGARY, Alberta, Dec. 03, 2019 (GLOBE NEWSWIRE) -- US Development Group, LLC (through a wholly-owned affiliate, collectively **USD**) and Gibson Energy Inc. (**Gibson**) (TSX: GEI) jointly announced today an agreement to construct and operate a diluent recovery unit (**DRU**) near Hardisty, Alberta, Canada. ConocoPhillips Canada has contracted to process 50,000 barrels per day of inlet bitumen blend through the DRU to be shipped by Canadian Pacific (**CP**) (TSX: CP) (NYSE: CP) and Kansas City Southern Railway Company (**KCS**) (NYSE: KSU) to the U.S. Gulf Coast. USD and Gibson are currently in

USD's patented DRU technology separates the diluent that has been added to the raw bitumen in the production process which meets two important market needs – it returns the recovered diluent for reuse in the Alberta market, reducing delivered costs for diluent, and it creates **DRUbit™**, a proprietary heavy Canadian crude oil specifically designed for rail transportation. DRUbit™ is crude oil or bitumen that has been returned to a more concentrated, viscous state that creates safety and environmental benefits when transported by rail in Canada and the U.S. DRUbit™ is a market access solution that will satisfy demand for heavy Canadian crude oil on the U.S. Gulf Coast and in other markets at a cost that is economically competitive to the crude oil that is transported by pipeline today.

"Our DRU technology provides a sustainable, long-term solution for shipping Canadian crude oil to the U.S. Gulf Coast. DRUbit™ offers safety and environmental benefits in transportation, provides greater take-away capacity and improved economics for all parties," said USD CEO, Dan Borgen. "USD is a company that provides solutions for energy infrastructure and our patented DRU technology is another valuable solution. We are thrilled to work with ConocoPhillips Canada, our JV partner Gibson, and both CP and KCS to deliver this DRU and DRUbit™ solution as part of a networked system that provides direct market access for Canadian producers."

"The DRU process is an innovative solution that competes with pipeline economics and secures improved netbacks across the seasonality and widely varying differentials experienced in the Western Canadian spot market," said Kirk Johnson, President, ConocoPhillips Canada. "It helps address a critical challenge to Canada's oil producers — constrained market access — to the benefit of all Canadians."

"We expect DRUs to be a critical part of solving the egress challenges Western Canadian producers are facing, both today and over the long-term," said Steve Spaulding, Gibson's President and Chief Executive Officer. "Improved netbacks for producers will drive increased oilfield and related business activity, create new jobs and help revive communities as well as positively benefit all levels of government through increased royalties and other levies."

standard conditions. The new terminal in Port Arthur will be constructed, owned and operated solely by USD. It will have capability for rail unloading, barge dock loading and unloading, tank storage and blending, and will be pipeline connected to Phillips 66's Beaumont Terminal, providing customers access to a large network of refining and marine facilities. ConocoPhillips will re-blend the DRUbit™ with a variety of diluents to create higher-value customized blends that better meet the needs of its customers.

"From an innovation, sustainability and safety perspective, this is a game changer," said Keith Creel, CP President and CEO. "This process removes diluent from the crude-by-rail supply chain, and as a result, we end up moving a non-hazardous commodity. This will further increase the safety of crude-by-rail, to the benefit of the communities we operate in and through."

"KCS is pleased to be a strategic partner in this innovative solution to improve the economics and safety of moving crude oil," said KCS President and Chief Executive Officer Patrick J. Ottensmeyer. "It's also a great opportunity to grow our business in the Gulf Coast area and develop our Port Arthur asset."

Construction of the DRU is expected to take approximately 18 to 24 months and is subject to certain conditions, including obtaining agreements to underpin the economics of the project and receipt of required regulatory approvals, including from the Alberta Energy Regulator. The DRU could be placed into service as early as the second quarter of 2021.

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About USD Group LLC

US Development Group, LLC ("USD") and its affiliates are engaged in designing, developing, owning, and managing large-scale multi-modal logistics centers and energy-related infrastructure across North America. USD solutions create flexible market access for customers in significant growth areas and key demand centers, including Western Canada, the U.S. Gulf Coast and Mexico. Among other projects, USD is currently pursuing the development of a premier energy logistics terminal on the Houston Ship

additional information, please visit www.usdg.com. Information on websites referenced in this release are not part of this release. DRUbit™ is a trademark of DRU Assets LLC, a subsidiary of USD, and is used by permission. All rights reserved.

About Gibson

Gibson is a Canadian-based oil infrastructure company with its principal businesses consisting of the storage, optimization, processing, and gathering of crude oil and refined products. Headquartered in Calgary, Alberta, the Company's operations are focused around its core terminal assets located at Hardisty and Edmonton, Alberta, and also include the Moose Jaw Facility and an infrastructure position in the U.S. Gibson shares trade under the symbol GEI and are listed on the Toronto Stock Exchange. For more information regarding Gibson as well as the DRU project visit www.gibsonenergy.com and Gibson's profile on SEDAR at www.sedar.com.

About ConocoPhillips

Headquartered in Houston, Texas, ConocoPhillips had operations and activities in 17 countries, $70 billion of total assets, and approximately 10,400 employees as of Sept. 30, 2019. Production excluding Libya averaged 1,310 MBOED for the nine months ended Sept. 30, 2019, and proved reserves were 5.3 BBOE as of Dec. 31, 2018. Our Canadian operations are focused on developing our world-class portfolio including the ConocoPhillips-operated Surmont Joint Venture with TOTAL E&P Canada in the Athabasca region of northeast Alberta and exciting opportunities in the liquids-rich Montney play in northeast British Columbia. For more information, go to www.conocophillips.ca.

About Canadian Paci c

Canadian Pacific (CP) is a transcontinental railway in Canada and the United States with direct links to major ports on the west and east coasts. CP provides North American customers a competitive rail service with access to key markets in every corner of the globe. CP is growing with its customers, offering a suite of freight transportation services, logistics solutions and supply chain expertise. Visit www.cpr.ca to see the rail advantages of CP.

About the Kansas City Southern Railway Company

Headquartered in Kansas City, Mo., Kansas City Southern (KCS) (NYSE: KSU) is a transportation holding company that has railroad investments in the

serving northeastern and central Mexico and the port cities of Lázaro Cárdenas, Tampico and Veracruz, and a 50 percent interest in Panama Canal Railway Company, providing ocean-to-ocean freight and passenger service along the Panama Canal. KCS' North American rail holdings and strategic alliances with other North American rail partners are primary components of a unique railway system, linking the commercial and industrial centers of the U.S., Mexico and Canada. More information about KCS can be found at www.kcsouthern.com.

Forward Looking Statements

Certain statements contained in this press release constitute forward-looking information and statements (collectively, ***forward-looking statements****) including, but not limited to, statements concerning the proposed construction and operations of the DRU, the anticipated benefits, opportunities and sustainability of the DRU and DRUbit™ for project participants, oil field and related business activities, market participants, local communities and governments, the methods of transportation of DRUbit™ and contribution of the DRU to the improvement of market access for oil producers, construction, ownership and operation of USD's Port Arthur terminal and the plans for such terminal, improved industry economics associated with the DRU and transportation of DRUbit™, the safety features of the transportation of DRUbit™ and expectations with respect to the business and financial prospects and opportunities related to the DRU and DRUbit™ transportation.*

These statements relate to future events or future performance. All statements other than statements of historical fact are forward-looking statements. The use of any of the words "anticipate", "plan", "aim", "target", "contemplate", "continue", "estimate", "expect", "intend", "propose", "might", "may", "will", "shall", "project", "should", "could", "would", "believe", "predict", "forecast", "pursue", "potential" and "capable" and similar expressions are intended to identify forward-looking statements. The forward looking statements reflect the project participant's beliefs and assumptions with respect to, among other things, the ability to obtain necessary commercial support and regulatory approvals in connection with the DRU and Port Arthur terminal, the timing of completion of the DRU and Port Arthur terminal, continued market demand, general economic trends, industry trends, commodity prices, capital markets, the governmental, regulatory and legal environment in the various jurisdictions in which they

current and future obligations, ability to obtain financing for capital programs and the DRU and Port Arthur terminal on acceptable terms, the successful and timely implementation of capital projects in a manner consistent with financial expectations and the other business activities of the participants, and other assumptions inherent in management's expectations of future operating and financial results and other forward-looking statements identified herein.

Forward-looking statements involve known and unknown risks, uncertainties and other factors that may cause actual results or events to differ materially from those anticipated in such forward-looking statements. Although the project participants believe these statements to be reasonable, no assurance can be given that these expectations will prove to be correct and such forward-looking statements included in this press release should not be unduly relied upon. Actual results could differ materially from those anticipated in these forward looking statements as a result of, among other things, risks inherent in the businesses conducted by each of the project participants, ability for Gibson and USD to secure additional long-term, take-or-pay agreements with other producer and refiner customers to fully underpin the economics of the project, the ability to satisfy the commercial conditions relating to ConocoPhillips' participation in the DRU project and other conditions associated with the DRU and its construction and operation, the ability of customers to discover and market reserves, construction costs in respect of the DRU and USD's Port Arthur terminal, regulatory decisions, competitive factors in the industries in which the project participants operate, prevailing economic conditions, world-wide demand for crude oil and petroleum products, volatility of commodity prices, currency and interest rates fluctuations, product supply and demand (including demand for DRUbit™), changes in credit ratings applicable to any of the participants, operating costs and the accuracy of cost estimates, exposure to counterparties and partners, including ability and willingness of such parties to satisfy contractual obligations in a timely manner, future capital expenditures, ability to obtain necessary regulatory approvals for the DRU and USD's Port Arthur terminal, the availability, costs, terms and timing of or execution of, and competition for, required regulatory approvals, rail capacity and terminal access, the successful and timely implementation of construction on the DRU and Port Arthur terminal and/or stages thereof, changes to any of the

regulations, including environmental and tax laws and regulations, competition for employees and other personnel, equipment, material and services related thereto, the availability and cost of employees and other personnel, equipment, materials and services, weather, including its impact on product demand, exploration, production and transportation, inherent risks associated with the exploration, development, production and transportation of bitumen, the timing and extent of changes in foreign currency exchange rates, interest rates, inflation rates, global and domestic financial market conditions and global and domestic general economic conditions, political developments around the world, including the areas in which the project participants individually, or collectively, operate, many of which are beyond the control of any of the project participants. Readers are cautioned that the foregoing lists are not exhaustive. For a full discussion of the material risk factors please refer to those included in Gibson's Annual Information Form dated March 4, 2019 as filed on SEDAR and available on the Gibson website at www.gibsonenergy.com, the more detailed information about factors that could affect future events may be found in filings by ConocoPhillips with the Securities and Exchange Commission including ConocoPhillips' Annual Report on Form 10-K for the year ended December 31, 2018 and subsequent reports, those detailed from time to time in reports filed by CP with securities regulators in Canada and the United States under "Risk Factors" and "Management's Discussion and Analysis of Financial Condition and Results of Operations - Forward-Looking Information" in CP's annual and interim reports on Form 10-K and 10-Q, and the more detailed information about factors that could affect future events may be found in filings by KCS with the Securities and Exchange Commission including KCS' Annual Report on Form 10-K for the year ended December 31, 2018 and subsequent reports.

Tags

Gibson Energy | DRUbit | dru | usd

Related Links

- Gibson Energy Website
- US Development Group Website

Recommended

Source: Gibson Energy Inc.

Gibson Energy Con rms 2020 Fourth Quarter and Year-End Earnings Release Date and Provides Conference Call & Webcast Details

CALGARY, Alberta, Jan. 25, 2021 (GLOBE NEWSWIRE) -- Gibson Energy Inc. announced today that it expects to release its 2020 fourth quarter and year-end nancial and operating results on Monday,...

Source: Gibson Energy Inc.

Gibson Energy Announces Redemption of Convertible Debentures

CALGARY, Alberta, Dec. 23, 2020 (GLOBE NEWSWIRE) -- Gibson Energy Inc. announced today that it has completed the previously announced redemption of its outstanding 5.25% convertible unsecured...

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Exhibit 12

Excerpts from October 20, 2020 KCS Board of Directors Meeting Slides

WITHHELD FROM PUBLIC VERSION

Exhibit 13

Excerpts from February 4, 2021 KCS Board of Directors Meeting Materials

WITHHELD FROM PUBLIC VERSION

Exhibit 14

June 3, 2021 CN-KCS Presentation Slides, Bernstein's 37th Annual Strategic Decisions Conference

PUBLIC VERSION

Bernstein's 37th Annual Strategic Decisions Conference

JJ Ruest
President & CEO, CN

Patrick J. Ottensmeyer
President & CEO, KCS

June 3, 2021









Forward-Looking Statements

Certain statements included in this presentation constitute "forward-looking statements" within the meaning of the United States Private Securities Litigation Reform Act of 1995 and under Canadian securities laws, including statements based on management's assessment and assumptions and publicly available information with respect to KCS, regarding the proposed transaction between CN and KCS, the expected benefits of the proposed transaction and future opportunities for the combined company. By their nature, forward-looking statements involve risks, uncertainties and assumptions. CN cautions that its assumptions may not materialize and that current economic conditions render such assumptions, although reasonable at the time they were made, subject to greater uncertainty. Forward-looking statements may be identified by the use of terminology such as "believes," "expects," "anticipates," "assumes," "outlook," "plans," "targets," or other similar words.

Forward-looking statements are not guarantees of future performance and involve risks, uncertainties and other factors which may cause actual results, performance or achievements of CN, or the combined company, to be materially different from the outlook or any future results, performance or achievements implied by such statements. Accordingly, readers are advised not to place undue reliance on forward-looking statements. Important risk factors that could affect the forward-looking statements in this presentation include, but are not limited to: the outcome of the proposed transaction between CN and KCS; the parties' ability to consummate the proposed transaction; the conditions to the completion of the proposed transaction; that the regulatory approvals required for the proposed transaction may not be obtained on the terms expected or on the anticipated schedule or at all; CN's indebtedness, including the substantial indebtedness CN expects to incur and assume in connection with the proposed transaction and the need to generate sufficient cash flows to service and repay such debt; CN's ability to meet expectations regarding the timing, completion and accounting and tax treatments of the proposed transaction; the possibility that CN may be unable to achieve expected synergies and operating efficiencies within the expected time-frames or at all and to successfully integrate KCS' operations with those of CN; that such integration may be more difficult, time-consuming or costly than expected; that operating costs, customer loss and business disruption (including, without limitation, difficulties in maintaining relationships with employees, customers or suppliers) may be greater than expected following the proposed transaction or the public announcement of the proposed transaction; the retention of certain key employees of KCS may be difficult; the duration and effects of the COVID-19 pandemic, general economic and business conditions, particularly in the context of the COVID-19 pandemic; industry competition; inflation, currency and interest rate fluctuations; changes in fuel prices; legislative and/or regulatory developments; compliance with environmental laws and regulations; actions by regulators; the adverse impact of any termination or revocation by the Mexican government of KCS de México, S.A. de C.V.'s Concession; increases in maintenance and operating costs; security threats; reliance on technology and related cybersecurity risk; trade restrictions or other changes to international trade arrangements; transportation of hazardous materials; various events which could disrupt operations, including illegal blockades of rail networks, and natural events such as severe weather, droughts, fires, floods and earthquakes; climate change; labor negotiations and disruptions; environmental claims; uncertainties of investigations, proceedings or other types of claims and litigation; risks and liabilities arising from derailments; timing and completion of capital programs; and other risks detailed from time to time in reports filed by CN with securities regulators in Canada and the United States. Reference should also be made to Management's Discussion and Analysis in CN's annual and interim reports, Annual Information Form and Form 40-F, filed with Canadian and U.S. securities regulators and available on CN's website, for a description of major risk factors relating to CN. Additional risks that may affect KCS' results of operations appear in Part I, Item 1A "Risks Related to KCS's Operations and Business" of KCS' Annual Report on Form 10-K for the year ended December 31, 2020, and in KCS' other filings with the U.S. Securities and Exchange Commission ("SEC").

Forward-looking statements reflect information as of the date on which they are made. CN assumes no obligation to update or revise forward-looking statements to reflect future events, changes in circumstances, or changes in beliefs, unless required by applicable securities laws. In the event CN does update any forward-looking statement, no inference should be made that CN will make additional updates with respect to that statement, related matters, or any other forward-looking statement.

Additional Information

No Offer or Solicitation
This presentation does not constitute an offer to sell or the solicitation of an offer to buy any securities or a solicitation of any vote or approval, nor shall there be any sale of securities in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such jurisdiction. No offer of securities shall be made except by means of a prospectus meeting the requirements of Section 10 of the Securities Act of 1933, as amended.

Additional Information and Where to Find It
In connection with the proposed transaction, CN will file with the SEC a registration statement on Form F-4 to register the shares to be issued in connection with the proposed transaction. The registration statement will include a preliminary proxy statement of KCS which, when finalized, will be sent to the stockholders of KCS seeking their approval of the merger-related proposals. This presentation is not a substitute for the proxy statement or registration statement or other document CN and/or KCS may file with the SEC or applicable securities regulators in Canada in connection with the proposed transaction.

INVESTORS AND SECURITY HOLDERS ARE URGED TO READ THE PROXY STATEMENT(S), REGISTRATION STATEMENT(S), TENDER OFFER STATEMENT, PROSPECTUS AND ANY OTHER RELEVANT DOCUMENTS FILED WITH THE SEC OR APPLICABLE SECURITIES REGULATORS IN CANADA CAREFULLY IN THEIR ENTIRETY IF AND WHEN THEY BECOME AVAILABLE BECAUSE THEY WILL CONTAIN IMPORTANT INFORMATION ABOUT CN, KCS AND THE PROPOSED TRANSACTIONS. Any definitive proxy statement(s), registration statement or prospectus(es) and other documents filed by CN and KCS (if and when available) will be mailed to stockholders of CN and/or KCS, as applicable. Investors and security holders will be able to obtain copies of these documents (if and when available) and other documents filed with the SEC and applicable securities regulators in Canada by CN free of charge through at www.sec.gov and www.sedar.com. Copies of the documents filed by CN (if and when available) will also be made available free of charge by accessing CN's website at www.CN.ca. Copies of the documents filed by KCS (if and when available) will also be made available free of charge at www.investors.kcsouthern.com, upon written request delivered to KCS at 427 West 12th Street, Kansas City, Missouri 64105, Attention: Corporate Secretary, or by calling KCS's Corporate Secretary's Office by telephone at 1-888-800-3690 or by email at corpsec@kcsouthern.com.

Participants
This presentation is neither a solicitation of a proxy nor a substitute for any proxy statement or other filings that may be made with the SEC and applicable securities regulators in Canada. Nonetheless, CN, KCS, and certain of their directors and executive officers and other members of management and employees may be deemed to be participants in the solicitation of proxies in respect of the proposed transactions. Information about CN's executive officers and directors is available in its 2021 Management Information Circular, dated March 9, 2021, as well as its 2020 Annual Report on Form 40-F filed with the SEC on February 1, 2021, in each case available on its website at www.CN.ca/investors/ and at www.sec.gov and www.sedar.com. Information about KCS' directors and executive officers may be found on its website at www.kcsouthern.com and in its 2020 Annual Report on Form 10-K filed with the SEC on January 29, 2021, available at www.investors.kcsouthern.com and www.sec.gov. Additional information regarding the interests of such potential participants will be included in one or more registration statements, proxy statements, tender offer statements or other documents filed with the SEC and applicable securities regulators in Canada if and when they become available. These documents (if and when available) may be obtained free of charge from the SEC's website at www.sec.gov and from www.sedar.com, as applicable.

Non-GAAP Measures
CN reports its financial results in accordance with United States generally accepted accounting principles (GAAP). This presentation includes certain forward looking non-GAAP measures, including EBITDA, free cash flow and adjusted debt-to-adjusted EBITDA multiples. These non-GAAP measures may not be comparable to similar measures presented by other companies. It is not practicable to reconcile, without unreasonable efforts, these forward-looking measures to the most comparable GAAP measures, due to unknown variables and uncertainty related to future results. Please see note on Forward-Looking Statements above for further discussion.

All amounts in this presentation are expressed in US dollars, unless otherwise noted. All references to the "Company" are to CN.

CN-KCS: An "End-to-End" Merger That Will Enhance Choice and Competition

CUSTOMER CHOICE

- Wide variety of transportation options in the center of the U.S. including rails, highways and barges on the Mississippi River system
- The CN-KCS combination will create and add new direct rail routes that will **enhance multimodal competition** and **maximize customer choice**
- Committed to preserve connectivity by **keeping current gateways open**

NEW OPPORTUNITIES

- Create service where no direct choices exist today, **enhancing competition** between motor carriers and railroads and among railroads
- Provide grain shippers in Illinois with **new access** to East St. Louis and new direct single-line service to Mexico and ports in Mobile / New Orleans

NO OVERLAP

- CN has committed to a divestiture of a 70-mile section of track that would result in **zero overlap**
- **End-to-end** merger ensures that shippers enjoy the **same number of options** that they do today

CONTINUED INVESTMENT

- **$250 million in infrastructure investments** across CN and KCS lines
- Results in **more efficiency, more capacity and more opportunities for employees and communities**



CN-KCS is a fully end-to-end merger that will produce significant public interest benefits

High Confidence in Our Original Estimate of $1B in EBITDA Synergies

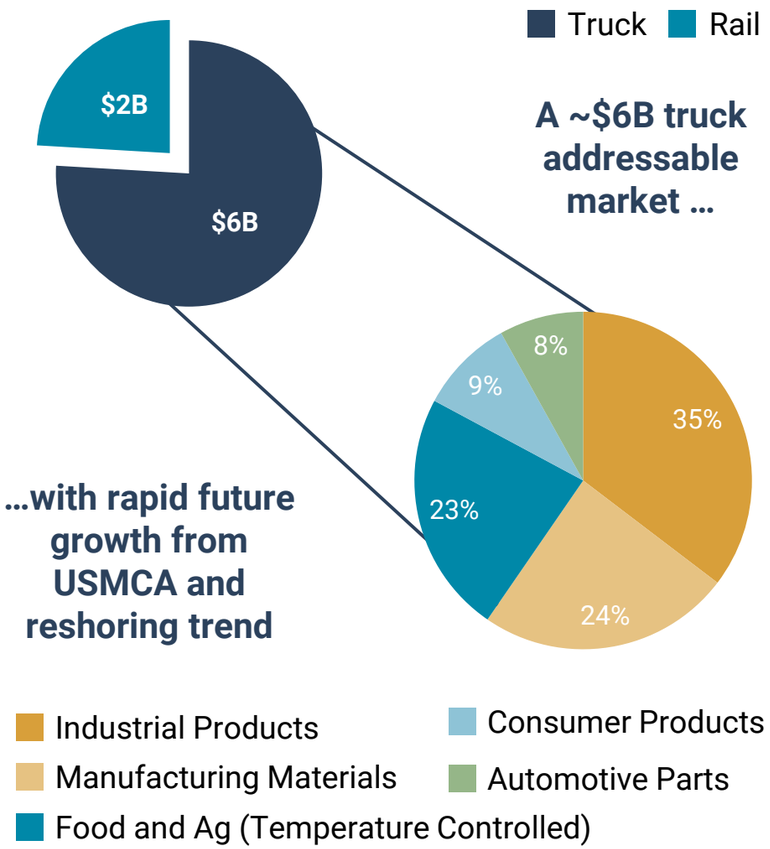
New Revenue Opportunities

- ✓ The revenue opportunities are based on two major routes:
  - – Kansas City Speedway – connecting CN's Midwest foothold and the KC region
  - – CN Greenway – connecting Mexico, East Texas and the Gulf with CN's US Midwest and Eastern Canada foothold
- ✓ Combined business could target an incremental $6B of truck intermodal and $2B of rail TAM
- ✓ Diligence on KCS identified additional opportunities beyond original assessment (mostly carloads)

Cost Efficiencies

- ✓ Improved fuel efficiency and lower costs
- ✓ Technology deployment on a larger network
- ✓ More effective purchasing of operating and capital expenditures
- ✓ Core of cost savings will not be people-driven

Intermodal Opportunity Breakdown (1)



Synergies are predominantly growth and revenue-driven; and will yield environmental benefits by taking trucks off the road

(1) Conservative estimate based on CN's original assessment of new revenue opportunities.

CN's Advanced Technology Applied to a Larger Rail Network

Autonomous Track Inspection Program *(for Safety and Capacity)*

- Latest sensors and AI technology for accurate preventative maintenance, enabling up to 20x more inspections
- Proven rail safety improvements (reduce incidents, reduce incident costs, better customer sentiment)



Digitalized and Automated Train Inspection *(for Safety and Reliability)*

- More frequent and better machine vision-based inspections
- High-resolution imaging coupled with powerful machine learning algorithms



Connecting the Supply Chain *(for Service and Business Growth)*

- Real-time "track and trace" for customer shipments
- Reducing end-to-end variability and cycle times



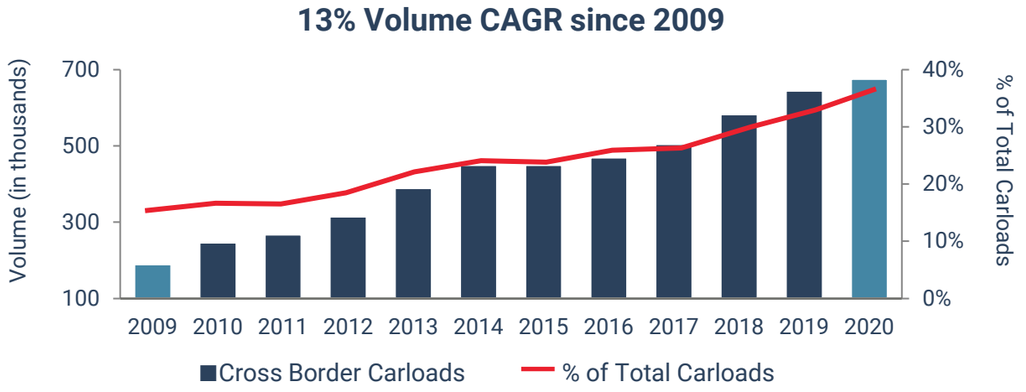
The combined CN-KCS customers will benefit from CN's leadership and investments in advanced technology

Mexico Provides Unparalleled Growth Opportunities

Mexico Near-Sourcing Benefits and Positive Drivers

- ✓ Multiple factors (including the ratification of USMCA, the COVID-19 pandemic, and other macro geo-political trends) have led to an increased corporate focus on near-sourcing / near-shoring
- ✓ Mexico's manufacturing economy will reap material benefits
- ✓ Companies who near-source in Mexico have multiple advantages:
  - Trade advantages
  - Manufacturing clusters
  - Competitive labor costs with a highly trained workforce

KCS US-Mexico Volume



KCS Customer / Partner Investments and Projects



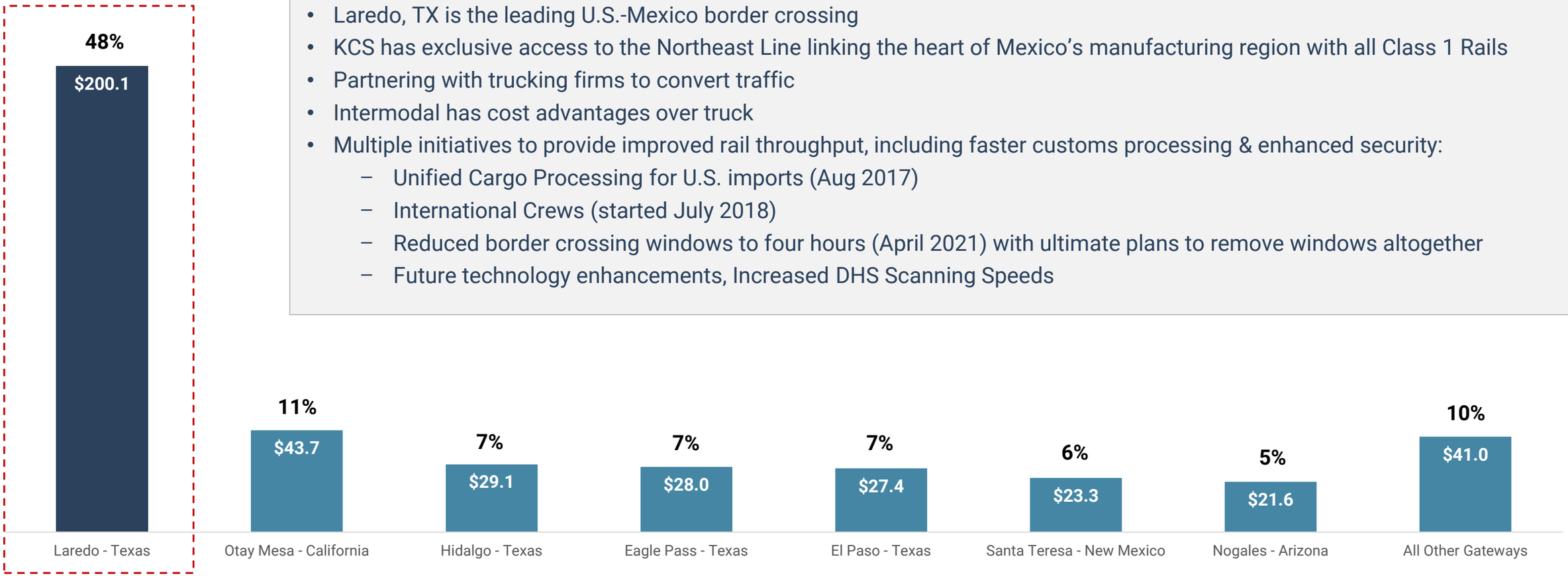
CN-KCS will be very well positioned to participate in Mexico's growing economy and near-sourcing phenomenon

Source: KCS public filings

Creating A Seamless, Same-System U.S.–Mexico Connection via Laredo, TX

2020 U.S. & Mexico Surface Trade by Border Crossing Import and Export

Value (US$ billions) & % Share



Commentary

- Laredo, TX is the leading U.S.-Mexico border crossing
- KCS has exclusive access to the Northeast Line linking the heart of Mexico's manufacturing region with all Class 1 Rails
- Partnering with trucking firms to convert traffic
- Intermodal has cost advantages over truck
- Multiple initiatives to provide improved rail throughput, including faster customs processing & enhanced security:
  - Unified Cargo Processing for U.S. imports (Aug 2017)
  - International Crews (started July 2018)
  - Reduced border crossing windows to four hours (April 2021) with ultimate plans to remove windows altogether
  - Future technology enhancements, Increased DHS Scanning Speeds

The CN-KCS Premier USMCA rail network will connect the U.S. and Mexico through the #1 gateway in Laredo, TX

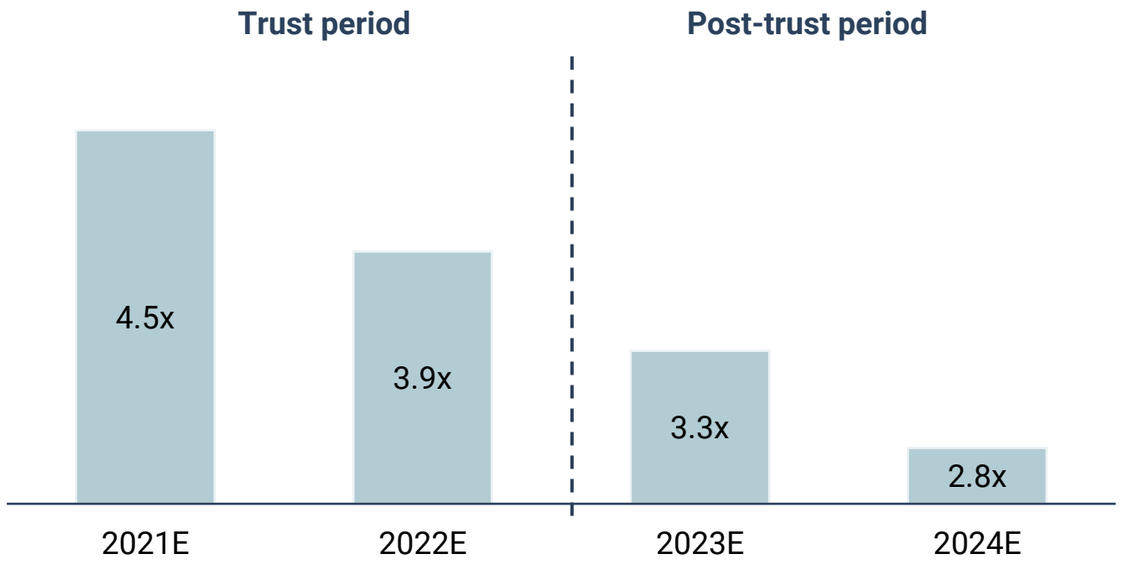
Source: KCS public filings

Committed to Maintaining a Strong Balance Sheet and Investment Grade Rating – During and After the Voting Trust

CN's Strong Financial Profile

- Strongest balance sheet among Class I rail carriers
- S&P and Moody's expect CN to remain investment grade
- Suspended share buy-backs
- Strong FCF profile
- Continued capital expenditure investments
- Rapid deleveraging profile

Projected Rapid Deleveraging Profile (1)



CN is committed to maintaining a strong financial position and investment grade profile

(1) Represents adjusted debt-to-adjusted EBITDA multiple, assuming closing into trust at end of 2021. Please see the heading Non-GAAP Measures in this presentation.

KCS Management and Governance While in Voting Trust

1. Continuity of KCS' existing governance and executive management

- KCS management will remain in control of KCS (CN will have no governance rights nor exercise any control over KCS)
- Pat Ottensmeyer will continue to lead KCS as CEO, reporting to the Board and the Trustee
- KCS' Board has approved retention bonuses to ensure the team stays in place and manages the company

2. No change in KCS' existing strategic plan and operations

- KCS management will lead and operate KCS in the same manner as it currently does
- KCS will act in the ordinary course of business and will continue to pursue its existing strategic plan

3. No change in capital allocation policy; KCS will continue to be well-capitalized and make investments in its business

- Investment grade rating of BBB+ / Baa2
- KCS will continue to deploy 40-50% of available cash to capital expenditures
- KCS will make marketing and capital investments with the interests of KCS and its customers in mind, not those of CN

CN application satisfies every aspect of Voting Trust approval framework

Exhibit 15

Excerpts from Canadian Pacific Railway Limited Form F-4 Registration Statement, filed with the Securities and Exchange Commission on October 1, 2021

SECURITIES AND EXCHANGE COMMISSION

FORM F-4

Registration statement for securities issued by foreign private issuers in certain business combination transactions

Filing Date: **2021-10-01**
SEC Accession No. 0001193125-21-289901

(HTML Version on secdatabase.com)

FILER

CANADIAN PACIFIC RAILWAY LTD/CN
CIK:**16875**| IRS No.: **980355078** | Fiscal Year End: **1231**
Type: **F-4** | Act: **33** | File No.: **333-259991** | Film No.: **211300045**
SIC: **4011** Railroads, line-haul operating

Mailing Address
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403-319-3591

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As filed with the Securities and Exchange Commission on October 1, 2021

Registration No. 333-[–]

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM F-4
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

Canadian Pacific Railway Limited
(Exact name of registrant as specified in its charter)

Canada	4011	98-0355078
(State or other jurisdiction of incorporation or organization)	**(Primary Standard Industrial Classification Code Number)**	**(IRS Employer Identification Number)**

7550 Ogden Dale Road S.E., Calgary, Alberta,
Canada, T2C 4X9
(403) 319-7000
(Address, including zip code, and telephone number, including area code, of registrant' s principal executive offices)

With copies to:

Jeffrey J. Ellis	Francis J. Aquila	Adam Godderz	Steven A. Rosenblum
Canadian Pacific Railway Limited	C. Andrew Gerlach	Kansas City Southern	Elina Tetelbaum
7550 Ogden Dale Road S.E.	Sullivan & Cromwell LLP	427 West 12th Street	Wachtell, Lipton, Rosen & Katz
Calgary, Alberta, Canada T2C 4X9	125 Broad Street	Kansas City, Missouri 64105	51 West 52nd Street
(403) 319-7000	New York, New York 10004	(816) 983-1303	New York, New York 10019
	(212) 558-4000		(212) 403-1000

Approximate date of commencement of proposed sale of the securities to the public:
As soon as practicable after the effectiveness of this registration statement and upon completion of the transaction described in the enclosed proxy statement/prospectus.

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act of 1933, as amended, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

If applicable, place an X in the box to designate the appropriate rule provision relied upon in conducting this transaction:

U.S. Exchange Act Rule 13e-4(i) (*Cross-Border Issuer Tender Offer*) ☐
U.S. Exchange Act Rule 14d-1(d) (*Cross-Border Third Party Tender Offer*) ☐

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933.

Emerging growth company ☐

If an emerging growth company that prepares its financial statements in accordance with U.S. GAAP, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards† provided pursuant to Section 7(a)(2)(B) of the Securities Act ☐

† The term "new or revised financial accounting standard" refers to any update issued by the Financial Accounting Standards Board to its Accounting Standards Codification after April 5, 2012.

The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act, or until this registration statement shall become effective on such date as the U.S. Securities and Exchange Commission, acting pursuant to said Section 8(a), may determine.

CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to Be Registered	Amount to Be Registered	Proposed Maximum Offering Price Per Share	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee
Canadian Pacific Railway Limited common shares	264,723,380(1)	N/A	$16,669,128,225.64(2)	$1,545,228.19(3)

(1) Represents the maximum number of Canadian Pacific Railway Limited ("CPRL") common shares estimated to be issuable or subject to stock-based awards that may be assumed by the registrant upon the completion of the transaction described herein. The calculation of the number of CPRL common shares being registered is based on (a) the sum of (i) 90,789,609, an estimate of the maximum number of shares of common stock, par value $0.01 per share, of Kansas City Southern ("KCS") issued and outstanding as of September 27, 2021, and (ii) 1,000,744.6654, the maximum number of shares of KCS common stock issuable upon the exercise or settlement of KCS options and time-based and performance-based awards (collectively, the "KCS equity awards") with respect to KCS common stock (together, the "estimated number"), multiplied by (b) the exchange ratio of 2.884 CPRL common shares for each share of KCS common stock.

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(2) Calculated pursuant to Rules 457(c), 457(f)(1) and 457(f)(3) promulgated under the Securities Act of 1933, as amended (the "U.S. Securities Act"), and solely for the purpose of calculating the registration fee. The proposed maximum aggregate offering price of the securities being registered was calculated based on (a) the product of (i) $271.60, the average of the high and low prices for shares of KCS common stock as reported on the New York Stock Exchange on September 24, 2021, multiplied by (ii) the estimated number (which represents the estimated maximum number of shares of KCS common stock that may be exchanged in the transactions contemplated by the merger agreement described herein, as described in footnote (1) above), minus (b) $8,261,131,829.89 (which represents the estimated aggregate amount of cash that will be paid by CPRL to the holders of shares of KCS common stock in the transactions contemplated by the merger agreement described herein). In accordance with Rule 416, this registration statement also covers an indeterminate number of CPRL common shares as may be issuable as a result of stock splits, stock dividends or similar transactions.

(3) The registration fee for the securities registered hereby has been calculated pursuant to Section 6(b) of the U.S. Securities Act, by multiplying the proposed maximum aggregate offering price for the securities by 0.0000927.

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"*The KCS Merger Proposal–Opinion of Morgan Stanley*" and "*The KCS Merger Proposal–Opinion of BofA Securities*" on pages 71 and 84, respectively. After further discussion and deliberation, the KCS board unanimously determined that the final CPRL proposal continued to constitute a company superior proposal and approved the proposed waiver letter agreement with CN, termination of the CN merger agreement, KCS' s payment of the $700.0 million CN agreement termination payment and the $700.0 million CN refund owed to CN (or its affiliates) under the terms of the CN agreement, and KCS' s entry into the merger agreement with CPRL. The KCS board also approved the updated retention and severance arrangements set forth in the final CPRL proposal.

Following the completion of the KCS board meeting, KCS management notified CN of the KCS board' s determination, after which KCS and CN entered into the waiver letter agreement and KCS terminated the CN agreement and paid the $700.0 million CN agreement termination payment. Shortly thereafter, KCS delivered an executed signature page to the merger agreement with CPRL, which had already been executed by CPRL, and KCS and CPRL issued a joint press release announcing the transaction. Following execution of the merger agreement, CPRL remitted to KCS $700.0 million in connection with the payment of the CN agreement termination payment made by KCS to CN, KCS paid the $700.0 million CN refund to an affiliate of CN, and CPRL remitted to KCS $700.0 million in connection with the payment of the CN refund made by KCS to an affiliate of CN.

Recommendation of the KCS Board; KCS' s Reasons for the Transaction

At a special meeting held on September 15, 2021, the KCS board unanimously: (1) determined that it was in the best interests of KCS and its stockholders, and declared it advisable, to enter into the merger agreement with CPRL; (2) approved the execution, delivery and performance of the merger agreement and the transactions contemplated by the merger agreement (including the merger); (3) recommended that the stockholders of KCS adopt the merger agreement; and (4) directed that the merger agreement be submitted to a vote at a meeting of KCS' s stockholders. **The KCS board unanimously recommends that KCS stockholders vote "FOR" the merger proposal.**

In evaluating the transaction and in reaching its determinations and making its recommendations with respect to the merger agreement, the KCS board consulted with KCS senior management and outside legal and financial advisors over the course of several meetings, and considered a number of factors, including the following material factors that weighed in favor of the transaction.

Strategic Considerations and Synergies:

The KCS board believes the transaction will create the first rail network connecting the U.S., Mexico and Canada, with the ability to deliver dramatically expanded market reach for KCS and CPRL customers, provide new competitive transportation options, provide infrastructure, public safety and environmental benefits through truck to rail conversion opportunities, and support North American economic growth;

The KCS board believes CPRL and KCS are the fastest growing Class I railroads, with significant success in the transformation to Precision Scheduled Railroading;

The KCS board considered a synergy analysis (based on CPRL' s synergies analysis) showing annualized EBITDA synergies for the combined company of approximately $990 million (plus $20 million of capital expenditure and depreciation and amortization synergies) expected to be realized within the first three years after the transaction, primarily by executing the combined growth strategies of KCS and CPRL with new efficiencies for customers and improved on-time performance under their respective PSR programs; the KCS board also considered a more conservative synergy analysis
prepared by KCS management showing EBITDA synergies of approximately $377 million (plus

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$23 million of capital expenditure and depreciation and amortization synergies) over three years, and assessed both synergy analyses in making its decision, as further described in the section entitled "*KCS Unaudited Prospective Financial Information*";

The KCS board believes that the combined company will have the scale, balance sheet strength, financial flexibility, and free cash flow to fund future growth, and improved ability to access the capital markets on more favorable terms than available to KCS as an independent company, which would allow the combined company to be more competitive in capturing strategic opportunities;

The KCS board received information from and had discussions with KCS' s management, in consultation with outside financial advisors, regarding CPRL' s business, results of operations, financial and market position, KCS management' s expectations concerning the combined company' s business and financial prospects, and historical and current trading prices of CPRL common shares;

Attractive Value and Mix of Consideration

The KCS board considered the aggregate value and nature of the consideration to be received in the transaction by KCS stockholders, including:

that the merger consideration had an implied value per share of KCS common stock of $300, based on the closing price of CPRL common shares on the NYSE as of August 9, 2021 (the last full trading day prior to the date on which CPRL submitted the revised CPRL proposal), which represented a premium of approximately 34% to KCS stockholders based on the unaffected closing price of KCS common stock on March 19, 2021 (the last trading day before the KCS board' s approval of and the announcement of the prior CP merger agreement);

that based on CPRL' s market price on September 13, 2021, approximately 69% of the merger consideration consists of CPRL common shares, with the CPRL common shares to be issued to KCS common stockholders constituting approximately 28% of the outstanding shares of CPRL common shares following the transaction, offering KCS common stockholders the opportunity for meaningful ownership participation in the future earnings, dividends, synergies and growth of the combined company, a company which the KCS board considers to be an attractive investment for the reasons discussed above in the section entitled "*Strategic Considerations and Synergies*";

that based on CPRL' s market price on September 13, 2021, approximately 31% of the merger consideration consists of cash, which provides KCS stockholders with immediate liquidity for a portion of their shares; and

that the first merger and the second merger, taken together, are intended to qualify as a "reorganization" within the meaning of Section 368(a) of the Code and that Section 367(a)(1) of the Code will not apply to cause the mergers to result in gain recognition by holders of KCS common stock that exchange their shares of KCS common stock for the merger consideration (other than any Excepted Shareholder), as more fully described in the section entitled "*Material U.S. Federal Income Tax Consequences*";

Attractive Strategic Alternative:

The KCS board believes that the transaction with CPRL is attractive in comparison to the alternative of remaining independent and continuing to execute on KCS' s long-range business strategy and is also attractive in comparison to other alternatives, including the CN agreement. In this regard, the KCS board considered:

the course and history of KCS' s discussions and competitive negotiations with Party A and CN, including: (i) the fact that, after six rounds of bidding, Party A' s last proposal to acquire KCS for

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have received or in the future may receive compensation for the rendering of these services, including (i) having acted as a bookrunning manager and/or co-manager on certain debt capital markets transactions for CPRL, (ii) having acted or acting as a lender under CPRL' s $1.3 billion revolving credit facility, which consists of a $1.0 billion tranche and a $300 million tranche, which was amended on September 24, 2021 to extend the maturity dates of such tranches to September 27, 2026 and September 27, 2023, respectively, and (iii) having provided or providing certain treasury services and products to CPRL. From September 1, 2019, through August 31, 2021, BofA Securities and its affiliates derived aggregate revenues from CPRL of approximately $6.6 million for corporate and/or investment banking services. In addition, BofA Securities received a customary fee of less than $100,000 in connection with its commitment to act as a lender under CPRL' s amended revolving credit facility, which was received subsequent to such period.

KCS Unaudited Prospective Financial Information

The prospective financial information included in this section has been prepared by, and is the responsibility of, KCS' s management. This prospective financial information was not prepared with a view toward compliance with published guidelines of the SEC or the guidelines established by the American Institute of Certified Public Accountants for preparation or presentation of prospective financial information.

Neither Deloitte LLP nor PricewaterhouseCoopers LLP has audited, reviewed, examined, compiled nor applied agreed-upon procedures with respect to the accompanying prospective financial information and, accordingly, neither Deloitte LLP nor PricewaterhouseCoopers LLP expresses an opinion or any other form of assurance with respect thereto. The PricewaterhouseCoopers LLP report incorporated by reference in this document relates to KCS' s previously issued financial statements. It does not extend to the prospective financial information and should not be read to do so.

Summary of KCS Prospective Financial Information

KCS Unaudited Prospective Financial Information

As described under the section of this proxy statement/prospectus entitled "*The KCS Merger Proposal–Background of the Transaction*," on page 49, KCS management maintains the KCS long-range plan, which is periodically updated and reviewed with the KCS board, that reflects KCS management' s financial and business outlook for KCS over a ten-year period. This KCS long-range plan was reviewed by the KCS board in connection with its consideration of a transaction with CPRL, CN and other potential strategic alternatives throughout the latter half of 2020 continuing through its meeting on September 15, 2021. The KCS long-range plan included certain unaudited prospective financial information concerning KCS on a standalone basis for the fiscal years ending December 31, 2021 through December 31, 2029. We refer to these unaudited projections as the "KCS management unaudited KCS projections". The KCS management unaudited KCS projections were provided to Morgan Stanley and BofA Securities, which were directed by KCS management to use and rely upon the KCS management unaudited KCS projections for purposes of their respective financial analyses and fairness opinions. In addition, certain of the KCS management unaudited KCS projections were provided to CPRL, the CPRL board and their respective financial advisors, BMO, Goldman Sachs and Evercore.

In connection with the transaction, KCS management also prepared certain unaudited prospective financial information concerning CPRL on a standalone basis using (i) the CPRL five-year plan (as prepared by CPRL management and provided to KCS management) and (ii) extrapolations prepared by KCS management on the basis of the CPRL five-year plan for the fiscal years ending December 31, 2026 through December 31, 2029. Such unaudited prospective financial information was translated into U.S. dollar amounts from the original Canadian dollar amounts presented in the CPRL five-year plan based on an assumed foreign exchange ratio of 1.25x. We refer to these unaudited projections as the "KCS management unaudited CPRL projections," and the KCS management unaudited KCS projections and the KCS management unaudited CPRL projections, collectively, as the "KCS management unaudited projections". The KCS management unaudited CPRL

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projections were provided to the KCS board in connection with its consideration of the transaction as well as to Morgan Stanley and BofA Securities, which were directed by KCS management to use and rely upon the KCS management unaudited CPRL projections for purposes of their respective financial analyses and fairness opinions.

The KCS management unaudited projections were prepared treating KCS and CPRL, respectively, on a standalone basis, without giving effect to the transaction, including any impact of the negotiation or execution of the transaction, the expenses that may be incurred in connection with the transaction or the consummation thereof, the potential synergies that may be achieved by the combined company as a result of the transaction, the effect of any business or strategic decision or action that has been or will be taken as a result of the merger agreement having been executed or in anticipation of the transaction, or the effect of any business or strategic decisions or actions which would likely have been taken if the merger agreement had not been executed but which were instead altered, accelerated, postponed or not taken in anticipation of the transaction.

In connection with the transaction, KCS management prepared pro forma analyses, which were presented to the KCS board, that included CPRL' s estimated potential earnings before interest, taxes, depreciation and amortization (which we refer to as "EBITDA") synergies of $990 million (consisting of $810 million from revenue synergies and $180 million from operating and expense synergies), together with an alternative case showing a lower estimate of potential EBITDA synergies of $377 million (consisting of $222 million from revenue synergies and $155 million from operating and expense synergies). The primary difference between the two cases was a more conservative assumption on revenue synergies (specifically the combined company' s share of bulk commodities) in the $377 million EBITDA synergies case. The assumptions used in the $990 million EBITDA synergies case were based on CPRL' s assessment of market opportunities that the combined company could reasonably be expected to capture, leading to a substantially greater estimate of revenue synergies. KCS management believed, however, that for purposes of the KCS board' s consideration of the transaction, the KCS board should also consider a synergies estimate reflecting the more conservative assumptions. The $377 million EBITDA synergies case also used slightly more conservative assumptions with respect to operating and expense synergies. The pro forma analyses, in each case, assumed a phase-in of synergies over the three years following CPRL' s receipt of STB final approval, beginning in fiscal year 2023. KCS management, among other things, assumed that the aggregate cost of achieving the projected synergies would be, with respect to the $990 million synergies case, $180 million, and with respect to the $377 million synergies case, $155 million, with half of the costs to be incurred in the first year of the phase-in and the remaining half to be incurred in the second year of the phase-in. KCS management also assumed, with respect to the $990 million synergies case, no dissynergies, $20 million of capital expenditure and depreciation and amortization synergies and a one-time capital investment of $50 million, and, with respect to the $377 million synergies case, $50 million of dissynergies and $23 million of capital expenditure and depreciation and amortization synergies. These assumed dissynergies or additional synergies were subtracted from or added to the EBITDA synergies estimates. The assumed EBITDA synergies, including the cost to achieve such synergies, included in the two cases (which we refer to collectively as the "KCS management assumed synergies") are not reflected in the KCS management unaudited projections. The KCS management assumed synergies were provided to Morgan Stanley and BofA Securities, which were directed by KCS management to use and rely upon the KCS management assumed synergies for purposes of their respective financial analyses and fairness opinions.

Other than annual financial guidance provided to investors, which is generally updated each quarter, KCS does not as a matter of course make public long-term forecasts or projections as to future performance, revenues, earnings or other results, due to, among other reasons, the inherent difficulty of accurately predicting financial performance for future periods and the uncertainty of the underlying assumptions and estimates. However, the financial projections by KCS management are being included in this proxy statement/prospectus to give shareholders access to certain non-public information provided to the KCS board and KCS' s financial advisors and to CPRL and the CPRL board and their respective financial advisors. The inclusion of the financial projections by KCS should not be regarded as an indication that the KCS board, KCS, the CPRL board, CPRL, Morgan Stanley, BofA Securities, BMO, Goldman Sachs or Evercore or any other recipient of this information

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considered, or now considers, it to be an assurance of the achievement of future results or an accurate prediction of future results, and they should not be relied on as such.

This prospective financial information was not prepared with a view toward compliance with published guidelines of the SEC or the guidelines established by the American Institute of Certified Public Accountants for preparation or presentation of prospective financial information, or GAAP, but, in the view of KCS' s management were prepared on a reasonable basis, reflected the best available estimates and judgments at the time of preparation, and presented as of the time of preparation, to the best of KCS' s management' s knowledge and belief, the expected course of action and the expected future financial performance of KCS or CPRL, as applicable. However, this information is not fact and should not be relied upon as being necessarily indicative of future results, and readers of this proxy statement/prospectus are cautioned not to place undue reliance on the KCS management unaudited projections or the KCS management assumed synergies. Although KCS' s management believes there is a reasonable basis for the KCS management unaudited projections and the KCS management assumed synergies, KCS cautions stockholders that future results could be materially different from the KCS management unaudited projections and the KCS management assumed synergies. This summary of the KCS management unaudited projections and the KCS management assumed synergies is included in this proxy statement/prospectus because the KCS management unaudited projections and the KCS management assumed synergies were provided to KCS' s financial advisors and to the KCS board for purposes of considering and evaluating the transaction and the merger agreement.

Other than annual financial guidance provided to investors, CPRL does not as a matter of course share with third parties long-term forecasts or projections as to future performance, revenues, earnings or other results due to, among other reasons, the inherent difficult of accurately predicting financial performance for future periods and the uncertainty of underlying assumptions and estimates. CPRL' s management prepared and provided to KCS' s management the CPRL five-year plan solely in connection with KCS' s consideration of a transaction with CPRL. The fact that the CPRL five-year plan was provided to KCS management should not be regarded as an indication that the CPRL board, CPRL, KCS or any other recipient of the CPRL five-year plan considered, or now considers, it to be an assurance of the achievement of future results or an accurate prediction of future results of CPRL, and it should not be relied on as such.

The KCS management unaudited projections and the KCS management assumed synergies are subject to estimates and assumptions in many respects and, as a result, subject to interpretation. While presented with numerical specificity, the KCS management unaudited projections and the KCS management assumed synergies are based upon a variety of estimates and assumptions that are inherently uncertain, though considered reasonable by KCS' s management as of the date of their preparation. These estimates and assumptions may prove to be inaccurate for any number of reasons, including general economic conditions, industry trends, the regulatory environment, competition, and the risks discussed in this proxy statement/prospectus under the sections entitled "*Cautionary Statement Regarding Forward-Looking Statements*" and "*Risk Factors*" beginning on pages 36 and 21, respectively. See also "*Where You Can Find Additional Information*" beginning on page 229. The KCS management unaudited projections and the KCS management assumed synergies also reflect assumptions as to certain business decisions that are subject to change. Because the KCS management unaudited projections were developed for KCS on a standalone basis without giving effect to the transaction, they do not reflect any divestitures or other restrictions that may be imposed in connection with the receipt of any necessary governmental or regulatory approvals, any synergies that may be realized as a result of the transaction or any changes to KCS' s or CPRL' s operations or strategy that may be implemented after completion of the transaction. There can be no assurance that the KCS management unaudited projections or the KCS management assumed synergies will be realized, and actual results may differ materially from those shown. Generally, the further out the period to which the KCS management unaudited projections and the KCS management assumed synergies relate, the less predictable and more unreliable the information becomes.

The KCS management unaudited projections contain certain non-GAAP financial measures that KCS believes are helpful in understanding its past financial performance and future results. KCS management regularly uses a

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variety of financial measures that are not in accordance with GAAP for forecasting, budgeting and measuring financial performance. The non-GAAP financial measures are not meant to be considered in isolation or as a substitute for comparable GAAP measures. While KCS believes that these non-GAAP financial measures provide meaningful information to help investors understand the operating results and to analyze KCS' s financial and business trends on a period-to-period basis, there are limitations associated with the use of these non-GAAP financial measures. These non-GAAP financial measures are not prepared in accordance with GAAP, are not reported by all of KCS' s competitors and may not be directly comparable to similarly titled measures of KCS' s competitors due to potential differences in the exact method of calculation.

Financial measures included in projections provided to a financial advisor and a board of directors in connection with a business combination transaction are excluded from the definition of "non-GAAP financial measures" under the rules of the SEC, and therefore such financial measures are not subject to SEC rules regarding disclosures of non-GAAP financial measures, which may otherwise require a reconciliation of a non-GAAP financial measure to a GAAP financial measure. Reconciliations of non-GAAP financial measures were not provided to and were not relied on by Morgan Stanley or BofA Securities for purposes of their respective financial analyses and opinions or by the KCS board in connection with its consideration of the transaction, nor were they provided to CPRL or its financial advisors. Accordingly, a reconciliation of these non-GAAP financial measures has not been provided.

None of KCS, CPRL, the combined company or their respective affiliates, advisors, officers, directors or other representatives can provide any assurance that actual results will not differ from the KCS management unaudited projections or the KCS management assumed synergies, and none of them undertakes any obligation to update, or otherwise revise or reconcile, the KCS management unaudited projections or the KCS management assumed synergies to reflect circumstances existing after the date the KCS management unaudited projections or the KCS management assumed synergies were prepared or to reflect the occurrence of future events, even in the event that any or all of the assumptions underlying the KCS management unaudited projections or the KCS management assumed synergies, as applicable, are shown to be in error. Except as required by applicable securities laws, KCS does not intend to make publicly available any update or other revision to the KCS management unaudited projections or the KCS management assumed synergies, even in the event that any or all assumptions are shown to be in error. None of KCS or its affiliates, advisors, officers, directors or other representatives has made or makes any representation to any KCS stockholder or other person regarding KCS' s ultimate performance compared to the information contained in the KCS management unaudited projections or the KCS management assumed synergies or that forecasted results will be achieved. KCS has made no representation to CPRL, in the merger agreement or otherwise, concerning the KCS management unaudited projections or the KCS management assumed synergies.

The prospective financial information included in this document has been prepared by, and is the responsibility of, KCS management. Neither PricewaterhouseCoopers LLP nor Deloitte LLP have audited, reviewed, examined, compiled nor applied agreed-upon procedures with respect to the accompanying prospective financial information and, accordingly, neither PricewaterhouseCoopers LLP nor Deloitte LLP express an opinion or any other form of assurance with respect thereto. The PricewaterhouseCoopers LLP report incorporated in this document relates to KCS' s previously issued financial statements, and the Deloitte LLP reports incorporated in this document relate to CPRL' s previously issued financial statements. These reports do not extend to the prospective financial information and should not be read to do so.

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The following table presents a summary of the KCS management unaudited KCS projections that were reviewed by the KCS board in connection with its consideration of the transaction and provided to Morgan Stanley and BofA Securities for purposes of their respective financial analyses and fairness opinions. In addition, certain of the KCS management unaudited KCS projections were provided to CPRL.

(Dollars in millions)	FY' 21	FY' 22	FY' 23	FY' 24	FY' 25	FY' 26	FY' 27	FY' 28	FY' 29
Revenue	$2,992	$3,292	$3,554	$3,748	$3,946	$4,143	$4,344	$4,556	$4,770
EBITDA(1)	1,551	1,827	2,033	2,174	2,318	2,462	2,610	2,768	2,928
Capital Expenditures	500	541	586	618	651	684	717	752	787
EPS(2)	8.29	10.75	12.60	14.21	16.06	18.04	20.20	22.60	25.20
Unlevered Free Cash Flow(3)	364 (4)	779	940	1,013	1,089	1,164	1,242	1,324	1,408

(1) EBITDA is defined as earnings before interest, taxes, depreciation and amortization.
(2) EPS is defined as diluted earnings per share adjusted for the depreciation component of income tax driven by the difference in the Mexican peso to U.S. dollar exchange rate that existed at the time assets in Mexico were put into service and the current Mexican peso to U.S. dollar exchange rate.
(3) Unlevered Free Cash Flow is defined as EBITDA less depreciation and amortization, plus other income, less other expenses, tax affected, plus depreciation and amortization, adjusted for changes in net working capital, less capital expenditures and less other investing activities. The calculation of Unlevered Free Cash Flow was not expressly included in the KCS management unaudited KCS projections but was derived from the KCS management unaudited KCS projections and is included for reference.
(4) Figure represents July – December 2021.

The following table presents a summary of the KCS management unaudited CPRL projections that were provided to the KCS board in connection with its consideration of the transaction as well as to Morgan Stanley and BofA Securities for purposes of their respective financial analyses and fairness opinions.

(Dollars in millions)	FY' 21	FY' 22	FY' 23	FY' 24	FY' 25	FY' 26	FY' 27	FY' 28	FY' 29
Revenue	$6,580	$7,086	$7,498	$7,875	$8,287	$8,694	$9,111	$9,551	$9,995
EBITDA(1)	3,526	3,862	4,127	4,376	4,652	4,943	5,242	5,558	5,878
Capital Expenditures	1,260	1,240	1,200	1,224	1,249	1,310	1,373	1,439	1,506
Unlevered Free Cash Flow(2)	852 (3)	1,989	2,267	2,457	2,666	2,603	2,775	2,958	3,143

(1) EBITDA is defined as earnings before interest, taxes, depreciation and amortization.
(2) Unlevered Free Cash Flow is defined as EBITDA less depreciation and amortization, plus other income, less other expenses, tax affected, plus depreciation and amortization, less capital expenditures, less other cash/non-cash expenses, plus land sales and others and plus increase in deferred tax liability.
(3) Figure represents July – December 2021.

Listing of CPRL Common Shares

It is a condition to the completion of the transaction that the CPRL common shares issuable under the merger agreement are approved for listing on the NYSE, subject to official notice of issuance, and the TSX, subject to customary listing requirements.

CPRL must use its reasonable best efforts to cause the CPRL common shares to be issued in the first merger to be approved for listing on the NYSE, subject to official notice of issuance, and the TSX, subject to customary listing conditions, prior to the effective time. Listing will be subject to CPRL fulfilling all the listing requirements of the NYSE and TSX. There can be no assurance that the CPRL common shares will be accepted for listing on the NYSE or the TSX.

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