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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

Re: Finance Docket No. 36500, *Canadian Pacific Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

I write on behalf of Applicants to correct certain typographical and other errors in Applicants' Response to Comments and Requests for Conditions, Opposition to Responsive Applications, and Rebuttal in Support of the Application, filed July 12, 2022 ("Applicants' Response"). Corrections are noted in the accompanying Table of Errata. We explain several of those corrections in more detail below.

- The continuous pagination in the Highly Confidential version of Volume I is one page off from that in the Public version. In addition, the Highly Confidential and Public versions of Volume II omitted continuous pagination and exhibit cover pages, and certain Reply Verified Statements lacked page numbers. We are supplying replacement versions that correct these errors. The replacement versions also correct the other errors noted on the Table of Errata. For convenience, we are also supplying a Public version of Volume I that makes the corrections set forth in the Table of Errata.

- Volume I (Highly Confidential version), Figure No. 5 (at page 101 of the Narrative) was based on an outdated draft of Exhibit 7 to the Reply Verified Statement of W. Robert Majure ("Majure R.V.S."), rather than the final version of that Exhibit. The replacement Volume I (Highly Confidential version) includes a corrected Figure No. 5, based on the correct, filed version of Exhibit 7 to the Majure R.V.S. Figure No. 5 is redacted in its entirety in the Public version.

- Volume I (Highly Confidential version), Figure No. 27 (at page 218 of the Narrative), was based on an outdated draft of Table 3 in the Reply Verified Statement of Richard Brown and Nathan Zebrowski ("Brown/Zebrowski R.V.S."), rather than the final version of that Table. The replacement Volume I (Highly Confidential version) includes the correct version of Figure No. 27, based on the correct, filed version of Table 3 of the Brown/Zebrowski R.V.S. All changes to Figure No. 27 are Highly Confidential, and there are no changes to the Public version of Figure No. 27.

- The Reply Verified Statement of Raymond A. Elphick and John F. Orr ("Elphick/Orr R.V.S.") (Vol. II, Exh. H) inadvertently included a version of Figure No. 1 (at page 20) that omitted certain locations and cross references. The replacement Volume II (both the Highly Confidential version and Public version) includes a corrected Elphick/Orr R.V.S. Figure No. 1.

- The Reply Verified Statement of Nick Walker (Vol. II, Exh. L) inadvertently omitted the material behind the tab for Exhibit No. 8. The replacement Volume II (both the Highly Confidential version and Public version) includes this material.

- The Reply Verified Statement of Stephen D. Simmons accompanying the Public version of Volume II (Exh. J) inadvertently omitted the material behind the tab for Exhibit No. 7, which was included in the Highly Confidential version. The replacement Public Volume II includes this material.

- The Verified Statement of Samantha Hynes ("Hynes V.S.") accompanying the Highly Confidential version of Volume III (at page 14) inadvertently included an unsigned signature page (a signed page was included with the Public version). We are submitting herewith replacement page 14 of Volume III of the Highly Confidential version of the Reply, which is identical to the signature page included in the Public version of the Reply.

- Hynes V.S. Exhibit 98 in Volume III provided a set of excerpts from the Deposition of Patrick J. Ottensmeyer, which were designated Highly Confidential and redacted in the Public version of Volume III. We have re-designated those excerpts as Public. We are submitting herewith replacement pages 3499-511 for both the Highly Confidential and Public versions of Volume III.

Please contact me with any questions.

Respectfully submitted,

David L. Meyer

Attorney for Canadian Pacific Railway Limited

Enclosures

cc: All Parties of Record

REDACTED PUBLIC RECORD VERSION

EXHIBIT 1: TABLE OF ERRATA

Component & Location	Original	Corrected	Type of Error
Vol. I	The continuous page numbering of the Highly Confidential version of Volume I inadvertently begins on the second page (i.e., the cover page is unnumbered).	Applicants are supplying a replacement version of the Highly Confidential version of Volume I to conform to the page numbering to the Public Version. This version also makes the other corrections noted below.	Typographical error
Vol. II	Continuous page numbering, exhibit cover pages, and certain Reply Verified Statement page numbers were inadvertently omitted from Volume II.	Applicants are supplying replacement copies of the Public and Highly Confidential versions of Volume II to add continuous page numbering. These replacements also make the other corrections noted below.	Typographical error
Vol. I at 5, n.5[1]	". . . particular carriers."); *see, e.g.,* *Error! Main Document Only.* *Wisconsin Central Transp. Corp., et al. – Continuance in Control – Fox Valley & Western Ltd.*, Finance Docket No. 32036, 1992 I.C.C. LEXIS 279, at *10 (ICC served Dec. 4, 1992) ("**Error! Main Document Only.**A showing of expected . . ."	". . . particular carriers."); *see, e.g., Wisconsin Central Transp. Corp., et al. – Continuance in Control – Fox Valley & Western Ltd.*, Finance Docket No. 32036, 1992 I.C.C. LEXIS 279, at *10 (ICC served Dec. 4, 1992) ("A showing of expected . . ."	Typographical error
Vol. I at 6	". . . rail industry, with the unpredictable effects except insofar . . ."	". . . the rail industry, with unpredictable effects except insofar . . ."	Typographical error

[1] Page numbers in citations to Vols. I and II refer to the page number of the Narrative or relevant Reply Verified Statement, respectively Correction.

Component & Location	Original	Corrected	Type of Error
Vol. I at 6, n.7	". . . imposed and the transaction; mitigation is not imposed to correct pre-existing conditions, and the condition imposed must be reasonable.); . . ."	". . . imposed and the transaction; mitigation is not imposed to correct pre-existing conditions, and the condition imposed must be reasonable); . . ."	Typographical error
Vol. I at 8	"In fact, the Transaction, will deliver substantial new competition. . ."	"In fact, the Transaction will deliver substantial new competition. . ."	Typographical error
Vol. I at 10	". . . new infrastructure may end being needed . . ."	". . . new infrastructure may end up being needed . . ."	Typographical error
Vol. I at 15	"As referenced above, Applicants' acceptance of the Board's standard labor protective conditions . . ."	"as referenced above, Applicants' acceptance of the Board's standard labor protective conditions . . ."	Typographical error
Vol. I at 16	"CP's agreement with {{ . . ."	"• CP's agreement with {{ . . ."	Typographical error
Vol. I at 16	". . . three years advance notice to Bayer's chloring suppliers . . ."	" . . . three years' advance notice to Bayer's chlorine suppliers . . ."	Typographical error
Vol. I at 17	"*See, e.g.*, Decision No. 8 (served Sept. 30, 2021) at 2, 9 n.9; Decision No. 11, (served Nov. 23, 2021) . . ."	"*See, e.g.*, Decision No. 8 (served Sept. 30, 2021) at 2, 9 n.9; Decision No. 11 (served Nov. 23, 2021) . . ."	Typographical error
Vol. I at 22	". . . to keep these traffic where it is today."	". . . to keep this traffic where it is today."	Typographical error
Vol. I at 28	"The hard data underlying Applicants traffic analyses . . ."	"The hard data underlying Applicants' traffic analyses . . ."	Typographical error
Vol. I at 30	" { [redacted] }}"	" { [redacted] }}"	Typographical error
Vol. I at 30	"…Brown/Zebrowski R.V.S. at {¶¶ 43-46 & Figures 3-4."	"…Brown/Zebrowski R.V.S. at ¶¶ 43-46 & Figures 3-4."	Typographical error
Vol. I at 30	"UP witness Haley points to a 14-hour transit time differential between UP and CPKC for Laredo-Chicago lane . . ."	"UP witness Haley points to a 14-hour transit time differential between UP and CPKC for the Laredo-Chicago lane. . ."	Typographical error
Vol. I at 31	"…longer than the shortest available route. Brown/Zebrowski R.V.S. at ¶¶ 24."	"…longer than the shortest available route. Brown/Zebrowski R.V.S. at ¶ 24."	Typographical error

Component & Location	Original	Corrected	Type of Error
Vol. I at 34	" . . . numerous examples of from the extensive record of shipper support . . ."	". . . numerous examples from the extensive record of shipper support . . ."	Typographical error
Vol. I at 34, n.26	". . . Application (Volume 3-4 and the Table of Contents herein (Exhibits S-AC)."	". . . see the Application Volume 3 and the Table of Contents herein (Exhibits S-AC)."	Typographical error
Vol. I at 35, n.27	"In fact, we anticipating making new investments . . ."	"In fact, we anticipate making new investments . . ."	Typographical error
Vol. I at 37	"…prove efficient transportation options for many shippers' needs. Wahba/Naatz R.V.S. ¶ 28-31."	"…prove efficient transportation options for many shippers' needs. Wahba/Naatz R.V.S. ¶¶ 28-31."	Typographical error
Vol. I at 38	". . . shift perishables that move by truck form a two-stage route . . ."	". . . shift perishables that move by truck from a two-stage route . . ."	Typographical error
Vol. I at 39, n.35	". . .demonstrate that Applicants traffic analyses did not double count . . ."	". . . demonstrate that Applicants' traffic analyses did not double count . . ."	Typographical error
Vol. I at 43	". . . sights on criticisms of Applicants 'base period' data . . ."	". . . sights on criticisms of Applicants' 'base period' data, . . ."	Typographical error
Vol. I at 43	". . . Mr. Van Dyke is simply wrong in suggesting that building a 2019 base the Mr. Van Dyke claims to prefer would have enabled more reliable – or even reliable at – assessments . . ."	". . . Mr. Van Dyke is simply wrong in suggesting that building a 2019 base that Mr. Van Dyke claims to prefer would have enabled more reliable – or even as reliable – assessments . . ."	Typographical error
Vol. I at 44	"…R.V.S. at ¶ 6, 11. As discussed by Messrs. Elphick and Orr, an apples-to-apples measure of base…"	"…R.V.S. at ¶¶ 6, 11. As discussed by Messrs. Elphick and Orr, an apples-to-apples measure of base…"	Typographical error
Vol. I at 45	". . .CP and KCS 2019 reported segment densities than the Applicants' planned for the operations . . ."	". . . CP and KCS 2019 reported segment densities than the Applicants' modelling, which planned for the operations . . ."	Typographical error
Vol. I at 46	". . . precedents demand that a transaction 'produce[]effects . . ."	". . . precedents demand that a transaction 'produce [] effects . . ."	Typographical error

Component & Location	Original	Corrected	Type of Error
Vol. I at 47	"Given the Board's decades of consistent precedents – and the Class 1s own decades of (nearly) consistent advocacy . . ."	"Given the Board's decades of consistent precedents – and the Class 1s' own decades of (nearly) consistent advocacy . . ."	Typographical error
Vol. I at 47, n.45	"CN0000185-HC, {{ [redacted] }} (Vol. 3, Exh. 6)."	"CN0000185-HC, {{ [redacted] }} (Vol. 3, Exh. 5)."	Typographical error
Vol. I at 49	". . . vertical foreclosure is unlikely to occur and that end-to-end merger create new opportunities for shippers . . ."	". . . vertical foreclosure is unlikely to occur and that end-to-end mergers create new opportunities for shippers. . ."	Typographical error
Vol. I at 49	". . . in which UP and BNSF advances exactly the same arguments . . ."	". . . in which UP and BNSF advanced exactly the same arguments . . ."	Typographical error
Vol. I at 56	". . .for the simple reasons that the end-to-end aspects . . ."	". . . for the simple reason that the end-to-end aspects . . ."	Typographical error
Vol. I at 58	". . . many points throughout the Eastern United States.[62] And in *UP/SP* . . ."	". . . many points throughout the Eastern United States.'[62] And in *UP/SP* . . ."	Typographical error
Vol. I at 62	". . . new developments in world of antitrust law . . ."	". . . new developments in the world of antitrust law . . ."	Typographical error
Vol. I at 64	" . . . if the board did not act to protect them . . ."	". . . if the Board did not act to protect them."	Typographical error
Vol. I at 66	"KCS could 'discriminate against its competitors' by . . ."	"KCS could (i) 'discriminate against its competitors' by . . ."	Typographical error
Vol. I at 71, n.84	"Deposition of Patrick Ottensmeyer on Feb. 22, 2022 ('Ottensmeyer Dep. Tr.') 39:8-21 (Vol. 3, Exh. E)."	"Deposition of Patrick Ottensmeyer on Feb. 22, 2022 ('Ottensmeyer Dep. Tr.') 39:8-21 (Vol. 3, Exh. 98)."	Typographical error
Vol. I at 72	"As its sole 'evidence' of 'foreclosure,' relies on the testimony . . ."	"As its sole 'evidence' of 'foreclosure,' BNSF relies on the testimony . . ."	Typographical error
Vol. I at 72	"How is that he concludes that BNSF was foreclosed?"	"How is it that he concludes that BNSF was foreclosed?"	Typographical error

Component & Location	Original	Corrected	Type of Error
Vol. I at 72, n.89	"Deposition of Paul Hirsch on June 3, 2022 ('Hirsch Dep. Tr.') (Vol. 3, Exh. A) . . ."	"Deposition of Paul Hirsch on June 3, 2022 ('Hirsch Dep. Tr.') (Vol. 3, Exh. 94) . . ."	Typographical error
Vol. I at 77	"Figure2, below shows that post-2005 . . ."	"Figure 2 below shows that post-2005 . . ."	Typographical error
Vol. I at 80	"BNSF chose to deemphasize Laredo and shift traffic to Eagle Pass and El Paso."	"BNSF chose to de-emphasize Laredo and shift traffic to Eagle Pass and El Paso."	Typographical error
Vol. I at 81, n.105	"BNSF0003606 ({ [redacted] }) (Vol. 3, Exh.16)."	"BNSF0003606 ({ [redacted] }}) (Vol. 3, Exh. 17)."	Typographical error
Vol. I at 81, n.106	"*see also,* BNSF0000932 at -38"	"*see also* BNSF0000932 at 38"	Typographical error
Vol. I at 81, n.106	"{ [redacted] } (Vol. 3, Exh.18)."	"{ [redacted] } (Vol. 3, Exh. 17)."	Typographical error
Vol. I at 82, n.109	"BNSF0002839 at -50 ({{ [redacted] }} (Vol. 3, Exh.23))."	"BNSF0002839 at 50 ({{ [redacted] }} (Vol. 3, Exh. 22))."	Typographical error
Vol. I at 84, n.116	"UP-10-17."	"UP-10 at 17."	Typographical error
Vol. I at 87, Figure 3	"{ [Figure 3] }}"	"{ [Figure 3] }"	Typographical error
Vol. I at 87	". . . show that that {{ [redacted] }}"	". . . show that {{ [redacted] }"	Typographical error
Vol. I at 91	". . . unreasonable rates for to Robstown, it would not in CPKC's interest either."	". . . unreasonable rates to Robstown, it would not be in CPKC's interest either."	Typographical error
Vol. I at 92, n.128	"UP-HC-001106 ({{ [redacted] }}) ((Vol. 3, Exh. 29)."	"UP-HC-001106 ({{ [redacted] }}) (Vol. 3, Exh. 29)."	Typographical error

Component & Location	Original	Corrected	Type of Error
Vol. I at 92, n.129	"BNSF0000932 at -34 ((Vol. 3, Exh. 14)."	"BNSF0000932 at 34 (Vol. 3, Exh. 14)."	Typographical error
Vol. I at 93	"Those theories depend in the notion that KCSM would manipulate upwards the rate that BNSF or UP must imbed in its interline services."	"Those theories depend on the notion that KCSM would manipulate upwards the rate that BNSF or UP must embed on its interline services."	Typographical error
Vol. I at 94	". . . forces them away form a pre-Transaction interline routing . . ."	". . . forces them away from a pre-Transaction interline routing . . ."	Typographical error
Vol. I at 95	". . . raised no issue or concern with ow well those prior agreements . . ."	". . . raised no issue or concern with how well those prior agreements . . ."	Typographical error
Vol. I at 97	"shipper's routing options." In some cases . . ."	"shipper's routing options. In some cases . . ."	Typographical error
Vol. I at 97, n.137	"*Id.*"	"*Id.* at 12."	Typographical error
Vol. I at 99, n.143	". . . Brief of Defendant The Burlington Northern and Santa Fe Railway Company (served Sept. 8, 2003) at 21-22 ((Vol. 3, Exh. 32)."	". . . Brief of Defendant The Burlington Northern and Santa Fe Railway Company (served Sept. 8, 2003) at 21-22 (Vol. 3, Exh. 32)."	Typographical error
Vol. I at 101, Figure 5	Figure 5 was based on an outdated draft of Exhibit 7 to the Majure R.V.S.	Replacement version of Figure 5 , based on the filed version of Exhibit 7 to the Majure R.V.S., provided in replacement Highly Confidential Volume I.	Correction
Vol. I at 102	"{ [redacted] }."	"{ [redacted] }."	Typographical error
Vol. I at 103	". . . no reason to impose it here, an in fact the Board . . ."	""). . . no reason to impose it here, and in fact the Board . . ."	Typographical error

Component & Location	Original	Corrected	Type of Error
Vol. I at 108	". . . conceivably be affected by the Transaction. Brooks R.V.S. at 10."	". . . conceivably be affected by the Transaction. Brooks R.V.S. at ¶ 10."	Typographical error
Vol. I at 117, n.183	"*See, e.g.*, *Major Rail Consolidation Procedures*, 5 S.T.B at 547 . . ."	"*See, e.g.*, *Major Rail Consolidation Procedures*, 5 S.T.B. at 547 . . ."	Typographical error
Vol. I at 118	"As Board concluded in the Houston Gulf Oversight proceeding . . ."	"As the Board concluded in the Houston Gulf Coast Oversight proceeding. . ."	Typographical error
Vol. I at 121	"There will no new terminal consolidations."	"There will be no new terminal consolidations."	Typographical error
Vol. I at 122	"Creel VS at ¶ 39."	"Creel V.S. at ¶ 39"	Typographical error
Vol. I at 122	". . . no small part to its unique culture of accountability, with operating personnel down to level of trainmaster . . ."	". . .no small part from its unique culture of accountability, with operating personnel down to the level of trainmaster . . ."	Typographical error
Vol. I at 128, n.199	". . . CN's May 20, 2022 Letter to the Honorable Cynthia T. Brown (CN-16) (filed Mar. 20, 2022)."	". . . CN's May 20, 2022 Letter to the Honorable Cynthia T. Brown (CN-16) (filed May 20, 2022)."	Typographical error
Vol. I at 129	" . . . untenable were each and every customer be given a 30-day hold . . ."	". . . untenable were each and every customer given a 30-day hold . . ."	Typographical error
Vol. I at 133	"Reply Verified Statement of Keith Creel ('Creel R.V.S.') at ¶3, 25."	"Reply Verified Statement of Keith Creel ('Creel R.V.S.') at ¶¶ 3, 25."	Typographical error
Vol. I at 134	"BNSF's boldly asks that the Board impose . . ."	"BNSF boldly asks that the Board impose . . ."	Typographical error
Vol. I, at 137, n.214	"HB&T-KCS Terms, § 1 & Exhibit B (General Conditions) § 2.4."	"HB&T-KCS Terms, § 1 & Exhibit B (General Conditions) § 2.4 (Simmons R.V.S., Exh. 3)."	Typographical error
Vol. I at 139	". . . enter and exit yards, and are otherwise impose . . ."	". . . enter and exit yards, and otherwise impose . . ."	Typographical error

Component & Location	Original	Corrected	Type of Error
Vol. I at 139	" . . . which need only move across Houston via the multiple tracks, and multiple routes available for those movements. Elphick/Orr R.V.S. at 13 . . ."	" . . . which need only move across Houston via the multiple tracks, and multiple routes available for those movements. Elphick/Orr R.V.S. at ¶ 49 . . ."	Typographical error
Vol. I at 139	"UP (with the financial support of KCS and BNSF) has invested heavily in Houston rail capacity, and more work is underway, including on the routes used by KCS's trains. Elphick/Orr R.V.S. at 51-52"	"UP (with the financial support of KCS and BNSF) has invested heavily in Houston rail capacity, and more work is underway, including on the routes used by KCS's trains. Elphick/Orr R.V.S. at ¶¶ 51-52"	Typographical error
Vol. I at 142	" . . . KCS paid its share of part of those investments . . . Elphick/Orr R.V.S. at ¶ 19."	" . . . KCS paid its share of part of those investments . . . Orr R.V.S. at ¶ 19."	Typographical error
Vol. I at 146, n.225	"Elphick/Orr R.V.S. at ¶¶ 9-11."	"Orr R.V.S. at ¶¶ 9-11."	Typographical error
Vol. I at 151	". . . overcounts the number of 10,000 foot trains that CPKC intends to run. Elphick/Orr R.V.S. at ¶¶ 29-68."	". . . overcounts the number of 10,000 foot trains that CPKC intends to run. *Id.* at ¶¶ 29-68."	Typographical error
Vol. I at 151	"Kenny Rocker and John Turner, incorrectly treat the line as a single track. Elphick/Orr R.V.S. at ¶ 78."	"Kenny Rocker and John Turner, incorrectly treat the line as a single track. *Id.* at ¶ 78."	Typographical error
Vol. I at 152	"But CPKC will be adding only about six trains per day at this location, and will remain the distinct minority user of these lines, which will still remain below historical capacity. *Id.* at ¶¶ 79-81."	"But CPKC will be adding only about six trains per day at this location, and will remain the distinct minority user of these lines, which will still remain below historical capacity. *Id.* at ¶¶ 94-98."	Typographical error
Vol. I at 153	". . . west to Elgin and Randall Road east of Bensenville Yard. *See* Elphick R.V.S. at ¶¶ 7, 11, 1]."	". . . west to Elgin and Randall Road east of Bensenville Yard. *See* Elphick R.V.S. at ¶¶ 7, 11."	Typographical error
Vol. I at 164	". . . changes to Bensenville Yard which, will contribute . . ."	". . . changes to Bensenville Yard, which will contribute . . ."	Typographical error

Component & Location	Original	Corrected	Type of Error
Vol. I at 164	". . . (i.e., a mathematical formula uses to estimate capacity) . . ."	". . . (i.e., a mathematical formula used to estimate capacity) . . ."	Typographical error
Vol. I at 164	". . . improvements to that subdivision that CP's plans will support . . ."	". . . improvements to that subdivision that CP plans will support . . ."	Typographical error
Vol. I at 165	"The track schematics in Figure 14 below shows . . ."	"The track schematics in Figure 14 below show . . ."	Typographical error
Vol. I at 166, n.269	"Oppenheim Dep. Tr. at 175:4-176:20."	"Deposition of Rich Oppenheim dated June 7, 2022 ('Oppenheim Dep. Tr.') at 175:4-176:20."	Typographical error
Vol. I at 167	". . . without affecting Metra traffic when an outage CP's, Marquette Subdivision . . ."	". . . without affecting Metra traffic, when an outage on CP's Marquette Subdivision . . ."	Typographical error
Vol. I at 168	"Second, as discussed below at page [ ], all of the other sources . . ."	"Second, as discussed below at page 185, all of the other sources . . ."	Typographical error
Vol. I at 170, Figure 16	"Delays Were OTP at 95% Metra Target"	"Delays Where OTP at 95% Metra Target"	Typographical error
Vol. I at 170, n.279	"Walker RVS at n.36."	"Walker R.V.S. at n.39."	Typographical error
Vol. I at 171, n.280	"Oppenheim Dep. Tr. at 109:7-10; *see also* Deposition of David Rodriguez dated June 8, 2022 ('Rodriguez Dep. Tr.') at 90:21-25, 91:1-25, 92:1-22."	"Oppenheim Dep. Tr. at 109:7-10; *see also* Deposition of David Rodriguez dated June 8, 2022 (Exhibit 96) ('Rodriguez Dep. Tr.') at 90:21-25, 91:1-25, 92:1-22."	Typographical error
Vol. I at 171, n.281	"*See, e.g.*, Deposition of Greg Godfrey on June 9, 2022 ('Godfrey Dep. Tr.') at 48:16-24 ('[W]e would like to minimize controllable delays) (emphasis added) . . ."	"*See, e.g.*, Deposition of Greg Godfrey on June 9, 2022 (Exhibit 95) ('Godfrey Dep. Tr.') at 48:16-24 ('[W]e would like to minimize *controllable* delays.') (emphasis added) . . ."	Typographical error
Vol. I at 173	"CP performs incredibly well in dispatching Metra's peak-period train."	"CP performs incredibly well in dispatching Metra's peak-period trains."	Typographical error
Vol. I at 175, n.291	"*See* Walker R.V.S., Figure 10."	"*See* Walker R.V.S., Figure 11."	Typographical error

Component & Location	Original	Corrected	Type of Error
Vol. I at 176	"And it compares itself publically . . ."	"And it compares itself publicly . . ."	Typographical error
Vol. I at 177, n. 305	"*Id.* at ¶ 21."	"*Id.* at ¶ 24."	Typographical error
Vol. I at 177-78, n.306	". . . which spans from January 2016 to March 2022, *id.* 162:8-16163:11, Oppenheim . . ."	". . . which spans from January 2016 to March 2022, *id.* 162:8-163:11, Oppenheim . . ."	Typographical error
Vol. I at 180	". . . delay to its trains delays proves malfeasance is simply wrong."	". . . delay to its trains proves malfeasance is simply wrong."	Typographical error
Vol. I at 186	". . . As explained by Mr. Elphick., to the extent this occurs, it is usually . . ."	". . . As explained by Mr. Elphick, to the extent this occurs, it is usually . . ."	Typographical error
Vol. I at 187	". . . interference during Metra's peak periods almost never occurs. *Id.* at ¶ 31, Figure 5."	". . . interference during Metra's peak periods almost never occurs. *Id.* at ¶ 38, Figure 8."	Typographical error
Vol. I at 187, n.339	". . . Oppenheim acknowledged. *See e.g.* Oppenheim Dep. Tr. at 307:13-17 . . ."	". . . Oppenheim acknowledged. *See, e.g.*, Oppenheim Dep. Tr. at 307:13-17 . . ."	Typographical error
Vol. I at 188	"Metra does not to mention that most Metra stations are designed . . ."	"Metra does not mention that most Metra stations are designed . . ."	Typographical error
Vol. I at 189	"Mr. Oppenheim conceded as much as his deposition."	"Mr. Oppenheim conceded as much at his deposition."	Typographical error
Vol. I at 189	". . . train was on the 'wrong' track. Walker R.V.S., at ¶ 42."	". . . passenger's train was on the 'wrong' track. Walker R.V.S., at ¶ 49."	Typographical error
Vol. I at 189	". . . sacrifice capacity and cause unnecessary delays. Walker R.V.S., at ¶ 44."	". . . sacrifice capacity and cause unnecessary delays. Walker R.V.S., at ¶ 51."	Typographical error
Vol. I at 189	"And there is nothing unsafe about this practice. Walker R.V.S., at ¶ 43."	"And there is nothing unsafe about this practice. Walker R.V.S., at ¶ 52."	Typographical error
Vol. I at 190	"Metra dredges up a past discussions from 2019. . ."	"Metra dredges up past discussions from 2019, . . ."	Typographical error
Vol. I at 190, n.350	". . . Amtrak trains are not attributable to the transaction, and if Amtrak has committed . . ."	". . . Amtrak trains are not attributable to the transaction, and Amtrak has committed . . ."	Typographical error

Component & Location	Original	Corrected	Type of Error
Vol. I at 191	"As Mr. Walker explains, this critique is 'baffl[ing]" and 'seems entirely contrived.' Walker R.V.S., at ¶ 78."	"As Mr. Walker explains, this critique is 'baffl[ing]' and 'seems entirely contrived.' Walker R.V.S., at ¶ 91."	Typographical error
Vol. I at 191	"Indeed, implementing PTC has been a challenge to every railroad company. Walker R.V.S., at ¶ 79."	"Indeed, implementing PTC has been a challenge to every railroad company. Walker R.V.S., at ¶ 92."	Typographical error
Vol. I at 192, n.354	"Walker R.V.S., at ¶ 80."	"Walker R.V.S., at ¶ 93."	Typographical error
Vol. I at 193	". . . Metra seeks conditions to 'to ameliorate . . ."	". . . Metra seeks conditions 'o ameliorate . . ."	Typographical error
Vol. I at 195, n.360	"Gameiro R.V.S., at ¶ 12; *see e.g.* Oppenheim Dep. Tr. at 307:13-17."	"Gameiro R.V.S., at ¶ 12; *see, e.g.*, Oppenheim Dep. Tr. at 307:13-17."	Typographical error
Vol. I at 198, n.372	". . . Metra's Objections and Responses to Applicants' First Set of Interrogatories, Requests for Production of Documents, and Requests for Admission ('Metra R&Os') (Exhibit 53), at 4 ('…Metra responds by stating that its dispatchers currently dispatch both passenger and freight trains on the Metra's Rock Island Line . . ."	". . . Metra's Objections and Responses to Applicants' First Set of Interrogatories, Requests for Production of Documents, and Requests for Admission ('Metra R&Os') (Exhibit 52), at 4 ('…Metra responds by stating that its dispatchers currently dispatch both passenger and freight trains on Metra's Rock Island Line . . ."	Typographical error
Vol. I at 199, n.373	"*See* Metra R&Os (attached as Exhibit 53) . . ."	"*See* Metra R&Os (attached as Exhibit 52) . . ."	Typographical error
Vol. I at 199, n.373	". . . seven hours between 9:45 pm and 4:52 am during the week, and none of its outbound trains operate scheduled service for over six hours between 12:05 am and 6:21 am during the week . . ."	". . . seven hours between 9:45 p.m. and 4:52 a.m. during the week, and none of its outbound trains operate scheduled service for over six hours between 12:05 a.m. and 6:21 a.m. during the week . . ."	Typographical error
Vol. I at 202, n.381	"Metra's suggestion that that it should be excused from contractual terms it no longer likes . . ."	"Metra's suggestion that it should be excused from contractual terms it no longer likes . . ."	Typographical error

Component & Location	Original	Corrected	Type of Error
Vol. I at 203	"As Mr. Elphick explains these projects would come at the prohibitive cost of over $1 billion."	"As Mr. Elphick explains, these projects would come at the prohibitive cost of over $1 billion."	Typographical error
Vol. I at 204	". . . untouched by Transaction-related train count changes namely on Metra's MD-N line. . ."	". . . untouched by Transaction-related train count changes, namely on Metra's MD-N line. . ."	Typographical error
Vol. I at 205	". . . through Applicants' planned reconfiguration of Bensenville Yard. Elphick R.V.S., at ¶ 62."	". . . through Applicants' planned reconfiguration of Bensenville Yard. Elphick R.V.S., at ¶ 63."	Typographical error
Vol. I at 205	". . . entirely derivative of its own re-Transaction dissatisfaction . . ."	". . . entirely derivative of its own pre-Transaction dissatisfaction . . ."	Typographical error
Vol. I at 206	". . . to not to withhold consent unreasonably. Metra's requests are thus The requested condition would also be thus . . ."	". . . to not withhold consent unreasonably. Metra's requests are thus . . ."	Typographical error
Vol. I at 206	". . . Applicants are committing that to engage with Metra . . ."	". . . Applicants are committing to engage with Metra . . ."	Typographical error
Vol. I at 206	". . . work correcting the make errors in RTC modeling."	". . . work correcting the errors in RTC modeling."	Typographical error
Vol. I at 207	". . . 10-year STB oversight condition of CP dispatching practices . . . , including requirement agreement between Metra and CP to binding workable dispatching . . ."	". . . 10-year STB oversight condition of CP dispatching practices . . . , and require that CP and Metra agree to binding workable dispatching . . ."	Typographical error
Vol. I at 207, n.385	"METR-7 at 71."	"METR-7 at 3."	Typographical error
Vol. I at 208	". . . Metra's passenger service in the unlikely event any occur. *See infra* Part VII.E.; Creel R.V.S. 16."	". . . Metra's passenger service in the unlikely event any occur. *See infra* Part VII.E.; Creel R.V.S. at ¶ 16."	Typographical error

Component & Location	Original	Corrected	Type of Error
Vol. I at 211, n.394	"CN0000049-HC, { [redacted] }} . . ."	"CN0000049-HC, {{ [redacted] }} (Vol. 3, Exhibit 54) . . ."	Typographical error
Vol. I at 211, n.394	"{{ [redacted] }"	"{{ [redacted] } (Vol. 3, Exhibit 55)."	Typographical error
Vol. I at 211, n.395	"…FD 36514, CN Letter to the Honorable Cynthia T. Brown (CN-28), (filed Sept. 16, 2021) (Vol. 3, Exhibit 57)…"	"…FD 36514, CN Letter to the Honorable Cynthia T. Brown (CN-28), (filed Sept. 16, 2021) (Vol. 3, Exhibit 56)…"	Typographical error
Vol. I at 214	"Under the Board' precedents, the Board must first find . . ."	"Under the Board's precedents, the Board must first find . . ."	Typographical error
Vol. I at 215	"…routes between Kansas City and Chicago. Ottensmeyer R.V.S. at ¶ 12; Naatz R.V.S. at {¶¶ 92-94."	"…routes between Kansas City and Chicago. Naatz R.V.S. at ¶¶ 92-94."	Typographical error
Vol. I at 217, Figure 26	"2015-2019 WAYBILL DATA SHOWS DE MINIMUS CP-KCS . . ."	"2015-2019 WAYBILL DATA SHOWS DE MINIMIS CP-KCS . . ."	Typographical error
Vol. I at 217	"Much of the traffic waybilled as moving via Springfield is in fact physically interchanged between KCS and CN at East St. Louis. Naatz R.V.S. at 91."	"Much of the traffic waybilled as moving via Springfield is in fact physically interchanged between KCS and CN at East St. Louis. Naatz R.V.S. at ¶ 96."	Typographical error

Component & Location	Original	Corrected	Type of Error
Vol. I at 217	"And that traffic is not using the KCS-CN route for overhead movement between Kansas City and Chicago; this is primarily local traffic moving to and from on-line KCS and CN shippers." *Id.*	"And that traffic is not using the KCS-CN route for overhead movement between Kansas City and Chicago; this is primarily local traffic moving to and from on-line KCS and CN shippers."	Typographical error
Vol. I at 217	". . . even these de minimus traffic figures overstate . . ."	". . . even these de minimis traffic figures overstate . . ."	Typographical error
Vol. I at 217	"This is shown in Figure 27 below. Brown/Zebrowski RVS at ¶ 93:"	"This is shown in Figure 27 below. Brown/Zebrowski R.V.S. at ¶ 89:"	Typographical error
Vol. I at 217, n.405	"Brown/Zebrowski R.V.S. at {¶ 93 Figure {____"	"Brown/Zebrowski R.V.S. at ¶ 93 Figure 12."	Typographical error
Vol. I at 218, Figure 27	Figure 27 was based on an outdated draft of Table 3 in the Brown/Zebrowski R.V.S.	Replacement version of Figure 27 , based on the filed version of of Table 3 in the Brown/Zebrowski R.V.S., provided in replacement Highly Confidential Volume I.	Correction
Vol. I at 218, n.406	"*See* Brown/Zebrowski R.V.S. at ¶ 97."	"*See* Brown/Zebrowski R.V.S. at ¶ 89."	Typographical error
Vol. I at 219	". . . it is clear than the Springfield Line plays *literally zero* competitive role . . ."	". . . it is clear that the Springfield Line plays *literally zero* competitive role . . ."	Typographical error
Vol. I at 220, n.408	"Brown/Zebrowski R.V.S. at Exhibit 2."	"Brown/Zebrowski R.V.S. at Figure 12; Workpaper Historical Springfield Line Analysis.xlsx."	Typographical error
Vol. I at 220	"A look at the ICCs decision in the *UP/MKT* case . . ."	"A look at the ICC's decision in the *UP/MKT* case . . ."	Typographical error
Vol. I, at 222, n.410	"Email from Rhonda Anderson (CN) to Michael Wilkinson (KCS), 'Cockrell interchange to be closed asap' (July 2, 2019), Naatz R.V.S."	"Email from Rhonda Anderson (CN) to Michael Wilkinson (KCS), 'Cockrell interchange to be closed asap' (July 2, 2019), Naatz R.V.S. Exhibit 4."	Typographical error

Component & Location	Original	Corrected	Type of Error
Vol. I at 224	"…CN made no serious efforts to develop interline traffic via Springfield. Naatz R.V.S. at ¶ 99"	"…CN made no serious efforts to develop interline traffic via Springfield. Naatz R.V.S. at ¶ 99."	Typographical error
Vol. I at 226	"{ [redacted]	"{ [redacted] }""	Typographical error
Vol. I at 229	"But it has no authority to use a proposed transaction as free pass to . . ."	"But it has no authority to use a proposed transaction as a free pass to . . ."	Typographical error
Vol. I 233, n.434	"Naatz R.V.S. at Exhibit 10."	"Naatz R.V.S. at Exhibit 5."	Typographical error
Vol. I at 234	". . . single-line services to which these shippers have been accustomed. Naatz R.V.S. at {107."	". . . single-line services to which these shippers have been accustomed. Naatz R.V.S. at ¶ 107."	Typographical error
Vol. I at 235	"…will not protect Bartlett's interest. Naatz R.V.S. at {107."	"…will not protect Bartlett's interest. Naatz R.V.S. at ¶ 107."	Typographical error
Vol. I at 236	"Naatz and Brooks describe in detail the role this line will play as part of the CPKC network. Naatz R.V.S. at {92-94; Brooks R.V.S. at {¶¶ 49-54."	"Naatz and Brooks describe in detail the role this line will play as part of the CPKC network. Naatz R.V.S. at ¶ 94; Brooks R.V.S. at ¶¶ 49-54."	Typographical error
Vol. I at 237	"…traffic and improve the service these shippers receive. Naatz R.V.S. at {¶92."	"…traffic and improve the service these shippers receive. Naatz R.V.S. at ¶ 92."	Typographical error
Vol. I at 237	". . . as Mr. Brooks explains. Brooks R.V.S. at {¶ 51."	". . . as Mr. Brooks explains. Brooks R.V.S. at ¶ 51."	Typographical error
Vol. I at 238	"…other shortlines via Davenport and Peoria. Brooks R.V.S. at {¶ 57."	"…other shortlines via Davenport and Peoria. Brooks R.V.S. at ¶ 57."	Typographical error

Component & Location	Original	Corrected	Type of Error
Vol. I at 240	"CN witness Hunt makes clear that CN is not just thinking about taking truck off the highway."	"CN witness Hunt makes clear that CN is not just thinking about taking trucks off the highway."	Typographical error
Vol. I at 241	"…analysis of CN's witnesses is riddled with errors (Brown/Zebrowski R.V.S. at {¶ 66)"	"…analysis of CN's witnesses is riddled with errors (Brown/Zebrowski R.V.S. at ¶ 66)"	Typographical error
Vol. I at 241	"…Reply Verified Statement of Bengt Mutén ('Mutén R.V.S.') at {¶¶ 8-9, 16."	"…Reply Verified Statement of Bengt Mutén ('Mutén R.V.S.') at ¶¶ 8-9, 16."	Typographical error
Vol. I at 241	"…as we discuss above and Naatz explains. *See* Naatz R.V.S. at {¶¶ 98-99."	"…as we discuss above and Naatz explains. *See* Naatz R.V.S. at ¶¶ 98-99."	Typographical error
Vol. I at 241	"…a trivial distance in railroad intermodal terms. Mutén R.V.S. at {¶ 17."	"…a trivial distance in railroad intermodal terms. Mutén R.V.S. at ¶ 17."	Typographical error
Vol. I at 242	". . . sacrificing reliability for marginal-at-best improvements in cost. Mutén R.V.S. at {¶¶ 14-15."	". . . sacrificing reliability for marginal-at-best improvements in cost. Mutén R.V.S. at ¶¶ 14-15."	Typographical error
Vol. I at 242	"…attracting nearly as much of this traffic as Hunt forecasts. Brown/Zebrowski R.V.S. at ¶ 72."	"…attracting nearly as much of this traffic as Hunt forecasts. Brown/Zebrowski R.V.S. at ¶ 71."	Typographical error
Vol. I at 242	"'…an *interline CN to* a single-line route via Springfield.' *See* Brown/Zebrowski RVS at ¶ 74."	"'…an *interline CN to* a single-line route via Springfield.' *See* Brown/Zebrowski R.V.S. at ¶ 73."	Typographical error
Vol. I at 243	"'…(for example, by diverting more traffic as relative route length becomes longer).' Brown/Zebrowski R.V.S. at ¶ 67."	"'…(for example, by diverting more traffic as relative route length becomes longer).' Brown/Zebrowski R.V.S. at ¶ 66."	Typographical error
Vol. I at 247, n.455	". . . NS Joint Use Agreement (Simmons Exh. 10) § 2(a)(ii); Dallas Intermodal Marketing Agreement (Simmons Exh. 10) § 5(a)(i)."	". . . NS Joint Use Agreement (Simmons Exh. 12) § 2(a)(ii); Dallas Intermodal Marketing Agreement (Simmons Exh. 10) § 5(a)(i)."	Typographical error

Component & Location	Original	Corrected	Type of Error
Vol. I at 251	"First of all, as explained in the Elphick/Orr R.V.S. Elphick/Orr R.V.S. at ¶ 114. NS is incorrect."	"First of all, as explained in the Elphick/Orr R.V.S., NS is incorrect. Elphick/Orr R.V.S. at ¶ 114."	Typographical error
Vol. I at 251, n.468	". . . (showing 49.9% and 38.7% merger-related growth percentages, for an average of 44.5%)."	". . . (showing 49.9% and 38.7% merger-related growth percentages, for an average of 44.3%)."	Typographical error
Vol. I at 253	". . . meaning that there no issue with excessive train length. *See* Elphick/Orr R.V.S. at ¶¶ 108-112."	". . . meaning that there no issue with excessive train length. *See* Elphick/Orr R.V.S. at ¶¶ 108-112, 115."	Typographical error
Vol. I at 253	". . . Plan will alter improve service on the Meridian Speedway . . ."	". . . Plan will improve service on the Meridian Speedway . . ."	Typographical error
Vol. I at 257	". . . NS has the bargained-for protections the MSLLC Agreements."	". . . NS invested in the Speedway, NS has the bargained-for protections in the MSLLC Agreements."	Typographical error
Vol. I at 257	". . . CPKC's own interest in avoiding any service failure. Simmons RVS at ¶¶ {60-61."	". . . CPKC's own interest in avoiding any service failure. Simmons R.V.S. at ¶¶ 60-61."	Typographical error
Vol. I at 257	"{ [redacted] }"	"{ [redacted] }"	Typographical error
Vol. I at 257, n.482	". . . NS Joint Use Agreement (Simmons Exh. 12), Appendix B, §§ 2, 4; Western Haulage Agreement (Simmons Exh. 12) § 2(c); NS Joint Use Agreement (Simmons Exh. 11) . . ."	". . . NS Joint Use Agreement (Simmons Exh. 12), Appendix B, §§ 2, 4; Western Haulage Agreement (Simmons Exh. 11) § 2(c); NS Joint Use Agreement (Simmons Exh. 12) . . ."	Typographical error

Component & Location	Original	Corrected	Type of Error
Vol. I at 257, n.483	"NS Joint Use Agreement (Simmons Exh. 12), Appendix B, §§ 2, 4; Western Haulage Agreement (Simmons Exh. 12) § 2(c); NS Joint Use Agreement (Simmons Exh. 11) §§ 2(a)(ii), 6(b); Limited Liability Company Agreement of Meridian Speedway, LLC (Simmons Exh. 12) § 5.12; Dallas Terminal Marketing Agreement (Simmons Exh. 13) § 4(m)."	"NS Joint Use Agreement (Simmons Exh. 12), Appendix B, §§ 2, 4; Western Haulage Agreement (Simmons Exh. 11) § 2(c); NS Joint Use Agreement (Simmons Exh. 12) §§ 2(a)(ii), 6(b); Limited Liability Company Agreement of Meridian Speedway, LLC (Simmons Exh. 13) § 5.12; Dallas Terminal Marketing Agreement (Simmons Exh. 10) § 4(m)."	Typographical error
Vol. I at 258	". . . similar to those it currently possess for the Meridian Speedway . . ."	". . . similar to those it currently possesses for the Meridian Speedway. . ."	Typographical error
Vol. I at 258-59	" [redacted]	"{ [redacted] }"	Typographical error
Vol. I at 259	"{Creel R.V.S. at {23."	"Creel R.V.S. at 23."	Typographical error
Vol. I at 259	" . . . { [redacted] }}"	" . . . { [redacted] }"	Typographical error
Vol. I at 270, n.524	". . . in 2027 'when the exclusivity provision of KCSM's concession expires.' BNSF-at 54."	". . . in 2027 'when the exclusivity provision of KCSM's concession expires.' BNSF-9 at 54."	Typographical error
Vol. I at 271, n.526	"BNSF Network Map, BNSF Railway, https://www.bnsf.com/ship-with-bnsf/maps-and-shippinglocations/mexico/network-map.html (last visited May 12, 2022) (Vol. 3, Exh. 81)."	"BNSF Network Map, BNSF Railway, https://www.bnsf.com/ship-with-bnsf/maps-and-shippinglocations/mexico/network-map.html (last visited May 12, 2022) (Vol. 3, Exh. 80)."	Typographical error

Component & Location	Original	Corrected	Type of Error
Vol. I at 271, n.526	"Gateway & Connections, BNSF Railway, https://www.bnsf.com/ship-with-bnsf/maps-and-shipping-locations/mexico/gateway-andconnections. html (last visited June 28, 2022) (Vol. 3, Exh. 82)."	"Gateway & Connections, BNSF Railway, https://www.bnsf.com/ship-with-bnsf/maps-and-shipping-locations/mexico/gateway-andconnections. html (last visited June 28, 2022) (Vol. 3, Exh. 81)."	Typographical error
Vol. I at 271, n.528	"*See* BNSF0000932 (Vol. 3, Exh. 15)."	"*See* BNSF0000932 (Vol. 3, Exh. 14)."	Typographical error
Vol. I at 271, n.529	"*See* BNSF0000166 . . . (Vol. 3, Exh. 28)"	"*See* BNSF0000166 . . . (Vol. 3, Exh. 27)"	Typographical error
Vol. I at 271, n.529	" . . . BNSF0000151 . . . (Vol. 3, Exh. 83)."	" . . . BNSF0000151 . . . (Vol. 3, Exh. 82)."	Typographical error
Vol. I at 273, n.534	"BNSF-9 at 65 n.23"	"BNSF-9 at 65 n.23."	Typographical error
Vol. I at 275, n.535	"*See* BNSF0003259 ({{[redacted]}}"	"*See* BNSF0003259 ({ [redacted] }"	Typographical error
Vol. I at 275, n.535	"*See* BNSF0003259 . . . (Vol. 3, Exh. 84)"	"*See* BNSF0003259 . . . (Vol. 3, Exh. 83)"	Typographical error
Vol. I at 275, n.535	" . . . BNSF0003265 . . . (Vol. 3, Exh. 78)."	" . . . BNSF0003265 . . . (Vol. 3, Exh. 77)."	Typographical error
Vol. I at 277	". . . via the Laredo gateway, UP ask the Board to protect it . . ."	". . . via the Laredo gateway, UP asks the Board to protect it . . ."	Typographical error
Vol. I at 279	". . . the parties will negotiate those terms. See Naatz R.V.S. at ¶{ 69."	". . . the parties will negotiate those terms. See Naatz R.V.S. at ¶ 69."	Typographical error
Vol. I at 282	". . . the Coalition Communities, as shown in Figure 32 below. Elphick R.V.S. at ¶ 66."	". . . the Coalition Communities, as shown in Figure 32 below. Elphick R.V.S. at ¶ 67."	Typographical error
Vol. I at 282, n.545	". . . Conditions of the Coalition to Stop CPKC (ITAS-4)) (filed June 9, 2022) at 3."	". . . Conditions of the Coalition to Stop CPKC (ITAS-4) (filed June 9, 2022) at 3."	Typographical error

Component & Location	Original	Corrected	Type of Error
Vol. I at 284	". . . compared to many other communities in and around Chicago. Elphick R.V.S. at ¶ 70."	". . . compared to many other communities in and around Chicago. Elphick R.V.S. at ¶ 71."	Typographical error
Vol. I at 286	". . . circumstances and match network conditions on a day-to-day basis. Elphick R.V.S. at ¶ 79."	". . . circumstances and match network conditions on a day-to-day basis. Elphick R.V.S. at ¶ 78."	Typographical error
Vol. I at 287, n. 559	"*See* Letter from C. Anne Ergo to A. Giordano (May 24, 2022)) (Vol. 3, Exh. 86)) (asserting that Applicants' . . ."	"*See* Letter from C. Anne Ergo to A. Giordano (May 24, 2022) (Vol. 3, Exh. 86) (asserting that Applicants' . . ."	Typographical error
Vol. I at 289	". . . with BNSF having considerably more traffic in this region. *See* Elphick R.V.S. at ¶ 88."	". . . with BNSF having considerably more traffic in this region. *See* Elphick R.V.S. at ¶ 87."	Typographical error
Vol. I at 296, n. 583	"*See* JA-HC-000001 at -05-06 (emphasis added) { [redacted] } (Vol. III, Exh. 90) (Vol. 3, Exh. 90)."	"*See* JA-HC-000001 at -05-06 (emphasis added) { [redacted] } (Vol. 3, Exh. 90)"	Typographical error
Vol. I at 310	"As those individuals make clear, their comments do not 'do not constitute . . ."	"As those individuals make clear, their comments 'do not . . ."	Typographical error
Vol. I at 311	"Finally, the suggestion that that U.S. intermodal ports . . ."	"Finally, the suggestion that U.S. intermodal ports . . ."	Typographical error
Vol. I at 313	". . . drawing form his years of experience analyzing mergers . . ."	". . . drawing from his years of experience analyzing mergers . . ."	Typographical error

Component & Location	Original	Corrected	Type of Error
Vol. II, Exh. H (Elphick/Orr R.V.S.) at 9, n.10	"Annualized October 2020 KCS GTMs of [redacted] billion are nearly identical to [redacted] billion FY 2019 GTMs for KCS, and October 2020 monthly GTMs of [redacted] GTMs are between the monthly low of [redacted] and monthly high of [redacted] in FY 2019. *See* Workpaper "Cost Metrics Growth Model.xlsx", tab "KCS OP Metrics" at cells B39 ([redacted] B30 ([redacted]), B33 ([redacted]) B55 [redacted] ."	"Annualized October 2020 KCS GTMs of {{[redacted]}} billion are nearly identical to {{[redacted]}} billion FY 2019 GTMs for KCS, and October 2020 monthly GTMs of {{[redacted]}} GTMs are between the monthly low of {{[redacted]}} and monthly high of {{[redacted]}} in FY 2019. *See* Workpaper "Cost Metrics Growth Model.xlsx", tab "KCS OP Metrics" at cells B39 ({{[redacted] }), B30 ({{[redacted] }}), B33 ({[redacted] }) B55 ({{[redacted] }})."	Typographical error
Vol. II, Exh. H (Elphick/Orr R.V.S.) at 11	"[redacted] "	"{[redacted] }}"	Typographical error
Vol. II, Exh. H (Elphick/Orr R.V.S.) at 11, n.14	"[redacted]	"{[redacted] }"	Typographical error
Vol. II, Exh. H (Elphick/Orr R.V.S.) at 12	"[redacted]	"{[redacted] }"	Typographical error
Vol. II, Exh. H (Elphick/Orr R.V.S.) at 12	"[redacted] "	"{[redacted] }}"	Typographical error

Component & Location	Original	Corrected	Type of Error
Vol. II, Exh. H (Elphick/Orr R.V.S.) at 12	"This [redacted] amount is closely aligned to corresponding figures of [redacted] daily GTMs developed for the system cost model and the [redacted] daily GTMs . . ."	"This {{[redacted]}} amount is closely aligned to corresponding figures of {{[redacted]}} daily GTMs developed for the system cost model and the {{[redacted]}} daily GTMs . . ."	Typographical error
Vol. II, Exh. H (Elphick/Orr R.V.S.) at 13-14, n.18	"[redacted]"	"{[redacted]}}"	Typographical error
Vol. II, Exh. H (Elphick/Orr R.V.S.) at 20	Elphick/Orr R.V.S. Figure 1 ("Index Map of Capacity Arguments") omits certain locations and cross-references.	Replacement Elphick/Orr R.V.S. Figure 1 provided in replacement Volume II.	Correction
Vol. II, Exh. J (Simmons R.V.S.) at 28, n.30	"The [redacted]"	"The {[redacted]}}."	Typographical error
Vol. II, Exh. J (Simmons R.V.S. Exh. 7, KCS-UP Capacity Project Map, October 2018)	Material behind exhibit tab inadvertently omitted in Public version of Vol. II.	Replacement Simmons R.V.S. Exhibit 7 provided in replacement Volume II.	Correction
Vol. II, Exh. L (Walker R.V.S., Exh. 6, Commuter Rail System On-Time Performance Report – December 2017 (Excerpts))	Exhibit tab erroneously labeled "Exhibit 7."	Replacement tab provided in replacement Volume II.	Typographical error
Vol. II, Exh. L (Walker R.V.S., Exh. 8, Metra Website, https://metra.com/time-performancereports#Metra_and_On_Time_Performance)	Material behind exhibit tab inadvertently omitted.	Replacement Walker R.V.S. Exhibit 8 provided in replacement Volume II.	Correction
Vol. III (Hynes V.S. ¶ 75) at 10	"Attached as Exhibit 74 is a true and correct copy of excerpts of the document produced by NS, bearing production number NS00002011."	"Attached as Exhibit 74 is a true and correct copy of excerpts of the document produced by NS, bearing production number NS00002007."	Typographical error

Component & Location	Original	Corrected	Type of Error
Vol. III (Hynes V.S.) at 14	Unsigned signature page included.	Replacement page provided.	Correction Replacement provided.
Vol. III (Hynes V.S Exh. 74) at 2697	"HIGHLY CONFIDENTIAL – NS00002011"	"HIGHLY CONFIDENTIAL – NS00002007"	Typographical error
Vol. III (Hynes V.S Exh. 94) at 3234	"Exhibit A"	"Exhibit 94"	Typographical error
Vol. III (Hynes V.S Exh. 95) at 3325	"Exhibit B"	"Exhibit 95"	Typographical error
Vol. III (Hynes V.S Exh. 96) at 3381	"Exhibit C"	"Exhibit 96"	Typographical error
Vol. III (Hynes V.S Exh. 97) at 3435	"Exhibit D"	"Exhibit 97"	Typographical error
Vol. III (Hynes V.S Exh. 98) at 3498	"Exhibit E"	"Exhibit 98"	Typographical error
Vol. III (Hynes V.S Exh. 98) at 3498-3511	Transcript excerpts redacted in Public Reply.	Excerpts re-designated as Public and replacement exhibit provided.	Correction Replacement provided.

CP-53/KCS-39

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36500

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

APPLICANTS' RESPONSE TO COMMENTS AND REQUESTS FOR CONDITIONS, OPPOSITION TO RESPONSIVE APPLICATIONS, AND REBUTTAL IN SUPPORT OF THE APPLICATION

VOLUME 1 OF 3

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Exhibit 03	Verified Statement of Paul Tellier of CN's Application in *CN/WC*, Finance Docket 34000 filed on April 9, 2001
Exhibit 04	Memorandum opinion *FTC* v. *Peabody Energy Corp.*, No. 4:20-cv-00317-SEP, (E.D. Mo. Oct. 5, 2020)
Exhibit 05	Document produced by CN bearing production number CN0000185-HC
Exhibit 06	Document produced by BNSF bearing production number BNSF0001598 (excerpts)
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Exhibit 32	Reply Comments of BNSF *Major Issues in Rail Rate Cases*, Ex Parte No. 657 (Sub-No. 1), filed May 31, 2006
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Exhibit 46	Document produced by UP, bearing production number STB-FD36500-UP-HC000092
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Exhibit 48	Attached as Exhibit 48 is a true and correct copy of Metra's Public Workpaper Summary of CP Delay Events 2016 – 2021, produced by Metra, bearing production number METR_FD36500_001156.01
Exhibit 49	Metra's December 2021 On-Time Performance report, available at https://metra.com/sites/default/files/inline-files/On-Time%20Performance%20Report%20-%20December_2021.pdf (last accessed July 12, 2022)
Exhibit 50	Metra's January 2019 Ridership Trends report, available at https://metra.com/sites/default/files/assets/planning/ridership/jan_2019_ridership_report_standalone.pdf (last accessed July 12, 2022)
Exhibit 51	Comments of Metra filed in *Canadian Pacific Ry., et al. – Control – Dakota, Minnesota & Eastern R.R., et al.*, Finance Docket No. 35081 on March 4, 2008 (excerpts)
Exhibit 52	Metra's Response to Applicants' Interrogatories, Requests for Production and Requests for Admission (Apr. 11, 2022) (excerpts)
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Exhibit 56	Canadian National Railway Company, et. al—Control—Kansas City Southern, et al.'s Motion to Withdraw (CN-28) filed in *CN/KCS*, Finance Docket 36514 (September 16, 2021).
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Exhibit 68	Verified statement of Jean-Jacques Ruest to CN and KCS's Joint Motion for Approval of Voting Trust Agreement (CN-18 KCS-1), filed in *CN/KCS*, Finance Docket 36514 on May 26, 2021(excerpts)

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Exhibit 77	Document produced by BNSF, bearing production number HC BNSF0003265
Exhibit 78	Document produced by NS, bearing production number NS 00004912
Exhibit 79	Notice of Exemption in the Meridian Speedway transaction, filed in Finance Docket No. 34822 on January 17, 2006
Exhibit 80	BNSF Network Map, BNSF Railway, available at https://www.bnsf.com/ship-with-bnsf/maps-and-shipping-locations/mexico/network-map.html (last visited May 12, 2022)
Exhibit 81	Gateway & Connections, BNSF Railway, available at https://www.bnsf.com/ship-with-bnsf/maps-and-shipping-locations/mexico/gateway-and-connections.html (last visited June 28, 2022)
Exhibit 82	Document produced by BNSF bearing production number BNSF0000151
Exhibit 83	document produced by BNSF, bearing production number BNSF0003259
Exhibit 84	CP Response to Information Request No. 1, EI 31352 (Oct. 28, 2021) (excerpts)

Exhibit 85	Attached as Exhibit 85 is a true and correct copy of the CREATE webpage, available at https://www.createprogram.org/about-create/ (last visited on July 12, 2022)
Exhibit 86	Letter from C. Anne Ergo to A. Giordano (May 24, 2022)
Exhibit 87	CP's Commitment to Fight Climate Change, CP Sustainably Driven (2020), available at https://sustainability.cpr.ca/downloads/CP_Rail_2020_Climate_Statement.pdf (last accessed on July 12, 2022)
Exhibit 88	CP's Climate Strategy, CP Sustainably Driven (2021), available at https://sustainability.cpr.ca/downloads/CP_Rail_Climate_Strategy.pdf (last accessed on July 12, 2022)
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CP-53/KCS-39

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36500

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

APPLICANTS' RESPONSE TO COMMENTS AND REQUESTS FOR CONDITIONS, OPPOSITION TO RESPONSIVE APPLICATIONS, AND REBUTTAL IN SUPPORT OF THE APPLICATION

Applicants submit this response to the Comments, Amended Comments, and Amended Responsive Applications filed in this and all related dockets. As we demonstrate in the Application and the evidence and argument submitted herewith, the Application is compellingly in the public interest and should be approved without conditions beyond those embodying the commitments Applicants are making – summarized herein – to ensure that the public interest benefits of the combination of CP and KCS come to pass.[1]

The Transaction is supported by hundreds of shippers, shortlines, passenger rail interests, labor organizations, and others. No shipper or shipper association requests that the Transaction be denied. The Federal Railroad Administration endorses Applicants' Safety Implementation Plan. Amtrak and other passenger rail interests support the Transaction. Amtrak stresses "CP's excellent record as an Amtrak host railroad and CP's commitments to Amtrak's efforts with

[1] To avoid confusion, we refer herein to "unconditioned approval" to encompass the conditions Applicants have stated that they will accept, as summarized in Section I and the Reply Verified Statement of Keith Creel.

states and others as detailed in the agreement" reached between Amtrak and CP, and believes that the CP/KCS Transaction "promises significant public benefits for the U.S. rail network."[2] What opposition there is comes principally from the five Class 1 railroads. The protection these Class 1 railroads seek is itself evidence that they see the CP/KCS Transaction an injecting new competition into the North American rail network.

As the record reflects, the Transaction will deliver extraordinary public benefits, both quantified and unquantified, but all of tremendous value to shippers, the U.S. rail network, and the broader public interest. Among them:

- Competition will be strengthened and intensified by the new, single-line service offerings unlocked by the Transaction;
- Shippers will have new, better options and alternatives to the Class 1 services on which they depend today;
- CPKC's investments in its network to support the Transaction will further strengthen the U.S. rail network, adding capacity and enabling new, more robust transportation arteries;
- CPKC's improved network will uniquely support North American trade, better connecting the United States with both Mexico and Canada and supporting vital and evolving trade patterns;
- CPKC's new capabilities will shift tens of thousands of trucks off the Nation's roads, bringing emissions, infrastructure and economic benefits;
- The integration of CP and KCS will deliver concrete and quantifiable cost savings, enabling them to do more with less;
- CPKC's anticipated growth will deliver new jobs to America's heartland; and

[2] Amtrak Letter to Board (filed Feb. 2, 2022) at 1. Numerous communities across CP's and KCS's service territories echo Amtrak's support, expressing excitement about the transaction and CPKC's commitment to constructive cooperation with efforts by Amtrak and others to expand passenger services that may use parts of the CPKC network.

- CPKC will facilitate the expansion of passenger rail service on the CPKC network by being a good partner for Metra and the other commuter agencies that share CPKC lines and being an "A+" Amtrak host.

As we demonstrated in the Application and reinforce herein, the Transaction will deliver all of this without any offsetting public interest harms: no reduction in competition, no adverse impact on rail service or passenger operations on lines CPKC will use; and no material unmitigated impacts on local communities.

We are submitting this response in three volumes. Volume I (this volume) provides a narrative response to the comments and responsive applications, with citations to supporting verified statements and other evidence. In Volume II we provide Reply Verified Statements from a number of witnesses – including shippers – supporting approval of the Application. Volume III provides a number of additional documentary exhibits, including deposition excerpts and documents produced by other parties in discovery, for including in the record of this proceeding. Those exhibits are authenticated by the accompanying Verified Statement of Samantha Hynes.

In the sections that follow, we explain why the Board should reject the pleas of the parties seeking to have conditions imposed on the Transaction – or in CN's case seeking to undo a significant part of it through an unprecedented divestiture of an important part of the KCS network, a divestiture that no shipper on that line supports. We also explain why conditions are *not necessary* and why they would *do affirmative harm* by uniquely burdening CPKC in its quest to provide shippers and the U.S. rail network with robust and improved new transportation options connecting the North American continent.

I. INTRODUCTION

The most vehement opposition to the Transaction comes not from shippers, but rather from the Class 1 railroads who will compete most directly with the new transportation services that the CP/KCS Transaction will enable. Their opposition, and the self-serving conditions they seek, are not motivated by any need to protect the public interest from harm but by desire to protect themselves from change – i.e., the new, more intense competition CPKC will provide – or to get something valuable for themselves in the process. The Board should reject their efforts. The Board and its predecessor agency have recognized for a half century or more that the hard competitive truth is that "[n]o carrier is entitled to its existing level of traffic simply because it presently serves a given market."[3]

One of the most vigorous condition-seeking Class 1s in this proceeding, BNSF, warned the Board in 2000 when the agency was considering whether to change its rules governing Class 1 mergers that the Board should not use its merger rules to create "opportunities for competitors and other third parties to *abuse the merger approval process by using it to stop or to delay a pro-competitive merger* or to use it as *a means to extract special favors unrelated to the proposed merger*."[4] BNSF was right then, and little did it know then that its words would describe perfectly its own efforts in this proceeding, along with those of its Class 1 brethren and many of the other participants here.

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[3] *Guilford Transp. Inds., Inc. – Control – Delaware & Hudson Ry. Co.* ("Guilford/D&H"), 366 I.C.C. 396, 403 (1982); *see also Norfolk Southern Corp. – Control – Norfolk & Western Ry. Co.* ("*N&W/Southern*"), 366 I.C.C. 173, 213 (1982) (same) (citing *Burlington Northern Inc. – Control & Merger – St. Louis-San Francisco Ry.* ("*BN/Frisco*"), 360 I.C.C. 788 (1980); *Great Northern Pacific – Merger – Great Northern* ("*Great Northern Pacific/Great Northern*"), 331 I.C.C. 228 (1967); and *Detroit, Toledo & Ironton R.R. Control*, 275 I.C.C. 455 (1950)).

[4] *Major Rail Consolidation Procedures*, Ex Parte No. 582 (Sub-No. 1), Comments of BNSF Railway Company, Verified Statement of Richard J. Pierce, Jr. (filed Nov. 17, 2000), at 12 (emphasis added) (Vol. 3, Exh. 1).

The Application demonstrated that the proposed CP/KCS Transaction would be procompetitive and serve the public interest in numerous other ways. The Class 1 railroads' response to the Application – and especially their efforts to seek delay and to restrain or prevent the competition that CPKC will bring to them as a result of the Transaction – strongly reconfirms its procompetitive character. As we demonstrate in this response to Comments and the two Responsive Applications, the Board should approve the Transaction without conditions beyond those that are customary in end-to-end merger cases such as this.

Applicants will demonstrate the following:

- ***Under the pre- 2001 Merger Rules, Conditions Must Be Narrowly Tailored to Remedy Proven Harm Caused by the Transaction***

In Section II, we show that many of the commenters have not met the standards for merger relief under the Board's pre-2001 Merger Rules, which govern this proceeding. Under the pre-2001 Merger Rules, the Board has long emphasized that, in determining whether a transaction is in the "public interest," the focus is on competition, not harm to individual competitors, and the Board has thus consistently rejected competitors' arguments that they should be protected from the new competition generated by a transaction.[5] To grant any condition, the condition must be predicated on a showing of harm caused by the Transaction. Any relief must be narrowly tailored to remedy any such harm, and relief that would upend

[5] *N&W/Southern*, 366 I.C.C. at 213 ("In assessing the probable impacts of consolidation, and evaluating any harm arising from the consolidation, our concern is the preservation of essential services, not the survival of particular carriers."); *see, e.g.*, *Wisconsin Central Transp. Corp., et al. – Continuance in Control – Fox Valley & Western Ltd.*, Finance Docket No. 32036, 1992 I.C.C. LEXIS 279, at *10 (ICC served Dec. 4, 1992) ("A showing of expected substantial harm to a particular competitor as a result of a transaction is not equivalent to a showing of harm to competition.").

pre-Transaction relationships and provide the Commenters (and Responsive Applicants)[6] with rights that that they never previously had.[7]

The pre-2001 Rules do not require CPKC to "enhance" competition in the form of grants of trackage rights, divestitures, mileage pro-rate schemes, or by rewriting privately negotiated agreements to provide even rights to the large Class 1s others that they do not have in the pre-Transaction world. Nonetheless, this Transaction *does affirmatively enhance competition* by unlocking new single-line services and major new investments in CPKC's North-South transportation artery. The conditions sought by the Class 1 railroads would blatantly undermine the competition they would face from CPKC. And worse, many of the proposed conditions would in effect restructure the rail industry, with unpredictable effects except insofar that they would be certain to hobble the future competitive initiatives of the CPKC network that this Transaction will unlock.

- ***The Application Provides Ample Evidence of the Transaction's Public Interest Benefits***

In Section III we respond to criticisms directed at the Application's public benefits showing. First, we note that hundreds of shippers, shipper associations, passenger rail interests, labor organizations, and others support approval of the Transaction. Next we demonstrate that,

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[6] For convenience, references herein to "Commenters" is intended to encompass all parties who have filed comments addressing the Application, including Responsive Applicants CN and NS.

[7] *See, e.g.*, *Canadian National Railway Co. & Grand Trunk Corp. – Control – EJ&E West Co.*, Finance Docket No. 35087, 2008 STB LEXIS 220, at *10 (STB served Apr. 25, 2008) ("*CN/EJ&E*") (must be a sufficient nexus between the condition imposed and the transaction; mitigation is not imposed to correct pre-existing conditions, and the condition imposed must be reasonable); *Union Pacific Corp, Union Pacific R.R., & Missouri Pacific R.R. – Control & Merger – Southern Pacific Rail Corp., Southern Pacific Trans. Co., St. Louis Southwestern Ry., SPCSL Corp., & The Denver & Rio Grande Western R.R.* ("*UP/SP*"), 1 S.T.B. 233, 418 (1996) (STB served Aug. 6, 1996) (internal citations omitted) (conditions must be narrowly tailored, operationally feasible, produce net public benefits and "will not be imposed unless the merger produces effects harmful to the public interest (such as a significant loss of competition) that a condition will ameliorate or eliminate").

contrary to the assertions of the opportunistic Class 1s, Applicants' forecasts of the traffic that CPKC's new, competitive offerings are likely to attract were reasonable and derived from a thorough evaluation. Applicants reasonably expect to attract traffic from other Class 1s and from other modes by offering customers services that will meet their needs, including new single-line options that customers have never had before. Applicants' rail-to-rail and truck-to-rail traffic studies are one reflection of the implications of the more efficient and improved new single-line services CPKC will be able to offer, and CPKC's new traffic gains will be a product of that affirmative new competition and not a disabling – through "foreclosure" – of any existing interline options. CPKC will not – and need not – resort to "foreclosure" to win that traffic, and CPKC would shoot itself in the foot if it tried.

Applicants have also demonstrated that CPKC will be financially healthy and capable of making the significant new investments in its rail network while simultaneously repaying Transaction-related debt. That health – and prompt debt repayment – is not at all dependent on realizing any of the traffic growth or revenue gains anticipated from the Transaction, and thus CPKC will have no incentive to act irrationally by engaging in foreclosure to try to force short-run shifts in traffic to the CPKC network.

Finally, we demonstrate that the specific criticisms of the Operating Plan and Applicants' operating efficiency calculations – mostly from CN witnesses – are without merit. Applicants have presented reliable evidence of the traffic and operational changes arising from the Transaction and the efficiencies that those changes will generate.

This evidence strongly supports multiple compelling categories of public benefits: the concrete and quantifiable efficiencies generated by the combination of CP and KCS, and the less quantifiable but much larger, and no less real, benefits to competition and the public interest

from the new, more robust single-line offerings the Transaction will enable, backed up by hundreds of millions of dollars of new investment in critical rail infrastructure. In short, the Transaction is a once-in-a-lifetime opportunity to bring to the U.S. railroad industry new, market-based competition, which the other Class 1 railroads sadly appear to fear and seek to limit.

- ***The Transaction Will Not Cause Harm to Competition; It Will Increase Competition***

In Section IV, we respond to various arguments about the competitive effects of the Transaction.[8] We start with the settled fact that the Transaction will not reduce the number of independent rail transportation options for any shippers, period. Nobody disputes that. In fact, the Transaction will deliver substantial new competition, which hundreds of shippers note in their support.

The arguments that Commenters make about harm to competition are premised almost entirely on "vertical" concerns about "gateway foreclosure." Ironically, these arguments are put forward most vociferously by the same Class 1 railroads – UP and BNSF especially – who have loudly and consistently extolled the procompetitive virtues of their own end-to-end combinations. The Board's precedents, including its decision approving KCS's acquisition of Tex Mex where UP and BNSF made the same arguments they seek to retread here, show the way to address these concerns: to reject them in light of the economic facts, as backed up by the commitments Applicant are making to keep gateways open on commercially reasonable terms. Section IV reviews the extensive evidence – economic and otherwise – showing that there has been, and will be, no anticompetitive foreclosure, whereas the conditions UP and BNSF demand

[8] We address CN's spurious argument about the "parallelism" of KCS's Kansas City-Springfield line in Section VIII.

would themselves be highly anticompetitive, serving to tax CPKC's own aggressive competition and subsidize UP and BNSF.

Section IV also addresses a variety of other claims by shipper associations and others that, while couched in terms of "competition," in fact seek relief having nothing to do with this Transaction. Their calls for open gateways, reciprocal switching, and other sweeping remedies echo their longstanding efforts to seek re-regulation on an industry-wide basis, and are untethered to this Transaction.

- ***The Transaction Will Not Disrupt Rail Service***

In Section V, we respond to concerns voiced by some – likely based on bad memories of the *UP/SP* and *CSX/NS/Conrail* mergers – that the Transaction will cause disruptions to the service levels customers receive today. As we explain, this will not happen, not just because of the core features of the Transaction (especially its purely end-to-end character), but because of Applicants' dedication to careful and methodical merger implementation. As we summarize in Section V, and John Brooks explains in more detail in his Reply Verified Statement, Applicants are making several commitments that go beyond what merging parties have offered in the past – and which they anticipate would be conditions of the Transaction – to help assuage concerns about the effect of the Transaction on future service levels.

- ***CPKC's Implementation of the Transaction Will Not Outstrip Available Rail Capacity***

In Section VI, we respond to Comments from the three Class 1 railroads most threatened by the new competition CPKC will bring – UP, BNSF, and CN – contending that CPKC's growth will outstrip capacity and cause congestion.[9] UP and BNSF focus on the lines in Texas

[9] We address the capacity issues raised by Metra in Section VII.

where they share (primarily UP) trackage with KCS, and seek a condition forcing CPKC to get their permission, and pay for whatever UP and BNSF claim is necessary, before adding a single carload to these line. Such a condition has never before been imposed in any merger, and it ignores the many existing trackage rights provisions that already govern when, how, and who pays for capacity required by increased traffic volumes on the shared lines.

As we demonstrate, there will be no capacity shortfall. Many of these lines have successfully handled more trains than the Transaction anticipates in the past using less robust infrastructure than exists today (even before additional infrastructure will be added by CPKC and others). With the capacity expansion projects already underway along with the additional investments CPKC will make to expand capacity, the lines CPKC uses will support CPKC's added trains alongside all of the other uses of that trackage, including UP, BNSF, Amtrak, Metra, and others. It would be particularly unwarranted to expand the contractual rights of UP and BNSF given that under the trackage rights agreement imposed on UP by the Board, it is UP's responsibility to install the infrastructure necessary to support the needs of all of the users of that trackage, with KCS obligated to share in the cost alongside the other users. CPKC will be a cooperative partner in supporting whatever new infrastructure may end up being needed over time, as well as supporting the good operating practices necessary to get the most out of today's infrastructure. But it would be contrary to the public interest to give UP and BNSF a veto over CPKC's new competition.

- ***The Transaction Will Not Cause Harm to Metra's Passenger Operations***

In Section VII, we address the concerns raised by Metra, which are based on a fundamental misunderstanding of the Transaction's impacts on the lines shared by Metra and CP in the Chicago area. As we demonstrate, the Transaction will not outstrip CPKC capacity along

the Mississippi River, and it will not drive CPKC trains between Kansas City and St. Paul over Metra's lines. Train counts will increase (by eight trains a day) on one portion of one of Metra's lines (the MD-W line west of Bensenville) – and nowhere else on Metra. On that one line, there is more than enough capacity to support that growth without any adverse impact on Metra's passenger operations. Applicants back up these conclusions with comprehensive RTC modeling, built by correcting the many fatal flaws in the model presented by Metra's own expert.

Most of Metra's concerns, which form the predicate for a request to override existing agreements and force a transfer of dispatching from CP to Metra, reflect complaints about various practices that pre-date the Transaction. We demonstrate that those concerns are extraordinarily exaggerated, and that CP in fact performs quite well for Metra. We also make clear, however, that CPKC is determined to be an even better partner for Metra than CP has been, and Mr. Creel communicates several commitments that Applicants are making to ensure that CP follows though in that objective.

- ***No Class 1 Railroad Is Entitled to the Self-Serving Relief It Seeks***

In Section VIII, we address the additional self-serving requests for relief put forward by the Class 1 railroads, none of which has offered any valid predicate for that relief. Their requests for conditions are transparent attempts to lock in what they have today or to produce windfalls for themselves rather than go out to the market to fight for it. The Board should reject the Class 1 railroads' invitations to stifle competition at the public's expense.

CN requests that the Board require divestiture of the Springfield Line to CN's U.S. subsidiary, Illinois Central. But there is no competitive reason for why such a drastic remedy is

necessary, especially since divestiture of a line in the merger context has never been ordered, at least not since the Staggers Act. That line is not an active parallel route.[10]

Equally significant, the divestiture CN proposes would do violent harm not only to Transaction benefits, but to the single-line KCS service that on-line shippers (who account for almost all of the line's traffic) have come to rely upon. Tellingly, those shippers overwhelmingly oppose CN's request.

CN's call for a divestiture is on its face predicated on a 2001-Rules principle (and even then a faulty one) that the Board has authority to impose whatever conditions it wishes to "enhance competition." But far from enhancing competition, that relief would harm the competition that CPKC will provide, to the advantage of CN alone. Were CN right about the unique truck-diversion potential of the investments it proposes, CPKC would be an eager participant in working with CN to pursue them. A divestiture would be unjustified and counterproductive.

NS has requested various conditions meant to change the commercial terms of the Meridian Speedway agreements, all to favor NS. These are longstanding and negotiated agreements. NS wants changes to improve its profit at the expense of CPKC and expand the scope. NS seeks these conditions even though the CP/KCS Transaction has no adverse effect at all on the Meridian Speedway traffic carried by NS.

BNSF "reserves the right" to seek to have the Board impose on CPKC a host of new trackage rights that BNSF has long coveted, that would be unrelated to any Transaction-related harm, and would interfere with CPKC's operation of its own network. BNSF should be told no

[10] *See infra* Section VIII.A.2.

now, so that it is not given incentives to look for ways to cause problems as an excuse to ask for those rights later.

CSXT asks the Board to alter long-settled contracts to its advantage. CSX's desire to unwind aspects of the long-established Meridian Speedway agreements is unconnected to the Transaction and unwarranted, as is its demand that the Board make permanent a temporary pre-Transaction arrangement entered into between CSX and KCS regarding their interchange at New Orleans.

For its part, UP requests access to the to-be-built second rail bridge across the Rio Grande River at Laredo Bridge on the "same terms" as its access to the current bridge even though the new bridge will be privately funded by KCS and will increase the efficiency of cross-border traffic movements. Like all of the rest of the Class 1 requests, UP's request for the Board to override whatever terms the parties might negotiate has no nexus to the Transaction.

Without exception, these are requests untethered to any Transaction related harm that would give these railroads more rights than they have today. Also without exception, these request would give these railroads something they may have also wanted but were unable to negotiate. The complaints from Class 1 railroads show their fears that a CP-KCS transaction will improve service, provide better options for shippers, and increase competition. But as the Board has repeatedly recognized, arguments that a transaction's overall benefits to competition will, like virtually any marketplace event, be detrimental to some individual competitors is not relevant to the question of whether the Transaction is in the public interest.

- ***Applicants Have Accepted Standard Labor Protective Conditions***

Section IX briefly addresses the comments filed by rail labor organizations. As we demonstrate, Applicants are making good progress entering the implementing agreements with

affected labor organizations, and they reconfirm their acceptance of standard labor protective conditions.

- ***Other Requests for Conditions Should Be Rejected***

In Sections X and XI, we demonstrate that there is no merit to other miscellaneous request for relief.

In Section X, we show that requests for conditions from commenters raising environmental issues are being addressed through the Board's environmental review process, and in any event are not supported by any evidence of actual environmental harm. The "Coalition to Stop CPKC's" demand for more than nine billion dollars in infrastructure investments to address the addition of only eight additional freight to lines that daily host upwards of 70 total trains (including Metra passenger trains), and have historically hosted more freight trains than CPKC will operate, is particularly egregious. They are happy to have CPKC's anticipated freight traffic foisted on other communities but not in their backyards. CPKC is determined to be a good neighbor to all of the communities in which it will operate – even those that make outrageous demands – but the Board should recognize that the interest of the broader public would not be well served by policies that encourage a handful of communities to hold the competitive benefits of this Transaction hostage to their local demands.

Finally, in Section XI, we take on a handful of miscellaneous requests for relief that have no actual relationship to the Transaction: efforts by some TIH shippers to obtain a long-sought the rollback of CP's tariff covering TIH/PIH shipments; concerns expressed by various wheat associations about the possible effects on certain of their members of competition from other producers who will benefit from the Transaction, even though they have nothing to fear; Evergy's concern about its post-Transaction service levels; Texas International Terminal's effort

to resuscitate a dormant set of rights granted to KCS in 1986; LyondellBasell's effort to create new competitive access for BNSF and UP out of whole cloth; and the misguided comments of three individual FMC commissioners, who apparently do not desire for CP to continue offering efficient intermodal services from the Ports of Vancouver and St. John to the U.S. Midwest, none of which will be materially affected the Transaction.

- ***Applicants Accept a Discrete Set of Conditions Aimed at Confirming that the Transaction Will Serve the Public Interest***

Applicants have made – and discuss in this Response – a number of specific commitments that reflect Applicants' confidence that their proposed Transaction is in the public interest. Applicants understand and accept that they will be held to those commitments, specifically:

- Applicants' commitment to keep gateways open on commercially reasonable terms, as spelled out in greater detail in the Reply Verified Statement of John Brooks;
- Applicants' "Service Promise" and the other specific commitments respecting post-Transaction service protection set forth in the Reply Verified Statement of John Brooks;
- Applicants' representations to the Board and FRA set forth in their Safety Implementation Plan, which the FRA has accepted;
- Applicants' Voluntary Mitigation Measures filed with OEA on May 3, 2022; and
- as referenced above, Applicants' acceptance of the Board's standard labor protective conditions.

In addition, Applicants have entered into a number of agreements with parties in this proceeding that address concerns raised by those parties or reflect commitments that Applicants have made that have led those parties to support the Transaction. Applicants anticipate that the Board may impose their compliance with those agreements as a condition of the Transaction. Those agreements include:

- CP's agreement with {{ [redacted] }}

- CP's agreement with Amtrak committing to support Amtrak's previously-planned expansion of Amtrak service between Chicago and St. Paul in exchange for Amtrak's commitment to add certain infrastructure that would support those operations;

- CP's agreement with Bayer CropScience LP committing to provide three years advance notice to Bayer's chlorine suppliers of a change in certain of KCS's tariff provisions relating to IH transportation, provided that those shippers make use of the safest railcars available; and

- CP's agreements with certain communities relating to their environmental concerns.

Applicants acknowledge the Board's view that all of these commitments should become part of the Transaction that Applicants are asking the Board to approve.

* * *

In sum, the Transaction as presented in the Application promises to bring extraordinary benefits to the US rail network, its shippers, and other beneficiaries. It should be approved as promptly as possible so that CPKC can get started delivering those benefits.

II. MANY COMMENTERS PAY INSUFFICIENT ATTENTION TO THE GOVERNING LEGAL STANDARD

A. The Board Has Established that this Transaction Will Be Reviewed Under the Pre-2001 Merger Rules and Related Board Precedents

The Board has provided clear direction that the Transaction will be reviewed under the pre-2001 Merger Rules set forth at 49 C.F.R. part 1180 (2000). On April 23, 2021, following fervent efforts by most of the other Class 1 railroads to have the 2001 rules applied to this

Transaction,[11] the Board issued Decision No. 4, finding "the waiver provision under 49 C.F.R. § 1180.0(b) should apply to this Transaction" and that the Board's "review of this Transaction will be governed by the regulations contained in 49 C.F.R. part 1180, subpart A in effect before July 11, 2001." Decision No. 4 (served Apr. 23, 2021) at 2. The Board based this determination in part on its conclusion that "a merger of the CP and KCS networks would appear to result in the fewest overlapping routes when compared to a merger between KCS and any other Class I carrier" and that the "interrelationship between the CP and KCS networks in fact appears to be end-to-end in nature . . . which likely raises fewer competitive concerns than a transaction that is not end-to-end." *Id.*

Decision No. 4 did not end the efforts by the Class 1 railroads and others to persuade the Board to change its mind and apply the more onerous requirements of the 2001 merger rules to this Transaction. Indeed, the procedural history of this proceeding has been littered with efforts by the Class 1s to delay the Transaction and interpose further procedural hurdles and costs. Throughout, however the Board has been steadfast, emphasizing again and again that the review here will be conducted under the pre-2001 rules and related precedents. *See, e.g.*, Decision No. 8 (served Sept. 30, 2021) at 2, 9 n.9; Decision No. 11 (served Nov. 23, 2021) at 3; Decision No. 13 (served Feb. 18, 2022) at 2 n.3, 5 n.10.

Unfortunately, many of the Comments (and all of the Responsive Applications) continue to ignore that the pre-2001 rules apply. They predicate requests for relief – in some cases extraordinary relief – on principles that have no grounding in Board precedent under the pre-

[11] One Class 1 has acknowledged that the pre-2001 rules properly apply to this Transaction. CSX advised the Board that "it expects the Transaction will be reviewed under the 2000 Rules and not the undefined, untested 2001 Rules which do not appear to have application to a consolidation involving KCS." CSX Comment with Respect to Rules Applicable to this Proceeding (CSXT-1) (filed Apr. 1, 2021) at 1.

2001 rules, but emanate instead from requirements established in the 2001 rules – most notably the notion the Board might impose conditions to "enhance" competition relative to the pre-merger status quo and mandate the preparation of a formal "Service Assurance Plan." As Applicants will explain when they address each of these overreaching requests below, they reflect an unabashed unwillingness to accept the Board's repeated rulings that its "review of this Transaction will be governed" by the pre-2001 rules.

B. Pre-2001 Precedents Require that Conditions Be Linked to Concrete Transaction-Specific Harms

The Board's pre-2001 rules and the many precedents under those rules establish a well-understood set of ground rules for this proceeding. The Board has extensive discretion in assessing whether the Transaction as proposed is in the public interest, but if it serves the public interest the Board's precedents require its approval. Under 49 U.S.C. § 11324(c), of course, the Board "may impose conditions governing the transaction." *See* Decision No. 13. But the Board's pre-2001 precedent – as reviewed extensively in the Board's Decision No. 13 – makes clear that this authority is not an untethered power to regulate Applicants (or their Transaction) in service of the public interest. Instead, that conditioning power applies only to remedy specific Transaction-related harms.

As the Board has held over and over again, the Board "will not impose public interest conditions on a railroad consolidation" unless, at a minimum, four elements are satisfied: "[1] that the consolidation may produce effects harmful to the public interest (such as an anticompetitive reduction of competition in an affected market), [2] that the conditions to be imposed will ameliorate or eliminate the harmful effects, [3] that the conditions will be operationally feasible, and [4] that the conditions will produce public benefits (through reduction or elimination of the possible harm) outweighing their harm to the merger." *Union Pacific Corp.*

– *Control -- Missouri Pacific R.R., Western Pacific*, 366 I.C.C. 462, 565 (1982) ("*UP/MP/WP*").[12] As the Board summarized in Decision No. 13 herein (at 4), it "will not impose conditions on a railroad consolidation unless it finds that the merger produces effects harmful to the public interest (such as a significant loss of competition) that a condition will ameliorate or eliminate."

The Board's precedents have developed several important corollaries to this core principle that have significant bearing on the conditions sought in this proceeding.

First, because the predicate for any condition is a finding of Transaction "effects harmful to the public interest," *UP/MP/WP*, 366 I.C.C. at 565, the Board "will not normally impose conditions on a consolidation to protect a carrier," *N&W/Southern*, 366 I.C.C. at 235 (1982). The only exception to this rule is when "essential services are threatened and the condition: (1) is shown to be related to the impact of the consolidation; (2) is designed to enable shippers to receive adequate service; (3) would not pose unreasonable operating or other problems for the consolidated carrier; and (4) would not frustrate the ability of the consolidated carrier to obtain the anticipated public benefits." *Id.* No carrier makes a claim in this proceeding that the CP/KCS Transaction would threaten essential services.

Second, because conditions "must address an effect of the transaction," *UP/SP*, 1 S.T.B. at 418, the Board "will not impose conditions 'to ameliorate longstanding problems which were not created by the merger,' nor will [it] impose conditions that 'are in no way related either

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[12] The ICC and Board have repeated or cited this set of elements in nearly every Major Merger decision since 1982. *See, e.g.*, *Burlington Northern Inc., et al. – Control & Merger – Santa Fe Pacific Corp., et al.* ("*BN/Santa Fe*"), 10 I.C.C.2d 661, 729 (1995); *UP/SP*, 1 S.T.B. at 418 ("[c]onditions will not be imposed unless the merger produces effects harmful to the public interest (such as a significant loss of competition) that a condition will ameliorate or eliminate"); *CSX Corp. & CSX Trans., Inc., Norfolk Southern Corp. & Norfolk Southern Ry. – Control & Operating Leases/Agreements – Conrail, Inc. & Consolidated Rail Corp.* ("*CSX/NS/Conrail*"), 3 S.T.B. 196, 277-78 (1998); *Canadian National Ry., et al. – Control – Illinois Central Corp., et al.* ("*CN/IC*"), 4 S.T.B. 122, 141 (1999).

directly or indirectly to the involved merger.'" *Id.* (citing *BN/Santa Fe*, 360 I.C.C. at 952); *see also CSX/NS/Conrail*, 3 S.T.B. at 278; *UP/MP/WP*, 366 I.C.C. at 562-65. Likewise, the Board rejects conditions that "would put the proponent of a condition in a better position than before the merger," *UP/SP*, Finance Docket No. 32760 (Decision No. 103, STB served May 1, 2008) at 6, such as conditions that would "offset revenue losses by competitors." *BN/Santa Fe*, 10 I.C.C. at 730.

Third, the mere presence of some public interest concern associated with the Transaction is "*by no means sufficient"* to warrant imposition of a proposed condition. Decision No. 13 at 4 (citing *UP/SP*, 1 S.T.B. at 419) (emphasis added). "The condition must also be, among other things, narrowly tailored to remedy those effects." Decision No. 13 at 4. The Board will "closely scrutinize conditions that could alter the competitive balance otherwise to be realized from the merger, including whether those conditions could have unpredictable effects." *Id.* (citing *UP/SP*, 1 S.T.B. at 418); *see also* Decision No. 13 at 4 (citing *UP/MP/WP*, 366 I.C.C. at 564 for the proposition that the agency "should not use our conditioning powers to make consolidation proceedings vehicles for rail system restructuring").

Fourth, potential adverse impacts of the condition on the public interest – and on the Transaction itself – are central to the Board's assessment whether a particular condition is warranted. The Board "will consider evidence demonstrating the operational and competitive impacts of a requested condition on the primary transaction." Decision No. 13 at 4 (citing *CN/IC*, Finance Docket No. 33556 (Decision No. 7, STB served Sept. 18, 1998); *see also UP/MP/WP*, 366 I.C.C. at 564 (discussing the effects of conditions on the potential consummation of a transaction, and under certain circumstances, net public benefits).

Finally, the Board's precedents emphasize that the central focus of any consideration of potential conditions is on the Transaction's impact on competition. Although competition is not the sole consideration the Board may consider in assessing the public interest, it is the dominant one. As the Board said when approving the *CN/IC* transaction: "Conditions will generally not be imposed unless a merger produces effects harmful to the public interest that a condition will ameliorate or eliminate. The principal harms for which conditions are appropriate are a significant loss of competition or the loss by another rail carrier of the ability to provide essential services." *CN/IC*, 4 S.T.B. at 141; *see also CSX/NS/Conrail*, 3 S.T.B. at 277-78.

As we explain in this response, the requests for conditions fail under these governing principles. They are not required to overcome any public interest harm from the Transaction as proposed (including the commitments that Applicants are making with respect to the Transaction's implementation, as set forth below); they would reach far beyond any conceivable impact of the Transaction, with unpredictable consequences; in many cases they are designed to address pre-existing grievances having nothing to do with the Transaction; and they would do affirmative harm to the Transaction and the public interest (and in particular the new competition the Transaction would bring). The standards governing CN's extraordinary divestiture request are even more onerous – and even more clearly not satisfied, as we address in Section VIII.A below.

III. THE TRANSACTION WILL RESULT IN SIGNIFICANT PUBLIC BENEFITS

As recognized by many hundreds of shippers, this Transaction will deliver extraordinary benefits for rail customers, the robustness of the U.S. rail network, and the broader public interest. The Application contains extensive evidence of those benefits, which we need not rehash in this Response.

At the core of the Transaction's public benefits is its role in stimulating – without the need for any Board regulatory intervention – new competition in U.S. (and international) transportation markets. Some of those benefits are readily quantified, such as the concrete efficiencies the Transaction will achieve by combining the CP and KCS networks. Others flow from the improved competitive capabilities of the combined network, the new single-line services the Transaction will enable, and the further improvements in CPKC services through the virtuous cycle of investment and innovation that Transaction-related traffic growth will support. The full measure of these competitive benefits will be much more extensive than just the new traffic that CPKC attracts from other railroads, from other modes, and by generating entirely new marketing opportunities. CPKC will bring the benefits of greater competition to its existing customers, as well as to those of other railroads who end up deciding (perhaps as a result of competitive responses from CPKC's rivals) to keep this traffic where it is today.

The Comments of interested parties largely take these benefits as a given, with many acknowledging them outright.[13] The critics of Applicants' benefits evidence are, perhaps not surprisingly, CPKC's future Class 1 commenters. Some, led by UP, mock CP's new single-line services, asserting that they are unlikely to be particularly attractive to shippers, especially when measured against UP's supposedly shorter and faster routes. UP suggests that for CPKC to achieve its forecasted traffic growth, it will surely have to resort to foreclosure strategies that degrade UP's own existing interline routing options. UP and its allies are wrong. New CPKC single-line services will be attractive to customers, as the Board (and even UP itself) has consistently recognized in evaluating the benefits of end-to-end mergers in the past. CPKC will

[13] *See* Appendix C, Selected Excerpts from Shipper Support Statements Regarding Procompetitive Benefits of CP/KCS Transaction.

be a stronger and better competitor to these other Class 1s, and they know it. It is resoundingly in the public interest that CP and KCS be allowed to come together to achieve that goal.

Other Class 1 commenters, led by CN, quibble with some of the technical details of Applicants' quantifications of Transaction-related cost savings and data underlying the base year CP and KCS traffic that the Transaction will augment. None of these critiques have any merit either, and even if valid could not change the fact that the Transaction is in the public interest.

A. There Is No Merit to Claims by Class 1 Rivals that CPKC Will Not Provide Valuable New Competitive Options

Several of the Class 1 commenters take issue with Applicants' estimates of the traffic they will attract from other railroads or from trucks, and the revenues associated with those traffic gains.[14]

All of these critiques lack merit. Fundamentally, the combination of the end-to-end CP and KCS networks will serve the public interest by injecting new competition into the industry. Competition is a dynamic and fluid process, and it is obviously never possible to predict the outcome of that process with the precision of a diamond cutter. Now are the specific traffic gains that CPKC realizes the only measure of the public benefits of that competition: all shippers benefit whether or not they choose to shift their traffic to CPKC.

[14] UP and CN contend that Applicants have overestimated the projected traffic diversions. *See* Union Pacific Railroad Company's Comments and Request for Conditions (UP-10), Verified Statement of Thomas C. Haley ("Haley V.S.") (filed Feb. 28, 2022); CN's Comments on Application and Request for Conditions, Verified Statement of David T. Hunt ("Hunt V.S.") (filed Feb. 28, 2022). While BNSF, on the other hand, contends that Applicants *understate* the attractiveness of the combined CPKC networks. *See* Comments of BNSF Railway Company (filed Feb. 28, 2022) ("BNSF-9"), Verified Statement of Benton V. Fisher ("Fisher V.S.") at 13 (claiming "applicants' estimated diversions and growth traffic likely understate the additional volumes that will traverse the CPKC network"). This disagreement alone likely confirms the reasonableness of Applicants estimates.

Nonetheless, the Application has presented thorough, sophisticated, and reasonable estimates of the traffic that CPKC anticipates it will attract from other railroads and other modes of transportation, as well as the new traffic that its improved services and accompanying investments will generate. Those estimates are sound and fully consistent with Board precedent. Those estimates are validated in significant part by the groundswell of shipper support for the Transaction, and excitement about the specific new opportunities it will create.

The fact that CPKC's network will in some corridors require CPKC to move freight somewhat farther than its larger rivals will not hinder CPKC's new competition. CPKC will be capable of providing reliable, economical, and compelling new alternatives even where it may have a modest disadvantage in route length.

1. The Class 1 Critique of CPKC Traffic Estimates Misses the Fundamental Point that the Stronger Competition that Comes with the Transaction Is What Really Matters

Some of the Class 1 railroads criticize the precise quantification of traffic that CPKC will attract, often emphasizing their own views that their services are faster, more efficient, or otherwise superior to the CPKC routes.[15] Those critiques are unfounded. To start, estimating with precision the exact amount of traffic that CPKC will win away from other transportation options is not a precondition to finding that the Transaction will serve the public interest – nor

[15] *See* CN-13 at 18 (claiming that "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."); UP-10, Rocker/Turner V.S. at 2 (claiming that "Applicants' plans require CPKC to divert significant volumes of traffic from both UP and BNSF using longer, less efficient routes."); *id.*, Haley V.S. at 5.

even possible.[16] As described in detail below, Applicants developed their estimates based on a thorough assessment of the marketplace, and they are reasonable and sound.

But more fundamentally, the Class 1s are missing the forest for the trees: whatever measure of success CPKC achieves, the combination of the end-to-end CP and KCS networks will be a catalyst for investment in a new and improved North-South rail option that will inject new competition into the industry. If it really were the case that CPKC's estimates were wildly off base, and the Class 1 railroads did not expect much of their own traffic to be diverted to the CPKC network, they would not be objecting so vigorously. It is telling that the Class 1 railroads say nothing about their own competitive responses to CPKC. Their preferred strategy is to prevent new competition from CPKC from ever getting off the ground, using regulatory tools, rather than meeting CPKC in the marketplace.

It is also curious that the principal critics of the benefits available from Applicants' proposed end-to-end merger have themselves previously lauded the very same benefits when advancing their own end-to-end mergers, as recounted in detail in Appendix B. For example, BNSF has claimed that its formative transaction enabled it to "improve its service and grow the combined railroads' business in every major traffic category."[17] And CN has described how own U.S. origin story – the *CN/IC combination*, a transaction quite similar to CP/KCS – "was implemented with real gains in efficiency," and allowed CN to "offer new and improved

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[16] *See* 49 C.F.R. § 1180.7 (1999) (requiring Applicants to prepare analyses of the "anticipated effects of the transaction on traffic patterns, market concentrations, or transportation alternatives available to the shipping public."). Of course, whether the CPKC diversions are underestimated or overestimated is not a factor in the Board's review of the competitive effects of the Transaction, which is the primary focus of the public interest standard under the pre-2001 Merger Rules. Diversion analysis prove nothing about potential competitive harm.

[17] *Competition in the Railroad Industry*, Ex Parte No. 705, BNSF Reply Comments, Verified Statement of John P. Lanigan (filed May 27, 2011) at 2, 8 (emphasis added).

services."[18] These critics have unanimously failed to provide a coherent explanation of why these same kinds of benefits cannot be achieved or would be of a lesser value in the context of this Transaction.

2. Applicants' Estimates of the Traffic CPKC Will Attract Are Reasonable and Sound

Contrary to the insinuation of some Class 1 commenters, Applicants' estimates of the traffic that CPKC will attract from other railroads and other transportation modes was thorough, sophisticated, and reasonable. It was based on a rigorous and holistic assessment of the marketplace and the capabilities CPKC will bring to the market. Those estimates were based, in part, on the work of Richard W. Brown and Nathan S. Zebrowski of FTI Economic Consulting, who analyzed 2019 traffic flows reported in CP and KCS internal traffic tape data and the Carload Waybill Sample, and the potential for CPKC to attract traffic now handled by other Class 1 railroads in lanes where CPKC will offer significantly improved capabilities relative to the separate offerings of CP and KCS. In addition, Bengt Mutén of IHS performed a thorough analysis of the traffic moving by truck today in highway lanes.

The conclusions reached by Messrs. Brown, Zebrowski, and Mutén were then validated by Jonathan Wahba (CP's Vice President of Commercial Integration) and Michael J. Naatz (KCS's Chief Marketing Officer), both of whom have extensive familiarity with the commodity flows and customer opportunities in the affected markets. Messrs. Wahba and Naatz confirmed the analysis and supplemented it with a detailed examination of new opportunities for rail traffic growth, identifying movements that were not included in the rail-to-rail diversion analysis based

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[18] *Canadian National Railway Company, Grand Trunk Corp., and WC Merger Sub, Inc. – Control – Wisconsin Central Transportation Corp., Wisconsin Central Ltd., Fox Valley & Western Ltd., Sault Ste. Marie Bridge Company, and Wisconsin Chicago Link Ltd. ("CN/WC")*, Finance Docket No. 34000, Application, Verified Statement of Paul Tellier (filed Apr. 9. 2001) at 3 (Vol. 1) (Vol. 3, Exh. 3).

on 2019 data (primarily because these moves did not exist in 2019, and would not exist but for the Transaction occurring).

Applicants' findings show that customers will be attracted to the new service options, including more competitive intermodal services that CPKC will provide. Together, these five witnesses present a reasonable and reliable view of the likely degree to which CPKC will offer a compelling value proposition that attracts large volumes of rail traffic. Of course, none of these witnesses – including those of the Class 1 objectors – purport to predict exactly which carloads shippers will choose to ship on CPKC routes. No analyst possesses that kind of crystal ball. But the analysis of Applicants' witnesses and their process and conclusions are sound, reasonable, and fully consistent with methodologies previously approved in transactions involving the Class 1 opponents.

The Class 1s' criticisms of Messrs. Brown's and Zebrowski's analysis are lacking in substance and reveal that the Class 1 railroads really do not know how to attack a Transaction that produces the positive benefits that their mergers created. On the one hand, most railroads simply assert, without any analytical support, that Applicants' rail-to-rail diversion estimates as provided in the Brown/Zebrowski Verified Statement are overstated because the CPKC routes are longer than the routes from which traffic is expected to be diverted, and thus diversion would only occur by foreclosure. BNSF, on the other hand, claims the diversion estimates are understated.[19] The fact that one railroad argues the estimates are overstated and others argue the estimates are understated may itself reveal that CPKC's middle-ground estimates are reasonable (where the goal of estimates is not perfection).

- ***Modest Route Length Disadvantages Will Not Disqualify CPKCS from Offering Shippers Value They Find Attractive***

[19] BNSF-9, Fisher V.S. at 13-14.

We begin with UP's attack because it aims at the heart of CPKC's competitive benefits – contending that shippers will not much value CPKC's new offerings. UP wonders why "customers would willingly choose longer CPKC routes over existing interline routes."[20] But UP widely misses the mark. The hard data underlying Applicants' traffic analyses shows that UP's effort to equate "route length" or even "simulated run times" with the best service option is fundamentally wrong, and UP should know it. Shippers routinely choose transportation options based on a wide array of factors that are entirely unrelated – or only loosely related – to the variables upon which UP fixates. Applicants marketing witnesses and traffic analysts thoroughly debunk UP's false premise. Reply Verified Statement of Jonathan Wahba and Michael J. Naatz ("Wahba/Naatz R.V.S.") at ¶¶ 8-18; Reply Verified Statement of Richard W. Brown and Nathan S. Zebrowski ("Brown/Zebrowski R.V.S.") at ¶¶ 33-47.

At the outset, Applicants note that the decisions as to whether CPKC routes will be competitive will not be for UP to make. Those decisions will be made by rail customers, whom CPKC will have to attract to CPKC's offerings by meeting their needs for reasonable rates, reliable service, and cycle times that enable equipment savings. CPKC is confident that many customers will find CPKC's offers compelling. The history of railroading and CP's own success in delivering value to customers shows that CPKC will certainly not be disqualified from consideration because of longer routes, which is merely one factor that rail customers consider.

But the hard data drives an even more powerful stake through the heart of UP's simplistic assertions. As Messrs. Brown and Zebrowski show, mileage alone does not actually have very much to say about the overall competitiveness of a route or shippers' choices among competing

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[20] *See, e.g.*, UP-10 at 25.

alternatives. Longer routes can be more efficient and can provide faster, or more reliable, service. Brown/Zebrowski R.V.S. at ¶¶ 34-47; *see also* Wahba/Naatz at ¶ 13.[21] Longer routes, even supposing they have somewhat higher costs, can still be rate competitive and have relatively low prices where railroads are motivated to compete, as CPKC will be here. Brown/Zebrowski R.V.S. at ¶¶ 49-52; Wahba/Naatz R.V.S. at ¶¶ 13-18.

Messrs. Brown and Zebrowski based their traffic on data presented with the Application showing the relatively low influence of route mileage (within a reasonable range) on shippers' actual routing choices, and that analysis was not seriously challenged. *See* Brown/Zebrowski R.V.S. at ¶ 24; Verified Statement of Richard W. Brown and Nathan S. Zebrowski at Appendix B (App. Vol. 2 at 175-184).

In response to UP's attack, these witnesses took a harder look at data obtained in discovery from UP and BNSF, and they confirmed without a doubt that UP's simplistic assumptions about the role of route length in driving transit time differences is incorrect. In fact, the data confirm that CPKC's somewhat longer routes in some corridors will not make CPKC's routing options unattractive to shippers as new competitive alternatives.

Again, all of this is beside the point because shippers value reliability and many other attributes, not just speed. But even taking UP's claims about speed at face value, the actual data (drawn from UP and BNSF's own car event and waybill data records) show:

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[21] "This poses both challenges and opportunities for each railroad contending to provide the ideal service parameters demanded by shippers in a myriad of individual circumstances. Many elements of CPKC's operating plan, including train schedules, line capacity and velocity, planned maintenance outages, switching frequency, and intermediate handlings, will affect the transit times and service levels CPKC is able to provide to customers. It is unfounded to discount CPKC's opportunities to compete on the narrow basis of relative route length." Brown/Zebrowski R.V.S. at ¶ 41.

- For UP's movements via the Laredo gateway, {{[redacted]}} Brown/Zebrowski R.V.S. at ¶¶ 39-40 & Figure 2 (emphasis added).

- Narrowing the focus to the specific corridor between Laredo and Chicago yields the same conclusion. The variation in UP's carload and intermodal shipments on this one corridor is {{[redacted]}}. Brown/Zebrowski R.V.S. at ¶¶ 43-46 & Figures 3-4.

- Examining the performance of UP and BNSF intermodal shipments in the Chicago-Laredo lane confirms that CPKC offerings are fully capable of competing successfully. UP witness Haley points to a 14-hour transit time differential between UP and CPKC for the Laredo-Chicago lane, but the data show that that modest differential is {{[redacted]}} the amount of time UP (and BNSF) trains actually take to traverse those networks between Laredo (or Robstown) and Chicago). Brown/Zebrowski R.V.S. at ¶ 47-48 & Figure 5.

- UP's own evidence about market outcomes also contradicts UP's claims. UP witness Haley suggests that CPKC will not be competitive because of a route-length disadvantage that is no greater than the disadvantage that BNSF already possesses relative to UP, yet BNSF historically has attracted {{[redacted]}} of traffic on this route. Brown/Zebrowski R.V.S. at ¶ 47.

CN witness Hunt attacks Applicants' traffic analyses with a somewhat similar, more technical assertion that Messrs. Brown and Zebrowski's analysis should have given greater weight to route-length (i.e., "circuity").[22] Mr. Hunt is equally wrong.

As already shown, Messrs. Brown and Zebrowski conducted detailed traffic distribution analyses that revealed that circuity is not determinative of traffic shares at the relevant distance thresholds. Their approach used that data to reasonably and reliably estimate the impact of CPKC's new single-line routes, taking into account the degree to which relative distance influences shipper choices, and they explicitly excluded from consideration potential traffic shifts where CPKC routes would be more than 500 miles (or 50%) longer than the shortest available route. Brown/Zebrowski R.V.S. at ¶ 24. Moreover, as Applicants' witnesses demonstrate, Mr. Hunt's analysis is contradicted by his own work. His estimates of the traffic that CN would attract away from CPKC were it to purchase KCS's Springfield/St. Louis Line demonstrates that relative route-mileage is not dispositive:

First, Mr. Hunt's core methodology treats single-line routes as equivalent in "impedance" (or relative attractiveness to shippers) to interline routes that are 350 to 650 miles shorter. Brown/Zebrowski R.V.S. at ¶ 25; *see* CN-13, Hunt V.S. at 8.[23] Applying those parameters, the CPKC single-line diversion routes that Mr. Hunt states are 217-miles longer on average than existing interline routes, would, in fact, be *more efficient than* and highly competitive with existing interline routes. Brown/Zebrowski R.V.S. at ¶ 25.

Second, unlike Applicants' witnesses, Mr. Hunt's analysis concluded that traffic would shift to new CN single-line routes that would be more than 500 miles longer that existing

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[22] *See* CN-13 at 18; *id.*, Hunt V.S. at 8.

[23] Canadian National Application (CN-14), Verified Statement of David T. Hunt in Support of Springfield Line Divestiture to CN ("Hunt Application V.S.") (filed Feb. 28, 2022) at 37.

alternatives (*e.g.*, in the Kansas City-Calgary lane). Brown/Zebrowski R.V.S. at ¶ 24. Applicants do not credit this analysis, but it shows that CN's claims that CPKC's single-line routes will be competitively disadvantaged is not credible.

Third, Mr. Hunt's insistence that Messrs. Brown and Zebrowski should have used diversion percentages that vary with route length is contrary to his own use of diversion percentages that *barely change* in response to changes in route length, and in some cases even *increase* precisely because the diversion route is longer. Brown/Zebrowski R.V.S. at ¶¶ 26-28.

CN's own evidence thus confirms the reasonableness (and indeed superiority) of the data-driven approach taken by Applicant witnesses in this case.

- ***Other Attacks on Applicants' Traffic Estimates Are Equally Insubstantial***

CN's smattering of additional criticisms of Applicants' traffic analyses are likewise and easily rejected.

Mr. Hunt asserts that Messrs. Brown and Zebrowski should not have identified potential shifts of lumber traffic from Canada to Dallas or grain traffic from the Midwest to Mexico because those diversions are not tied directly to station moves in the 2019 traffic data is also easily discarded. Mr. Hunt overlooks the detailed explanations as to why each of these traffic shifts are likely following CPKC's creation of single-line service connecting destinations with existing demand to additional origin supply. Brown/Zebrowski R.V.S. at ¶¶ 15-18; Wahba/Naatz V.S. at ¶¶ 21-31, 96-101 (App. Vol. 1 at 253-258, 288-292). Specifically, CPKC's lumber and grain diversion estimates were based on Messrs. Wahba's and Naatz's knowledge of the dynamics and trends in those markets, and were quantified and validated with the support of Messrs. Brown and Zebrowski. Brown/Zebrowski R.V.S. at ¶ 16.

Mr. Hunt's own work in support of CN's Responsive Application reveals Mr. Hunt's self-serving inconsistency. He too recognizes that it may be appropriate to find that new single-

line routes could shift traffic currently moving in one origin-destination corridor to another. In his analysis, 15% of volumes currently moving through New York and New Jersey ports to Kansas City would instead move through the Port of Montreal were CN to gain a single-line route to Kansas City. Brown/Zebrowski R.V.S. at ¶ 18 n.26. Applicants do not endorse the correctness of this conclusion – in fact, Mr. Hunt provides significantly less detail and support for his assumption than Messrs. Brown and Zebrowski. But it shows that consideration of such shifts is appropriate in a rail traffic impact analysis. *Id.* at ¶ 18.

- ***CPKC's Revenue Estimates Are Reasonable***

The Class 1s also criticize Applicants for not providing more details concerning the prices CPKC will charge in the marketplace, suggesting that Applicants have not reliably estimated the revenues they will earn in the post-Transaction world. Messrs. Brown and Zebrowski explain why these criticisms are unwarranted. Brown/Zebrowski R.V.S.at ¶¶ 57-62.

The Class 1 railroads take Applicants to task for not precisely cataloguing the rates that they will earn from each carload of traffic they anticipate attracting to the CPKC network, or telegraphing exactly what rate discounts they may offer in competition with customers' existing transportation alternatives. UP even suggests, falsely, that CPKC's competitive strategies would necessarily entail charging the same rates as shippers pay today.[24] But it would be exceedingly inappropriate for Applicants to be required to develop and divulge to these Class 1s every detail of their strategies to bring new competition to the market. Applicants have not telegraphed – and should not telegraph – the customer-by-customer marketing plans that they will be rolling out to the marketplace if they are allowed to combine. To do so would undermine the very competition that the CPKC transaction is intended to enhance. Applicants recognize that they will need to

[24] UP-10 at 27.

present shippers with a package of rate and service terms that better meet their needs. Those packages will vary shipper-by-shipper, market-by-market, and will encompass a broad array of attributes from rate levels, equipment availabilities, cycle time expectations, reliability, transit times, and many other variables.[25]

3. Applicants' Estimates Are Validated by the Transaction's Extensive Shipper Support and Real-World Developments

Were the thoroughness of Applicants' market analyses and the track-record of end-to-end railroad combinations not enough to support Applicants' traffic forecasts, they would be validated by the extensive shipper support – and in many cases excitement about concrete new potential CPKC services – and real-world developments, including plans that many shippers are making to invest alongside CPKC to take advantage of the improved transportation linkages made possible by the Transaction.

Appendix C recites numerous examples from the extensive record of shipper support for the Transaction,[26] which Applicants are augmenting with a number of additional verified statements from shippers targeting specific ways in which the Transaction will bring better rail transportation options, stronger competition, and likely resulting traffic growth opportunities for CPKC. These shippers understand the multi-faceted benefits of the new CPKCS single-line routes that will be created by the Transaction.

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[25] Messrs. Brown and Zebrowski also explain why the specific criticisms of their revenue estimates levied by CN witness Hunt are incorrect. They show that (a) their use of a "segment approach" to revenue estimation was superior to "end to end approach" (Brown/Zebrowski R.V.S. at ¶ 58); (b) Mr. Hunt's claim that certain estimates exceeded actual historical non-CPKC revenues failed to account for re-billing (*id.* at ¶ 59); and (c) a minor currency conversion error identified by Mr. Hunt affects a total of 21 units of traffic and would impact revenues by less than 0.01% (*id.* at ¶ 61).

[26] For a complete list, see the Application (Volume III and the Table of Contents herein (Exhibits S-AC).

Real-word developments since last October and other concrete market facts further underscore the reasonableness of Applicants' estimates of the Transaction's potential.

First, numerous shippers have been developing their own plans to make investments to take advantage of the new, more efficient transportation linkages made possible by the transaction. CP's Chief Marketing Officer John Brooks and KCS's Chief Marketing Officer Michael Naatz separately summarize what KCS and CP are hearing from their current and future customers. Brooks R.V.S. at ¶¶ 5-6; Naatz R.V.S. at ¶105. Several of these shippers are communicating their plans directly to the Board. *See* Verified Statement of Mr. Bob Knief, President of Bartlett Grain Co. ("Knief V.S.") (filed June 22, 2022) at ¶ 15.[27]

Second, post-Application developments and other real-world facts further confirm precisely those new opportunities about which Applicants' Class 1 rivals are most skeptical. For example, CN witness Mr. Hunt claims that Applicants' forecasts of intermodal traffic from the Port of Lazaro Cardenas 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."[28] Mr. Hunt also opines that "[t]he Port of Lazaro Cardenas is

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[27] *See also* Reply Verified Statement of NEW Cooperative, Inc. (Vol. II, Ex. X) ("I write today to advise the STB of a potential investment that is contingent on the approval of the CP-KCS combination. This combination provides us the possibility to build a greenfield grain elevator to ship corn and soybeans in Northern Iowa, to capitalize on new, efficient single-line routes on CP-KC from Iowa to grain destinations on the KCS, including Mexico."); Reply Verified Statement of Kevin Hall, Vice President, Supply Chain & Continuous Improvement, Agriculture for CHS Inc. (Vol. II, Ex. U) ("The increased efficiencies and market access created by the CP-KCS merger would be an impetus for rail-using companies, such as CHS, to make the most of those benefits by considering making new investments in supply chain infrastructure to be served by CPKC."); Reply Verified Statement of Ray Carroll County Grain Growers, Inc. (Vol. II, Ex. Y) ("We are pleased to support the CP-KC transaction and believe that it opens up more possibilities for us. In fact, we anticipate making new investments in this corridor in the foreseeable future.").

[28] CN-13, Hunt V.S. at 27-31; *see also* UP-10 at 24-25 ("Applicants describe aspirations to draw substantial quantities of new traffic to their combined system, anchored by vague plans to attract international intermodal traffic to the Port of Lazaro Cardenas…").

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."[29] However, the reality of this opportunity has been proven by shipper interest in this transportation option and CP and KCS's now-proven ability to deliver service levels meeting customer needs even *before* the benefits of their combined network have been unlocked. Wahba/Naatz R.V.S. at ¶¶ 34-35.

Working on an interline basis, CP and KCS demonstrated the capabilities of their route between Lazaro Cardenas and Chicago, enabling steamship companies and intermodal shippers to bypass the congested Southern California ports. As one of those shippers – Sparx Logistics – testifies here:

> "We have proven through our actions that we believe ocean shipping from Asia to Lazaro Cardenas is a viable way to reach destinations in the Central and Eastern United States. We believe that the CP-KCS Transaction can only strengthen this exciting new option, making it better for our shippers and their customers."[30]

The president of the steamship line that handled those containers via Lazaro and the CP-KCS inland rail route similarly testifies that:

> "The combined CP-KCS network . . . will create efficient, single-line service from Lazaro Cardenas to those U.S. and Canadian population centers, making Lazaro a valuable relief value for freight that would otherwise further clog other ports."[31]

As this testimony confirms, UP and CN simply have their facts wrong. Maritime distances are not a barrier to Lazaro's competitiveness, especially for trade from Southeast Asia (Vietnam, Singapore, etc.), where vessel routes are not more circuitous. Nor is the modest

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[29] CN-13, Hunt V.S. at 32.

[30] Verified Statement of Markus Heiken, VP Global Ocean Procurement, Sparx Logistics Inc. (Vol. II, Ex. AA).

[31] Reply Verified Statement of Uffe Ostergaard, President of Hapag-Lloyd (America) LLC, at 1 (Vol. II, Ex. V).

differential in rail route mileage as compared to UP's and BNSF's rail routes from Southern California to Chicago. Other Pacific Coast ports will remain viable – indeed, dominant – options for containerized cargo moving to the U.S. Midwest, but Lazaro Cardenas has real and yet-untapped potential to prove efficient transportation options for many shippers' needs. Wahba/Naatz R.V.S. ¶¶ 28-31.

UP and CN are also critical of Applicants' anticipated ability to attract additional DRUbit traffic moving between Canada and the Gulf, supporting the transition of crude-by-rail to this non-hazardous form. Citing a 2019 press release announcing the first phase of the Hardisty project, they assert that this opportunity does not require the Transaction to be achieved.[32]

Those assertions, however, don't relate to the real-world market facts, as presented here by the rail shippers involved in this project. As the Chief Commercial Officer of USD Group explains in his Reply Verified Statement, CPKC's new routes promise to incentivize further investment in DRUbit infrastructure, thereby speeding up the transition to more efficient, safer DRUbit:

> "We believe the Transaction will create more efficient, new single line routes from origins near the Alberta oil sands, on CP's network, to destination refineries on KCS's network, without which new DRUbit traffic is much less likely to arise. We understand that CPKC will support new investment in capacity (longer sidings, etc.) on the CP-KCS North-South route connecting Canada with the Gulf Coast, enabling improved cycle times and reliability and the ability to move more product on the same number of trains, which impacts cost, efficiency, and capacity. These efficient new routes promise to incentivize further investment in DRUbit infrastructure, thereby speeding up the transition to more efficient, safer DRUbit."[33]

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[32] *See* UP-10 at 24-25; CN-13, Hunt V.S. at 25-27.

[33] Reply Verified Statement of Brad Sanders, Executive Vice President, Chief Commercial Officer, USD Group LLC, at 3 (Vol. II, Ex. AC).

As Messrs. Wahba and Naatz explain, UP and CN are confusing the first phase of the Hardisty project with the second and third phases, which have not been undertaken and which may not be undertaken without the transportation benefits that the Transaction will bring. The improved cycle times and service reliability made possible by the CP/KCS Transaction will support the new investments necessary to unlock this traffic and displace more hazardous forms of crude-by-rail moving across North America's rail network. Wahba/Naatz R.V.S. at ¶¶ 43-46.

Similarly devoid of connection with market facts is CN's assertion that Messrs. Wahba and Naatz "claim approximately $122 million in diversions that were apparently 'missed' by Applicants' diversion experts in LPG, grain, and perishable commodities."[34] As Applicants' witnesses explain, there are clear and compelling opportunities in each of these commodity groups to support rail movements to alternative destinations, or from alternative origins, that would not have been captured by a narrowly focused analysis only of 2019 origin-to-destination rail flows, and recent experience confirms the validity of these forecasts. For LPG, CP gained new business after 2019 from specific customers that would benefit from the new capabilities of single-line CPKC routes. The same is true of grain, where CP has identified concrete new opportunities for CP origins to supply a major KCSM grain customer in Mexico. Brown/Zebrowski R.V.S. at ¶ 64; Wahba/Naatz R.V.S. at ¶ 39. And for perishables, CN ignores the fact that the CP/KCS combination would not merely replicate existing highway movements, but shift perishables that move by truck from a two-stage route via warehouses in the south to a longer-haul rail movements directly into the U.S. Midwest closer to end consumers. Wahba/Naatz R.V.S. at ¶ 41; Mutén R.V.S. at ¶¶ 10-11.[35] The concrete potential of these and

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[34] *See* CN-13, Hunt V.S. at 32.

[35] These witnesses demonstrate that Applicants' traffic analyses did not double count any of these new market opportunities, contrary to CN's assertions. Brown/Zebrowski R.V.S. at ¶ 64.

other new marketing opportunities underscores the procompetitive potential of the CP/KCS transaction.

4. The KCS Board's Highly Conservative Pre-Agreement Synergies Estimates Do Not Undermine Applicants' Anticipated Benefits

Finally, the fact that KCS's board of directors was presented with a "more conservative" assessment of revenue synergies and operating savings in the course of its consideration whether to enter into a merger agreement with CP does not undermine the magnitude of benefits that Applicants now anticipate. As Mr. Naatz explains, it made sense for KCS's board to view potential future synergies conservatively, for they were deciding whether to accept consideration in the form of shares the value of which would be based in part on those synergies. Naatz R.V.S. at ¶¶ 108-112. Further, the KCS team developing those conservative estimates – which nonetheless showed extraordinary potential for new growth from a CP/KCS combination – had not yet had the benefit of the more detailed, collaborative analysis of that potential undertaken in conjunction with CP, and ultimately informed by the analysis of Applicants' traffic experts with the benefit of confidential data sources. *Id*. at ¶ 112. As the passage of time has shown, moreover, the desire of the marketplace for the transportation and competitive benefits that CPKC will unlock has only grown stronger. *See* above at Section III.A.3.

B. There is Zero Risk to CPKC's Financial Viability and Continued Investment, Regardless of How Much New Traffic Is Attracted to the CPKC System, or at What Rates

Echoing UP's false suggestion that CPKC's somewhat longer routes will compel it to "foreclose" UP interline routes in order to achieve forecasted traffic gains, CN contends that CPKC will be under financial pressure to do the same thing. CN is equally wrong.

As Velani and De Bruyn explain, CPKC will be financially strong and fully capable of rapidly repaying its Transaction-related debt regardless of how much new traffic it attracts – or how much revenue it reaps from that traffic. They demonstrate that CPKC will have ample free cash flow to pay down debt and invest in the railroad even in the absurdly unrealistic scenario where CPKC attracted no new traffic at all as a result of the Transaction. Reply Verified Statement of Nadeem Velani and Chris De Bruyn, ("Velani/DeBruyn R.V.S.") at ¶¶ 23-29.

CN's suggestion that Mr. Velani's analysis of CN's failed 2021 bid to acquire KCS has a bearing on the financial pressures CPKC will face here is also incorrect. CN claims that, "[i]n opposing CN's proposed merger with KCS, CP conducted a financial analysis of the transaction" and concluded that "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 . . . ."[36] As Messrs. Velani and De Bruyn explain, however, the facts of this Transaction are quite different:

- CN was offering substantially more cash consideration, which in turn would have driven substantially higher levels of debt;
- CN's public statements to investors and the public established that it was sharply focused on hitting "return-on-invested-capital" (ROIC) targets, which would have been challenging with the KCS transaction absent sharp revenue increases; and

[36] *See* CN-13 at 59-60, citing Exhibit 4, Verified Statement of Mark E. Zmijewski ("Zmijewski V.S."), at ¶ 5 (quoting Verified Statement of Nadeem Velani at 11).

- CN's proposed transaction involved combining two railroads with substantial amounts of competitive traffic and overlapping routes, creating very real risks that had a voting trust been authorized, it would have had to be unwound via divestiture, with attendant financial risks.

Velani/DeBruyn R.V.S. at ¶¶ 36-41.

None of these factors are at play with CP's acquisition of KCS.

C. The Class 1 Critique of the Operating Efficiencies Generated by the Transaction Is Invalid

Several of the Class 1s critique the magnitude of the operating efficiencies the CP/KCS Transaction will generate.[37] UP's critique is insular, focusing on static and narrow interchange cost savings without appreciating the rippling effect of operational redesign coupled with traffic growth and investment. These opportunities for greater efficiency extend well beyond the narrow body of traffic currently interchanged at Kansas City and cannot be achieved without the Transaction. CPKC's ability to re-optimize operations across a broader network will be the foundation for growth. Reply Verified Statement of Raymond A. Elphick and John F. Orr ("Elphick/Orr R.V.S.").

CN's quibbles with Applicants' estimates of operating efficiencies are no less meritorious, as Michael Baranowski explains in his Reply Verified Statement. Baranowski R.V.S. at ¶¶ 11-13. As Mr. Baranowski explains, Applicants have based their estimates on the same approaches that are used in the ordinary course in the railroad industry and that undergird the Board's regulatory processes. Baranowski R.V.S. at ¶ 38. They are entirely reliable.

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[37] *See, e.g.*, UP-10 at 23 ("CPKC would not generate significant merger benefits through cost savings"); UP-10, Haley V.S. at 5-14 (claiming that "applicants' projected operating cost savings are very small, and almost all could be achieved without a merger"); CN-13, Zmijewski V.S., at 59 (claiming claimed mechanical savings "are not cognizable efficiencies, or, at best, cognizable for a limited time period).

CN's witness on this subject, Dr. Mark E. Zmijewski, is a prolific testifying expert for parties in merger litigation seeking to attack the merging parties' efficiencies estimates. Courts considering his testimony have recognize that it is impossible to predict the future with certainty, such that efficiencies cannot be rejected based on the parties' inability to provide precise quantification with certainty. As recently as 2020, a district court judge considered Dr. Zmijewski's testimony on behalf of the Department of Justice and stated:

> "While Dr. Zmijewski's testimony identified several flaws with Defendants' process, and the Court commends his rigor, the Court also has no doubt that there is truth to Defendants' claim that the JV is likely to achieve significant efficiencies" and "[t]he Court is, of course, concerned about the fundamental unverifiability of efficiencies that are grounded in the business judgments of Defendants' employees. Also, as the FTC's examples make clear, some portion of Defendants' projected efficiencies are unrealistic or oversimplified. But Defendants have shown that they used a process substantially similar to that used in the ordinary course of business to determine the anticipated efficiencies arising from this transaction, and they have supported their claims with evidence from past transactions. Thus, the issues identified by the FTC *do not render Defendants' efficiencies wholly unverifiable*."[38]

Applicants' estimates of the efficiencies the Transaction will generate are likewise well founded in experience and the tools of the railroad industry. Baranowski R.V.S. at ¶¶ 36-38. There is no doubt that the CP/KCS Transaction will generate material efficiencies, to the benefit of the U.S. rail network, CPKC's customers, and the competitive process.

D. CN's Continuing Criticisms of the Operating Plan Lack Merit and Are Irrelevant to the Board's Evaluation of the Transaction's Impacts

CN continues its pattern of attacking the traffic density data reported in Applicants' Operating Plan. Applicants' prior submissions have thoroughly addressed CN's spurious claims

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[38] *FTC* v. *Peabody Energy Corp.*, No. 4:20-cv-00317-SEP, Memorandum Opinion (E.D. Mo. Oct. 5, 2020) (Vol. 3, Exh. 4) at 82-83 (emphasis added).

that Applicants' methodology for developing and presenting density data was invalid.[39] As the Amended Operating Plan shows, Applicants' approach in fact provides the best and most reliable means of assessing the *impacts of the Transaction*, which is the purpose of the Board's review in this proceeding. The data presented in the Amended Operating Plans supports a reliable assessment of the changes in traffic volume – in terms of train counts and tonnage – resulting from the traffic and operating changes associated with the Transaction.

CN's new volley of attacks appears to acknowledge this key fact thus turns its sights on criticisms of Applicants' "base period" data, most centrally CN witness Van Dyke's assertion that "Applicants' *base year* operating plan is based on traffic density data that is conceptually flawed and demonstrably incorrect."[40] None of this matters for purposes of determining how many more trains (or fewer trains in some instances), or how much more tonnage, the Transaction will result in CPKC handling on the various segments of its post-Transaction network. Instead, CN's new criticisms go only to the degree of precision associated with the base Operation Plan as a perfect measure of exactly what one would see if you stood trackside during 2019 and counted trains or weighed the passing railcars.

In any event, Messrs. Elphick and Orr explain in detail why Mr. Van Dyke is simply wrong in suggesting that building a 2019 base that Mr. Van Dyke claims to prefer would have enabled more reliable – or even reliable at – assessments of the transaction's impacts.

First, Mr. Van Dyke criticized Applicants for using data "to construct a '2019 base year' [that] does not actually include *any* data from 2019."[41] As explained in the Reply Verified

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39 *See* Applicants' Response to Decision No. 16 (CP-43/KCS-30) (filed Mar. 21, 2022); Applicants' Amended Operating Plan (Exhibit 13) (CP-47/KCS-34) (filed May 13, 2022).

40 CN-17, Verified Statement of Carl Van Dyke ("Van Dyke V.S.") at 6 (emphasis added).

41 *See* Van Dyke V.S. at 7-8 (emphasis added).

Statement of Raymond A. Elphick and John F. Orr, CN's criticisms are based on the mistaken premise that it would have been realistic, or even possible, to use FY2019 reported data to build a base that could have been used as the starting point for layering on Transaction-related changes. Elphick/Orr R.V.S. at ¶¶ 6-9. Applicants' approach, by enabling apples-to-apples comparisons between the pre- and post-transaction periods, was more reliable, not less.

A FY 2019 train plan was neither available nor representative of current operations, so Applicants reasonably chose the most current design at the time, and applied it to October 2020 traffic. That period was chosen because it was the nearest peak month to the period covered by the current design and because its volume levels were representative of the typical monthly range experienced in full year 2019. As discussed by Messrs. Elphick and Orr, the operating statistics generated by that approach provide the best available and most accurate reflection of current pre-Transaction levels. Elphick/Orr R.V.S. at ¶ 4.

Mr. Van Dyke also criticizes CP's decision to use KCS data for the period from February to early May 2021 data to develop pre-Transaction demand train levels (*e.g.,* unit trains carrying grain and other bulk commodities). That choice made sense for many reasons, including because it was aligned with KCS's current train design and also representative of KCS's pre-Transaction operations and 2019 average traffic levels. This period is not skewed due to seasonality. Elphick/Orr R.V.S. at ¶ 13.

Additionally, KCS reported segment density data available for FY2019 did not include corresponding train counts, so it could not have been used by Applicants to develop counts of trains per day ("TPD") or cars per day ("CPD"). As a result, Mr. Van Dyke's proposed approach would have left Applicants with no ability to develop an accurate assessment of Transaction-related operating changes, much less one linked to the pre-Transaction base plan. Elphick/Orr

R.V.S. at ¶¶ 6, 11. As discussed by Messrs. Elphick and Orr, an apples-to-apples measure of base and synergy TPD/CPD counts was critical. *Id.* at 11. Applicants' methodological choice was thus made consciously and appropriately, weighting the tradeoffs associated with modeling 2019 operations rather than relying on 2019 data, which would simply not have supported the analysis that the Operating Plan was designed to advance, or the role it plays in the Board's assessment of the Transaction's true impacts.

Mr. Van Dyke's other criticisms are equally without merit, as Messrs. Elphick and Orr explain. Elphick/Orr R.V.S. at ¶¶ 5, 13-19.[42] CN's quest to defeat Applicants' merger on a set of "data technicalities" is both misguided and ultimately just wrong. It is also disingenuous: Mr. Van Dyke's workpapers show that his preferred method for modelling segment densities produces results that are less aligned with CP and KCS 2019 reported segment densities than the Applicants' modelling, which planned for the operations of CPKC the same way they would plan for any future traffic and operational changes in the ordinary course. They used the best data available, and the best analytical tools available, to analyze the impacts of those plans, assure their feasibility, and present the resulting statistics to the Board. The Board has all the information it needs to form and support reliable judgments that the operating impact of the Transaction will serve the public interest.

IV. THERE ARE NO VALID COMPETITIVE CONCERNS

Despite the end-to-end character of the proposed Transaction, and extensive evidence of its competitive effects – covered in small part in the preceding section – a number of commenters

[42] Had Applicants followed Mr. Van Dyke's proposed methodologies, moreover, the resulting differences in operating statistics would have been trivial in scope and magnitude. Elphick/Orr R.V.S. at ¶¶ 17-18.

seek to articulate competitive concerns. They do this because they understand that the Board's precedents demand that a transaction "produce [] effects harmful to the public interest (such as a significant loss of competition)" in order to justify any "condition [to] ameliorate or eliminate" that harm.[43] However, there will be no such harm, and thus no predicate for any competition-preserving conditions. The Transaction will not reduce the number of serving railroads for any shipper or in any corridor (CN's claims notwithstanding), and CPKC will not eliminate any existing interline option that shippers would prefer to use over CPKC's new single-line alternatives. CPKC will have strong incentives to preserve those options, which is why Applicants did not hesitate to make robust commitments at the outset of this case to keep all gateways open both operationally and commercially for traffic that might be affected by the Transaction. With these commitments, which Applicants accept may be enforced by the Board, the public is assured that the Transaction will be every bit as procompetitive as Applicants foresee.

In this Section we address in detail the claims – primarily by a handful of opportunistic Class 1s seeking protection from CPKC's competition – that the Transaction will have anticompetitive vertical effects. We also explain why the requests of numerous shipper associations for open access, reciprocal switching, and other sweeping regulatory strictures predicated on their dissatisfaction with the level of competition in the industry have no place in this proceeding. The only threat to competition here is from the overreaching condition requests—by Class 1s and shipper associations alike – that would hobble CPKC's efforts to inject new competitive alternatives into the rail industry.

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[43] Decision No. 13 at 4 (quoting *UP/SP*, 1 S.T.B. at 418).

A. There Is No Basis for Concern About "Vertical" Competition

The Transaction is undeniably an end-to-end merger, a form of a vertical merger that "by its very nature, is not likely to generate the kinds of competitive problems that often arise in connection with a 'parallel' consolidation."[44] Apart from one self-motivated commenter – CN – no party has even suggested that the Transaction would reduce head-to-head competition among CP and KCS, and we demonstrate in Section VIII.A below that CN's contentions regarding the competitive role of KCS's Kansas City-Springfield Line are contradicted by the facts. The resounding support of hundreds of shippers extolling the procompetitive virtues of the Transaction and urging its approval speak loudly, and arrayed against them are precisely none that assert any true loss of competitive rail options – zero. Even CN's own communications with its shippers currying support for its divestiture proposal have readily acknowledged that {{ }}[45]

Given the Board's decades of consistent precedents – and the Class 1s' own decades of (nearly) consistent advocacy – regarding the procompetitive virtues of end-to-end mergers and the lack of any basis for thinking that competition is likely to be harmed rather than intensified, our Class 1 opponents have painted themselves into a bit of a corner, especially given that they all acknowledge that this Transaction is fundamentally a pure end-to-end transaction.[46] The Class 1 opponents must answer a number of questions: What has changed to warrant a departure from the Board's consistent precedents? What has changed to motivate an about face by the

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[44] *Kansas City Southern – Control – The Kansas City Southern Railway Company et al.*, Finance Docket No. 34342 ("*KCS/Tex Mex*") (Decision No. 12 served Nov. 29, 2004) ("KCS/Tex Mex Decision") at 17.

[45] CN0000185-HC, {{ }} (Vol. 3, Exh. 5).

[46] *See, e.g.*, BNSF-9, Verified Statement of David Reishus ("Reishus V.S.") at ¶ 10; UP-10, Rocker/Turner V.S. at 8.

Class 1 railroads in their attitude toward end-to-end consolidations? And, what if anything is different about this particular end-to-end Transaction to bring it outside the Board's consistent findings that transactions like this one – such as *CN/IC* – actually do intensify rather than harm competition in the transportation marketplace?

The answer to all of these questions, unfortunately for Applicants' opponents, is that *nothing has changed*, except that in this particular case – as in the *KCS/Tex Mex* proceeding of 17 years ago – UP and BNSF in particular feel threatened by the potential (indeed, likelihood) of new, more intense competition from CPKC single-line routes and want protection. As the Board's precedents establish, however, they are not entitled to protection.[47] Only harm to *competition – not harm to competitors – is entitled to* the Board's protection. Here, competition will be strengthened, not reduced.

The procompetitive nature of the CP/KCS Transaction is thoroughly addressed throughout the evidence in this case. That evidence encompassed the testimony of CP and KCS personnel regarding how they plan to bring new competitive options to rail customers, the analysis of Applicants' experts showing those new options likely will entice significant numbers of shippers to choose CPKC over other available alternatives, the testimony of hundreds of shippers who look forward to the day when CPKC operations become available, and the thorough economic testimony of Applicants' economic witness, Dr. W. Robert Majure, who has reviewed countless mergers in his prior role as a senior economist at the Department of Justice Antitrust Division, and concludes in this case that "a CP/KCS combination is a vertical

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[47] KCS/Tex Mex Decision at 17-18 ("harm to a competitor (UP, BNSF)" is not the same as "harm to competition"). Neither UP nor BNSF, nor any other railroad has raised any hint of concern about harm to their essential services, nor could they, particularly given the financial and network strengths of CPKC's much larger Class 1 rivals.

transaction of two complementary networks that would create opportunities for procompetitive benefits throughout the CP/KCS network and would not substantially lessen competition."[48]

In this Section, we demonstrate that the arguments regarding potential vertical competitive harm – and vaguer concerns of some about the potential loss of existing interline options in cases where CPKC will have a new single-line or longer potential haul – are not valid. In particular, the arguments of the Class 1 opponents are contradicted by:

- The Board's consistent conclusions, arrived at in case after case assessing the concrete factual contexts presented by the end-to-end aspects of specific railroad industry consolidations, that vertical foreclosure is unlikely to occur and that end-to-end mergers create new opportunities for shippers, not less;
- The consistent and sworn testimony of Applicants' opponents on the exact same issues in their own proposed consolidations;
- The Board's considered conclusions in a prior case that is factually indistinguishable from this one: KCS's acquisition of Tex Mex and TFM in 2005, in which UP and BNSF advanced exactly the same arguments they retread here regarding the likelihood of foreclosure at the Laredo gateway. Their predicted foreclosure did not come to pass then, and it will not come to pass in this case either; and
- The Board's consistent and successful reliance on conditions enforcing prior applicants' commitments to "keep gateways open on commercially reasonable terms" in lieu of more formalistic – and anticompetitive – mechanisms for regulating the interline rates of merging parties. Applicants here have made even

[48] Reply Verified Statement of W. Robert Majure ("Majure R.V.S.") at ¶ 11.

> more robust commitments in this regard, which far exceed what would truly be necessary (nothing) to ensure that they have incentives to maintain existing interline options that shippers may prefer in the future despite the advent if new, more efficient CPKC single-line routes.

UP and BNSF have very little to say about these issues that has not been said many times before, and thoroughly rejected by the Board. As Dr. Majure explains, the basic economics have not changed at all. The railroad industry facts have not changed at all. This end-to-end merger will be every bit as (and Applicants believe) procompetitive as the end-to-end mergers that came before – such as the *CN/IC* transaction, which nobody, ever, has suggested led to anything but new, procompetitive single-line route options to the benefit of shippers and the U.S transportation network.

What do UP and BNSF try to argue beyond a rehash of the arguments that the Board has previously rejected? Three things, principally. One: that the Board's prior analysis was entirely beholden to a discredited economic theory known as the "one lump" doctrine, and that (they claim) more modern economists view vertical mergers with suspicion. As Dr. Majure explains in detail, this is nonsense. The Board never based its conclusions about the procompetitive effects of end-to-end mergers in the rail industry on abstract economic theories, but on an assessment of the hard facts, and the facts here line up with those in prior cases and the vertical integration of CP and KCS will create more competition, not less. Dr. Majure also shows that the Class 1 economists really have nothing new to offer beyond the same old arguments, except dressed up to sound and look different, but the conclusion should be the same: the arguments about the potential for harm in a vertical merger do not stand up to the facts of this

Transaction. As the Board has done, and the ICC before it, the Board should once again find that these "vertical competition is bad" theories do not support a finding of likely competitive harm.

Two: UP appears to contend (with some allies) that this case is somehow different because CPKC's new single-line routes add nothing of value – viewed from Omaha, they appear longer and slower than UP's routes via Laredo – so the only way CPKC could hope to succeed would be via foreclosure of UP's "better routes." This is hubris speaking rather than fact. As we have already demonstrated in Section III, CPKC will offer shippers real value and success in attracting customers on the merits, with no need – and no incentive – to try to disable UP's routes.

Three: BNSF makes the aggressive claim (never previously presented to the Board or KCS) that for the past 17 years KCS has been foreclosing it brutally at Robstown/Laredo, and things will only get worse under CPKC. This is egregiously false, as a sober analysis of the underlying facts, confirmed by the deposition testimony of the BNSF witness making this claim, establishes.

As Applicants have previously made clear, and as Mr. Brooks explains in further detail, they will not shut down any existing interline option that shippers seek to preserve. Stated in the terminology of the Board's well-established precedents, they will not close any affected gateways (commercially or otherwise) and they will keep those gateways open on commercially reasonable terms.

Against this backdrop, there is only one threat to competition here, and that is the overreaching demand for protective conditions put forward by both UP and BNSF (and echoed in the comments of ACC/NITL/TFI). Any requirement that CPKC provide interline rate factors (or Rule 11 rates) that are a fixed, mileage-based percentage of the single-line rates that CPKC

will offer in competition with other Class 1 railroads (or any other mandated linkage to those rates) would be truly anticompetitive. As Dr. Majure and other witnesses explain, it would disclose to CPKC's competitors the rates it was charging in the marketplace in an effort to win traffic from them. Further, it would impose a direct tax on CPKC in the form of compulsory reductions on CPKC's interline revenue divisions that would subsidize UP and BNSF. This would not help shippers, but simply transfer money from CPKC to its larger rivals. The exact same condition request was rejected in *KCS/Tex Mex* and it should be rejected here.[49]

At bottom, there is no vertical competitive concern in this case, and even if there were the tried and true solution would be enforcement of Applicants' commitment to keep gateways open, not a new regulatory mechanism that would interfere with precisely the new competition that this Transaction promises to bring shippers and the U.S. economy.

1. The Board Has Extensive Experience with End-To-End Mergers and the Net Benefits They Have Brought

Board precedent – developed over decades under the pre-2001 merger rules and applied in numerous non-major end-to-end transactions since then – teaches two things: vertical competitive issues are not a significant concern in these cases, and the appropriate way for the Board to assure the public of that is to hold applicants to their commitments that they will not close gateways, commercially or operationally. The Board's unbroken line of precedents, up to and including its most recent decision earlier this year in a merger case, establishes that the end-to-end character of the Transaction that certain commenters now assail is precisely what will make CPKC a more formidable competitor and what will lead to improved transportation options for shippers.

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[49] KCS/Tex Mex Decision at 24.

The Board recognized this fact in every one of the pre-2000 major merger decisions that built the systems of the five largest Class 1s. Appendix A recounts, chronologically and case-by-case, the extraordinarily consistent record developed by the Board's evaluation of the end-to-end aspects of those past mergers, starting with *BN/Frisco* in 1982. To be sure many of those transactions – like *UP/SP* – also had extensive horizontal overlaps (unlike here) that required trackage rights and other remedies, but the end-to-end aspects were uniformly regarded as procompetitive.

This precedent was founded on a recognition that, unlike in the pre-Staggers era, the public interest was best served not by protecting individual railroad rivals from change, but by allowing railroads to come together to offer new, better single-line services in the marketplace. In 1982, the Board's predecessor, the Interstate Commerce Commission ("ICC"), went so far as to eliminate the "protective conditions" that had been routinely imposed on past mergers, and that insulated competing railroads from having to compete harder against new single-line transportation options made possible by mergers. The ICC explained, relying on its conclusion on the record of the end-to-end *BN/Frisco* of earlier that same year:

> "[R]ailroads *do not have a proprietary right in the future to the traffic they have carried in the past*. Therefore, we need not protect railroads from the possible loss of traffic through diversion to a merged railroad. On the contrary, *protecting competing railroads tends to limit a shipper's ability to obtain the best service from the merged company and dampens the incentives for competitive response to the merged company from existing railroads*."[50]

As the precedents set forth in Appendix A demonstrate time and again, this core finding has stood the test of time in major merger after major merger up to and including *CN/IC*.

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[50] *Rulemaking Concerning Traffic Protective Conditions in Railroad Consolidation Proceedings* ("Traffic Protective Conditions"), 366 I.C.C. 112, 117-18 (1982) (quoting BN/Frisco) (emphasis added) (alterations in original). This rationale behind the decision to rescind the so-called DT&I conditions was described as "well reasoned and persuasive" by the court of appeals. *Detroit, Toledo & Ironton R. Co.* v. *United States*, 725 F.2d 47, 51 (6th Cir. 1984).

In the non-major mergers since 2001, the Board has reached exactly the same conclusion after having reevaluated deeply in the Major Merger Rules proceeding the record of prior mergers and their potential competitive effects. For example:

- ***CN/Wisconsin Central (2001)***: The "end-to-end configuration of the CN/WC control transaction will benefit shippers by enabling CN to secure, and to increase to the maximum extent possible the efficiency of, its Superior-Chicago NAFTA route connecting Western Canada and the Central United States" and allow CN/WC to "offer expanded single-line service and other large network advantages."[51]
- ***CP/Dakota, Minnesota & Eastern Railroad ("DM&E") (2008)***: "The evidence demonstrates that this essentially end-to-end transaction will benefit shippers by enabling CPRC/DM&E/IC&E to provide single-system service where none currently exists."[52]
- ***CSX/Pan Am (2022)***: The Board "has often recognized more efficient single-line service as a benefit of mergers."[53]

Even though the Board decided these cases against the backdrop of its having adopted the 2001 Major Merger Rules, the Board consistently rejected calls for conditions based on alleged vertical competitive effects. Instead, in every case – and indeed based on calls to carry out the spirit of the 2001 rules, the Board merely required compliance with the applicants' own

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[51] *Canadian National Ry., et al. – Control – Wisconsin Cent. Transportation Corp. et al.* ("*CN/WC*"), 5 S.T.B. 890 (2001).

[52] *Canadian Pacific Ry., et al. – Control – Dakota, Minnesota & Eastern R.R., et al.* ("*CP/DM&E*") Finance Docket No. 35081 (decision served Sept. 30, 2008).

[53] *CSX Corp. & CSX Transportation, Inc., et al. – Control & Merger – Pan Am Systems, Inc. et al.* ("*CSX/Pan Am*"), Finance Docket No. 36472 (Decision No. 9 served Apr.14, 2022) at 22.

commitments to keep gateways open and not create new regulatory bottlenecks – exactly the commitments Applicants have made here.

The ICC and the Board were not voices in the wilderness in assessing the competitive effects of end-to-end railroad mergers. Each of the Class 1 railroads that now seek protection in this case, in each of the mergers that build their current networks, told the Board that – as a matter of economics, fact, and law – there was no basis for competitive concern about end-to-end railroad combinations. They did so without exception when their own transactions were under Board (or ICC) review – in *CN/IC, CSX/NS/Conrail, UP/SP*, *BN/Santa Fe, UP/CNW*, and many other merger cases that preceded those, as shown in Appendix A.

In the *BN/Santa Fe* proceeding, for example, Applicants argued vociferously – and correctly – that the "vertical" aspects of their mergers were precisely what made them procompetitive, not anticompetitive. Applicants' economist Joseph Kalt explained: "the bulk of the impacts of the BN/Santa Fe merger on the merged company's traffic movements are 'vertical.' That is, *one of the primary benefits of the merger is the ability to provide expansions of single-line service*."[54] Professor Kalt elaborated:

> "In the case at hand, the term 'vertical foreclosure' is particularly inapposite. Not only are the traffic diversions from other carriers and other modes … *not* the consequence of any exercise of market power; they arise from improvements in service offerings to customers. The BN/Santa Fe merger does not portend the vertical foreclosure of competition. If anything, the merger promises the introduction of a more effective single-line competitor where previously the BN and Santa Fe were at a competitive disadvantage."[55]

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54 *BN/Santa Fe*, Verified Statement of Joseph P. Kalt. (filed Oct. 1994) at 97 (Vol. 3, Exh. 6).

55 *Id.* at 99.

This statement captures the core thesis of the CP/KCS combination almost precisely. To paraphrase: *If anything, the merger promises the introduction of a more effective single-line competitor where previously CP and KCS were at a competitive disadvantage*.

When the record of those prior mergers was being reviewed in 2000 and 2001 in connection with the Board's revisions to its major merger rules, the same Class 1s doubled down to extoll the procompetitive benefits that their end-to-end mergers had brought to the marketplace. There was not a whisper of "foreclosure" concerns from all these past mergers, for the simple reason that the end-to-end aspects of these transactions were plainly procompetitive. They enabled new, more efficient routing options, and they gave shippers new choices to select the routes they preferred: efficient ones stayed open and available, and inefficient ones fell into disuse in preference to new single-line options. Appendix B provides a detailed catalogue of the testimony before the Board that was offered by Applicants' Class 1 opponents. A small sampling is provided below:

- ***BNSF***: "Economic analysis indicates that end-to-end mergers are unlikely to cause competitive harm."[56]
- ***BNSF***: "Because this is predominantly an end-to-end combination, situations in which there might be a potential reduction in competition have been limited from the outset."[57]
- ***NS***: Proponents of imposing conditions mandating trackage rights for another carrier when a railroad that exclusively serves a shipper merges with another

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[56] *Major Rail Consolidation Procedures – Advance Notice of Proposed Rulemaking,* Ex Parte No. 582 (Sub-No. 1), Comments of the Burlington Northern and Santa Fe Railway Co. (filed Nov. 17, 2000) ("BNSF Comments in Major Rail Consolidation Procedures") (Vol. 3, Exh. 7).

[57] BNSF0001135 (Applicants' Brief in *BN/SF*) (Vol. 3, Exh. 8).

connecting carrier "simply seek to use the fact of an end-to-end consolidation transaction as a convenient opportunity to force two-carrier rail access to exclusively served shippers whose situations would not change at all as a result of the transaction."[58]

- ***UP***: "UP does not share the view of many shippers that end-to-end mergers generally have anticompetitive vertical effects."[59]

Even more important, the record developed over multiple decades contains far more than mere argument by the Class 1 opponents about the benefits of end-to-end mergers. It is filled with *evidence* of their actual procompetitive effects.

The Class 1s themselves repeatedly extolled those benefits: in the *Major Rail Consolidation Procedures*, BNSF, CN, and UP praised end-to-end mergers at length. For example, BNSF stated: "Unlike parallel mergers, end-to-end mergers do not involve significant network overlaps, so that few or no shippers face a potential reduction in the number of railroads that serve them. Moreover, end-to-end mergers are the equivalent to vertically integrating the various routes served by railroads, and the overall impact of integrating and rationalizing the ownership of the rail network is pro-competitive through reduced costs and improved overall service."[60] And the Board's own merger oversight proceedings, in which it took evidence and carefully assessed whether prior mergers had achieved their procompetitive goals, consistently led to the same conclusion: end-to-end mergers invigorated competition and did not harm it.

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58 *Major Rail Consolidation Procedures*, Ex Parte No. 582 (Sub-No. 1) NS's Comments (filed May 16, 2000) (Vol. 3, Exh. 9) at 33-34.

59 *Major Rail Consolidation Procedures*, Ex Parte No. 582 (Sub-No. 1) UP's Comments and Initial Proposals (filed May 16, 2000) (Vol. 3, Exh. 10) at 11.

60 *Major Rail Consolidation Procedures*, Ex Parte No. 582 (Sub-No. 1), Comments of the Burlington Northern and Santa Fe Railway (filed Nov. 17, 2000) at 15.

For example, in *CN/IC*, the STB stated that the merger "has been implemented successfully and without significant complaints" and found no "competitive or other problems stemming from the *CN/IC* combination."[61] In *CSX/NS/Conrail*, the STB found that as a result of the transaction, "[b]alanced rail competition ha[d] been brought to many points throughout the Eastern United States."[62] And in *UP/SP*, the Board noted in terminating oversight that "the record demonstrates that the conditions we imposed on the UP/SP merger have maintained and fostered rail competition in the Western United States."[63]

Arrayed against this unbroken wall of precedent, there is exactly zero evidence (at least over the past multiple decades) that mergers have even led merging railroads to shut down efficient routing options that shippers had preferred pre-merger by implementing "foreclosure" strategies. To be sure, they won traffic away from less-efficient interline routes by persuading shippers to switch, but in the decades-long history of oversight of end-to-end mergers there has *never* once been a finding that a gateway was closed, much less in the face of commitments made to the Board to keep those gateways open.

CN/IC illustrates this point. The Board has imposed a condition requiring CN to keep the Chicago gateway open for certain shipments of North Dakota grain. During the oversight process, the Board determined that CN had no incentive to ignore North Dakota grain traffic by closing the gateway and concluded that CN had in fact kept the gateway open.[64]

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61 *CN/IC*, Finance Docket No. 33556 (Sub-No. 4) (Decision No. 4 served Dec. 27, 2001) at 2.

62 *CSX/NS/Conrail*, Finance Docket No. 33388 (Sub-No. 91) (Decision No. 17 served Oct. 20, 2004).

63 *UP/SP*, Finance Docket No. 32760 (Sub-No. 21) (Decision served Dec. 20, 2001).

64 *CN/IC*, 5 S.T.B. at 332-33.

All of this learning has consistently led the Board to reject demands for conditions that railroads and others have sought to impose to insulate themselves against vertical competitive hard.

2. Commenters Offer No New Economic or Other Learning that Calls into Question the Board's Consistent Precedents and Factual Conclusions

The Commenters seeking to revisit these precedents – principally UP and BNSF – offer no legitimate basis for doing so. They proceed from the false premise that modern economics has moved on from the outdated ideas of yore, and now recognizes the grievous concerns with vertical mergers. For example, BNSF claims that while vertical rail mergers previously were presumed to cause "no harm," the "[a]dvances in the economic understanding of the potential harms that can arise from vertical mergers have led to a far more skeptical view of the presumption of no harm."[65]

They are wrong on multiple counts:

- First, as Dr. Majure explains, the Board's precedents were never based on rigid adherence to an abstract economic theory, but by a case-by-case assessment of the hard facts presented by specific proposed transactions, informed by the Board's (or ICC's) experience with the actual effects of previous transactions.
- Second, under the guise of "updating" the Board on the state of economic learning, the UP and BNSF economists provide an entirely vacuous set of theories of their own: namely, they want the Board to buy into the idea that the features of end-to-end railroad mergers that make them procompetitive (as Professor Kalt

[65] BNSF-9, Reishus V.S. at ¶ 12; *see generally* UP-10 at § 3.

testified for BNSF in 1995) instead make them inherently suspect and presumptively bad. That view may serve these railroads' new-found parochial interests in this case, but it is both at odds with the historical record and unhelpful in supporting any serious examination of the actual likely consequences of this or any other transaction, as Dr. Majure explains.

- Third, UP and BNSF ignore that the supposedly "new" theories they espouse here are in fact exactly the same ones that they tried, and failed, to convince the Board to adopt in *KCS/Tex Mex*.

The Board's Precedents Were Not Built on Abstract Theory. Certain Class 1 railroads suggest that the world of vertical merger analysis has suddenly changed from when their mergers were approved from one where such mergers presented no possibility of harm to one where all such mergers should be presumed to have anticompetitive concerns in every end-to-end case. That is false. The Board has long maintained that vertical mergers are never "per se" legal. Rather, the Board analyzes the facts presented by each case.

Dr. Majure explained in detail in his Verified Statement why this particular Transaction "would create opportunities for procompetitive benefits throughout the CP/KCS network." Verified Statement of W. Robert Majure ("Majure V.S.") App. Vol. 2 at ¶ 10. Dr. Majure described why in a vertical merger, one of the merging parties must have the ability and incentive to preclude or control a rival's ability to compete in order to foreclose, and explained the factual underpinnings of the Board's application of the "one-lump theory" in prior proceedings. *Id.* at ¶ 14. Dr. Majure further explained why neither CP nor KCS will have any incentive or ability to foreclose rivals or otherwise lessen competition as a combined firm, using

as an example UP's and BNSF's unfounded claims of foreclosure at Laredo post-*KCS//Tex Mex*. *Id.* at ¶ 12, Section III.2.[66]

Instead of attacking the foundations of Dr. Majure's findings that *this* vertical merger is procompetitive, the Class 1 railroads' economists hang their collective hats on the idea that the Board's findings in earlier proceedings were premised *solely* on a set of presumptions derived from the "one lump" theory. They aggressively attack the theory – which they had previously long supported – on the premise that if they poke holes in the "one lump" theory, the Transaction becomes ipso facto anti-competitive.

The Class 1 railroads' economists are attacking a strawman. As Dr. Majure explains in his Reply Verified Statement, the Board's decisions in prior merger proceedings did not rigidly apply a *presumption* derived from abstract economic theory. Majure R.V.S. at ¶ 19. Instead, the Board drew from the economic insights informing the "one lump" theory to address – on the particular facts – whether the merging railroads would have the incentive or ability to seek to expand their "lump" by foreclosing efficient interline options. *Id.* at ¶ 23.

Neither the Board nor the courts have said that application of the "one lump" theory creates a "no possibility of harm" standard.[67] As the D.C. Circuit explained, the Board (and its predecessor, the ICC) "do[] not treat the one-lump theory as an absolute, precluding the possibility of adverse effects from vertical integration," but rather "regard[] the theory as strong

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[66] *See* Section IV.A.3.

[67] As Dr. Majure's Reply Verified Statement explains, the Board discussing the "one lump" theory in prior cases did not assume an absolute ability to extract rents in those cases absent the relevant merger. The Board was simply using the theory to describe the issues in vertical competition. In addition, commenters' critique that the one-lump theory cannot apply here because Applicants do not have perfect information was squarely rejected by the D.C. Circuit, who stated the argument that Santa Fe did not have perfect information precluded the application of this theory left it "baffled." *Western Resources, Inc.* v. *STB*, 109 F.3d 782, 790 (D.C. Cir. 1997).

enough to create a presumption of bottleneck maximization of monopoly profits, subject to rebuttal."[68] But as explained by Dr. Majure and other Applicant witnesses, the facts here demonstrate that the Transaction is procompetitive.

Class 1 railroads also seem to suggest that new developments in the world of antitrust law and economics call into question the Board's end-to-end merger precedents, as discussed *infra*. But the potential harms from vertical mergers were well known by the ICC and the Board when it was deciding merger cases over the past four decades. Antitrust merger cases outside the railroad industry in the 1970s and 1980s made clear that "vertical" did not automatically equate with "legal." *See, e.g., Fruehauf v. FTC*, 603 F.2d 345 (2d Cir. 1979) (rejecting the FTC's vertical merger challenge under a foreclosure theory and finding a lack of proof of likely anticompetitive effects); *see also Alberta Gas Chemicals Ltd*. v. *E.I. Du Pont De Nemours & Co.*, 826 F.2d 1235 (3d Cir. 1987) (finding no antitrust injuries from a vertical merger). The fact that the Board and ICC gave serious consideration to vertical theories in its past cases – and rejected them – demonstrates that the Board's precedents have never simply waved away the possibility of competitive harm in such cases.[69]

The Alternative Theories Put Forward by UP and BNSF Economists Merely Presume that Vertical Mergers Are Bad. In their efforts to upend the Board's longstanding approach to end-to-end railroad mergers, the UP and BNSF economists propose an alternative framework that is built entirely on abstract economic theory suggesting that some vertical mergers in some situations can, in theory cause competitive harm. As Dr. Majure explains, however, this counter-presumption (reflected most explicitly in the testimony of UP witness Salop) ignores many

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68 *Id.*

69 *See* Appendix A.

efficiencies stemming from vertical mergers and consequently, would find an anticompetitive concern in *every vertical merger across all industries*—an absurd result inconsistent with fact, law, and common sense. Majure R.V.S. at ¶¶ 46, 47.

In the new World Order these Class 1s propose, their status quo market positions would be protected because all end-to-end mergers would be seen as competitively "dangerous" in the precise circumstances where they are most likely to be good for shippers by offering new single-line options that encourage shipper to make different transportation choices. As Dr. Majure explains, Professor Salop's misguided framework would find that "any instance where CP and KCS have identified an opportunity to win business with the enhanced single-line service their combination allows would instead be an opportunity that CPKC would win through anticompetitive effects." Majure R.V.S. at ¶ 21; *see generally* Majure R.V.S. § 2.1.2. These commenters fail to show why CPKC would have the incentive to win traffic by foreclosing competitors instead of through competition. *See* Majure R.V.S. ¶¶ 26, 28. By contrast, Applicants have shown that CPKC would be incentivized to win traffic through competition. *See generally* Majure V.S. § 3.[70] And that is exactly what CPKC intends to do.

Professor Salop, among others, essentially argues that evidence that a vertical transaction has had pro-competitive benefits should *never* be credited because that same evidence could also be consistent with an anticompetitive effect. Importantly, Professor Salop's own academic work addressing vertical mergers (which dates back many decades) was debated and rejected in the *BN/Santa Fe* proceeding. Applicants' economic witness Richard Schmalensee took on Professor Salop's thesis directly, concluding that: "All of the theories of anticompetitive foreclosure agree

[70] Dr. Majure addresses specific critiques of his analyses by Class 1s' economists in the Majure R.V.S.

that it is extremely difficult, if not impossible to distinguish efficient from inefficient vertical mergers or practices."[71] In other words, Professor Salop is able to see competitive harm in procompetitive transactions because that is the presumption he starts with. Majure R.V.S. at ¶ Section 2.2.3. Professor Salop admits as much when he examines shifts in UP's share of northbound traffic via all U.S./Mexico gateways before and after the *KCS/Tex Mex* transaction, and acknowledges that the trends he found were "equally 'consistent'" with foreclosure and no foreclosure.[72] UP is well aware of its lack of any economic evidence in support of its foreclosure theory when its repeat critique of Dr. Majure's analysis is that it "is at least as consistent with anticompetitive foreclosure as with any procompetitive explanation."[73]

UP and BNSF Presented the Very Same Theories to the Board in KCS/Tex Mex, and They Were Correctly Rejected. Not only is there nothing new or helpful about UP's and BNSF's economic theories, the very same theories, nay the *same arguments*, about foreclosure at the Laredo and Robstown gateway, were presented and rejected in the *KCS/Tex Mex* case in 2005. The Board's findings in *KCS/Tex Mex* in 2005, based on an extensive economic record put forward by UP and BNSF in support of their predictions of dire foreclosure consequences if the Board did not act to protect them, is the strongest evidence available that their retreaded arguments do not hold water.

In *KCS/Tex Mex*, there was abundant focus on gateway foreclosure issues, with UP and BNSF making the same arguments they advance here. For example, UP expressed concerns that

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71 *BN/SF*, Verified Statement of Richard Schmalensee at 34 (Vol. 3, Exh. 11).

72 UP-10, Verified Statement of Steven C. Salop at ¶ 90. Dr. Majure also explains why Dr. Salop's analyses are flawed in the Majure R.V.S.

73 UP-10 at 5.

there would be an "anticompetitive rate increase in rates [*sic*] or reduction in service levels" for competing carriers travelling through the Laredo Gateway, and "higher prices" for certain shippers "through evasion of the Mexican regulatory provisions prohibiting price discrimination."[74] BNSF similarly raised concerns about the Laredo gateway, stating that KCS could divert traffic to the KCS system by raising rates at Laredo for any traffic going over TFM that did not originate from the KCS/Tex Mex system, or "discriminate against competing carriers."[75] And both UP and BNSF advocated for a pricing scheme similar to the I-5 Agreement between UP and BNSF, where as part of a commercial quid pro quo BNSF agreed to a matrix of rate factors UP could use in making quote to shippers for movement to/from certain BNSF-stations in the Pacific Northwest.

Table 1 compares the arguments UP and BNSF made then with the ones they make now to demonstrate that the Board has already heard and rejected the positions they advance in this proceeding.

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[74] *KCS/Tex Mex*, Union Pacific Railroad Company's Comments (UP-7) ("KCS/Tex Mex, UP-7"), Verified Statement of Jerry Hausman at ¶ 14 (filed Aug. 4, 2003) (Vol. 3, Exh. 12).

[75] *KCS/Tex Mex*, Comments of the Burlington Northern and Santa Fe Railway Company (BNSF-4) ("KCS/Tex Mex, BNSF-4"), Verified Statement of Peter J. Rickershauser at 9-12 (filed Aug. 4, 2003) (Vol. 3, Exh. 13).

TABLE 1
COMPARISON OF BNSF AND UP POSITIONS IN 2004 AND 2022

BNSF	
2004	**2022**
KCS could (i) "discriminate against its competitors" by "rais[ing] rates at Robstown for any traffic going over Tex Mex unless it originates from the KCS system or is routed to give KCS its longest haul," (ii) "raise rates at Laredo for any traffic going over TFM that again does not originate from the KCS/Tex Mex system or does not give the system its longest haul," (iii) "discriminate against competing carriers on TFM by charging higher bridge fees or by reducing the crossing access that it would charge itself," (iv) "cause TFM and Tex Mex to discontinue providing value-added services" to "KCS's competitors." (KCS/Tex Mex, KCS/Tex Mex, BNSF-4 at 11)	"This combination of Mexican law elements allows KCS to engage in the following obvious strategy: it could first raise rates in Mexico on movements that could be handled in the United States by both BNSF and KCS, and then lower KCS's U.S. portion of the rate, allowing the higher Mexican KCSM rate to subsidize the U.S. transportation." (BNSF-9 at 29)
"KCS' diversion analysis confirms KCS' intent to divert traffic from BNSF, even if that diversion results in inefficient routings of rail traffic."[76] (KCS/Tex Mex, KCS/Tex Mex, BNSF-4 at 11)	"[T]he combined CP-KCS will be incentivized to divert its traffic through rate manipulations away from competitive routings on BNSF and other railroads."[77] (BNSF-9 at 2)

[76] KCS/Tex Mex, BNSF-4 at 11.

[77] BNSF-9 at 2.

UP	
2004	**2022**
"Armed with control of both Tex Mex and TFM, however, KCS will have the incentive and ability to manipulate competitive outcomes to favor routes in which its U.S. railroads (KCS and Tex Mex participate)." (KCS/Tex Mex, UP-7 at 45)	"CPKC would have a significant incentive to manipulate competitive outcomes for crossborder traffic to favor routes in which it participates in the United States." (UP-10 at 22)
"In this case, however, KCS control of Tex Mex and TFM poses serious threats to the competitive process by undermining the transportation options available to shippers at the Laredo Gateway." (KCS/Tex Mex, UP-7 at 47.)	"However, CP control of KCS poses a serious threat to the competitive process because it would likely undermine the transportation options available to shippers for traffic moving via the Laredo Gateway." (UP-10 at 43)
"An even more serious threat to competition is the prospect that KCS would use its control of TFM to increase TFM rate factors in order to disable competition from UP-TFM offerings" by causing "TFM to raise its rates in relation to KCS rates north of the border which Mexican non-discrimination rules would allow." (KCS/Tex Mex, UP-7 at 49)	"CPKC could maintain the veneer of charging non-discriminatory KCSM rates in Mexico, while structuring KCSM-UP and CPKC single-line rates it offers to foreclose competition from UP." (UP-10 at 28)
"Once Tex Mex is under KCS control, Tex Mex and TFM will have greater incentives to prefer Tex Mex-TFM traffic over UP-TFM traffic. Preferential treatment would reduce service levels for UP customers and inefficiently divert traffic to Tex Mex-TFM routes." (KCS/Tex Mex, UP-7 at 56)	"CPKC could also reduce competition by giving preferential treatment to its own traffic moving over the International Bridge at Laredo." (UP-10 at 31)

The theories espoused by UP and BNSF have not changed in 17 years, and the Board systematically rejected each and every one of them, as well as UP's and BNSF's requested conditions predicated on those theories. The Board found that "approval of the KCS/TM application will not foreclose any horizontal competition, and therefore a 'competition-preserving' condition is not needed for the Laredo gateway." Instead, the Board acknowledged, and required KCS to adhere to the five pledges concerning the Laredo gateway that KCS has

made voluntarily, including its pledge to keep the Laredo gateway open on "commercially reasonable terms."[78]

The Board's decision was a thorough endorsement, on well-developed facts specific to the Laredo gateway, of the Board's longstanding approach to end-to-end mergers. The Board again reiterated that potential harm to a competitor does not equate to harm to competition, which is the touchstone of the Board's public interest inquiry. UP's and BNSF's concerns all went to the former, not the later. As the Board explained, if "control of TFM would lead KCS to favor its own routings for those few points that are served both by KCS and UP (or KCS and BNSF), KCS might earn more revenue than in the past, and UP (or BNSF) might earn less, but that is not going to result in higher costs to shippers. This could well mean some harm to a competitor (UP, BNSF), but not harm to competition."[79]

3. KCS Has Not Used Its Control of Tex Mex and KCSM to Foreclose UP or BNSF Routings Through the Laredo Gateway, and Neither Will CPKC

As we have shown, whereas both UP and BNSF predicted severe foreclosure consequences in *KCS/Tex Mex*, including that KCS/KCSM's "share" of "traffic moving via Laredo will be 100 percent," [80] the Board disagreed and specifically rejected the need for conditions of the sort UP and BNSF propose here. Time and experience have proven the Board right, and UP and BNSF wrong.

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[78] KCS/Tex Mex Decision at 6. Separately, KCS has embodied these commitments in an agreement with NITL, which incorporated an arbitration remedy. Naatz R.V.S at 68. ¶ __.

[79] *Id.* at 18.

[80] *KCS/Tex Mex*, Union Pacific Railroad Company's Comments, UP-7A ("KCS/Tex Mex UP-7A") (filed Aug. 4, 2003) at 8 (Vol. 3, Exh.12).

Recognizing the significance of the Board's ruling in 2005 rejecting their prediction that KCS would engage in foreclosure if allowed to control Tex Mex and TFM, UP and BNSF each attempt to come up with some explanation for what is different this time around. To UP it is largely that "economics" have somehow changed, which we addressed fully above. Beyond that, UP merely tries to deflect attention away from the magnitude of the concerns it expressed in *KCS/Tex Mex*, since UP's predictions demonstrably did not come to pass. UP implies that, really, KCS by itself *never* had the network reach to support real foreclosure concerns, but CP will fundamentally change the game. That is revisionist history, but is also a telling endorsement of the degree to which the combination of CP and KCS will dramatically extend the market reach of shippers served by both railroads, stimulating new competitive options. In 2005, UP extensively detailed the parade of horribles that would occur with "unconditioned KCS control of Tex Mex and TFM," including that KCS "will be eager to seize every available opportunity to shift traffic from UP-TFM routes to KCS-Tex Mex-TFM (or BNSF-Tex Mex-TF) routes" and that "KCS control of TFM will also allow" them "to circumvent" non-discrimination requirements imposed by Mexican law, which would "shift traffic away" in "anticompetitive ways by forcing shippers to pay more and accept poorer service."[81]

For its part, BNSF takes an entirely different approach. It argues, for the first time in 17 years and long after the fact, that KCS has been foreclosing BNSF line since 2005. The fact that UP builds no case of foreclosure at Laredo ought to end any serious debate about whether KCS foreclosed BNSF – in no world would KCS have an incentive and ability to drive away BNSF-KCSM interline traffic *in order to advantage UP*, BNSF's arch Western competitor.

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[81] KCS/Tex Mex UP-7A at 45, 47

Similarly, the complete lack of any complaint by any BNSF shipper (or any other shipper) should be dispositive. Shippers had not one but two separate fora in which they could have brought any bring complaints about KCS shutting down their preferred interline options: (a) the formal Board oversight process, where the Board could have enforced KCS's commitment to keep gateways open; and (b) KCS's agreement with NITL (which is still in effect), which provided for arbitration of any dispute about KCS's allege closure of those gateways. As KCS witnesses explain, however, there were no such complaints. BNSF has failed to present a single document, verified statement, support letter, or other shred of evidence that a *shipper* – as opposed to BNSF – believes that KCS's rate division between Robstown and Laredo for BNSF/KCS routings to Laredo is "commercially unreasonable." This is not surprising, as no KCS employee or officer has ever received a complaint that KCS was violating its commitments to provide "commercially reasonable" rates for BNSF or UP movements through Laredo to/from Mexico. Naatz R.V.S. at ¶ 4.

BNSF contends the fact that no shipper has ever voiced a concern about KCS's rates is "little more than recognition that KCS has exercised its enhanced market power in such a way as to forestall any complaints."[82] That is nonsense and an insult to shippers. If anyone would know whether KCS was charging commercially unreasonable rates, it would be the shippers. They would see the level of KCS's Rule 11 rates, and they would also see their preferred routing option becoming operationally or commercially infeasible. That not one shipper complained that KCS took action to force them to switch to KS single-line routes speaks volumes. In fact, several shippers – including KCS's largest, Bartlett Grain – have come forward to explain why they switched to KCS single-line routes between the United States and Mexico: because those

[82] BNSF-9 at 44.

routes offered better, more efficient single-line service, not because they were "forced to" by foreclosure of their other options. Knief V.S. at ¶ 14.

Unable to offer any affirmative evidence that the commitments are ineffective, BNSF asks the Board to infer that KCS must not be honoring its commitments because KCS did not produce in discovery documents reflecting that KCS has policies, protocols, or a compliance program in place to train its employees to ensure that KCS abides by the pledges.[83] KCS has not needed such formal policies or compliance programs because no shippers have complained – either to KCS or to the Board. But this does not mean that KCS is not cognizant of its obligations. As Mr. Ottensmeyer testified in his deposition, KCS has an "affirmative obligation to provide commercially reasonable rates"[84] and that "there is a general awareness of KCS's open gateway commitments."[85] Moreover, as discussed below, KCS could not charge "commercially unreasonable" rates even if it wanted to, because KCS lacks the market power that would be necessary to foreclose BNSF and UP efficient routings to and from Laredo.

Consistent with the lack of any complaint by a shipper (or even BNSF) in 17 years, BNSF's assertions about foreclosure beginning in 2005 are flatly contradicted by the cold hard facts. Even the BNSF witness who lobbed these allegations acknowledges that the issue boiled down to BNSF's unwillingness to accept any less contribution from Tex Mex interchange traffic, which led BNSF to shift its traffic to other gateways and away from Tex Mex.

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83 BNSF-9 at 46-47.

84 Deposition of Patrick Ottensmeyer on Feb. 22, 2022 ("Ottensmeyer Dep. Tr.") 39:8-21 (Vol. 3, Exh. 98). While originally marked "Confidential" under the Protective Order, Applicants hereby reclassify that information as "Public."

85 Ottensmeyer Dep. Tr. 40:14-41:7. While originally marked "Confidential" under the Protective Order, Applicants hereby reclassify that information as "Public."

BNSF's Specific Allegations About Tex Mex Rate Increases. As its sole "evidence" of "foreclosure," BNSF relies on the testimony of Paul Hirsch, the Assistant Vice President of BNSF's Mexico Business Unit. Mr. Hirsch testifies that BNSF and its shippers were "effectively foreclosed" from access to certain Mexican markets through the Laredo gateway after KCS's 2004 acquisition of Tex Mex.[86] According to Mr. Hirsch, "when [BNSF] compete[s] head-to-head with KCS for a movement through Laredo, [BNSF] invariably lose[s] that competition to KCS despite offering competitive rates and service."[87] On that basis, Mr. Hirsch concludes that BNSF has been "foreclosed from effectively competing for carload traffic through Laredo because of the control that a combined KCS/KCSM has over pricing and routing."[88]

Hirsch was not at BNSF when this alleged foreclosure took place. He did not join BNSF until 11 years later, in 2015.[89] How is it that he concludes that BNSF was foreclosed? He connects two dots: First, KCS decided to increase Tex Mex's rate for movement of BNSF interline traffic between Corpus Christi/Robstown and the Mexican border at Laredo; and, second, BNSF volumes at Laredo declined. From this he concludes that BNSF cannot compete. That is all there is to it. He does not identify any specific customer rate quote, routing, or origin and destination pair establishing that it is the KCS division that was "too high" or "commercially unreasonable" to prohibit BNSF from competing. Nor can he recall a single bid scenario where

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86 BNSF-9, Verified Statement of Paul M. Hirsch ("Hirsch V.S.") at 2.

87 *Id.* at at 8.

88 *Id.*

89 Hirsch admits that he "was not in [his] current position" at the time of KCS/Tex Mex, but states that he has "spoken with BNSF employees and former employees" who claim that KCS rate increases "were responsible for BNSF's loss of traffic." At his deposition, Mr. Hirsch admitted that this testimony is based on conversations with mainly one individual (of which there are no notes) and two charts in his verified statement that he did not prepare. Deposition of Paul Hirsch on June 3, 2022 ("Hirsch Dep. Tr.") (Vol. 3, Exh. 94) at 51:22-52:18, 54:20-22, 55:1-22. Much later in the deposition and after conferring with counsel, Mr. Hirsch named additional individuals. Mr. Hirsch also admitted that he lacked "direct personal knowledge of the effect of the KCS/Tex Mex merger on BNSF." *Id.* at 48:20-49:8.

a shipper claimed that KCS had quoted it a joint-line rate for a Robstown interchange that was "commercially unreasonable" or was so high as to foreclose a more efficient BNSF routing so that the customer was forced to use a less efficient KCS routing. Mr. Hirsch also contradicts himself: his claims that BNSF has "no visibility into the pricing practices of KCS and KCSM" and "have not been able to challenge KCS's conduct or avoid foreclosure," is directly at odds with his claim that "BNSF employees and former employees who were involved in marketing efforts at the time" were aware of this alleged foreclosure.[90] He has no explanation for why, if BNSF was well aware of the alleged forclosure, {{ }},[91] and neither BNSF nor any shipper lodged a complaint.

Instead, his deposition confirmed that his testimony is based entirely on the assumption that, if BNSF lost a piece of business to KCS on a route where KCS's rate had increased from pre-merger levels, BNSF must have been the victim of "foreclosure," not competition.[92] That, of course, is not true.

Unfortunately for BNSF, its story does not hold up under even the slightest examination of the facts.

- ***First, the Tex Mex's rate increase was not "foreclosure."***

When asked about the Tex Mex rate increases that allegedly foreclosed BNSF from competing at Laredo, Mr. Hirsch could not state what the rate increases were, what the rates increased to, how often the rates were increased, or when the rate increases occurred.[93] As

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90 BNSF-9, Hirsch V.S. at 7, 10.

91 Hirsch Dep. Tr.at 91:13-94:2, 95:5-9.

92 Hirsch Dep. Tr.at 63:11-22.

93 Hirsch Dep. Tr.at 62:11-63:13.

KCS's witnesses explain in detail, KCS did increase Tex Mex's division requirements after the *KCS/Tex Mex* transaction. The reason was not to drive traffic away from BNSF interline routes, but to cover Tex Mex's costs. As Mr. Naatz explains, Tex Mex's rate prior to the merger was significantly below market, had not been raised in years, and was below URCS costs. Naatz R.V.S. at ¶¶ 12, 21.[94] Before *KCS/Tex Mex*, Tex Mex was charging $260 per car or less for grain, intermodal, and automotive traffic interlined with BNSF, or well below most switching charges to move BNSF's cars more than 150 miles. *Id*. After it obtained control, KCS increased Tex Mex's rate by about $265, to $525. *Id.* at ¶ 20. But even at this increased level, the Tex Mex rate barely covered variable costs, and was nowhere near the 180% threshold required to bring a rate complaint. Naatz R.V.S. at Table 2. Today, KCS's rate factors for BNSF interline moves Robstown and Laredo still barely cover variable costs. *Id.* at ¶ 19, Table 1.

It is no wonder that when KCS raised Tex Mex's rates to a compensatory level, and BNSF refused to lower its own division, BNSF shifted some of its traffic to the Eagle Pass and El Paso gateways. But one thing is clear: the shift of BNSF traffic was not the result of KCS using its control of Tex Mex to foreclose BNSF from using the Laredo gateway. KCS would have no incentive to discourage BNSF from using the Tex Mex route as using any other gateway further west eliminates KCSM from receiving traffic on the south side of the border.

Nothing about this rate increase forced BNSF or any shipper away from the Laredo gateway. BNSF could easily have absorbed the increase out of its own rate factors, which {{{ }}} *Compare* Baranowski R.V.S. at Table 6 *with* Naatz R.V.S. at Table 1. In fact, if anyone

[94] As Dr. Majure explains, a common benefit of mergers is that new management can lead to re-evaluations, such as benchmarking against the market. Majure R.V.S. at ¶ 103.

has the right to complain about increased prices, it is KCS. Beginning in 2005, BNSF has raised its grain rates by thousands of dollars per carload. Naatz R.V.S. at ¶ 22. Today, the BNSF single-line rates for grain to Eagle Pass are lower than the BNSF/Tex Mex rate to Laredo – thus favoring a BNSF single-line route to Eagle Pass. *Id.* at ¶ 23. KCS has requested BNSF to take a lower division to make a BNSF/Tex Mex route competitive to increase both BNSF's and Tex Mex's share of grain and other carload traffic to Laredo, but BNSF has refused to do so – favoring its single-line route to Eagle Pass. Naatz R.V.S. at ¶ 24. BNSF is in no position to criticize KCS for refusing to lower Tex Mex's division on routes where KCS has a competing single-line option, when BNSF is doing the same thing – favoring its single-line options by refusing to lower its division for movements through Laredo.

- ***Second, BNSF's volume shifts away from Laredo had nothing to do with "foreclosure."***

Mr. Hirsch points to two figures in his Verified Statement purporting to show that BNSF traffic over the Laredo gateway decreased from 2005 forward as evidence of foreclosure.[95] However, at his deposition, Mr. Hirsch admitted that he did not know the {{[redacted]}}, the year of the merger, or what the actual cause was.[96] He also did not know who prepared these two charts and did not review the data underlying these charts.[97]

In fact, the supposed trends Mr. Hirsch points to eviscerate BNSF's claims of foreclosure. As Dr. Majure demonstrates through detailed analysis of traffic data, and as we show below

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95 BNSF-9, Hirsch V.S. at 6, 11.

96 Hirsch Dep. Tr.at 43:18-44:10.

97 Hirsch Dep. Tr.at 55:19-21.

through a detailed review of BNSF's own internal documents, numerous marketplace developments were driving the trends that Mr. Hirsch points to as evidence of supposed foreclosure, not least of which was {{[redacted]}}

Pricing by KCSM Subsequent to the Tex Mex/KCSM Transaction. UP's theory of foreclosure, unlike BNSF's, is entirely dependent on the level of rates that KCSM charges south of the border on UP-KCSM interline moves. Despite asserting that CPKC will have an incentive to jack up KCSM rates so as to render UP interline moves less "competitive" (but in reality to force UP to reduce its divisions and thus its profit margins), UP undertakes no examination of what happened to KCSM rates after KCS took control of TFM.

Had it done so, it would have learned that their TFM rates went {[redacted]} than UP's own rates during the period after the *KCS/Tex Mex* transaction, a pattern that is fatal to UP's foreclosure thesis. Figure 1 below focused on rates for grain (which BNSF cites as the commodity flow most affected by KCS's supposed foreclosure). It shows that KCSM's rates for grain (measured as revenue per unit ("RPU")) increased at a {[redacted]} percent compounded annual growth rate since 2005. Over the same period, UP's public reports show that its growth rate for all traffic has been {[redacted]} percent while BNSF's has been {[redacted]} percent. KCSM prices to the market, not to foreclose. Naatz R.V.S. at ¶ 26.

FIGURE 1
KCS GRAIN REVENUE PER UNIT INCREASES ARE ON PAR WITH OTHER RAILROADS

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The same pattern emerges when examining overall RPU trends for all commodities. Figure 2 below shows that post-2005 after taking control of KCSM and Tex Mex, KCS did not unreasonably raise rates or adopt commercially unreasonable divisions. Naatz R.V.S. at ¶ 27. In fact, KCSM rates {[redacted]} than rail rates charged by UP, BNSF, or other railroads in the United States.

FIGURE 2
KCSM RATES DID NOT INCREASE FASTER THAN OTHER RAIL RATES AFTER KCS ACQUIRED CONTROL[98]

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[98] KCS Consolidated and KCSM information before 2005 are based upon Pro-forma financial statements as KCSM and Tex Mex were not yet consolidated with KCSR.

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There Are Many Reasons Unrelated to "Foreclosure" That Explain Declines in BNSF Traffic via Laredo. Although BNSF would have the Board assume the only possible explanation for why BNSF's traffic at Laredo declined after 2004 is that KCS foreclosed BNSF from the Laredo gateway, the truth is that there are many causes for that decline, none of which include foreclosure by KCS. Mr. Hirsch admitted at his deposition that {{ }}[99] We discuss just a few of those reasons here.

- ***First, Good Old-Fashioned Competition Affected Traffic Patterns at Laredo/Robstown.***

As Dr. Majure explains, it would not be surprising if BNSF's traffic volumes via Laredo would fluctuate as a result of competition with the two other railroads serving that gateway: UP

[99] Hirsch Dep. Tr.at 87:13-91:1.

and KCS. In this instance, of course, KCS was improving its services by offering single-line transportation across the gateway for the first time. Majure R.V.S. at ¶ 88. There is no question that single-line service is typically both less expensive and more efficient than an interline route. Any carrier, including BNSF and UP, can usually offer a lower rate on single-line service versus an interchange to another carrier. So it is to be expected that where KCS and BNSF both serve a U.S. destination or origin, there is a strong probability that the KCS system is going to be able to provide an efficient single-line rate that is better than the joint-line rate with BNSF. As Mr. Naatz explains:

> "KCS can provide a single-line service that shippers choose because it is both less expensive and a more efficient route. Any carrier, including BNSF, can usually offer a lower rate on single-line service versus an interchange to another carrier. So, yes, where KCS and BNSF both serve the U.S. destination or origin, the KCS/KCSM system is of course going to be able to provide an efficient single-line rate that is better than the joint-line rate with BNSF."

Naatz R.V.S. at ¶ 9. BNSF also faces strong competition from UP. {{ [redacted] }}[100] In its comments in the *KCS/Tex Mex* proceeding, BNSF conceded that it had a "relatively small percentage of the traffic moving through Laredo" and that UP "carried 84% of the traffic at Laredo in 2001" because "UP enjoys a more direct route to Laredo."[101]

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[100] BNSF0000932 at -38 (Vol. 3, Exh. 14) ({{ [redacted] }}). *See also* BNSF0003021 at -025 (Vol. 3, Exh. 15) {{ [redacted] }}; BNSF0003279 at -087 (Vol. 3, Exh. 16) { [redacted] }; BNSF0003606 at -616 (Vol. 3, Exh. 17) {{ [redacted] }}

[101] *KCS/Tex Mex,* BNSF-9 at 3, 9.

The record in this proceeding illustrates these competitive forces in action. Bob Knief, President of Bartlett Grain, Co. LP, explains in his Verified Statement in support of the Transaction that in 2005, Bartlett Grain could choose to ship via UP, BNSF, or KCS, and ended up choosing to ship to Mexico via KCS single-line routes "because they best met our transportation needs by serving our end-markets best." Knief V.S. at ¶14. But Knief made clear that they were never "forced to choose [that] option." Knief V.S. at ¶14. As another example, a shipper decided in the 2009 time frame to transition all of its Mexican business from BNSF to UP. Naatz R.V.S. at ¶ 36. In another case, KCS simply won a contract (bidding against UP and BNSF). Naatz R.V.S. at ¶ 44. These losses of traffic, and similar losses of traffic, are due to *competition*, not foreclosure.

- ***Second, BNSF Chose to Shift Traffic to Eagle Pass and El Paso.***

Second, despite BNSF's claims of foreclosure by KCS, its witnesses and internal documents tell a different story. BNSF chose to de-emphasize Laredo and shift traffic to Eagle Pass and El Paso. Hirsch explained that BNSF chose not to compete to keep traffic at Laredo because its profit margins would not be at BNSF's self-imposed {{[redacted]}}[102] As Mr. Hirsch conceded, the profitability of using a particular gateway impacts the decision to use a gateway, and BNSF would choose the most profitable gateway, assuming all other considerations were held equal.[103] Notably, the rate BNSF earns on Mexican traffic it does serve via Laredo is {{{[redacted]}}} for carload traffic, recovering on average {{{[redacted]}}} BNSF's URCS-based variable costs. Baranowski

[102] Hirsch Dep. Tr. at 149:11-150:11.

[103] *Id.* at 162:19-164.

R.V.S. at Table 6. BNSF therefore has the ability to reduce rates if they truly wanted to compete and has chosen to direct traffic to other gateways, which are presumably more profitable.

KCS witness Naatz agrees with this view, testifying that BNSF is the party keeping its rates high, not KCS, and has steadfastly refused to lower its division requirements so as to make a joint BNSF/Tex Mex interline movement competitive with a UP or a BNSF single-line movement. Naatz R.V.S. at ¶ 6. BNSF has even offered a lower single-line rate than what the joint BNSF/Tex Mex rate would be to encourage shippers to use the Eagle Pass and El Paso gateways. *Id.* at ¶ 8. In short, BNSF was not foreclosed; it took a pass on competing for the business through the Laredo gateway.

Indeed, a review of the BNSF documents produced in discovery shows {{ }} That strategy continues to this day. Internal BNSF documents reveal that, {{ }}[104] BNSF {{ }}[105] and {{ }}[106] By {{

[104] BNSF0003550 at -55 ({{ }}) (Vol. 3, Exh. 18).

[105] BNSF0003355 at -56 ({{ }}) (Vol. 3, Exh. 19); BNSF0003606 ({{ }}) (Vol. 3, Exh.17).

[106] BNSF0003331 at -33 ({{ }} (Vol. 3, Exh.20)); *see also* BNSF0000932 at -38, the { }} (Vol. 3, Exh.14); BNSF0003606 at -19

[redacted]}}[107] while {{[redacted]}}[108] {{[redacted]}}[109] {{[redacted]}}[110] Given all of these efforts, corporate goals, and investments, it is no wonder that today the substantial majority of BNSF traffic is now interchanged with FXE, not KCSM. And this strategy has proven to be quite profitable for BNSF. In fact, Mr. Hirsch admits that BNSF during the very years that KCS was allegedly foreclosing BNSF from using the Laredo gateway, {{[redacted]}}[111]

- ***Third, Other Market Developments Affected BNSF Gateway Volumes***

Third, there have been significant changes in the marketplace that have affected the traffic available for BNSF to move via Laredo, and BNSF incentives to pursue that traffic.

{[redacted]}} (Vol. 3, Exh.17).

107 BNSF0002814 at -26 ({{[redacted]}}) (Vol. 3, Exh. 21).

108 *Id.* at -28.

109 BNSF0002839 at -50 ({{[redacted]}} (Vol. 3, Exh.22)). In that year, {{[redacted]}} of BNSF's interchanges were with FXE. BNSF0003304 at -06 ({{[redacted]}} (Vol. 3, Exh. 23).

110 BNSF0002804 at -14 (Vol. 3, Exh. 24). *See also* BNSF0002839 at -52 (2010 KCSM volumes) (Vol. 3, Exh. 22); *Id.* at -53 (2010 FXE volumes); BNSF0002798 at -809 (2012 KCSM volumes) (Vol. 3, Exh. 25); *Id.* at -810 (2010 FXE volumes); BNSF0002910 at -23 (2014 KCSM volumes) (Vol. 3, Exh. 26); *Id.* at -24 (2014 FXE volumes).

111 Hirsch Dep. Tr. 152: 2-10, 153: 1-13.

Applicants and BNSF agree that the Mexican marketplace has changed dramatically since the *KCS/Tex Mex* transaction.[112] There has been significant investment into the Mexican markets by grain companies, automotive and intermodal companies, and energy companies. The Eagle Pass gateway has responded to that growth by investing in additional infrastructure and customs and brokerage houses that previously did not exist. All of these changes have resulted in market shifts in cars, equipment, routes, gateways, and shipper choices.

During that time, UP and BNSF have developed long-term relationships (many exclusive) with numerous automotive, intermodal marketing companies, trucking companies, third-party logistic providers, and large customers. Naatz R.V.S. at ¶ 61. These exclusive relationships mean that KCS cannot today, and CPKC will not be able to in the future, simply raise KCS's division in an attempt to force these shippers to choose CPKC options. Undertaking such a strategy would risk losing traffic to other UP and BNSF routes and/or to trucking and maritime transport options.

BNSF-KCSM Intermodal and Automotive Traffic. An examination of the intermodal and automotive traffic since *KCS/Tex Mex* further shows that KCS and BNSF have worked together to provide joint-line intermodal and automotive service to Mexico from BNSF origins, *see* Naatz R.V.S. at ¶ 40, a partnership BNSF itself admits has drawn support from KCS and has been fruitful for both parties.[113] CPKC has the same incentive to continue this partnership.

Grain Traffic. BNSF blames its loss of market share of grain traffic through the Laredo gateway on KCS's division requirement for the Tex Mex portion of a joint-line BNSF/Tex Mex movement through Laredo. According to BNSF, KCS's division prevents BNSF from

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112 *See, e.g.,* BNSF-9 at 19-20; Naatz R.V.S. at ¶ 45.

113 BNSF-9 at 21, 35-36.

competing with KCS's single-line option through Laredo.[114] The data tell the real story: the decline in market share of the joint BNSF-Tex Mex-KCSM routing through Laredo is the direct result of BNSF favoring its single-line route through Eagle Pass or El Paso, not foreclosure by KCS.

This result is exactly what neutral observers predicted would happen one day. As explained by the Railroad Commission of Texas, and as adopted by the Board in its review of the *UP/SP* merger in 1996, BNSF has always had little incentive to route its grain traffic to Mexico using joint-line service with TexMex via Laredo:

> "Were it not for the fact that Laredo currently enjoys a competitive advantage over the other gateways to Mexico because there is a larger infrastructure of customs brokers located at Laredo than at the other gateways, there would be little or no incentive for BN/SF to route traffic via TexMex. Certainly, there is no reason to assume that BN/SF would deliberately route unit trains of grain in joint-line service with TexMex via Laredo when it will have a comparatively direct shot in single-line service at Eagle Pass. Given the admitted concentration of BN/SF's traffic from the grain belt and the Pacific Northwest and the industrial Midwest, it is only logical to assume that BN/SF would favor the less circuitous, single-line routing via Eagle Pass."[115]

Of course in the 26 years since those findings, the customs infrastructure at Eagle Pass has been upgraded such that it is now comparable to Laredo, removing the only impediment to BNSF taking advantage of its own single-line routing via Eagle Pass. [116]

Today, it is BNSF, not KCS, that has the option of using multiple gateways to Mexico. BNSF can choose to direct traffic through Laredo, Eagle Pass, or El Paso, and BNSF leverages that flexibility during contract negotiations with KCS concerning intermodal traffic. For example, KCS understands BNSF has a long-term exclusive contract with {[redacted]} that

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114 BNSF-9, Hirsch V.S. at 7-8.

115 *UP/SP*, 1 S.T.B. at 423.

116 UP-10 at 17.

requires{ } to use BNSF service when shipping to a location on BNSF's network. Naatz R.V.S. at ¶ 29. When KCS and BNSF were in the process of re-negotiating an intermodal agreement that had expired on December 31, 2021, BNSF used the threat of switching its routings with all customers, including { }, to the Eagle Pass gateway as leverage to get KCS to agree to its demands. Naatz R.V.S. at ¶¶ 30-31. This example shows that BNSF possess the market power to foreclose KCS routings, not the other way around.[117]

As another example, BNSF recently requested through rates from KCS on the Mexico–St. Paul, MN route. After negotiations over the rates and divisions, KCS and BNSF were able to reach an agreement covering multiple customers' traffic to include this route, interchanging at Robstown. Naatz R.V.S. at ¶ 33. If KCS had requested too high of a division (or was in fact foreclosing BNSF from using the Robstown/Corpus interchange), BNSF would not have partnered with KCS and instead, would have used its own long-haul route to Kansas City and/or moved traffic through the Eagle Pass or El Paso gateways. The Naatz R.V.S. contains several other examples of how and why KCS partners with BNSF to provide a joint BNSF-KCSR-KCSM routing through Laredo for intermodal and automotive traffic, including movements with { }.

BNSF also attempts to blame its loss of market share of Mexican cross-border intermodal traffic after *KCS/Tex Mex* on KCS, when in fact its loss of business was due to market forces, such as changes in the types of equipment preferred by customers and aggressive competition by UP. Naatz R.V.S. at ¶ 34. As an example, { }, a U.S.-based intermodal shipper with

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[117] Due to the potential of KCS losing all of this traffic and KCSM losing a substantial amount as well (some of this traffic would have to eventually be switched to a KCSM destination, but KCSM would have lost the long haul), KCS and BNSF, at the urging of the customer, agreed to a one-year extension of the existing agreement with no changes. This preserved the BNSF/KCSR/KCSM routing through Laredo, at least for the near term. Naatz R.V.S. at ¶ 32.

offices in Mexico, had a long-term contract with BNSF before *KCS/Tex Mex*, and routed traffic via the BNSF/Tex Mex interchange through Laredo. This service was part of and dependent upon the North American Container System ("NACS") box system, in which all Class 1s but UP participated. UP and NS started a competing box system, the Equipment Management Pool ("EMP"), in which {[redacted]} also participated. *Id.* at ¶ 35. After *KCS/Tex Mex*, BNSF began to partner directly with asset owners such as {[redacted]} for boxes, instead of participating in pool arrangements, such as NACS and EMP. *Id.* at ¶ 36. Around 2009, {[redacted]} decided to transition all of its western carrier business, including its Mexico business, to UP because it preferred the equipment available through the EMP pool arrangement over the equipment BNSF sourced directly from asset owners. *Id.* The decision had nothing to do with KCS or KCSM pricing.

Taken together, these examples show KCS has partnered with BNSF to develop Laredo interchange traffic, and CPKC will be incentivized to do the same. In fact, it is within KCS's self-interest to work with BNSF to provide a joint routings that would compete with UP, and these efforts thus far have been highly successful touting joint-line traffic gains, as shown in Figure 3 below.

FIGURE 3[118]

RAPID INCREASE IN BNSF-KCS CROSS-BORDER INTERMODAL TRAFFIC

[118] Naatz R.V.S. at ¶ 40.

KCS's network already connects Laredo with Dallas, yet KCS has partnered closely with BNSF via Laredo/Robstown because it has an interest in participating in the revenue from interline options that best meet shipper needs. For this traffic in particular, KCS would rather have a share of the revenue than none at all were BNSF (and its customers) to send the intermodal trains via another route that cut KCSM out entirely. Internal BNSF documents in fact show that {{ }}[119]

These marketplace dynamics will not disappear with the Transaction. CPKC will have no incentive to "foreclose" BNSF routings, especially given the success of the KCS/BNSF interline route. BNSF will continue to hold leverage over CPKC with the threat of shifting

[119] BNSF0000166 ({ }}) (Vol. 3, Exh. 27); *see also* Majure R.V.S. at fn.131.

routings to Eagle Pass via a BNSF/FXE route, and thus if CPKC charges a high division, it will risk losing BNSF as a partner, thus reducing CPKC's overall revenues. Accordingly, it remains in CPKC's self-interest to work with BNSF to continue to provide shippers with options, especially to and from origins and destinations that are served only by UP and BNSF. The only change will be a new single-line option for shippers, especially Chicago and Detroit/Eastern Canada shippers, to move traffic to and from Mexico via Laredo, which will *enhance* competition, not lessen it.

Energy. An examination of the petroleum and energy products markets in the Gulf region likewise shows that KCS is winning the traffic due to its customer relationships, its service, its efficient routings, and its single-line rates – not foreclosure.

For example, the Jefferson Energy Terminal is served by UP, BNSF, and KCS. ExxonMobil received bids from all three of those railroads for its movements from the Jefferson Energy Terminal to Mexico. KCS won the bid and continues to handle the entire movement today. Naatz R.V.S. at ¶ 44. ExxonMobil has made no allegations that KCS was using undue market power to price the KCSR portion of a BNSF routing at a commercially unreasonable rate or that KCS was using its control of KCSM to force a KCS routing over a UP move. Nor could it, given that KCSM has to give the same rate for the Mexico portion of the move to UP, BNSF, and KCS. Indeed, under its contract with KCS, ExxonMobil has the option to use the UP single-line rate to Laredo and at Laredo, KCSM must charge the same rate as it charges KCSR. KCSM does receive both UP and KCSR ExxonMobil traffic at Laredo. The simple fact is that ExxonMobil awarded the business to KCS given the single-line nature of KCS's move, KCS's

service focus, and KCS's willingness to undertake a long-term partnership with ExxonMobil. *Id.* at ¶ 46.[120]

Other Gulf Coast energy customers make the same choices. Where it is more efficient to move traffic over a single-line rail network, customers will do so. If the customer prefers a joint-line move, or a joint-line move is more efficient, that is the choice the customer will make. For example, the Entergy coal-fired electric plant in Lake Charles, Mississippi, is served by UP, KCS, and BNSF. Both UP and BNSF serve the coal origins and the destination and can provide single-line service. KCS can only serve the destination, and must interchange with either UP or BNSF to complete the route. In the past, KCS was able to provide routings, service, and division requirements that allowed for competitive joint-line service via UP/KCS or BNSF/KCS. However, in the two most recent rounds of bidding, the customer selected a single-line service over a joint-line move, even though KCS offered the same division to both UP and BNSF for a Kansas City interchange. Naatz R.V.S. at ¶ 47. KCS is certainly not contending, as BNSF seems to do here, that because it lost the traffic, BNSF or UP have exercised undue market power to "foreclose" a KCS routing option. Rather, KCS understands that the customer chooses the routes and rates, and, generally, a single-line option can be more competitive than a joint-line option and that KCS can only price its division so low before it drops below its costs.

[120] To further underline the competitive nature of the marketplace, ExxonMobil recently solicited bids from UP, BNSF, and KCS for various lanes of traffic, including both FXE and KCSM routings. ExxonMobil chose a UP/FXE routing over the BNSF/FXE routing for traffic to the west and chose KCS/KCSM for traffic to the Gulf and the Southeast. There was no allegation from ExxonMobil that KCS was manipulating the rates to disfavor a BNSF/KCSM routing. Naatz R.V.S. at ¶ fn.22.

4. The Same Forces that Ensured There Was Not Foreclosure Following *KCS/Tex Mex* and Other Cases Will Apply Here

The 17 years of post *KCS/Tex Mex* history tell a story of competition rather than foreclosure. All of the same marketplace realities that led KCS to continue to cooperate with UP and BNSF on interline services via Laredo will continue to apply with equal force to CPKC following this transaction:

- ***CPKC will continue to have strong incentives to provide shippers with the interline transportation options that best meet their needs.***

For many reasons, CPKC will have strong incentives to make sure that they maintain efficient interline routes over every gateway they serve, lest they lose traffic to other transportation options or simply drive remunerative rail traffic away. These incentives will apply no less strongly at Laredo and Robstown.[121]

First, the Transaction will not affect the options shippers have to choose FXE or other transportation modes for shipments between the United States and Mexico, and as any cursory examination will show UP and BNSF have extensive ability to tap U.S.-Mexico traffic opportunities via the Eagle Pass and El Paso gateways. Majure R.V.S. at ¶¶ 74-75. Even CN participates directly in U.S.-Mexico flows, via boat-to-train automotive service between the ports of Veracruz and Mobile. And the majority of Mexican freight still moves by truck across the border, including to UP's intermodal ramp in Laredo.

Any move by CPKC to foreclose efficient UP-KCSM or BNSF-KCSM options would be contrary to CPKC's incentives. Majure R.V.S. at ¶ 28. As the Board found in *KCS/Tex Mex*, "KCS's experts credibly explained that market conditions would prevent KCS from raising rates

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[121] Indeed, as one Class 1 railroad has observed: {{[redacted]}}(Vol. 3, Exh. 28).

to shippers or foreclosing UP and BNSF from the Mexican market, because the latter two carriers account for more than 90% of the rail traffic interchanged with TFM at Laredo, and it would be unprofitable for KCS to use its control of TFM to take actions that would foreclose this traffic."[122] The same logic applies here. In 2019, KCSM interchanged {{ }} of shipments with UP and BNSF at the Laredo gateway for which KCS can serve the final destination. Majure V.S. at ¶ 30. And as Mr. Naatz testifies, much of KCS's auto traffic is still interchanged with UP at Laredo. Naatz R.V.S. at ¶ 57. Given the amount of traffic interchanged with UP and BNSF at Laredo, efforts other than to compete on price and service could result in KCSM losing existing business it has with that shipper both on the lane in question to an FXE-routing and to many other locations where the CPKC system could not reach without interlining. Brown/Zebrowski R.V.S. at fn.75.

Put another way, just as it was not in KCS's self-interest to force BNSF-KCS-KCSM interline traffic away by setting commercially unreasonable rates to Robstown, it would not be in CPKC's interest either. BNSF would just divert its traffic away from KCS to one of its several alternative routing options into and out of Mexico.[123] UP and BNSF have the choice to use five different gateways into and out of Mexico and the choice to use FXE as an alternative to KCSM: Brownsville (KCSM), Laredo (KCSM), El Paso (FXE), Eagle Pass (FXE), and San Diego (FXE). KCSM faces extensive competition from FXE, of which UP owns 26 percent.[124] UP and BNSF connect with FXE at the Eagle Pass gateway, the "principal alternative" to the

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122 KCS/Tex Mex Decision at 17.

123 While BNSF and its customers have options if they don't like the rates offered by KCS, such choices and options being the definition of a competitive market, KCS has only one integrated gateway in and out of Mexico and also can interchange with BNSF and UP at Brownsville/Matamoros.

124 UP-10 at 17.

Laredo gateway.[125] Documents reveal that {{[redacted]}} For example, UP itself noted {{[redacted]}}[126] In addition, BNSF {{[redacted]}}[128] And BNSF notes that {{[redacted]}}[129]

CPKC's only real gateway option is Laredo. (Brownsville is not realistic as it does not connect the two halves of KCS's network). Naatz R.V.S. at Figure 1. If CPKC tried to undertake the foreclosure strategy hypothesized by UP and BNSF, UP and BNSF would simply shift gateways. Indeed, as BNSF's comments and evidence shows, BNSF can and does shift its Mexican traffic from Laredo to its other gateways (El Paso, Eagle Pass, and Brownsville) when it is in BNSF's economic interest to do so. In short, KCS lacks the market power to make foreclosure of UP or BNSF rational.

Naatz fully sets out why and how the marketplace prevents KCS from foreclosing BNSF routings. His statement shows that not only does KCS not foreclose BNSF routings, but that KCS works with BNSF to bring as much traffic over to the Laredo gateway as possible. This is

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125 *Id.* UP and BNSF also connect with FXE at the El Paso gateway. { [redacted] }

126 UP-HC-001387 at -410 ({{[redacted]}}) ((Vol. 3, Exh.30)).

127 Hirsch Dep. Tr. at 36:14-21.

128 UP-HC-001106 ({{[redacted]}}) (Vol. 3, Exh. 29).

129 BNSF0000932 at -34 (Vol. 3, Exh. 14). {{[redacted]}} *See* Hirsch Dep. Tr. at 71:17-19.

true not only for traffic served by UP and BNSF that KCS cannot serve directly, but also for BNSF grain, automotive, and energy products traffic, all of which compete against KCS traffic. Mr. Naatz further shows that when BNSF does not use a BNSF/KCS routing, the reason is BNSF's deliberate choice to use its other gateways and its refusal to lower its division to make a BNSF/KCS routing through Laredo competitive, not foreclosure by KCS.

Even where KCSM's Mexican network may provide shippers with the only way to get their goods by rail to the U.S. border, the result would be no different. KCS today – and CPKC in the future – will have strong incentives to support efficient routes that meet shippers' needs. Majure R.V.S. at ¶ 17.

- ***The Mexican regulatory regime will inhibit the foreclosure that BNSF and UP advance.***

The regulatory regime that KCSM must abide by on movements *within Mexico* will help prevent the kinds of foreclosure theories that UP and BNSF advance. Those theories depend on the notion that KCSM would manipulate upwards the rate that BNSF or UP must embed in its interline services. BNSF and UP both argue that CPKC might raise prices for movements within Mexico (disadvantaging UP and BNSF) and offset those higher prices by lowering CPKC's prices in the United States.[130] But Mexican rate regulation requires parity for like traffic to and from the border regardless of whether the movement is handled at the border by UP, BNSF, or KCS. Reply Verified Statement of Oscar Del Cueto ("Del Cueto R.V.S.") at ¶ 25; Naatz R.V.S. at 62. The same regulatory constraint would apply to KCSM after this Transaction. This means that if KCSM were to try to jack up its rate for movements to Laredo for ultimate deliver via UP

[130] BNSF-9, Reishus V.S. at ¶¶ 44-50; UP-10, Verified Statement of Luis F. de la Calle ("de la Calle V.S.") at 4-5.

to Chicago or St. Paul, it likely would have to raise rates for similar movements to the many more U.S. destinations that CPKC's network will not reach at all. This would be commercially counterproductive. Naatz R.V.S. at ¶ 62.[131]

Understanding the damage these Mexican regulations do to their foreclosure theories, UP and BNSF put forward the testimony of two witnesses who claim Mexican regulation is ineffective.[132] As Mr. Del Cueto explains, this perception of Mexican regulatory regime is not how KCSM sees the world. KCSM abides by those regulations, in no small part because it must do so to protect its extremely valuable government-issued concession in order to continue operating. Del Cueto R.V.S at ¶¶ 30, 40; Naatz R.V.S. at ¶ 62.

- ***CPKC will be bound by the "keep gateways open" commitment that has applied to KCS since 2005.***

Finally, as a backstop, just as KCS adhered to its commitment to keep the Robstown and Laredo gateways open, if any shipper feels that CPKC has acted in a way that forces them away from a pre-Transaction interline routing that would prefer, they will be free to bring that complaint forward to CPKC for efficient resolution, or if necessary to the Board in its oversight process.

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[131] BNSF witness Reishus also bases his analysis of Mexican regulation on a misunderstanding of the degree to which Mexican regulations allow KCSM to differentiate between unlike flows of traffic and thereby maximize profits without needing to force traffic cover inefficient routes in the United States. *See* Majure R.V.S. at ¶ 51.

[132] UP-10, de la Calle V.S. at 5; BNSF-9, Verified Statement of Aaron Dychter Poltolarek ("Poltolarek V.S.") at § 3.

5. Applicants' Commitments – Enforced as Appropriate By Shippers – Are the Tried-And-True Way To Address Concerns About Vertical Foreclosure

As in *KCS/Tex Mex*, in case after case the Board and shippers have been fully protected from theoretical foreclosure by exactly the kinds of commitments that Applicants are making in this case: to create no new bottlenecks and to keep gateways open on commercially reasonable terms. *See* Section I and Brooks R.V.S. at ¶ 15. In *CSX/Pan Am*, where serious concerns about foreclosure of competitive routings were raised, the Board endorsed the effectiveness of CRT commitments, stating that the "'commercially reasonable' requirement has been imposed as part of an open gateway condition by the Board in past merger decisions."[133] Similarly, in *CN/WC*, the Board denied more stringent conditions requested by other commenters and merely held CN/WC to its commitment to "keep all existing active gateways affected by the Transaction open on commercially reasonable terms."[134]

Given extensive experience and success with these kinds of commitments, it should come as no surprise that there is widespread support among shippers for that approach. NITL formally supported the approach in *CN/WC* and *KCS/Tex Mex*, and indeed the KCS-NITL agreement remains in full force (though it has never been used by a shipper to arbitrate any dispute). NITL is a participant here, and it has raised no issue or concern with how well those prior agreements (and the related commitments they formalized) have worked. The National Grain and Feed Association has stated that it "commends CP and KCS for their commitments to keep existing gateways with other Class 1 railroads open."[135] And the Iowa Interstate Railroad ("IAIS") has

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133 *CSX/Pan Am* at 16 (internal citations omitted). *See also CN/EJ&E*, FD 35087 et al., slip op. at 16, 54; *CP-DM&E*, FD 35081, slip op. at 5, 27; *Kan. City S.—Control—Kansas City S. Ry.,* 7 S.T.B. at 938 (2004).

134 *Canadian Nat'l Ry.—Control—Wis. Cent. Transp. Corp.*, 5 S.T.B. 890, 894, 918 (2001).

135 Opening Comments of The National Grain and Feed Association (submitted Feb. 28, 2022) at 6.

{{[redacted]}}

This approach is more than sufficient to provide a reliable backstop to CPKC's already-strong incentive to maintain efficient interline routes because shippers will know if CPKC takes any action to shut off those options. Shippers will be able to demand a Rule 11 rate from CPKC and they will know if that rate is the reason why an interline route they previously relied upon is no longer viable. As noted above, following *KCS/Tex Mex* not a single shipper raised any concerns or complained about rates to/from Laredo or internal points in Mexico. Naatz R.V.S. at ¶ 4. Applicants expect the same result here. CPKC will be aggressive in demonstrating to shippers the benefits of CPKC's new single-line services, but they know that they must sell shippers on the advantages of those routes and will not be successful if they try to force shippers to switch by downgrading shippers existing options. *See* Brooks R.V.S. at ¶¶ 8-9.

Even UP, when it was not seeking to insulate its own traffic from competition, told the Board that commitments such as Applicants have already made in this case *far exceed* what would be necessary to preserve shipper routing options in an end-to-end merger setting. In the "Merger Rules" proceeding in 2000, UP proposed that transcontinental mergers be subject to concrete gateway protection rules that it viewed as sufficient to keep gateways open commercially without requiring "the merged carrier to short-haul itself, depriving the carriers of the returns upon which they depend to attract capital, reinvest in their rail networks and maintain and improve service."[136] Specifically, UP proposed a narrowly cabined rule applicable to affected traffic only (i.e., where the merged carrier would newly serve both the origin and

[136] *Major Rail Consolidation Procedures*, STB Ex Parte No. 582 (Sub-No. 1) Union Pacific's Comments and Initial Proposals (filed May 16, 2000) at 14.

destination) requiring that the merging carrier establish a segment rate applicable to the new "bottleneck" over the most-frequently used gateway for traffic to/from a solely served customer. UP observed that "such a condition would go somewhat beyond merely preserving the exclusively-served shipper's routing options. In some cases, as where the traffic is now moving under joint or proportional rates, the reasonableness of the rate between Point A and Gateway B is not separately challengeable today."[137]

Applicants' commitment to quote Rule 11 rates (or cooperate with connecting carriers on through rates) for affected traffic via gateways is *much broader than what UP proposed* apply to its own potential transcontinental merger under the new merger rules. As examples, Applicants do not (i) limit their commitment only to "exclusively-served" traffic, (ii) exclude intermodal, automotive and transload traffic, or (iii) limit their commitment only to the "most-frequently used gateway."[138] *Id.*

UP, BNSF, and others who demand more onerous gateway conditions in this case are motivated by the commercial and competitive advantages such conditions would convey to themselves, not to vindicate any valid public interest concern.

6. The Rate-Setting Mechanism Proposed by UP and BNSF Is Both Unnecessary and Would Be Affirmatively Anticompetitive

UP and BNSF seek to improve their position by asking the Board to constrain rates in a way that they would never accept and have opposed in the past. The "mileage prorate" mechanism both UP and BNSF ask for is, at its core, an attempt to preserve (or improve) their own financial returns in the face of the fierce new competition from CPKC. Specifically, UP and

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137 *Id.* at 12.

138 *Id.*

BNSF ask the Board to impose a condition that, any time CPKC offers a single-line price on a movement that crosses the Mexican border, UP and BNSF are entitled to use KCSM at a mileage prorated portion of the CPKC single-line price.[139] Though both Class 1 railroads may claim this proposal is narrowly tailored and competition enhancing, it is neither and should be rejected.[140]

- ***Revenue Divisions Set in the Marketplace Are Not Based on Any Mileage Formula***

First, UP and BNSF's "mileage prorate" mechanism would impose a rigidity on CPKC's ability to set rates that would have the effect of locking-in UP and BNSF's competitive position and hamstringing CPKC's ability to compete aggressively with its new single-line service. UP and BNSF's proposal might make sense if market rate for interline revenue divisions were based on mileage alone. Both BNSF and UP are well aware of how revenue divisions are determined in the marketplace and they both know that divisions are not set based on any mileage formula; they are set by market forces. To that end, they have repeatedly argued against mileage-based rules in Board proceedings. BNSF's testimony in opposition to a mileage-based rule in its own merger case speaks eloquently: such a condition would "uproot the existing revenue divisions, require[ing] that new ones be set on the basis of comparative mileage."[141] Likewise, in the *McCarty Farms* rate case, BN "object[ed] to a straight mileage proration, noting that railroad revenue divisions *are negotiated and are generally not based on mileage formulae*."[142] In *Public*

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139 *See* BNSF-9 at 46-47; UP-10 at 9.

140 In addition to its many obvious flaws, the proposed condition would explicitly involve the Board in the regulation of rates for transportation within Mexico, which is not appropriate given the Mexican government's role in regulating KCSM. *See* Del Cueto R.V.S. at ¶ 44.

141 *Burlington Northern, Inc. & Burlington Northern R.R. – Control & Merger – Santa Fe Pacific Corp. & The Atchison, Topeka & Santa Fe Ry.*, Finance Docket No. 32549, Applicants' Response to Comments ("BNSF Response to Comments") (filed June 9, 1995).

142 *McCarty Farms, Inc., et al. v. Burlington Northern, Inc.*, 2 S.T.B. 460, 471 (1997) (emphasis added).

Service Company of Colorado D/B/A/ Xcel Energy v. The Burlington Northern And Santa Fe Railway Company,[143] BNSF claimed that a method other than a mileage prorate mechanism was "superior" because it can "cover both attributable and unattributable costs," citing a Board decision stating "[t]he revenue each carrier receives should cover the attributable costs of the service it provides and make some contribution to its unattributable costs." More recently, addressing the Board's tools for allocating cross-over traffic revenue in SAC rate cases, BNSF explained that mileage-based rules adopted in those cases were never intended to reflect "real-world negotiated divisions."[144] UP has similarly criticized the use of "mileage prorate" divisions in SAC rate cases as not accurately reflecting actual market-based divisions.[145]

So it is not surprising that actual revenue divisions bear no fixed relationship to the carrier's relative share of miles on the movement. Instead, revenue divisions set in the marketplace – and a carrier's revenue share as compared to its share of miles – vary widely from movement to movement based on a variety of factors. Majure R.V.S. at ¶¶ 146, 147; Brooks R.V.S. at ¶ 22; Naatz R.V.S. at ¶ 77. Those factors include the relative operating costs associated with the carrier's portion of the move, the costs associated with interchanging the

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143 *Public Service Company of Colorado d/b/a Xcel Energy v. The Burlington Northern and Santa Fe Railway Company*, STB Docket No. 42057, Final Brief of Defendant The Burlington Northern and Santa Fe Railway Company (served Sept. 8, 2003) at 21-22 (Vol. 3, Exh. 32).

144 *Major Issues in Rail Rate Cases*, Ex Parte No. 657 (Sub-No. 1), Reply Comments of BNSF (filed May 31, 2006) (Vol. 3, Exh. 32) at 22. BNSF cited multiple Board precedents making the point that market-based divisions were not mileage-based: *Duke Energy Corp. v. Norfolk Southern R.R.*, Docket No. NOR 42069 (STB served Nov. 6, 2003) at 20 n.29 (real world divisions between NS and other carriers would not "be particularly instructive, as those divisions presumably reflect a wide range of commercial considerations across a broad spectrum or traffic and gateways"); *Bituminous Coal – Hiawatha, UT to Moapa, NV*, 10 I.C.C.2d 259, 280 (1994) ("market-based divisions result from the interaction of supply considerations (the relative costs incurred by carriers in providing the interline movement and demand considerations (the relative bargaining power of the two carriers").

145 *FMC Wyoming Corp. & FMC Corp. v. Union Pacific R.R.*, Docket No. NOR 42022 (STB served May 12, 2000) at 28, 30, 31.

traffic, potential equipment costs, the need for infrastructure investment (or lack thereof), the level of service (over the road and first mile/last mile), the commodity, the volume of traffic, the availability of capacity, and the carrier's role in attracting the traffic in the first place. *Id.*

Dr. Majure examined the available data – including 100 percent traffic data from CP, KCS, UP, and BNSF – to assess the potential impact of the rate-setting mechanism UP and BNSF propose. That analysis confirms that carriers' market-based revenue divisions for interline movements are not set based on mileage alone and do not align with the prorated mileage covered by the segment. *Id.* at ¶ 147. This finding is illustrated in Figure 4 below, which includes four panels – one each for CP, KCS, UP, and BNSF – showing how each carrier's share of interline revenues for movements within the U.S. or between the U.S. and Canada compares to its mileage across the full array of movements in which it participates. In each panel, the x-axis describes the share of miles for that carrier's portion of each route and the y-axis describes the share of total movement revenue earned by that carrier on the same movement. *Id.* at ¶ 149. Each dot is a separate interline movement.

FIGURE 5

KCS, UP, BNSF, AND CP INTERLINE REVENUE DIVISIONS DO NOT ALIGN WITH ANY MILEAGE PRORATE FORMULA

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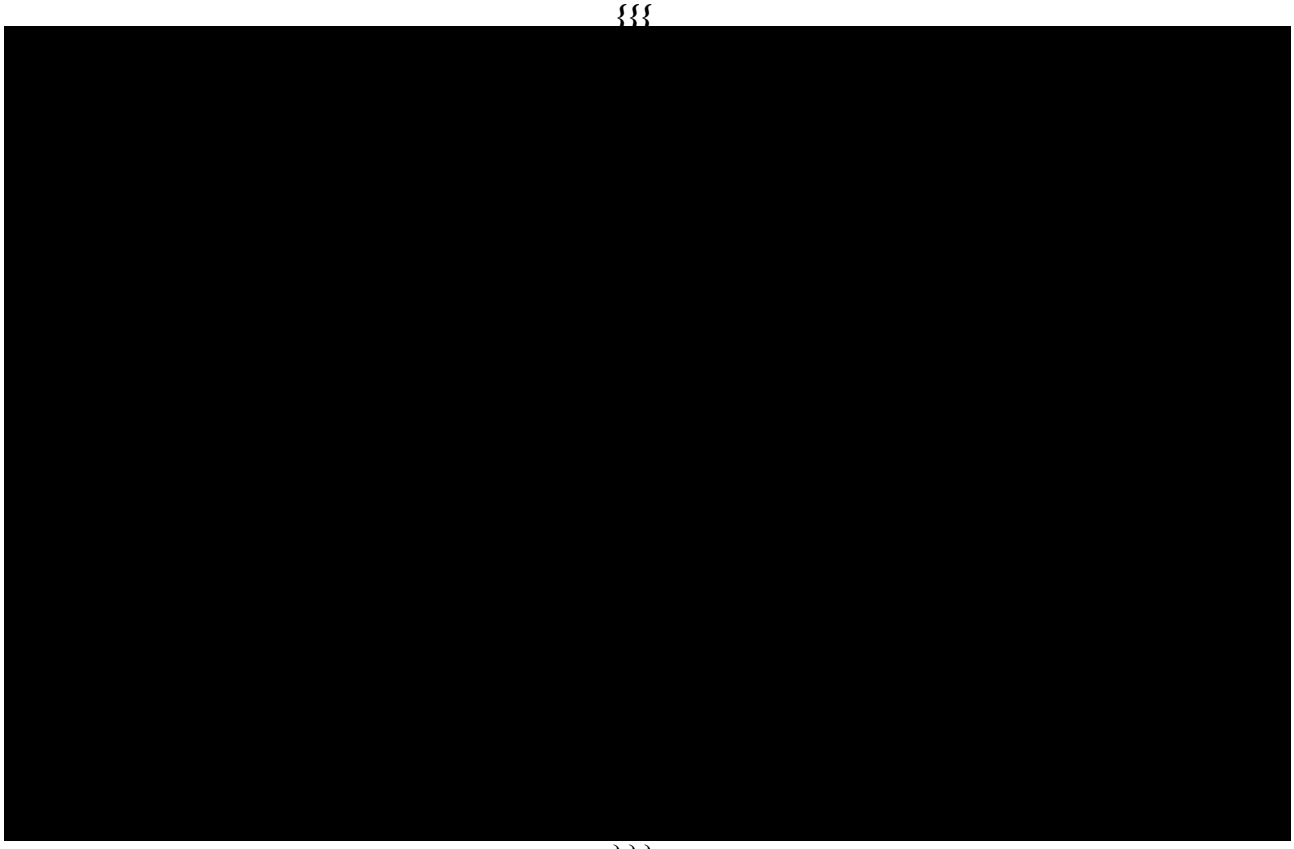

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If interline rates were typically set based on mileage, then the colored dots would tend to fall along the 45-degree line (where the share of revenues corresponds to the share of miles, *i.e.,* the "mileage prorate"). *Id.* at ¶ 150. Not surprisingly, that is not where they fall – confirming that market-based rates on interline movements do not vary in lockstep with the carrier's relative share of mileage. *Id.*

- ***The Fact That UP and BNSF Entered into a "Prop Rate" Agreement in 1996 Is Not a Reason to Impose One Here***

To be sure, interline partners from time to time do use "mileage prorate" allocation metrics as a simplifying tool to divide revenues for certain categories of interline traffic. In those

instances, as Mr. Naatz explains, the arrangements are negotiated, consensual, and often tightly cabined, such as to a specific group of new traffic opportunities. Naatz R.V.S. at ¶ 27.

UP and BNSF point to one such agreement, which they entered into in 1996 as part of the vast bundle of quid pro quos agreed to between those two railroads in connection with the proposed UP/SP merger, and they propose that it be used as a model for conditions they ask the Board to impose here. Specially, when UP agreed to give BNSF a bundle of rights (including trackage rights and the sale of a former Western Pacific line in California) to remedy competitive issues, it knew it would be giving BNSF a new single-line route between the Pacific Northwest (and Vancouver) and Southern California, which UP/SP would lack. UP therefore asked BNSF to negotiate the so-called "I-5 Prop Rate Agreement," pursuant to which BNSF would provide UP with a set of agreed rate factors allowing UP to quote rates for certain categories of traffic between BNSF stations in the Pacific northwest and certain parts of the UP/SP network.

The crucial point is that, contrary to UP's and BNSF's implication here, the I-5 Agreement (and all the other uses of mileage-prorate arrangements that UP cites)[146] were not imposed as a condition to remedy any vertical harm from UP/SP. It was a *commercial agreement* hammered out between UP and BNSF at arm's length as part of a set of agreements providing each with mutual commercial benefits. And as an internal BNSF document {{[redacted]}}. There is no simple "mileage prorate" principal established by this agreement, much less one that could be

[146] UP-10 at 74 (citing other examples).

imported into a Board mandate. Tellingly, even the BNSF witness who proposes a mileage prorate mechanism modelled on the I-5 Agreement fails to understand the complexities, and ramifications, of such a condition.[147]

The fact that the "I-5" framework represented a mutually agreeable commercial trade between UP and BNSF 25 years ago is no reason to impose it here, and in fact the Board has already rejected UP's request to do so in the *KCS/Tex Mex* proceeding, when it asked the Board to force KCS into agreeing to a "proportional rate agreement" that was "modelled on an agreement reached between UP and BNSF," *i.e.* the I-5 Agreement, as UP's favored method to "hold Applicants to their basic commitment to keep the Laredo Gateway open."[148] The Board did not require such a condition, finding a commitment to keep the Laredo gateway open on "commercially reasonable terms" sufficient.[149]

- ***The Mileage Prorate Mechanism Would Immediately Transfer Millions of Dollars from CPKC to UP and BNSF***

Were the Board to impose the UP/BNSF "mileage prorate" principle in this case, one immediate effect would be to transfer tens of millions of dollars of revenues into the pockets of UP and BNSF. Consider all CP and KCSM interline traffic for which, CP's and KCSM's existing interline division reflects a higher share of revenues than its share of miles on a potential CPKC single-line alternative. For any of this traffic in lanes where CPKC will set a new single-line rate, the immediate consequence (even if CPKCs single line rate is at the same level as existing interline rates rather than lower) will be a transfer to UP and BNSF as their share of

147 *See* Hirsch Dep. Tr. 186:21-187:4 {{ }}

148 UP-7A, Verified Statement of John Gray at 41-42.

149 KCS/Tex Mex Decision at 18-19.

revenue (i.e., their division) goes up and CPKC's is forced down. As Dr. Majure demonstrated the magnitude of this effect would be significant. Dr. Majure finds that the proposed mechanism would immediately impact approximately {{ }} of existing KCS single-line revenues via Laredo. Majure R.V.S. ¶ 159.

One concrete illustration of this involved the interline rates for intermodal traffic that KS and BNSF agreed to in 2016. As KCS witness Naatz explains, between KCSM-served terminals in Mexico and BNSF-served terminals in Texas and the West, KCS and BNSF negotiated interline rates covering joint-line KCS-BNSF intermodal services via the Laredo gateway in 50 different origin-destination lanes. Naatz R.V.S. at ¶ 40. As BNSF documents show and Mr. Naatz testifies, {{ }}[150]

BNSF's proposed mileage prorate condition would immediately upend this arrangement. As Mr. Naatz shows, KCS's share of revenues {{ }} As soon as CPKC puts single-line rates into the market, the mileage prorate condition would hand BNSF a {{ }} on moves in any lane where CPKC tried to compete. Naatz R.V.S. at ¶¶ 88, 29. This is, in a word, anticompetitive.

- ***The Mileage Prorate Mechanism Would Be a Tax on CPKC Competition and a Windfall Subsidy to UP and BNSF***

As Dr. Majure explains, moreover, the anticompetitive impacts of the proposed mileage prorate mechanism would not stop there. Majure R.V.S. at ¶ 151; *see generally* Majure R.V.S. at § 4.1.2. By linking CPKC's future interline revenue divisions to new CPKC single line rates, the

[150] *See, e.g.,* BNSF0002691({{ }}) (Vol. 3, Exh. 33); Naatz R.V.S. at ¶ 40.

UP/BNSF mechanism would operate on a tax on CPKC's competition, and a subsidy that would insulate UP and BNSF against that competition, and disable CKC from properly reflecting its single-line economics in its new rate offerings.

Dr. Majure explains this feature in detail, *see* Majure R.V.S. at § 4.1.2, but the simple illustrations below capture the basic point:

- Assume a KCSM-UP origin-to-destination rate today is $3,000, with KCSM collecting $1,200 and UP collecting $1,800, and that KCSM's share of the miles is one-third. KCSM's percentage of revenue is 40 percent, above the level that would be dictated by a strict mileage-prorate allocation (reflecting whatever the full array of cost and other market-based factors).
- Post-Transaction, if CPKC offered a single-line rate of $3,000, the UP/SP mechanism would cap CPKC's rate applicable to UP-KCSM or BNSF-KCSM interline moves at $1,000 (*i.e.*, 33 percent of $3,000, reflecting the mileage pro-rate allocation), $200 less than its pre-Transaction division. UP could maintain a $3,000 interline rate by pocketing the $200 (by increasing its division up to its two-thirds share of miles).

Now consider that CPKC would choose to take advantage of its new single-line economics to compete aggressively on price.

- If CPKC offered a single line rate that was $600 (or 20%) below pre-Transaction interline rate levels (creating an effective rate of $2,400), its share of interline revenues would now be capped at $800 (or $400 further below its pre-Transaction revenue share).

- With the subsidy of a forced reduction in CPKC's revenue division. UP could match CPKC's $2,400 single-line rate by only reducing its rate factor by $200, because CPKC would have in effect paid a $400 tax to subsidize UP's competition.

Naatz R.V.S. ¶¶ 85 and 86.

As Dr. Majure explains, this alleged "remedy" is "anticompetitive and would ensure UP and BNSF do not face the full competitive pressure they would otherwise face from a combined CPKC." Majure R.V.S. at ¶ 140.

The Board's own regulatory history shows that imposing regulatory mechanisms like these on post-merger rate-making is in fact anticompetitive experience. Despite UP and BNSF's protestations to the contrary, their proposed mechanism would resurrect key features of the long-discredited and anticompetitive "DT&I Conditions." As the Board is aware, in the pre-Staggers era the ICC developed a standard set of six conditions that it imposed almost automatically and identically in every merger proceeding, including (1) requiring "a consolidated carrier to 'maintain and keep open all routes and channels of trade via existing junctions and gateways unless otherwise authorized by the Commission'"; (2) "prohibit[ing] discrimination 'in the arrangement of schedules'"; (3) "requir[ing] a consolidated carrier to continue 'present traffic and operating relationships'"; (4) "prohibit[ing] discrimination . . . 'in promptness [and] frequency of service,'"; (5) "preclud[ing] a consolidated carrier from restraining 'the right of industries located on the acquired line to route traffic over any or all existing routes and gateways'"; and (6) "provid[ing] standing to seek later modification of the Conditions."[151] These

[151] *Rulemaking Concerning Traffic Protective Conditions in Railroad Consolidation Procedures*, 366 I.C.C. 112, 112-13 (I.C.C. 1982) (citing *Detroit, T. & I. R. Co. Control*, 275 I.C.C. 455, 492 (1950)).

standard merger conditions drew their name from *Detroit, Toledo & Ironton R.R. – Control*, 275 I.C.C. 455 (1950), and were explicitly aimed at *protecting carriers from competition*, not *protecting competition*.

By 1982, the ICC's experience with these conditions had shown that these conditions were inhibiting competition and "must be removed." The ICC found that their "anticompetitive elements" limited carriers' ability to "compete both in service and price," with a "chilling effect on innovative rate and routing practices" that "discourage[d] price and service innovations and dissuade[d] carriers from pricing according to actual cost." *Id*.[152] As Dr. Majure explains, the mileage-prorate mechanism proposed by UP and BSNF would resurrect exactly the same kind of rigid regulation of interline pricing that would impede the new competition CPKC promises. Majure R.V.S. at ¶¶ 168, 171.[153]

The anticompetitive nature of the rate-setting mechanism UP and BNSF propose is well summarized by BNSF's own criticism of similar conditions proposed by IC when BN and Santa Fe combined to form BNSF. IC proposed a 15-year condition that would "prescribe, for a period of 15 years, mileage-prorated divisions or rates ensuring mileage-prorated revenue for all traffic interchanged by Applicants and IC moving between specific points in thirteen states."[154] BN and Santa Fe pointed out that this condition would "create the risk of inefficient, non-market-responsive revenue divisions and inflict harm on the public.[155] Indeed, they argued it would go

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152 *Id.* at 115-116.

153 As Dr. Majure also points out, the mechanism has a further anticompetitive feature. Implementation of, and UP and BNSF's auditing of CPKC's compliance therewith, the "mileage prorate" mechanism would inevitably give CPKC's competitors access to the single-line rate quotes it was offering its customers. *See* Majure R.V.S. at ¶ 141.

154 BNSF Response to Comments at 92-93.

155 *Id.* at 97.

beyond even the abandoned DT&I Conditions by requesting that the Commission "uproot existing revenue divisions, requir[ing] that new ones be set on the basis of comparative mileage."[156]

BNSF was right then and it is wrong now. As both BNSF and UP have repeatedly contended in past Board proceedings – and as the objective facts in this case conclusively demonstrate – revenue divisions established in the marketplace do not hew to any "mileage prorate" formula, and any effort to impose them by regulation would be anticompetitive.

- ***UP and BNSF Give Away Their Lack of Any True Remedial Goal By Seeking to Apply Their Mechanism to Traffic Unaffected by the Transaction***

The best evidence of what is really motivating UP and BNSF is their explicit effort to have their rate-setting mechanism applied to all interline traffic between them and CPKC, even traffic that would be entirely *unaffected* by the Proposed Transaction, such as traffic flowing over Laredo to parts of UP's and BNSF's networks that CPKC will not service, and where it will not gain any longer haul than KCS could achieve today.[157] The only conceivable purpose of this would be to transfer revenue from CPKC to these larger railroads. Any condition the Board might consider to "keep gateways open" should be limited – in the same way Applicants' commitments are – to the preservation of interline routing options for traffic that might conceivably be affected by the Transaction. Brooks R.V.S. at ¶ 10.[158]

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156 *Id.*

157 *See* UP-10 at 71-72 (asking that the mechanism be applied to routes not remotely impacted by the Transaction, when they ask for the mechanism on any "competitive" route, where competitive is defined as when "CPKC and another railroad are competing for the same traffic" even when "CPKC and the other railroad d[o] not serve the identical origin or destination facility"); BNSF-9 at 73 (not limiting the application of the mechanism to only affected traffic).

158 Even shipper groups recognize this. *See* Comments and Request for Conditions of The American Chemistry Council, The Fertilizer Institute, and The National Industrial Transportation League ("ACC-6/TFI-5/NITl-3") (filed Feb. 28, 2022)at 7-8.

B. Shipper Group Desires for "Open Access" and Other Reregulatory Remedies Are Not Merger-Related

In addition to the overreaching requests by several Class 1 railroads, discussed above, a few shipper associations seek gateway and bottleneck-related relief that would extend well beyond any conceivable effect of the Transaction. They seek to capitalize on this Transaction to pursue long-standing efforts by these associations to reform the Board's "bottleneck" rate-making standards and further their open access crusade.[159] Their requests would unnecessarily and unfairly alter the regulatory landscape applicable to CPKC alone. There is no basis to award such drastic relief that does not relate to any Transaction-related harm, and they are inappropriately raised in this proceeding.[160]

1. Certain Requests Relating to "Gateways" and "Bottlenecks" Represent an Improper Effort to Revisit the Board's Bottleneck Rate Rules

Applicants have proactively committed to keep affected gateways open on commercially reasonable terms, and CPKC has specifically committed to waive its right to create new bottleneck segments by providing Rule 11 rates for the former-CP or former-KCS portions of origin-to-destination routings. *See* Section IV.5 above. These commitments are consistent with those made by participants in previous consolidations and accepted as sufficient to avoid any Transaction-related harm.[161] No further conditions should be required – especially under the pre-2001 merger rules.

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159 *See, e.g.*, ACC-6/TFI-5/NITl-3 at 13-19.

160 *See UP/SP*, 1 S.T.B. at 418.

161 *Kansas City Southern – Control – The Kansas City Southern Ry.*, 7 S.T.B. 933, 938 (2004) ("In addition, we are requiring KCS to comply with its commitment to keep the Laredo gateway open on commercially reasonable terms."); *Canadian National Ry. – Control – Wisconsin Central Transportation Co.*, 5 S.T.B. 890, 894 (2001) ("We are imposing a condition holding applicants to their representations:

Despite these commitments, ACC/TFI/NITL, in addition to seeking gateway protections where the Transaction "creates the opportunity for a longer haul" (*i.e.*, where Applicants' commitments would apply), seek to impose on CPKC a sweeping, five-pronged obligation, including that Applicants quote challengeable Rule 11 rates to/from "*all interchanges* with Class I and II railroads that were active at any time from January 1, 2018," regardless whether the Transaction affects the traffic in question.[162] Similarly, The Chlorine Institute appears to seek some form of condition maintaining "commercial neutrality at interchanges CP and KCS now maintain with other railroads."[163]

These proposals – if interpreted literally – would go far beyond keeping existing gateways open on commercially reasonable terms or ensuring that new bottlenecks are not created, which as discussed extensively above Applicants have committed to do. By definition, they would be untethered to any effect of the Transaction, and must be rejected for that reason alone.[164] The associations acknowledge that their arguments have long been rejected by the

(1) that the unified CN/WC will keep all existing active gateways affected by the transaction open on commercially reasonable terms; and (2) that applicants will waive defenses they might otherwise have (as a result of the transaction) under our bottleneck rates policy (where prior to the transaction a shipper would have been entitled to regulation of a bottleneck rate)."); *CSX/Pan Am* (Decision No. 9 served Apr. 14, 2022) at 15 ("CSX also commits 'to (a) keep all existing active gateways affected by the Proposed Transaction open on commercially reasonable terms, and (b) waive any right CSXT might otherwise have under the Board's rules to refuse requests by shippers to establish local, separately challengeable rates for movements on the PAR System to an interchange with another rail carrier.'").

[162] *See* ACC-6/TFI-5/NITl-3 at 9-13 (emphasis added).

[163] Amended Comments of the Chlorine Institute ("CI-3") (filed June 9, 2022) at 3-4.

[164] *See, e.g.*, *Norfolk Southern Railway Co. – Acquisition & Operation – Certain Rail Lines of the Delaware & Hudson Railway Co.*, FD No. 35873, (Decision No. 6 served May 15, 2015) at 32 ("These requested conditions will be denied . . . . [T]he record indicates that this alleged bottleneck existed prior to this proceeding . . . . The condition requested . . . is thus unrelated to the competitive effects of the proposed transaction."). This proposal would be inappropriate even under the 2001 Merger Rules. *See Major Rail Consolidation Procedures*, 5 S.T.B. 539, 564 (June 7, 2001) (bottleneck rate relief should be denied where the requesting "parties have not shown that this [proposed bottleneck rate relief] has the requisite nexus to mergers.").

Board, observing that "[t]he Board also has rejected arguments that vertical integration would foreclose efficient through routes, summarily concluding that, 'there is no reason for a carrier to foreclose an efficient connecting carrier just to achieve a long-haul.'"[165]

Still more problematic, these proposed conditions would alter the regulatory landscape *applicable uniquely to CPKC* for no reason other than these associations' longstanding desire for open gateway routing options. To illustrate, these groups appear to be demanding that, for CP traffic to destinations that KCS's network could not reach (such as traffic moving between Canada and points in the West on the UP or BNSF networks, or in the Northeast on the CSX or NS networks), CPKC nonetheless must quote Rule 11 rates over every possible interchange. And CPKC would have to do the same for KCS traffic to destinations that CP's network could not reach (such as KCS traffic moving to points in the Southeastern United States on the NS or CSX networks, or in the West on the UP and BNSF networks). *See* Brooks R.V.S. at ¶ 28. But no other railroad in the United States would have to do the same.

Requiring Rule 11 rates to every interchange regardless of merger impact would upend the rules established by Congress as set forth in the Bottleneck rate cases and impose on CPKC alone a regulatory regime to which no other railroad in North America is subject. The *Bottleneck Cases* establish that the governing statutory framework generally gives to the originating carrier the initiative to quote rates over its own long haul, unless the chosen routing is inefficient, and limit the application of the Board's rate reasonableness review to the origin-destination rates in whole, not individual segments thereof.[166] The Board has consistently rejected calls to revisit the

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[165] ACC-6/TFI-5/NITl-3 at 15.

[166] *Central Power & Light Co.* v. *Southern Pacific Transportation Co.*, 1 S.T.B. 1059, 1064 (1996); *Central Power & Light Co.* v. *Southern Pacific Transportation Co.*, 2 S.T.B. 235, 238-39 (1997) (collectively the "Bottleneck Cases").

seminal interpretation of the governing statutory framework set forth in these precedents. Even when it adopted new merger rules in 2001, which do not apply to this Transaction, the Board refused to "overrule [its] *Bottleneck Decision* so as to permit separate rate challenges to all segments of through or joint rates" as the shipper groups request.[167]

This is the framework that will govern CPKC, except in those limited cases where the Transaction will give CPKC a longer haul (or new single-line route) as compared to pre-Transaction conditions. It is these situations, and only these situations, to which Applicants' commitments apply and where the Board has imposed conditions in the past protecting shippers' access to routes that might be affected by a merger. *See* Verified Statement of John Brooks ("Brooks V.S.") (App. Vol. 1 at ¶¶ 46, 48); Brooks R.V.S. at ¶ 13.[168] Applicants' commitments will fully preserve shippers' pre-Transaction options.[169]

Going even a step beyond seeking to require CPKC to provide Rule 11 rates to every interchange regardless of Transaction impact, ACC/TFI/NITL further overreach by making the unprecedented proposal that the Board violate the statutory scheme by limiting CPKC's statutory right to pricing freedom.[170] Like BNSF and UP, they seek to dictate how CPKC must set

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167 *See Major Rail Consolidation Procedures*, 5 S.T.B. 539, 564 (2001).

168 Contrary to ACC/TFI/NITL's implication (ACC-6/TFI-5/NITL-3 at 10), Applicants have not committed to quote Rule 11 rates for all traffic regardless of whether the Transaction provides a new longer or single-line haul. The Application made clear that the commitment to preserve gateways was limited to those affected by the Transaction. *See* Brooks V.S. at ¶ 46, App. Vol. 1 at 233; *see also* Brooks R.V.S. at ¶ 13.

169 As a result, for example, shippers will have the option of challenging the Rule 11 gateway rates offered by Applicants, as the NGFA has requested. Opening Comments of the National Grain and Feed Association ("NGFA-1") (filed Feb. 28, 2022) at 7-8.

170 49 U.S.C. 10701(a); *see also BN/Santa Fe*, 10 I.C.C.2d at 750 ("Each utility party has proposed a specific remedy to address the merger-related harm it alleges. The remedies . . . [including] some form of rate prescription . . . are generally broader than the harms . . . . [I]t would be inappropriate to grant relief that substantially exceeds the harm threatened by the merger.").

bottleneck rates, precluding Applicants from charging higher bottleneck rates on a per-mile basis than the corresponding long-haul rate costs per mile.[171] This restriction would not merely be unfair to Applicants, given that no other railroad is subject to it, but it would also be affirmatively anticompetitive and nonsensical as a matter of economic policy, for the reasons discussed in Section IV.A.3 above and in the testimony of Applicants' witnesses. *See* Majure R.V.S. at § 4.1.1 ("[M]arket rates for interline traffic generally are not set based on prorated mileage") and ¶ 186.[172]

In a similar vein, The Chlorine Institute seeks to impose upon CPKC a unique rule that it maintain "commercial neutrality at interchanges CP and KCS now maintain with other railroads."[173] Requiring "neutrality" among gateways – and giving unfettered choice to shippers – would prevent Applicants from aggressively competing using their single-line and longer-haul routes. The Board has already tried and rejected a similar "commercial neutrality" regime when it jettisoned the "commercial closing doctrine," under which "any rate differential [*i.e.*, *non-neutrality*] was deemed to close a gateway."[174] The Board found six reasons why the commercial closing doctrine was anticompetitive, and it took the extraordinary step of reversing

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171 *See* ACC-6/TFI-5/NITl-3 at 9-10.

172 It was Congress's goal in deregulating the railroad industry to "allow[] railroads to achieve revenue adequacy by competing on a free-market basis." *MidAmerican Energy Co.* v. *STB*, 169 F.3d 1099, 1104-05 (8th Cir. 1999). And "[t]he Board has recognized that an important part of achieving revenue adequacy is differential pricing," i.e., allowing carriers to "charge a higher mark-up on rail segments where demand elasticity is low, such as bottlenecks, to compensate for low mark-ups on competitive segments." *Id.* at 1106-07 (citing *Coal Rate Guidelines, Nationwide*, 1 I.C.C.2d 520, 526-27 (1985)).

173 CI-3 at 3-4.

174 *Major Rail Consolidation Procedures*, 5 S.T.B. at 563.

the doctrine retroactively, withdrawing conditions that were already in place on previously approved transactions given the competitive harm that they had caused.[175]

Of particular import here, the Board found that the commercial closing doctrine was anti-competitive because it prevented a "newly consolidated carrier from realizing potential cost savings from consolidation" and forced new carriers to compete solely on service quality instead of price. *Traffic Protective Conditions*, 366 I.C.C. at 123-24. As the Board explained, each carrier should be "free to compete both in service and price to establish the price-service combinations that best meet shipper needs." *Id.* Forcing carriers to compete solely on service keeps prices artificially high, and may make rail transport less attractive to shippers than truck or barge transport since such a "commercial closing" regime is not imposed on those carriers. *Id.* at 114, 123-24. Similarly, here, preventing CPKC from leveraging new efficiencies unlocked by the Transaction to offer lower prices hamstrings CPKC's ability to compete, keeping prices artificially high. As the Board has recognized, although "[r]ate equalization . . . is in the[] best interests" of "some shippers," – and perhaps CI is one of those shippers – "it is contrary to the public interest as well as that of carriers and shippers." *Id.* at 123.

It is perhaps not surprising that these shipper groups are trying to use this proceeding to undo the statutory framework governing "bottleneck" rate-making. These organizations have been unhappy with the bottleneck rate regime for many years and are well aware that it requires an industry-wide change in regulatory (indeed, statutory) standards.[176] This proceeding is not the

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[175] *Traffic Protective Conditions*, 366 I.C.C. at 114, 122-26, 130-32.

[176] *See, e.g.*, *Competition in The Railroad Industry*, Ex Parte No. 705, Joint Comments of Alliance for Rail Competition, et al. (filed Apr. 12, 2011)) (Vol. 3, Exh. 34) ("Shipper Ass'n EP 705 Comments") at 44-46 (comments of, inter alia, ACC, TFI, NITL, Chlorine Institute, NGFA favoring change in the Board's bottleneck rate standards); Brief for Respondent NITL in Support of Petitioner, *Western Coal Traffic League* v. *STB*, 120 S. Ct. 372 (1999) (No. 99-135) (Vol. 3, Exh. 35) at 1-4 (seeking Supreme

proper forum for consideration of these groups' regulatory agenda; that forum is Congress. There is no reason why CPKC should be subjected to conditions that the associations have failed to convince the legislature and regulators to implement on an industry-wide level.[177] Imposing such conditions on CPKC would effect an industry restructuring of the sort the Board has already said in this case is inappropriate.[178]

Such conditions are not merely unwarranted; they would be affirmatively harmful to CPKC's ability to compete effectively. Requiring "open routing" at the shipper's initiative – or worse, "neutrality" among gateways – would inject new inefficiencies into CPKC's combined network and impede efforts by CPKC to compete more effectively against other Class 1 railroads and other modes. The damage would not be limited to the new competition CPKC hopes to offer using its more efficient and more capable single-line routes, but would extend as well to traffic flows unaffected by this end-to-end combination Transaction. *See* Brooks R.V.S. at ¶ 29. The net result would be anticompetitive, and should be rejected for the same reasons that the ICC

Court review of Eighth Circuit opinion affirming Board's bottleneck rate precedent); *see also Major Rail Consolidation Procedures*, 5 S.T.B. at 564.

[177] *See Major Rail Consolidation Procedures*, 5 S.T.B. at 564, 793 (rejecting comments by shippers groups including NITL and ACC); *see also* Shipper Ass'n EP 705 Comments (Apr. 12, 2011) (Vol. 3, Exh. 34) at 44 (arguing unsuccessfully that "[t]he Board's 'Bottleneck Decisions' facilitate conscious parallelism and should be reversed" because "[a] shipper seeking a bottleneck rate from an origin to a destination served by the same carrier will almost always be rebuffed or have the quoted rate limited to a local movement with no combination rate beyond allowed.").

[178] *See* Decision No. 13 at 4 ("[T]he agency 'should not use our conditioning powers to make consolidation proceedings vehicles for rail system restructuring.'") (quoting *UP/MP/WP*, 366 I.C.C. 462, 564); *see also UP/MP/WP*, 366 I.C.C., at 564 ("[U]s[ing] our conditioning powers to make consolidation proceedings vehicles for rail system restructuring . . . would not be consistent with the Congressional intent underlying the statutory scheme governing railroad consolidations.").

rescinded the "open-routing" and "gateway neutrality" conditions it had once imposed routinely in merger cases.[179]

2. Requests for "Reciprocal Switching Access" Are Similarly Unrelated to this Transaction

Certain shipper groups have used their comments in this proceeding to advance their longstanding efforts to have the Board order railroads to grant other railroads "reciprocal switching" access to on-line customers.[180] This relief is simply another chapter in the efforts of these groups to achieve industry-wide change in competitive access standards, most prominently in the pending Ex Parte No. 711 proceeding. The relief is untethered to any effect of the Transaction and should be rejected.

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[179] *See Traffic Protective Conditions*, 366 I.C.C. at 112; *CSX Corp. – Control – Chessie Sys., Inc.* 363 I.C.C. 518, 578 (1980) ("We have reappraised our policy in recent decisions and have examined the possibility that anticompetitive effects of the DT&I conditions outweigh any competitive benefits . . . . We have broadened our reappraisal of DT&I conditions by instituting a rulemaking to determine the advisability of eliminating DT&I-type conditions in all past and future rail consolidations."); *see also id.* at 536-37 ("DOJ opposes the DT&I traffic protective conditions requested by numerous railroads in this proceeding, as anticompetitive and without countervailing public benefits."). Among the rescinded conditions, "Condition 1" of the DT&I conditions had required a consolidated carrier to "keep open all routes and channels of trade via existing junctions and gateways' unless otherwise authorized by the Commission," while "Condition 5" had precluded such a carrier from "restraining 'the right of industries located on the acquired line to route traffic over any or all existing routes and gateways." *Traffic Protective Conditions,* 366 I.C.C. at 112-13.

[180] *See* NGFA-1 at 9 (condition "requiring the merged railroad to enter into reciprocal switching arrangements when circumstances require them to facilitate rail-to-rail competition post-merger"); Wheat Growers Comments at 2 (proposing "condition of guaranteeing captive shippers of the new CPKC open access to reciprocal switching"); Comments of U.S. Wheat Associates (filed Feb. 28, 2022) at 13 ("statutory competitive access as conditions on this transaction for use by any shipper on the new CP/KCS system that is subject to market dominance or receives inadequate service"); IMA Comments (filed Feb. 28, 2022) at 12 (identical to U.S. Wheat Associates Comments); Private Railcar Food and Beverage Association Request For Condition (filed Feb. 28, 2022) ("PRFBA Comments") at 12 ("reciprocal switching as a condition on this transaction for use by any shipper on the new CP/KCS system that is subject to market dominance or receives inadequate service"); North Dakota Wheat Commission Request for Conditions (filed on Feb. 28, 2022) ("North Dakota Wheat Commission Comments") at 16 (identical to U.S. Wheat Associates Comments).

Not one of these commenters offer any predicate evidence of *a single shipper* losing access to an existing rail option as a result of this Transaction, or any evidence at all of any adverse impact on competition. The "reciprocal switching" conditions they seek are precisely the kind of broad industry restructuring that the Board's precedents forbid.[181] Conditions of this sort are especially inappropriate in light of the Board's conclusion that the pre-2001 rules should apply,[182] under which the "competitive enhancements" these commenters propose are out of place.[183]

As these groups are well aware, the Board is presently considering the role of reciprocal switching access in Ex Parte No. 711, and that is where these issues should be addressed so that any regime of forced switching applies to all railroads, not just CPKC. All of these commenters (excepting only the North Dakota Wheat Commission) are among the participants in that case advocating industry-wide reciprocal switching.[184] The position of these shipper groups in favor

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[181] *See, e.g.*, *UP/MP/WP*, 366 I.C.C. at 564 ("[W]e should not use our conditioning powers to make consolidation proceedings vehicles for rail system restructuring. To do so would not be consistent with the Congressional intent underlying the statutory scheme governing railroad consolidations."); Decision No. 13, at 4 ("[U]s[ing] our conditioning powers to make consolidation proceedings vehicles for rail system restructuring . . . would not be consistent with the Congressional intent underlying the statutory scheme governing railroad consolidations").

[182] Decision No. 4 at 3.

[183] *See, e.g.*, *Major Rail Consolidation Procedures*, 5 S.T.B. at 547 (adopting the new rules and explaining they include "competitive enhancements" such as "reciprocal switching arrangements"). While some shippers have cited CP's proposal to offer a form of reciprocal switching access in connection with its interest in acquiring Norfolk Southern in 2016 (*see, e.g.*, North Dakota Wheat Commission Comments at 15, n.16), that prior proposal has no bearing in this proceeding. A potential CP-NS transaction would have involved much more complex competitive issues and also been subject to the Board's 2001 merger rules, which allow for such "competitive enhancements."

[184] *See, e.g.*, Ex Parte No. 711 (Sub-No. 1), Comments of National Association of Wheat Growers (filed Feb. 14, 2022) (Vol. 3, Exh. 36); U.S. Wheat Associates Testimony (filed Feb. 14, 2022) (Vol. 3, Exh. 37); Industrial Minerals Association-North America Testimony (filed Feb. 14, 2022) (Vol. 3, Exh. 38); National Grain and Feed Association Comments (filed Feb. 14, 2022) (Vol. 3, Exh. 39); Private Railcar Food and Beverage Association Testimony (filed Feb. 14, 2022) (Exhibit Vol. 3, Exh. 40).

of *industry-wide* changes to the Board's reciprocal switching rules dates back at least two decades.[185]

Applicants understand that these groups may be duty-bound to try to advance their preferred competitive-access framework in every available forum. Their requests, however, have no place in this proceeding.

Applicants have no hesitation in reiterating that CPKC will compete using whatever access tools might become available as a result of Board action in Ex Parte No. 711.[186] But no condition should be imposed on this Transaction.

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This is not the first time participants in the Board's merger proceedings tried to hijack those processes as a vehicle for imposing sweeping new competitive access relief. The Board resoundingly rejected those efforts before, and should so again.

As the Board concluded in the Houston Gulf Coast Oversight proceeding, "[w]hatever the merits of the "more-competitors-enhance-infrastructure-investment" argument, they are more appropriately made in an open access debate before Congress involving the entire rail system

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185 *See, e.g.*, *Competition in the Railroad Industry*, Shipper Ass'n Comments, EP 705 (filed Apr. 12, 2011) (Vol. 3, Exh. 34) at 21-44 (comments of, *inter alia*, ACC, TFI, NITL, Chlorine Institute, and NGFA favoring change in Board standards for grant of reciprocal switching); *see also Hearing on Revenue Adequacy,* NGFA Supplemental Submission, EP 761 (filed Feb. 13, 2020) (Vol. 3, Exh. 41); *Regulatory Reform Task Force,* TFI Written Statement, EP 738 (STB filed July 24, 2017) (Vol. 3, Exh. 42); *Railroad Revenue Adequacy,* NGFA Comment, EP 722 (filed Feb. 13, 2020) (Vol. 3, Exh. 41); *Hearing on Revenue Adeqaucy,* NITL Written Comments, EP 761/722 (filed Nov. 26, 2019) (Vol. 3, Exh. 43); *Railroad Revenue Adequacy,* IMA North America Comments, EP 722 (filed Nov. 25, 2019) (Vol. 3, Exh. 44.

186 *See* Ex Parte No. 711, Hearing (Mar. 15, 2022 and Mar. 16, 2022) available at https://www.youtube.com/watch?v=jM0N1zkQYi8 and https://www.youtube.com/watch?v=VWwUIRf0hGo.

than in this case."[187] As the Board explained in that case: "Because the railroad industry is not an open access industry, and because some shippers may pay more than others under the law that we administer, merger proceedings are not used as vehicles to equalize the competitive positions of shippers generally."[188] The Board added that "we cannot determine here, and do not need to determine here, how the railroad system would evolve if open access were adopted in Houston and, ultimately, the rest of the Nation: it could have unknown but significant effects on infrastructure, employment, and traffic patterns."[189] Conditions untethered to Transaction impacts and with such unpredictable effects are not permitted under the Board's pre-2000 rules and precedents.

V. APPLICANTS ARE DEDICATED TO ENSURING THAT THE TRANSACTION WILL BE IMPLEMENTED WITHOUT SERVICE DISRUPTION

Several commenters – perhaps thinking back to a few bad experiences with large rail mergers in the 1990s – express generalized concerns about the potential for implementation of the Transaction to cause service disruptions, and seek a variety of conditions aimed at addressing these worries. As we explain in this Section,[190] there is no valid cause for concern about this particular railroad merger. As an end-to-end Transaction, like the *CN/IC* combination of 1998, there is no basis for thinking that implementation of the Transaction will cause disruption. Nonetheless, Applicants have taken, and will continue to take, extraordinary steps to plan ahead

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187 *Union Pacific Corp. – Control – Southern Pacific Rail Corp.*, Finance Docket No. 32760 (Sub-No. 26) (Decision No. 10 served Dec. 21, 1998) at 4.

188 *Id.* at 2.

189 *Id.* at 3-4.

190 We separately address (and refute) the particularized assertions by UP and BNSF that the Transaction might lead to congestion on portions of the CPKC network that overlap with or interconnect with the UP and BNSF networks (*see* Section VI), and by Metra that the Transaction would adversely impact service on lines in the Chicago area shared with Metra (*see* Section VII).

and prepare for the implementation so that no unexpected disruptions arise. To allay any residual concerns, Applicants are committed to – and accept as a condition – a program of rigorous monitoring, reporting and Board oversight. As with previous transactions reviewed under the Board's pre-2001 rules, any more onerous requirements relating to purely speculative service concerns would be inappropriate.

A. The Transaction Will Not Lead to Service Disruption

The Transaction is highly unlikely to lead to any service disruption warranting onerous service-related conditions. This is so for many reasons.

First, this is a *purely end-to-end Transaction*. Analogies to the service disruptions observed during the integrations of UP/SP and CSX/NS/Conrail, which led the Board to implement the Service Assurance Plan requirement of the Board's 2001 Major Merger Rules, are inapplicable. The UP/SP and CSX/NS/Conrail transactions involved complex integrations of networks that had numerous elements not present here: the frailty of SP's infrastructure, the immediate restructuring of internal routings among the extensive parallel routes of the UP and SP networks, the need to disintegrate the Conrail network on Day 1 and reallocate routes and traffic among NS and CSX, and many more. *See* Verified Statement of Keith Creel ("Creel V.S.") at ¶ 38. From the perspective of likely service impacts, the closest historical analog to the CP/KCS Transaction is the *CN/IC* transaction, as to which the Board terminated the oversight period prematurely because it was so clear that merger implementation was proceeding smoothly.[191]

[191] *CN/IC*, (STB Decision No. 4).

By comparison with *UP/SP* and *CSX/NS/Conrail*, integrating CP and KCS will be simple. CP and KCS already share the one and only and terminal where they both operate. There will be no new terminal consolidations. Likewise, there will be no opportunity for internal re-routings; all traffic moving between the two networks will continue to move via Kansas City. As a corollary to this, and perhaps most fundamentally, the traffic changes occasioned by the Transaction will not result from CPKC flipping some sort of "merger integration switch" and hoping for the best. Rather, on Day 1 the traffic of CPKC be the same as the traffic on CP and KCS on Day 0, routed the same way in accord with these railroads' tried and true operational design. "Integration" of the two networks will begin immediately, of course, bringing the operational efficiencies that Applicants have detailed in the Application. But the new Transaction-related traffic Applicants anticipate will only come as – *and when, and if* – Applicants demonstrate to shippers that the service CPKC is able to deliver on its new single-line routes offers advantages as compared to shippers' existing rail and truck options. Traffic changes will occur incrementally over time, allowing CPKC to adapt its operation with the benefit of experience and learning. And traffic will not come at all if CPKC has not shown that it can provide reliable and disruption-free service in its new single-line routes. In a very real sense, the very same traffic changes that commenters worry will disrupt operations will in fact be a *barometer of CPKC's success in delivering improved operations*.

Second, this Transaction will bring together two railroads with ***excellent operational track records***. Both railroads have previous experience implementing consolidations that should give shippers and the Board confidence that integration here will be successful. CP combined with DM&E in 2009 and acquired CMQ in 2002, and both transactions proceeded smoothly.

Creel V.S. at ¶ 39. KCS acquired control of Tex Mex and TFM in 2005, and the implementation of those end-to-end transactions went smoothly as well. *Id.*

Both railroads' recent operational track records further demonstrate that their managements – and thus the management of the combined CPKC – will know what it takes to carry on reliable and effectively-resourced service during times of change. As reflected in the testimony and data presented in the Board's Ex Parte No. 770 proceeding, both CP and KCS have performed well through the post-COVID recovery, and their service is highly regarded by the shipper community (a point with which none of the commenters suggests any disagreement).

The consistency of CP's and KCS's operating performance explains in no small part why these two railroads have been among the most successful in growing their traffic bases over the past several years. From CP's perspective in particular, its successful PSR transformation (which began in 2013) allowed it to build a foundation of highly reliable service execution and resource utilization that created the foundation for attracting more traffic to the railroad. CP's industry-leading growth trajectory was the result. Brooks V.S. at ¶ 21.

CP has embraced that growth – as it will the growth unlocked by the CP/KCS Transaction – by allocating sufficient resources to its operations and deploying those resources efficiently and effectively. CP's operational success also stems in no small part from its unique culture of accountability, with operating personnel down to the level of trainmaster expected to understand what the railroad has promised that customer, and given the responsibility to ensure that CP delivers on what it promised. Reply Verified Statement of Raymond A. Elphick ("Elphick R.V.S.") at ¶ 92; Clements V.S. at ¶ 17. This culture will empower CPKC no less than it does CP today.

Third, the operational integrations that will be implemented will only occur after Applicants have spent *countless hours and extraordinary care planning for that integration* and preparing their IT systems and other processes to ensure that it goes smoothly. These preparations were described in the Application (*see* Brooks V.S., Clements V.S., and the Operating Plan), and Mr. Brooks provides an update on the status of those efforts in his Reply Verified Statement.

Applicants agree with the observation in USDA's comment that it would be prudent for CPKC to proactively allocate locomotives, labor, and equipment to potential pain points to avoid any transitional service impacts.[192] This is exactly the kind of planning that Applicants already have well underway, and that work will continue to, and through, the day in 2023 when they begin the integration process.

Applicants also have fully embraced USDA's recommendation regarding the importance of investing over the longer term in their infrastructure to avoid (or relieve) any congestion that may arise from traffic growth on the CPKC network.[193] Such investment is not merely an afterthought or reactionary measure to avoid service disruption. For CPKC, it is an integral part of Applicants' plan to expand the capacity and capability of their North-South route. Applicants have detailed hundreds of millions of dollars of specific investments they will make starting on Day 1, which will augment extensive projects that the two separate railroads already have planned or underway. But Applicants are not stopping there. Consistent with their ordinary course approach to capital planning, they will constantly monitor traffic trends and devote

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192 Comments of U.S. Department of Agriculture ("USDA Comments") (filed Feb. 28, 2022) at 2.

193 *Id.*

sufficient resources to ensure that the capabilities of CPKC's future infrastructure (and other resources) stay ahead of the growth curve. Brooks R.V.S. at ¶ 35.

B. Applicants' "CP/KCS Service Promise"

Applicants well understand that their confidence about their ability to implement the CP/KCS Transaction without inadvertently undermining the levels of service that CP and KCS customers have come to expect may not be shared by everyone. As a result, as explained in Brooks's Reply Verified Statement, Applicants are making a "CP/KCS Service Promise" to every one of our customers. Brooks R.V.S. at ¶ 32. Excerpted below, that Promise has five key pillars that together provide an assurance that CPKC will not take its eye off the service ball, will communicate about Transaction-related changes in service openly with its customers, and will proactively address any issues that arise.

FIGURE 6
THE CP/KCS SERVICE PROMISE

OUR CP/KCS SERVICE PROMISE

Pillar 1 – We Will Plan Thoroughly for Transaction Implementation

- Our goal is for Transaction-related changes to yield service that provides each customer with as good as or better service overall than what our customers received pre-Transaction.
- Our planning for Transaction implementation is already well underway.
- We will not implement Transaction-related changes until we are prepared to do so without causing disruption.

Pillar 2 – We Will Monitor Our Post-Transaction Performance

- We will proactively monitor our own performance so as to identify areas requiring adjustment before problems arise.

Pillar 3 – We Will Transparently Report on Our Post-Transaction Performance

- During an oversight period of up to five years, we will report regularly to the Board and the public on our service levels, with metrics tailored to lines and facilities most affected by Transaction-related traffic growth.
- We will supplement this reporting with proactive engagement with our customers (on a confidential basis) regarding CPKC services that affect their shipments.

Pillar 4 – We Will Proactively Communicate and Consult with Customers About Our Post-Transaction Performance

- We will meet regularly with our customers to discuss progress on Transaction implementation.
- We will add customers served by the KCS network to CP's Customer Advisory Council.
- We will seek regular input from our customers on ways we can improve our service to better meet their needs, or make adjustments to address issues as they arise.

Pillar 5 – We Will Resolve Concerns and Promptly Fix Any Issues that Arise

- CPKC will have a cross-functional team with authority to step in to develop and implement solutions for issues that arise, including via adjustments to our resourcing or operating practices.
- When adjustments do not resolve concerns raised by our customers, we will provide for an escalation process to ensure that customer concerns are heard by decision makers empowered to address them.
- We will participate in independent mediation with our customers when these steps do not resolve Transaction-related concerns.

Applicants also understand that the issue of post-transaction service is not merely a matter between CPKC and its customers. The Board will play a role as well. In that regard, a significant thrust of the service-related comments of many commenters is to urge the Board to

impose an oversight condition and require Applicants to submit reports on post-Transaction service.[194] Applicants share the interest of these commenters in a disruption-free implementation process and welcome reasonable and appropriate oversight of their implementation of the Transaction.

Specifically, Applicants accept a period of formal oversight of up to five years, coupled with appropriate reporting during this period on the fluidity of the CPKC network as it implements its integration plans. Mr. Brooks details the reporting that Applicants commit to provide during the Board's formal oversight period, and we will accept the Board embodying this reporting in a formal condition of its approval. Brooks R.V.S. at ¶¶ 36-37. Applicants anticipate that this period may be curtailed – as it was in the *CN/IC* transaction – when experience with the new CPKC shows that there are no service disruptions or other adverse impacts of the transaction warranting a prolonged oversight period. Board precedent and experience under the pre-2001 merger rules shows that thorough, fair, and fully-informed oversight of the Transaction's implementation is the appropriate means of identifying and addressing any (unlikely and speculative) service issues that might arise from the Transaction's implementation.[195]

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[194] *See, e.g.*, Opening Comments of Evergy Metro, Inc. (filed Feb. 28, 2022) at 17-18 ("Evergy Comments"); NGFA-1 at 11; BNSF-9 at 73 (arguing the Board should "[r]equire Applicants to regularly report to the public and the Board on the status of the Transaction during an oversight period of at least five years, including in such reports information and data sufficient to enable the public and the Board to evaluate CP-KCS's compliance with the conditions imposed by the Board on its approval of the Transaction" and "require Applicants during the Board's oversight period to regularly report service metrics relating to traffic through Laredo and congestion metrics at locations potentially affected by traffic increases brought about by the Transaction."); CN-13 at 76-77 (stating the Board should impose an oversight period of "at least five years" which would include "required reporting on whether merger benefits have been achieved, compliance with conditions, and any merger-related harms").

[195] *See, e.g.*, *CN/IC*, 4 S.T.B. at 122 (up to five years of oversight imposed, only oversight of two years); CSX/NS/Conrail, Finance Docket No. 33388 (Sub-No. 91) (Decision No. 17 served Oct. 20, 2004) (general oversight terminated after five years); *UP/SP*, Finance Docket No. 32760 (Sub-No. 2) (Decision No. 21 served Dec. 20, 2001) (general oversight ended after five years).

C. Additional Service-Related Conditions Would Unduly Burden CPKC's Competition for No Valid Purpose

Some commenters seek conditions going well beyond the oversight and reporting obligations that Applicants are prepared to embrace. The Board should reject such conditions as inconsistent with the rules governing this Transaction, unjustified in the factual context of this Transaction, and likely to handicap the new competition that will be the hallmark of this Transaction's public benefits.

First, several commenters have suggested that Applicants should be required to prepare a formal "Service Assurance Plan" ("SAP") or its equivalent, and follow the plan for at least five years.[196] As a threshold matter, such a requirement would both impose the rigors of the Board's 2001 Major Merger Rules on a Transaction that the Board has explicitly said will not be reviewed under those rules,[197] and would interpose significant delay in the implementation of the Transaction (which no doubt is CN's motivation for making this proposal).

More fundamentally, a formal SAP is not necessary here because Applicants have already, on their own, been undertaking the kind of advance planning called for by a formal service assurance plan. Applicants have already made clear the steps they are taking to prepare for the integration of the CP and KCS networks, and Applicants have already detailed the kind of proactive monitoring and reporting they will undertake, all under Board oversight. CPKC has

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196 *See* CN-13 at 76; USDA Comments at 2.

197 *Major Rail Consolidation Procedures*, Ex Parte No. 582 (served June 11, 2001) ("EP 582 Final Rules") at 41. The genesis of the formal SAP was the Board's recognition of "the importance of service to shippers" and "that implementation of any merger plan necessarily has an element of uncertainty." Given these uncertainties, the Board determined that the formal plan "should provide certain essential information, such as their plans to deal with any potential adverse service effects during implementation and to accommodate such less-than-optimum operations ... Moreover, the plan should identify and discuss potential areas of temporary or longer-term service degradation, and appropriate mitigation [and] provide for the establishment of problem resolution teams and describe the specific procedures to be utilized for problem resolution."

identified metrics it will proactively monitor and report to ensure that there is no service degradation due to the Transaction. Brooks R.V.S. at ¶¶ 36-37. Additionally, as discussed above, Applicants' internal preparations and service protection measures will include proactive planning so that resources can be allocated to "less-than-optimum operations" and "potential areas of temporary or longer-term service degradation."[198] It is particularly telling that none of the advocates of a formal SAP point to anything in particular that Applicants have not already addressed in one form or another.

Applicants understand the Board's goals in instituting the formal SAP requirement and are confident that given the nature of this Transaction, their careful planning and past implementation experience will ensure that they avoid service disruptions during the integration process. Preparation and implementation of a formal service assurance plan that is otherwise unnecessary would accomplish nothing other than the further delay CN has consistently desired and sought.[199]

Second, in a quest for guarantees that nothing will change, some shipper groups have proposed – perhaps inadvertently – conditions that would inject operational rigidity and thereby undermine CPKC's ability to compete effectively. ACC/TFI/NITL seeks a condition requiring that CPKC provide shippers with at least 30 days prior written notice of any planned service changes at shipper facilities.[200] Such a condition would be both unprecedented and misguided. It would deprive CPKC of the flexibility it may need – and that all of its competitors would have

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198 EP 582 Final Rules at 41.

199 *See, e.g.*, CN's Nov. 10, 2021 Letter to the Honorable Cynthia T. Brown (CN-5) (filed Nov. 10, 2021); CN's Nov. 22, 2021 Letter to the Honorable Cynthia T. Brown (CN-7) (filed Nov. 22, 2021); CN's Feb. 23, 2022 Letter to the Honorable Cynthia T. Brown (filed Feb. 23, 2022); CN's May 20, 2022 Letter to the Honorable Cynthia T. Brown (CN-16) (filed May 20, 2022).

200 ACC-6/TFI-5/NITl-3 (filed Feb. 28, 2022) at 23.

–to respond to evolving traffic patterns and other external events. As much as CPKC will seek to provide service that meets the needs of every one of its customers, operating a rail network that serves hundreds or thousands of customers would be untenable were each and every customer given a 30-day hold on any change in network operations that may affect that one customer, even if it clearly improved network operations for customers as a whole.

The Transaction will not alter the fundamental interdependence of the service levels provided to different shippers on a rail network. For example, every manifest train serves on average more than 40 different customers, meaning that an adjustment (say, a schedule change) that improves service overall may well have implications that are not uniformly desirable for every single customer whose freight rides that train. Elphick R.V.S. at ¶ 93. Similarly, switching crews and locomotives might be more effectively deployed to a shipper with surging volumes (delivering an extra switch to avoid congestion) than to maintain switch cadence for one with declining volumes. A condition that intervened in this fluid process of network optimization and adjustment would prevent CPKC from honing its operations to provide more effective competition, and likely would contribute to causing rather than avoiding service disruption.

Third, some shipper groups have proposed a regime of monetary penalties for post-Transaction service issues. Specifically, ACC/TFI/NITL asks the Board to implement a sliding scale of charges based on CP's post-transaction performance,[201] and the National Grain and Feed Association requests that the Board impose financial penalties for service failures.[202] These conditions would be similarly unprecedented and counterproductive. Indeed, a system of

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201 *Id.*

202 NGFA-1 at 10.

monetary penalties for service failures "would put the proponent of a condition in a better position than before the merger," which is disqualifying under the Board's precedents.[203] Such a regime does not exist for any shipper in the pre-Transaction world, and none has ever been imposed in any merger, even in the aftermath of the UP/SP and CSX/NS/Conrail service disruptions.[204] In fact, a service guarantee penalty regime would be counterproductive and distort CPKC's service offerings, handicap CPKC from competing against other Class 1s not subject to this strict regime, and inject unhelpful adversity and rigidity into a set of customer relationships. *See* Brooks R.V.S. at ¶¶ 44-45. The Board should not impose such an extraordinary condition here, especially given Applicants have already committed to establishing collaborative processes for customer involvement, input, and proactive remediation of any escalation any Transaction-related service concerns. Brooks R.V.S. at § III.

VI. THE "CAPACITY CONCERNS" ADVANCED BY UP, BNSF, AND CN HAVE NO MERIT

As set forth in the Application and in the Reply Verified Statement of Elphick and Orr, Applicants have carefully assessed the degree to which the traffic gains they anticipate from the Transaction will require additional capacity on CPKC's rail network, using the same tools they would deploy in the ordinary course to assure that their operations would not overtax capacity available from infrastructure and other resources. Claims to the contrary, primarily by other Class 1 railroads, are incorrect. Applicants recognize that evolving traffic levels and operations of all carriers using elements of the rail network will call for careful and ongoing review of how these operations are impacting available rail capacity. Applicants' self-interest in serving its customers will demand no less. Where CPKC will share trackage with UP, BNSF, or others, it

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203 *UP/SP*, Finance Docket No. 32760 (Decision No. 103, served May 1, 2008) at 6.

204 *See CN/IC*, 4 S.T.B. at 122.

will be dedicated to working collaboratively to ensure operations are coordinated fully and effectively, and that capacity is added as necessary to accommodate the needs of all users.

UP and BNSF, two of the Class 1 railroads most threatened by the new competition they will face from CPKC's new single-line service, manufacture concerns about the capacity available to support this new competition as a basis for demanding that the Board impose unprecedented conditions that would effectively give UP and BNSF the right to pre-approve CPKC's competitive initiatives. These requests are blatantly anticompetitive and should be denied.

As we demonstrate in this Section, CPKC's proposed operations and anticipated traffic growth will not exceed available rail capacity or disrupt the operations of UP, BNSF, or any other carrier. In Section VI.A., we explain that the basic features of the Transaction ensure that new CPKC traffic will not overwhelm existing rail capacity. In Section VI.B., we address the concerns that UP and BNSF raise about the lines in Texas they will share with CPKC. And in Section VI.C., we address the remaining concerns raised about capacity on other parts of the future CPKC network by UP, BNSF, and CN. We address Metra's specific contentions in Section VII below.

A. Basic Features of the Transaction Will Prevent CPKC Traffic Growth From Overwhelming Rail Capacity

The same key features of the CP/KCS Transaction that will help assure that there are no service disruption concerns will also help assure that CPKC's traffic growth does not exceed available rail capacity.

First, Applicants have carefully planned ahead and assessed the capacity needs of the CPKC network. Applicants have proposed extensive new capacity infrastructure – on top of

work that CP and KCS are undertaking independently on their own networks.[205] These infrastructure improvements will be more than sufficient to ensure that the capacity needs of the CPKC network are met.

Second, there will be no all-at-once flip of a switch that sends new rail traffic pouring onto existing infrastructure. CPKC's trains on Day 1, and perhaps on Day 180, will be the same as they are today. Unlike in the merger transactions with which UP and BNSF are most familiar, CP/KCS will not unilaterally reroute a single train. Rather, CPKC will gradually add new trains over time if (and only if) CPKC is successful in attracting shippers to its new single-line network.

Third, because the only new traffic that shows up on the CPKC network will be traffic that shippers choose to put on CPKC's network – by shifting it away from existing routes – the limitations imposed by capacity constraints (were such constraints really to exist) would be self-regulating. CPKC's anticipated growth will depend on its ability to provide service that meets customer needs, and does so materially *better than their existing options*. Shippers will not choose CPKC if capacity constraints on the CPKC network lead to gridlock or extensive service deterioration. Applicants' careful analysis has confirmed service will not deteriorate because there is ample capacity throughout the network, and CPKC will be motivated to ensure that this remains the case.

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[205] UP and BNSF's claims that Applicants have proposed no new investments are just wrong, *See* BNSF-9 at 58 ("Applicants have proposed no new capacity improvements in order to handle the projected CP-KCS traffic volumes."); UP-10 at 10 ("Applicants failed entirely to address the impact of their transaction on infrastructure that they use but that is owned by other railroads."); Comments of Norfolk Southern Railway Company and Request for Conditions (filed Feb. 28, 2022) ("NS-9") at 69 (Applicants "make no commitment to invest in capacity or ability to handle the projected growth."). We have done so wherever warranted, but only where such investments are necessary to accommodate Transaction-related growth. CPKC will of course continue to make improvements to its own network – and support improvement in other lines it uses to support growth that occurs independent of the Transaction. Elphick/Orr R.V.S. at ¶ 30.

Fourth, for the same fundamental reason, if experience shows that infrastructure improvements would achieve desirable improvements in service or reliability, or if they proved necessary to accommodate greater-than-expected growth, CPKC will be *more motivated than anyone else* to identify and implement such capacity improvements. CPKC will not be reluctant to invest in capacity, as CP and KCS's recent track record and Applicants' plans ought to demonstrate. *See* Reply Verified Statement of Keith Creel ("Creel R.V.S.") at ¶¶ 3, 25.

B. The Transaction Will Not Cause Disruption on the Lines KCS Shares with UP and BNSF in Texas

UP and BNSF focus most of their attention on the UP lines in Texas over which CPKC must operate in order to compete with UP and BNSF. These railroads are quite transparent about their view that nearly every new carload, or intermodal container, that CPKC would haul across the UP trackage rights and through Houston would be traffic that is taken away from their own "superior routes." In their zeal to protect themselves and their supposed traffic "entitlements," UP and BNSF demand that the Board set aside the binding trackage rights agreements that govern KCS's (and following the Transaction, CPKC's) operations over UP trackage and grant them a unilateral veto on the new competition CPKC would generate:

- UP insists that CPKC *not move a single carload of new traffic* until UP gives the green light. UP requests that the Board require Applicants to "commit *not to increase CPKC operations* on affected lines above pre-merger CP or KCS levels *until the owners and users of the lines agree* sufficient capacity has been added to accommodate the traffic growth."[206]

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206 UP-10 at 76.

- BNSF boldly asks that the Board impose a condition that would both require CPKC to "fully fund" all capital improvements on UP lines in Texas that BNSF also uses and "to not increase existing KCS traffic levels on those lines if such increases would displace existing traffic or compromise fluidity on those lines . . . *until necessary capital improvements are identified, fully funded by Applicants, and implemented*."[207]

Applicants are not in the slightest dismissive of the need to evaluate capacity needs and work with other users of shared infrastructure to ensure that the operations of all users can be accommodated effectively and efficiently. They have already conducted extensive analysis, and they are committed to doing more in collaboration with UP and BNSF as to these lines as the traffic and operations of all users evolve. But the capacity concerns raised by these other Class 1s are vastly overblown. With appropriate attention to operational discipline, there is more than enough capacity to accommodate CPKC's relatively modest train count increases that are anticipated over the course of the three-year implementation period. Even if the traffic growth on these lines does end up requiring additional infrastructure, CPKC will be the first to suggest that those investments are made. The governing trackage rights agreements already provide the processes and mechanisms for adding and funding any such new infrastructure. Giving UP and BNSF a unilateral (or coordinated) veto over CPKC's new competition is not only unnecessary, but it would be affirmatively contrary to the public's interest in letting CPKC compete.

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[207] BNSF-9 at 73 (emphasis added) ("In the absence of a plan by Applicants to address how increased CP-KCS traffic will be handled on shared lines in Texas – and until necessary capital improvements are identified, fully funded by Applicants, and implemented – require Applicants to not increase existing KCS traffic levels on those lines if such increases would displace existing traffic or compromise fluidity on those lines.").

1. UP and BNSF Proceed from the False Premise that CPKC Needs Their Permission to Use Shared Trackage to Compete Against Them

The principal thrust of the conditions requested by UP and BNSF, ironically, relates to trackage rights the Board required UP to grant to The Texas Mexican Railway Company ("Tex Mex") in *UP/SP* in order to "ensure the continuation of an effective competitive alternative to UP's routing into the border crossing at Laredo."[208] UP and BNSF each overtly seek to impose a unilateral veto right that entitles them to hold up any new operation over their trackage until massive amounts of new capacity are added. And worse, UP and BNSF seek the Board's imprimatur to hold the Transaction hostage to whatever ransom demands UP and BNSF choose to make (measured in the currency of CPKC dollars spent on UP trackage), since any competitive traffic gains would turn on UP's and BNSF's agreement to let the cars pass.[209]

These demands are fundamentally at odds with KCS's existing rights to the use these lines in common with UP and BNSF, which will give KCS – and CPKC as KCS's successor – *equal rights* to the lines shared with UP and BNSF, including the contractual rights to increase traffic on those lines in competition with UP and BNSF. When granting those rights, the Board flatly rejected efforts by UP and BNSF – echoed in their current arguments – to prevent KCS from competing against UP. The Board made very clear that UP's desire to keep new Tex Mex traffic off of its lines did not justify limitations on Tex Mex's rights: "UP/SP is contending, in essence, that the SP route is already congested and that it would prefer to keep that route for itself alone. Neither contention provides any justification for keeping Tex Mex's trains off the

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208 *UP/SP*, 1 S.T.B. at 424.

209 BNSF-9 at 73 ("Require Applicants to fully fund any capital improvements that would not be required but for increased CP-KCS traffic on lines owned by BNSF or other railroads.").

SP route."[210] Similarly, the Board rejected BNSF's effort to veto Tex Mex's (now KCS's) rights by stepping in to replace Tex Mex's role in serving Mexican cross-border traffic, noting that Tex Mex "rights are not contingent upon BNSF's approval."[211] The Board should continue to reject UP's and BNSF's efforts to obtain a veto over KCS's newly invigorated competition.

KCS's existing rights unequivocally granted KCS – and will give CPKC – full and equal access to UP trackage. Specifically, the trackage rights terms imposed by the Board in 1996 granting Tex Mex (now KCS) access to UP trackage rights between Robstown and Beaumont, TX make clear that KCS has "access to and joint use of the Joint Trackage . . . *equal to that of [UP]*."[212] The same right of "equal access" is set forth in the terms covering other UP-owned trackage between Rosenberg and Beaumont, including the Houston lines of Houston Belt & Terminal Railway Company ("HB&T"), which are owned in equal shares by UP and BNSF, and UP's former-SP line between Houston and Beaumont, over which UP instituted directional running with which KCS complies.[213] The governing trackage rights terms likewise provide for

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210 *Id.* at 607.

211 *Id.* at 595.

212 Terms for Texas Mexican Railway Company Trackage Rights between Missouri Pacific Railway Company and Southern Pacific Transportation Company, on the one hand, and The Texas Mexican Railway Company, on the other hand (Dec. 12, 1996) ("KCS-UP Robstown-Beaumont Trackage Rights Terms"), Exhibit B (General Terms), § 2.4 (Simmons R.V.S. Exh. 2) (emphasis added).

213 *See* Houston to Beaumont, TX Trackage Rights Agreement between Southern Pacific Transportation Company and The Texas Mexican Railway Company (June 16, 1997) ("UP-KCS Houston-Beaumont Agreement"), § 1 & Exhibit B (General Terms), § 2.2 (covering rights over former-SP line between Houston and Beaumont to facilitate UP's directional running plan) (Simmons R.V.S., Exh. 4); Terms for Texas Mexican Railway Company Trackage Rights between Houston Belt & Terminal Railway Company and The Texas Mexican Railway Company (Jan. 28, 1997) ("HB&T-KCS Terms") § 1 & Exhibit B (General Conditions) § 2.2 (covering trackage in Houston owned by HB&T (in turn owned 50% by each of UP and BNSF) (Simmons R.V.S., Exh. 3)).

the equal treatment of KCS in all matters concerning "the management, operation (including dispatching) and maintenance of the Joint Trackage."[214]

In addition to having equal rights, these agreements place no restriction whatsoever on the *volume* of traffic that KCS is entitled to handle using these rights. Indeed any such limitation would be contrary to the Board's intention that the rights be used to compete against UP for Laredo gateway traffic, and the Board's specific determination that Tex Mex be able to "gain additional traffic" using those rights.[215] The Board should reject any suggestion that CPKC requires UP or BNSF permission to compete against them and thereby potentially increase the volume of traffic moving in CPKC trains over these trackage rights segments.

2. The Facts Show that CPKC's Potential New Trains Will Not Exceed Capacity on UP/BNSF Trackage Rights Segments in Texas

A careful assessment of the merits of UP's and BSNF's capacity claims shows there is no cause for concern. KCS's operations over the UP trackage rights segments have posed challenges for KCS in the past, and will continue to require close coordination among the three railroads, but with extensive recent infrastructure investments by both KCS and UP, there is now (or soon will be) infrastructure that is more than adequate to accommodate CPKC's planned operations. We review these facts below, beginning with (a) the Houston complex itself, from Rosenberg, southwest of Houston on UP's Sunset Line (where KCS's own line ends and trackage rights begins) through the Houston terminal, and we then address (b) the two

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214 KCS-UP Robstown-Beaumont Trackage Rights Terms, Exhibit B (General Terms), § 2.4 (Simmons R.V.S., Exh. 2) (UP has "exclusive direction and control" over the movement of equipment over the trackage, "but in the management, operation (including dispatching) and maintenance of the Joint Trackage, [UP] and [KCS] shall be treated equally."); *see also* UP-KCS Houston-Beaumont Agreement, § 1 & Exhibit B (General Conditions) § 2.4 (Simmons R.V.S., Exh. 4); HB&T-KCS Terms, § 1 & Exhibit B (General Conditions) § 2.4 (Simmons R.V.S., Exh. 3).

215 *UP/SP*, 1 S.T.B. at 410.

directionally-operated UP lines that KCS uses between Houston and Beaumont, (c) KCS's Neches River Bridge in Beaumont, which BNSF and UP (and Amtrak) also use, and (d) the UP trackage lines in south Texas over which KCS operates between Victoria, TX and Robstown, TX (some portions of which also host BNSF operations).

a) There Will Be No Capacity Shortfall in the Houston Terminal Complex

The focal point of UP's and BNSF's stated capacity concerns is the Houston Terminal, which all KCS (and future CPKC) trains must traverse in order to move between KCS lines south of Houston (including Mexico) and the remainder of the KCS network. Even though CPKC will have no interest in overburdening this infrastructure, and thereby interfering with its own efforts to attract traffic moving via other rail route today, UP and BNSF theorize that additional CPKC trains will be the straws that breaks the camel's back. This is nonsense. The Houston Terminal has extensive available capacity, provided it is managed efficiently, and extensive additional capacity is in the pipeline as a result of projects UP has underway today.

CPKC is committed to cooperating with UP and BNSF to ensure that the Terminal is operated effectively, and the capabilities of the Houston Terminal's extensive infrastructure is not sub-optimized. The Houston Terminal has accommodated many more trains than operate today, or will operate with the anticipated CPKC growth. To the extent there emerges any need – or even any benefit – to adding additional infrastructure, CPKS will not hesitate to support those initiatives.

The Houston Terminal Has Extensive Capacity. There is extensive rail capacity in and around the Houston Terminal. Massive investments in additional capacity have been made since UP and SP merged in 1996. Unlike many rail terminals, Houston is blessed with multiple alternative through routes, all with multiple (double or triple) tracks. As explained by Messrs.

Elphick and Orr, and also by Mr. Wilkerson, who managed the Houston complex for UP from 2008 to 2013, the Terminal has ample capacity to handle the modest number of additional through freight trains (only about four in each direction) anticipated from the CP/KCS Transaction. Elphick/Orr R.V.S. at ¶¶ 46-54; Reply Verified Statement of Jason Wilkerson ("Wilkerson R.V.S.") at ¶¶ 7-13.

Even with the addition of CPKC's new trains, CPKC will continue to be a distinct minority user of Houston's rail infrastructure. Additionally, through train operations will impose (on a train-for-train basis) far less burden on that infrastructure than those of UP and BNSF, which change crews, enter and exit yards, and otherwise impose considerably more complex demands on the terminal than KCS's (or CPKC's) trains – which need only move across Houston via the multiple tracks, and multiple routes available for those movements. Elphick/Orr R.V.S. at ¶ 49; Reply Verified Statement of John F. Orr ("Orr R.V.S.") at ¶ 13; Wilkerson R.V.S. at ¶ 14. UP (with the financial support of KCS and BNSF) has invested heavily in Houston rail capacity, and more work is underway, including on the routes used by KCS's trains. Elphick/Orr R.V.S. at ¶¶ 51-52; Orr R.V.S. at ¶ 19; Wikerson R.V.S. at ¶ 11.

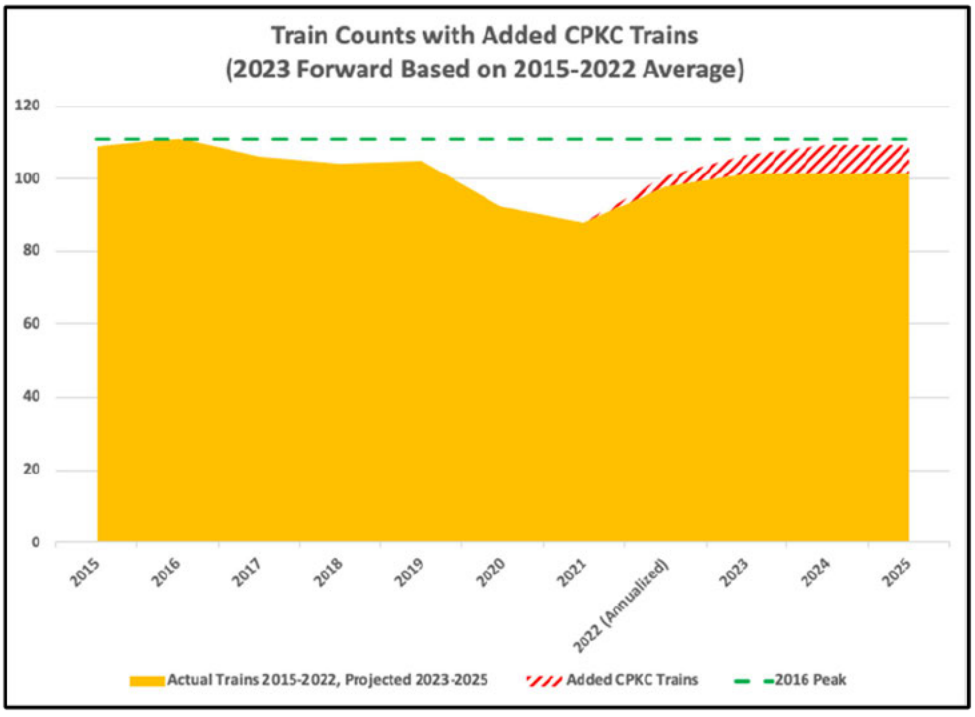
Messrs. Elphick and Orr review in detail the capacity available to support CPKC's modest proposed increases in trains through Houston, which will be no different in character from KCS's existing operations. Those trains will impose minimal burdens in the infrastructure and be easy to accommodate, provided UP and BNSF are operating the Houston Terminal efficiently and appropriately. Elphick/Orr R.V.S. at ¶¶ 46-54; Orr R.V.S. at ¶¶ 7-12; Wilkerson R.V.S. at ¶ 22.

Comparisons to Historic Traffic Levels Prove that Houston Has Ample Capacity for CPKC's Anticipated Growth. Even before the recent capacity investments, the Houston

Terminal routinely supported train activity levels well in excess of current levels, and more than sufficient to sustain the modest increases in CPKC volumes. As Mr. Simmons explains, even with the anticipated additional CPKC trains, the total trains per day would be less than what Houston's rail infrastructure supported four to five years ago. Simmons R.V.S. at ¶¶ 10-14; *see also* Orr R.V.S. at ¶¶ 7-12. The additional infrastructure that has been installed in that area in the last four to five years will only further support operational fluidity.

Figure 7 below, drawn from Orr's testimony, shows that the projected train counts in the Houston Complex in 2025 will not reach the peak level that was supported in 2016 even with the anticipated CPKC volume increases.

FIGURE 7[216]
ADDITION OF CPKC TRAINS WILL NOT PUSH HOUSTON TRAIN COUNTS ABOVE LEVELS ACHIEVED FLUIDLY IN RECENT YEARS



216 Orr R.V.S. at ¶¶ 9-11.

UP's and BNSF's Transient Operational Challenges Are No Excuse for Their Attempted Veto of CPKC Competition. As Mr. Orr explains, UP's and BNSF's concerns about future Houston operations appear to stem in large part from the difficulties both are currently having managing their own operations there and elsewhere. Orr R.V.S. at ¶¶ 18-19. CPKC should not be punished for UP's and BNSF's operational difficulties. UP's operational choices and its lack of adequate resources – in terms of power and train crews – have contributed to congestion and significant delays to KCS trains in and around Houston. *Id.* These kinds of failures need to be fixed, and Applicants have every confidence that UP (and BNSF) will fix them. CPKC will stand ready to help by collaborating with all of the other users of the Houston Terminal to ensure that its available capacity is not squandered by sub-optimal operating practices. But UP and BNSF should first get their own houses in order before looking to CPKC to bail them out with unnecessary investments in expensive new infrastructure. *Id.*

There Is No Possibility of a Repeat of UP's 1997-98 Service Crisis. UP and BNSF repeatedly invoke the specter of the 1997-98 UP service crisis, which originated at Englewood Yard in Houston, to stoke fear that CPKC would cause similar problems if their conditions are not granted. This comparison is far wide of the mark. Nothing about the modest increase in through trains anticipated from the CP/KCS Transaction is remotely comparable to the extensive disruption to Houston operations that arose from the perfect storm of SP's collapsing infrastructure and the wholesale changes in Houston operation from UP's integration of UP and SP facilities and the addition of entirely new BNSF trackage rights operations. As the Board found, the Houston service crisis was prompted by many factors, including the dilapidated state

of SP's infrastructure in and around Houston.[217] And as the Board also found, all of that soon changed with the advent of directional running, the implementation of the joint Spring Dispatching Center, investments in Houston infrastructure, and many other developments. As Mr. Simmons explains, Houston today bears little resemblance to its condition leading into the service crisis of the late 1990s. Simmons R.V.S. at ¶ 41.

First, massive amounts of additional capacity has been added since the service crisis. In the *UP/SP Houston/Gulf Coast Oversight* proceeding, UP committed to invest $1.4 billion to add capacity in and around Houston to support traffic growth.[218] KCS paid its share of part of those investments. {{[redacted]}} Orr R.V.S. at ¶ 19.[219] KCS itself has spent over $100 million on capital investments in the trackage rights lines since 2014, with UP investing a quarter of a billion dollars in Englewood and Settegast Yards in the last three years. Simmons R.V.S. at ¶ 41.

Second, as the Board noted in 1998, operational changes fundamentally altered the Houston railroad landscape and the productivity of the installed base of capacity. The joint Spring Dispatching Center gave Houston dispatchers visibility into trains heading toward Houston from all points, allowing them to plan in advance how to route those trains to their

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217 *Western Coal Traffic League* v. *Union Pac. Ry. Co.*, Finance Docket No. 33726 (served Nov. 30, 2000) at ("[T]he expenses prompted by the service crisis here were not the result of any one event, but rather were caused by a confluence of several events and circumstances – derailments, maintenance, a major traffic embargo, severe weather, and traffic surges – not uncommon to railroading.").

218 *See UP/SP Houston/Gulf Coast Oversight*, 3 S.T.B. 1030, 1033, Finance Docket No. 32760 (Sub-No. 26) (Decision No. 10 served Dec. 21, 1998) ("UP has promised to invest $1.4 billion in Houston area infrastructure if the Consensus Plan is not adopted.").

219 *See also* {{[redacted].}}

destinations in Houston, of across the Houston terminal in KCS's case. Elphick/Orr R.V.S. at ¶ 61; Orr R.V.S. at ¶ 23; Simmons R.V.S. at ¶ 41. The Board's "clear route" directive, had it been fully complied with, would have further improved efficiency by ensuring that through trains (like KCS's) were not unnecessarily held up by congestion on their customary routes. Orr R.V.S. at ¶¶ 31-33. [220] In addition, as the Board touted in 1998, UP's then-recent implementation of directional running on its lines northeast and east of Houston (between Houston and St. Louis and between Houston and Beaumont) dramatically expanded capacity and helped overcome the service problems that occurred in 1998. Simmons R.V.S at 41.[221]

Third, train volumes in and around Houston are significantly lower now – and will continue to be even following the implementation of the CP/KCS Transaction – than they were in 1997/1998.[222] At that time, the Board noted that "Houston Terminal dispatchers handle roughly 150 trains per day in a complicated terminal." Today, the average is closer to 100-120 trains per day, as shown in Figure 7 above.

Finally, the impact of CPKC's operations through Houston will be nothing like that of *UP/SP* and the implementation of the sweeping UP-BNSF settlement agreement. There will be no "new" mode of operations, no terminal consolidations, and no introduction of a new trackage

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220 *See UP/SP Houston/Gulf Coast Oversight*, 3 S.T.B. at 1038 (explaining that the clear route condition is "to enhance efficiency and facilitate the smooth movement of traffic through the Houston Terminal," and noting that alternative routes should be used "when customary routings are unavailable or congested.").

221 *See UP/SP Houston/Gulf Coast Oversight*, 3 S.T.B. at 1053 ("Until UP implemented the merger, which involved designing and installing a new computerized information and management control system, designing and implementing new train operating systems, and consolidating under one set of rules the various employee functions involved in the running of the railroad, it could not put into effect the new operational changes such as 'directional running,' which played a major role in easing the service crisis.").

222 *See id.* at 1050 ("But as UP points out, Houston Terminal dispatchers handle roughly 150 trains per day in a complicated terminal area and, in carrying out their duties, must perform over 2,300 actions in a 24-hour period, roughly one every 40 seconds.").

rights tenant. CPKC will step into KCS's shoes and, to the extent its new single-line services are viewed as attractive by rail customers, it will attract additional traffic that supports additional through trains, none of which will perform work in Houston-area yards. Thus, in today's environment, adding a handful of through trains is incapable of causing the kind of disruption that occurred in 1997 and 1998.

b) There Is Adequate Capacity on the UP-Owned Lines Between Houston and Beaumont

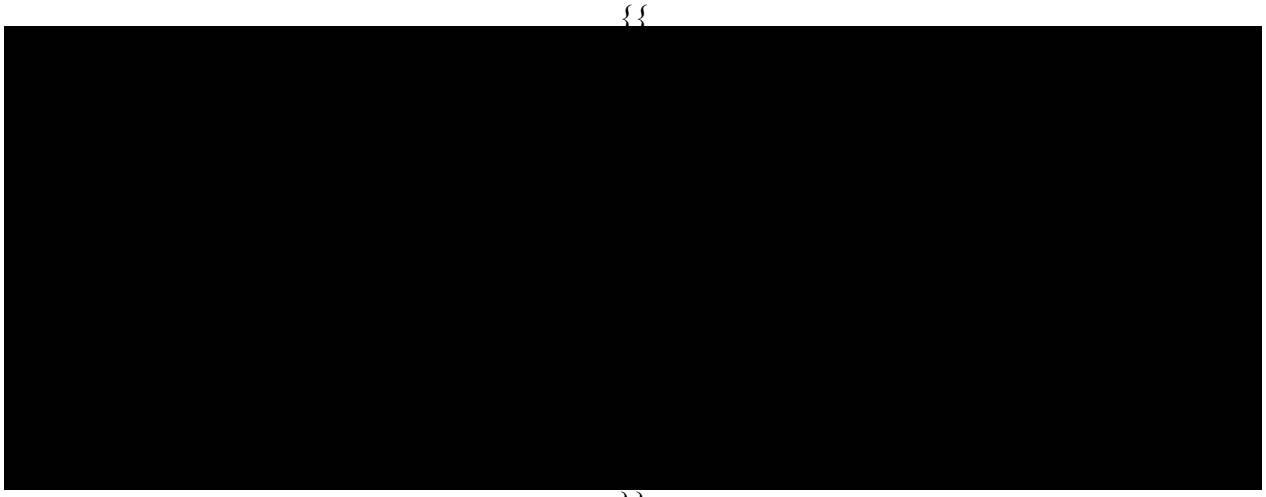
East of the Houston terminal, CPKC will operate over two separate directionally-operated UP lines between Houston and Beaumont. Eastbound trains will use UP's former-MP Beaumont Subdivision, and Westbound trains will use UP's former-SP Houston Subdivision, formerly known as the Lafayette Subdivision. UP's own assessment of capacity on these lines shows that there is ample available capacity (headroom, as measured by the difference between maximum fluid capacity and current train volumes) on these segments. That relationship is depicted in Figure 8 below.[223] Orr, who did not have the benefit of these confidential UP documents, reaches the same conclusion. Orr R.V.S. at ¶¶ 7-12.

[223] Figure 8 depicts the portion of the Lafayette (Houston) Subdivision with the greatest number of trains relative to fluid capacity; the portion east of Dayton would show {{[redacted]}}

FIGURE 8[224]

UP'S ASSESSMENT OF AVAILABLE CAPACITY ON BEAUMONT AND LAFAYETTE SUBDIVISIONS

{{



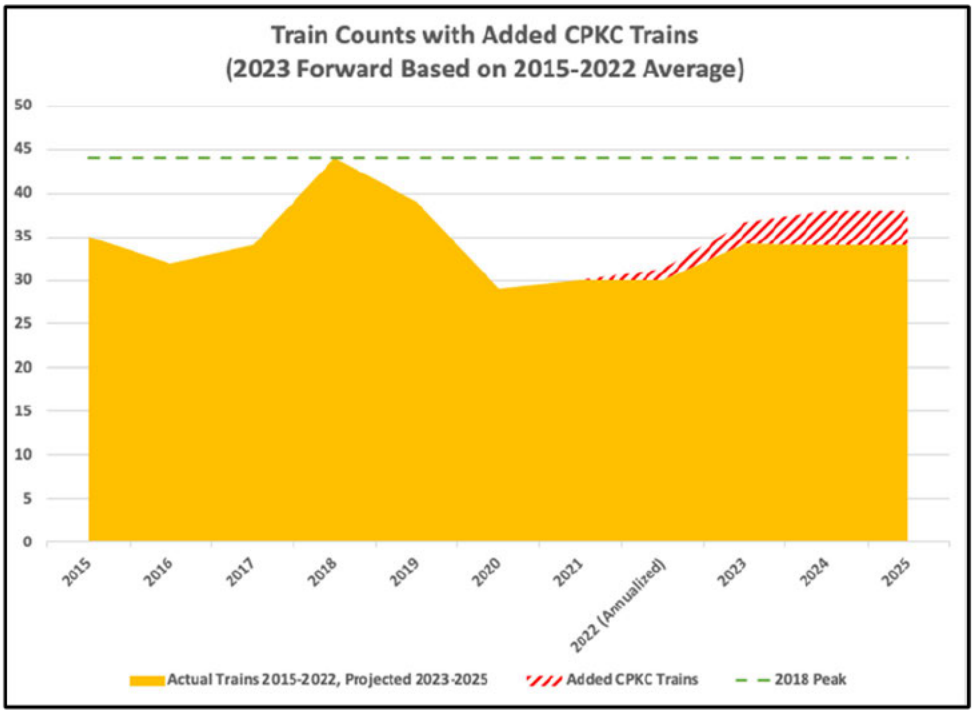
}}

This view is entirely consistent with, and corroborates, Mr. Simmons' assessment based on his comparison of current train counts with the historical volumes operated fluidly on the Lafayette Subdivision. Simmons R.V.S. at ¶ 14. Orr's Reply Verified Statement also supports this finding as reproduced in Figure 9 below. The headroom over and above the additional trains CPKC proposes is manifest. *See also* Orr R.V.S. at ¶¶ 10-14.

[224] *See* Workpaper "Workpaper Narrative Beaumont Lafayette.xlsx," Tabs "Beaumont Sub" and "Lafayette Sub."

FIGURE 9[225]

ADDITION OF CPKC TRAINS WILL NOT PUSH LAFAYETTE SUBDIVISION (HOUSTON-BEAUMONT) TRAIN COUNTS ABOVE LEVELS ACHIEVED FLUIDLY IN RECENT YEARS



c) Concerns About the Neches River Bridge at Beaumont Are Unwarranted

UP and BNSF express concern about the impact of the Transaction on operations over KCS's bridge across the Neches River at Beaumont, over which BNSF and UP operate, and over which Amtrak's Sunset Limited operates three days per week.[226] As explained by Mr. Simmons, a recent study undertaken jointly by KCS, UP, and BNSF has confirmed that the bridge has ample capacity to accommodate the incremental Transaction-related traffic. Thus, there is ample room for the 10.97 additional trains per day that CPKC anticipates by the end of the third year

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225 Orr R.V.S. at ¶¶ 9-11.

226 UP-10 at 59-62; BNSF-9 at 59-61.

following Transaction implementation. Simmons R.V.S. at ¶¶ 44-51; Elphick/Orr R.V.S. at ¶ 56. In the words of the joint study, {[redacted]}[227] Controlling for outliers, the project found that the {[redacted]}[228] With appropriate cooperation among the three railroads on processes to make efficient use of the bridge, there is no obstacle to adding the additional trains that Applicants anticipate.

Additionally, the joint study of bridge capacity found that readily available operational adjustments – or just more focused attention – would be sufficient to achieve the bridge's full throughput capacity. Simmons R.V.S. at ¶¶ 49-51. In light of this conclusion, it is no surprise that UP and BNSF had previously declined to support proposals by the Texas DOT to build a second bridge across the Neches River to handle UP and BNSF traffic there.[229]

In addition to the KCS-led joint study, history shows that there is capacity to accommodate the levels of traffic anticipated from the CP/KCS Transaction. Elphick/Orr R.V.S. at ¶¶ 57-62. Messrs. Elphick and Orr show that past traffic levels indicate that the bridge has handled 20-25 more trains than use the bridge today, leaving more than enough room for the 10-11 trains that the Transaction will bring to this segment. *Id.* at ¶ 56.

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227 *See* Simmons R.V.S., Exh. 9; ({[redacted]})

228 *Id.*

229 Ironically, UP once had its own bridge but abandoned it in favor of operating over KCS's bridge. In 2013 and 2016, both UP and BNSF opposed Texas DOT's ("TxDOT's") efforts to construct a new rail bridge over the Neches River. *See* Simmons R.V.S. at ¶ 44; {{[redacted]}}(Vol. 3, Exh. 47).

Finally, UP is wrong that Applicants' capacity analysis focused only on CPKC trains without considering the additional trains that UP, BNSF, and Amtrak operate over the Neches River Bridge.[230] The train counts reported in the Operating Plan Appendices focus on CPKC train operations, and in particular the effect of the Transaction on those train counts. But Applicants' analysis of available capacity considered all demands on the rail infrastructure CPKC will use, including in the case of the Neches River Bridge all of the trains UP says were not taken into account. *Id.* at ¶¶ 57-62.

d) There Is Adequate Capacity on the UP-Owned Lines Between Victoria and Robstown

There is also adequate capacity across the UP trackage between Robstown and Victoria, TX, despite the contentions of UP, BNSF, and CN.[231] This capacity can be shown through the past and ongoing capacity projects. Elphick/Orr R.V.S. at ¶¶ 36-45. For example, KCS is adding extensive capacity to allow for staging to and from the Border that will augment capacity on UP-owned lines between Robstown and Victoria. *Id.* at ¶ 39. Further, KCS is constructing a new siding at "Telferner," which is four miles north of Victoria, already has a siding and two staging tracks immediately west of Robstown, and is constructing an extension of its switching lead on the north end by 6,900 feet freeing the existing switching lead and allowing for the siding to be extended to 14,900 feet. *Id.* at ¶ 42.

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230 UP-10 at 11.

231 UP-10 at 556-57; BNSF-9 at 228-230; CN-13, Verified Statement of Hugh Randall ("Randall V.S.") at Ex. B, ("Randall V.S.").

3. UP and BNSF Demands that CPKC Fund 100 Percent of Any New Infrastructure Is Overreaching and Inappropriate

Even if there were any merit to UP's and BNSF's contentions that additional capacity infrastructure is needed on the trackage rights lines KCS uses, it would be inappropriate for the Board to override the governing trackage rights agreements in order to impose on CPKC an obligation to fund 100 percent of any new capacity on these lines. It would be even more inappropriate to give UP and BNSF carte blanche to spend CPKC's money on whatever additional capacity they might decide would be advantageous, which would be the inevitable result of giving them the right to hold up any incremental CPKC volumes.

As discussed above, CPKC is committed to working collaboratively with UP and BNSF to ensure that operations on these shared lines work for all users. That means that if new infrastructure investments are needed, CPKC will support the work needed to identify the optimal approach to capacity expansion (including using RTC analysis if that makes sense), install that capacity, and pay for that capacity, according to the provisions and processes already established in the governing agreements.

Of course, the starting point in those trackage rights agreements (the "Terms") place responsibility squarely on UP – as trackage rights landlord – to support the growth of all users, including KCS. For example, UP is obligated to make "[a]dditions to the Joint Trackage as shall be necessary to accommodate the traffic of [UP] and [KCS] while maintaining existing service standards (including transit times) in effect on the date of the Terms."[232] "Additions" include

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[232] KCS-UP Robstown-Beaumont Trackage Rights Terms, § 1 & Exhibit B (General Terms), § 2.2 Simmons R.V.S., Exh. 2) ("[UP] shall … be responsible for any Changes in and/or Additions to the Joint Trackage as shall be necessary to accommodate the traffic of Owner and User while maintaining existing service standards (including transit times) in effect on the date of the Terms."); HB&T-KCS Terms, § 1 & Exhibit B (General Conditions) § 2.2 (Simmons R.V.S., Exh. 3).

such projects as "sidings, Centralized Traffic Control, [and] grade separations," and spell out a comprehensive framework for KCS's sharing in the costs of such Additions, with the cost of most Additions (unless made for the "sole benefit of one party") shared by KCS in proportion to its share of GTMs on the line.[233]

The funding of that infrastructure cannot be shifted by UP and BNSF to place 100 percent of infrastructure costs on KCS (in the future CPKC), contrary to BNSF's contention.[234] BNSF acknowledges that existing agreements cover capacity additions that might be required on shared lines.[235] UP and BNSF have also shown that they understand how the cost sharing provisions in the trackage rights agreements operate.[236] The parties have ample experience negotiating to allocate costs based on the anticipated benefit they will each receive as a result of the improvements and reaching mutually beneficial compromises. Simmons R.V.S. at ¶¶ 15-35.

In sum, UP's and BNSF's attempt to shift 100% of infrastructure costs to CPKC has no basis in precedent and would override the existing trackage agreement that the Board imposed to enable KCS to grow its traffic and compete against CP and BNSF. The Board should reject UP's and BNSF's attempt to hitch a free ride.

C. There Will Be Adequate Capacity for the Traffic that CPKC Hopes to Attract Elsewhere on Its Network

CN, CP, BNSF, and NS raise concerns about potential capacity shortfalls at a number of additional locations across the CPKC system. These attacks have no merit and overlook the

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233 KCS-UP Robstown-Beaumont Trackage Rights Terms, § 5(b) (Simmons R.V.S., Exh. 2);; HB&T-KCS Terms, § 5(b) (Simmons R.V.S., Exh. 3).

234 *See* BNSF-9, Verified Statement of Sarah Bailiff at 2.

235 *Id.*

236 { [redacted] }

substantial upfront and ongoing capital investments that CPKC will make on the North-South corridors where CPKC will seek to attract traffic.

CN, based on the analysis of its witness, Mr. Randall, raises concerns about the available capacity on (i) KCSM lines in Mexico, (ii) KCS's Laredo Subdivision (between Laredo and Robstown, TX), (iii) KCS's Rosenberg Subdivision (between Victoria, TX and Rosenberg, TX), (iv) KCS mainline between Beaumont and Kansas City, (v) CP's Laredo Subdivision (between Moravia and Powersville), (vi) CP's Ottumwa Subdivision, (vii) CP's Davenport Subdivision, (viii) CP's level crossing with BNSF at Savanna, IL, (ix) CP's Chicago Subdivision, (x) CP's Elgin Subdivision and other lines in the vicinity of Chicago, and (xi) CP's Marquette Subdivision. Elphick/Orr R.V.S. at ¶¶ 21-68. However, Mr. Randall makes a slew of errors in his analysis, which lead him to overstate the capacity utilization on KCSM's lines. Among other errors, Mr. Randall (i) confuses practical capacity and maximum capacity in his calculations, leading him to conclude that certain subdivisions are at or exceed practical capacity, when in fact, they fall well below, (ii) improperly omits from his analysis existing infrastructure and recent capacity expansion projects, and (iii) overcounts the number of 10,000 foot trains that CPKC intends to run. *Id.* Elphick/Orr R.V.S. at ¶¶ 29-68.

Likewise, UP's suggestion that CPKC's anticipated traffic growth on CP's paired track between Airline Junction, MO and Polo, MO would push the line over capacity is incorrect because UP's witnesses, Kenny Rocker and John Turner, incorrectly treat the line as a single track. *Id.* at ¶ 78. UP also complains that the railroad network in St. Paul can become congested, and asserts a possible need to add trackage on its own lines to hold its own

trains while waiting for access to trackage that UP shares with BNSF and CP.[237] But CPKC will be adding only about six trains per day at this location, and will remain the distinct minority user of these lines, which will still remain below historical capacity. *Id.* at ¶¶ 94-98.

BNSF expresses vague concerns about capacity on CP's Davenport Subdivision (between Davenport and Clinton, IA), over which BNSF has trackage rights allowing it to provide local service, noting the CP segment is "unsignalized."[238] BNSF expresses concern that this CP segment is "unsignalized."[239] However, BNSF does not take into account that this year (2022) CP is installing CTC across much of the Subdivision (between Deer Creek and Davenport) as part of a project unrelated to the Transaction, and will add CTC to the remainder as part of Transaction implementation. CTC will enhance capacity on this segment. Elphick/Orr R.V.S. at ¶ 89.

Finally, Norfolk Southern expresses concern about the capacity of KCS's Wylie intermodal facility. NS-9 at 23-25.[240] That issue is fully addressed in Section VIII.B.[241]

VII. METRA'S CONCERNS ARE UNFOUNDED

Metra requests that the Board impose a long list of extraordinary conditions on the Transaction, including extensive infrastructure investments and a re-writing of the contractual terms between CP and Metra to shift dispatching control to Metra and alter the financial

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237 UP-10 at 64-65. CN, while not actually claiming a problem exists, asserts that Applicants did not supply "information necessary to prove" sufficient mainline and arrival/departure tracks. CN-13, Randall V.S. Exh. A.

238 BNSF-9 at 66-67.

239 BNSF-9 at 67.

240 CN's witness Randall asserts that Applicants have not "prove[n]" that the facility will be able to handle the anticipate increase in volume. CN-13, Randall V.S. Appendix A.

241 *See* Section VIII.B.3; Elphick/Orr R.V.S at ¶¶ 116-117.

compensation owed by CP to Metra, all supposedly to mitigate potential adverse impacts on Metra's commuter service.[242] Metra's position appears to stem from its misunderstanding of the Transaction's impacts. That misunderstanding likely flows in part from the irredeemably flawed analysis conducted by Metra's outside consultants Thomas D. Crowley and Robert D. Mulholland.[243] Metra has been led far astray by its consultants, who have based their opinion in this proceeding on an RTC simulation that is so riddled with errors that it is demonstrably incapable of modeling the status quo,[244] much less the potential impact of the Transaction.

As demonstrated below – and as confirmed by Applicants' corrections to the RTC simulations undertaken by Metra's consultants, the Transaction *will not* adversely affect Metra's passenger services anywhere. *See* Reply Verified Statement of Raymond A. Elphick ("Elphick R.V.S.") at ¶ 24, 36. Indeed, the MD-N Line from Chicago north to Fox Lake, IL will see *zero* additional trains,[245] and train counts will not increase on the portion from which runs from Chicago west to Elgin and Randall Road east of Bensenville Yard. *See* Elphick R.V.S. at ¶¶ 7, 11. The existing infrastructure on the MD-W Line west of Bensenville will easily

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242 *See* Comments and Request for Conditions of the Commuter Rail Division of the Regional Transportation Authority ("METR-7") (filed Mar. 15, 2022) at 69-71.

243 *See, e.g.*, METR-7 at 18.

244 *See* METR-7 at 19-20; *see also* METR-7, Verified Statement of Thomas D. Crowley and Robert D. Mulholland ("Crowley/Mulholland V.S.") at 60-61 (explaining that they needed to move existing trains off the Marquette Subdivision to the Mason City Subdivision in the base case).

245 Metra implies that it views the potential addition of Amtrak trains on the MD-N line (i.e., Amtrak's expanded Hiawatha and Twin Cities services between Chicago and Milwaukee) as caused by the Transaction. *See* Metra Supplemental Comments (filed June 9, 2022) ("METR-8") at 4. That is incorrect. Amtrak has long aspired to add these services, and it has the contractual rights to force its way onto CP's (and Metra's) right of way (with Board approval, of course). CP's settlement with Amtrak did not create these services, it merely expressed CP's commitment to cooperate in their establishment.

In any event, Amtrak has committed that it will invest in new infrastructure that will add capacity on Metra's MD-N line. *See* Amtrak-Canadian Pacific Agreement (filed Feb. 2, 2022). As Applicants' corrected RTC modeling shows, with that capacity, the new Amtrak service has no adverse impact on Metra's operations. *See* Elphick R.V.S. at ¶¶ 50-51.

accommodate the modest increase of 8.0 trains on that segment without disruption to Metra's commuter service. *See* Elphick R.V.S. at ¶¶ 15-28. Properly understood, the Transaction will not harm Metra.

Metra is an important partner. Applicants are disappointed with Metra's portrayal of its working relationship with CP and CP's solid performance on the lines that it shares with Metra. As discussed below, Metra's retelling of history is belied by the record in this proceeding. CP has in fact performed quite well for Metra. Equally important whatever gripes Metra may have about the pre-Transaction world cannot form a basis for imposing conditions.[246]

Nevertheless, Applicants are committed to building upon CP's strong track record of on-time performance for Metra's service, working with Metra to improve the channels of communication between the parties and address any impacts caused by the Transaction in a manner consistent with each party's contractual rights and obligations. To that end, Applicants are making several commitments aimed at making Metra, its ridership, and the Board comfortable that none of the harms conjured by their consultants will come to pass. *See* Creel R.V.S. at ¶ 16. These commitments are the appropriate method for resolving any operating, dispatching or compensation matters that might arise between CPKC and Metra following the Transaction, as the Board has previously recognized.[247] The Board should reject Metra's invitation to impose more extreme conditions that would fundamentally change the contractual

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246 *See UP/SP*, 1 S.T.B. at 418.

247 *See CP/DM&E* at 15 ("Moreover, Metra seeks material changes to (or extensions of) existing agreements, or to compel new contractual commitments from CPRC to protect Metra from potential traffic increases that it might not have considered during prior contractual negotiations. We will not use our conditioning power here to compel resolution of potential differences between CPRC and Metra with respect to operating, dispatching, and compensation matters. Given the intimate details involved in coordinating freight and passenger rail operations, capital expenditures, and compensation, commercial negotiation seems to be the better avenue for resolving such issues.").

relationship between a freight railroad and a passenger railroad, just as it has done many times before.[248]

A. The Transaction Will Not Adversely Impact Metra's Commuter Services

1. The Transaction Will Not Meaningfully Increase Freight Traffic on Lines Shared with Metra.

Metra is under the misimpression that the Transaction will result in meaningful increases in the volume of freight traffic on the MD-W Line east of Bensenville Yard and on the MD-N Line.[249] Metra is mistaken. As illustrated by Figure 10 below, the Transaction will not appreciably increase the number of freight trains on these lines.

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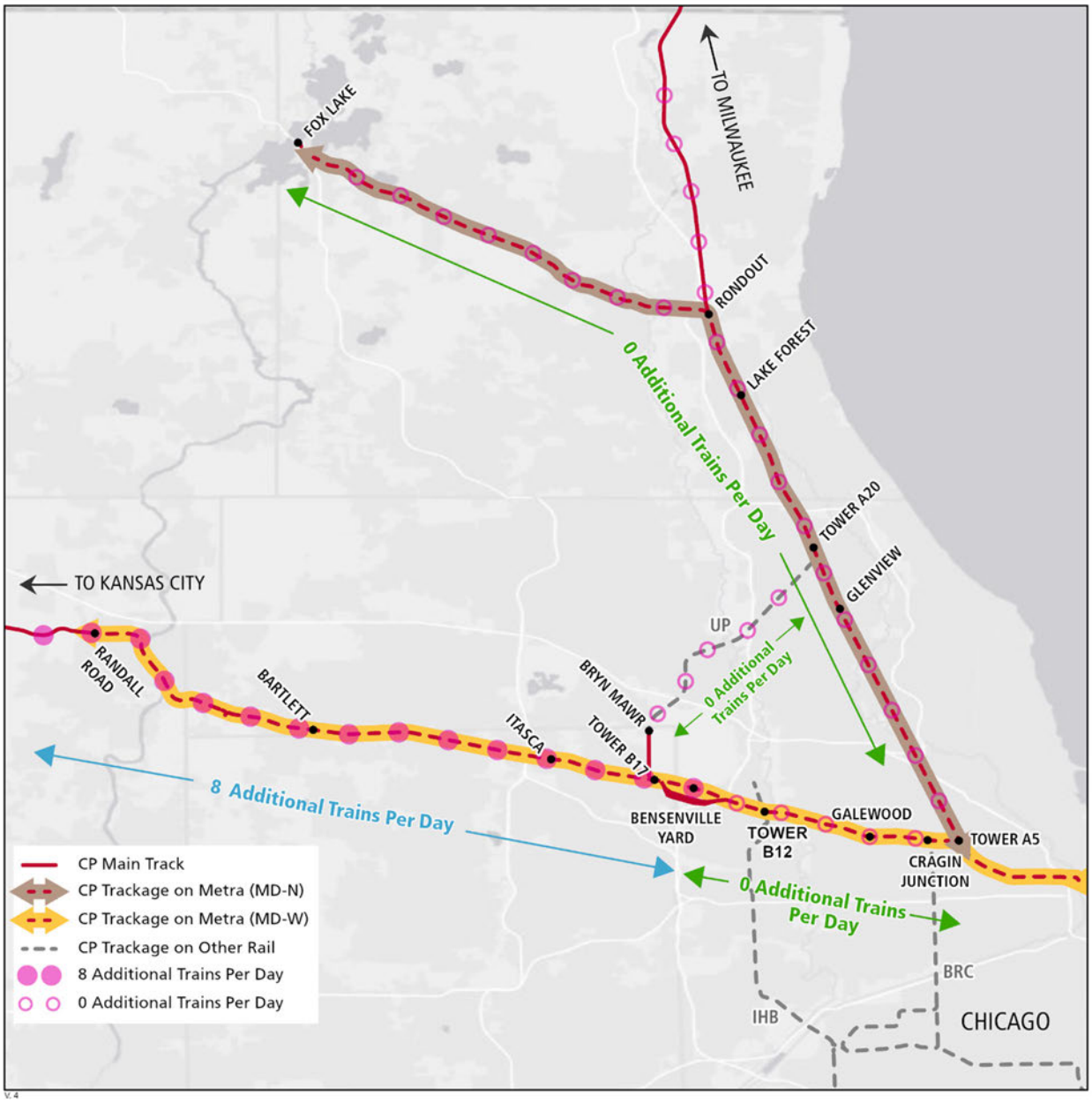
[248] *Major Rail Consolidation Procedures*, 5 S.T.B. at 564-65 (rejecting Metra's proposal to adopt a new rule that would allow the Board to override provisions of Metra's contracts with freight railroads); *CP/DM&E*, Finance Docket No. 35081 (Decision No. 11) at 15 (rejecting Metra's demand to condition approval on a transfer of dispatching from CP to Metra); *CSX/NS.Conrail*, Finance Docket No. 33388 (Decision No. 89, served July 20, 1998) at 297 ("[o]n review of specific requests for relief, however, it is apparent that most of the particular conditions sought by the passenger railroads are not directly related to effects of the transaction. Rather, these parties seek material changes to, or extensions of, existing contracts, or to compel new contractual commitments or property sales by NS or CSX. We are reluctant to use our conditioning power to compel resolution of differences between freight railroads and passenger agencies with respect to operating, dispatching, and compensation matters.").

[249] *See, e.g.*, METR-7, Crowley/Mulholland V.S. at 19 ("In total, CP/KCS plan to add 7.53 total freight trains per day east of Bensenville"); METR-7 at 19 ("Not only will expected freight train increases on MD-W and M-N significantly deteriorate service…").

FIGURE 10
MAP DETAILING TRAIN COUNT CHANGES ON LINES SHARED WITH METRA



As shown above, and as spelled out in the Amended Operating Plan, the only Transaction-related increase in traffic to the lines CP and Metra share will be an 8.0 trains per day increase on the MD-W Line west of CP's Bensenville Yard.[250] *See also* Elphick R.V.S. at ¶¶

[250] *See* Amended Operating Plan at 90-91.

6-14. As explained by Mr. Elphick, the MD-W Line will readily accommodate this growth without impacting Metra's train performance. *See id.* at ¶¶ 15-25. CP's already underway reconfiguration of Bensenville Yard, made possible by its recent land agreement with the Illinois Toll Authority and UP will facilitate CPKC's anticipated Transaction-related growth by expanding the yard and improving access to it by CP, intermodal and manifest trains. *See id.* at ¶ 37.[251] The Transaction will not entail any meaningful increases in traffic on any other lines, or segments of lines, currently shared by CP and Metra. *See* Elphick R.V.S. at ¶¶ 7, 8, 13.

Metra's concerns about growth elsewhere are founded on Mr. Crowley's flawed analysis. His assertion that the Transaction will add 7.53 trains per day east of Bensenville is completely inaccurate.[252] In fact, the Transaction will add *zero* trains per day east of Bensenville, including the portion of this segment between the east end of the yard and Tower B12. *See* Elphick R.V.S. at ¶ 7.[253] All other CPKC traffic east of Bensenville to or from other railroads in Chicago, or traffic to or from east of Chicago (for example, Detroit or Eastern Canada), will be handled in existing trains as Mr. Elphick explains. Elphick R.V.S. at ¶ 10.[254] Indeed, train counts east of Bensenville may actually be *reduced* relative to pre-Transaction levels because, pursuant to the reconfiguration of Bensenville Yard, some trains will no longer need to move between Bensenville and Schiller Park, since the automotive and intermodal facilities at Schiller Park will be consolidated at Bensenville. *Id.* at ¶ 11.[255]

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251 *See also* Amended Operating Plan at 91.

252 METR-7, Crowley/Mulholland V.S. at 19.

253 *See also* Amended Operating Plan at 91-93.

254 *See also* Amended Operating Plan at 91.

255 *See also* Amended Operating Plan at n. 130.

Mr. Crowley is also incorrect that the Transaction will add 0.9 trains per day to the MD-N Line.[256] Applicants' original Operating Plan showed an average of 0.9 additional line-haul freight trains to that segment to account for organic growth on the system unrelated to the Transaction.[257] Applicants' Amended Operating Plan clarified that there is no Transaction-related train count increase for the MD-N Line. Elphick R.V.S. at ¶ 13.[258] While Applicants estimate the Transaction will lead to a small amount of additional carloads on the MD-N Line, that additional traffic will be handled in existing trains. Elphick R.V.S. at ¶ 13[259] Train counts on the MD-N Line in fact may *decline* as a result of the Transaction, as bulk trains that might have previously moved via the MD-N Line to interchange in Chicago are more likely to move via the Marquette Subdivision for movement on the former KCS portions of CPKC's system south of Kansas City.[260]

Finally, citing to Mr. Crowley's Verified Statement, Metra asserts that "Applicants' omission of passenger trains and certain classes of freight trains on Metra's lines from their assessment of the impacts of the Transaction result in undercounting trains by more than 500% while also not accounting for seasonal or daily variation in traffic that will mean that Metra's lines at times will see even higher counts."[261] This statement shows that Mr. Crowley fundamentally misunderstands Applicants' capacity analysis, which did not assume away the existence of any other traffic. Elphick R.V.S. at ¶ 27.

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256 METR-7, Crowley/Mulholland V.S. at 28.

257 *See* App. Vol. 2, Operating Plan, Appendix A at 365 (showing 0.9 trains per day change for the C&M subdivision, which Metra refers to as the MD-N Line).

258 *See also* Amended Operating Plan, Appendix A, at 3. The MD-N Line is referred to in Appendix A as the "C&M West" and "C&M" subdivisions.

259 *See* Amended Operating Plan at 93.

260 *See* Amended Operating Plan at 93.

261 METR-7 at 57-58.

2. Metra Further Misunderstands the Transaction's Impacts Because Its Expert's RTC Model Is Fundamentally Flawed

Metra concluded that Applicants' Operating Plan is "unworkable" because its expert, Mr. Crowley, conducted an RTC model that purported to show that the Transaction will "break the rail system," and force CP to re-route trains off of CP's Marquette Subdivision (along the Mississippi River) and onto Metra's lines in numbers that "cannot be accommodated on Metra's lines without causing significant additional interference with Metra's service."[262] That would be cause for concern were it not completely wrong. In fact, Mr. Crowley's RTC simulation is so grievously flawed that it is entitled to no weight in this proceeding.

One reflection of the errors laced throughout Mr. Crowley's analysis is the fact Metra has now corrected its RTC simulation not once but twice, the second time being provided to Applicants and the Board just days before replies to comments and request for conditions were due.[263] As illustrated below in Figure 11, the results of Metra's continually-revised submissions swing greatly, indicating their unreliability. Metra's initial submission concluded delays to Metra trains would increase 594% as a result of the Transaction, its next submission showed delays would increase approximately 1,200%, and its third submission found delays to increase around 299%.[264]

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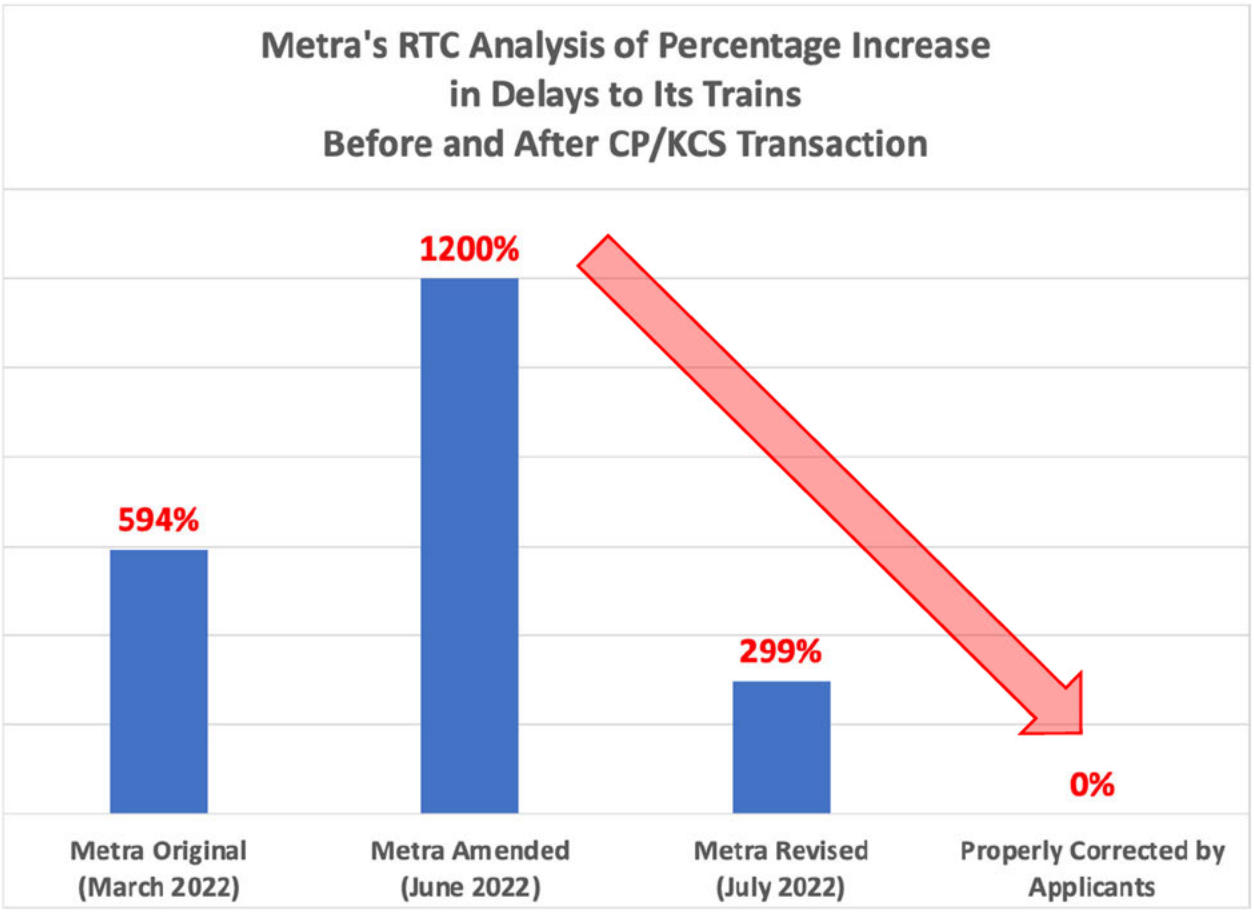
262 METR-7 at 18.

263 An initial review of this second submission did not appear to change our analysis of Metra's RTC simulation in any material manner because our corrected RTC simulation had already corrected the errors Metra identified in this supplemental submission. *See* Elphick R.V.S. at n.42. However, because we were not afforded adequate time to do a full review, we reserve the right to supplement or amend our analysis should a more fulsome review warrant any such changes.

264 *See* METR-7 at 21; METR-8 at 3; Metra Correction and Supplemental Statement (filed July 8, 2022) ("METR-9"), Attachment B.

FIGURE 11
METRA'S CHANGING RTC ANALYSES



In fact, Metra's RTC simulation always was and remains fatally flowed. Were those errors corrected, the result is that CP's modest increase in trains west of Bensenville Yard will cause no increase in delays to Metra trains. To start, there is perhaps no better evidence that Mr. Crowley's model is useless in predicting the impact of the Transaction than the fact that it is incapable of accurately simulating existing, real-world operations.[265] When Mr. Crowley attempted to simulate the operation of current-day CP freight trains across CP's current-day

[265] *See* METR-7 at 19-20; *see also* METR-7, Crowley/Mulholland V.S. at 60-61 (explaining that they needed to move existing trains off the Marquette Subdivision to the Mason City Subdivision in the base case).

Marquette Subdivision, he falsely concluded, based on his flawed RTC simulation, that the Marquette Subdivision is *already* at capacity and would require CP to move trains off the Marquette Subdivision and on to the Mason City Subdivision.[266] Reality is quite different. CP has no trouble operating current train volumes without operational disruption and without using the Mason City Subdivision. Elphick R.V.S. at ¶ 40. This fact alone ought to have informed Mr. Crowley that there was something fundamentally wrong with his simulation.

Even had Mr. Crowley not overlooked his model's failure to simulate real-world conditions, he would have recognized the fundamental flaws of his model had he followed the standard RTC practice of conducting a validation of his base model, which he apparently did not do. *Id.* at ¶ 48. The quality of results produced by RTC analysis is entirely dependent on user-generated inputs. *Id.* at ¶ 46. If any input is not accurate, the simulation can produce results that diverge wildly from what would take place in the real world, rendering any conclusion derived from those results meaningless. *Id.* This is proven here by re-running Mr. Crowley's simulations without any CP freight trains at all. Even with zero CP freight operations on Metra's MD-W and MD-N Lines, Crowley's simulation shows 2.4 hours of delay to Metra trains per week, when it should have operated with 100% on-time performance since Metra's time-tested pre-COVID schedules should not cause passenger trains to interfere with one another. *See* Elphick R.V.S. at ¶ 50. The obvious conclusion: something is very wrong with Crowley's model.

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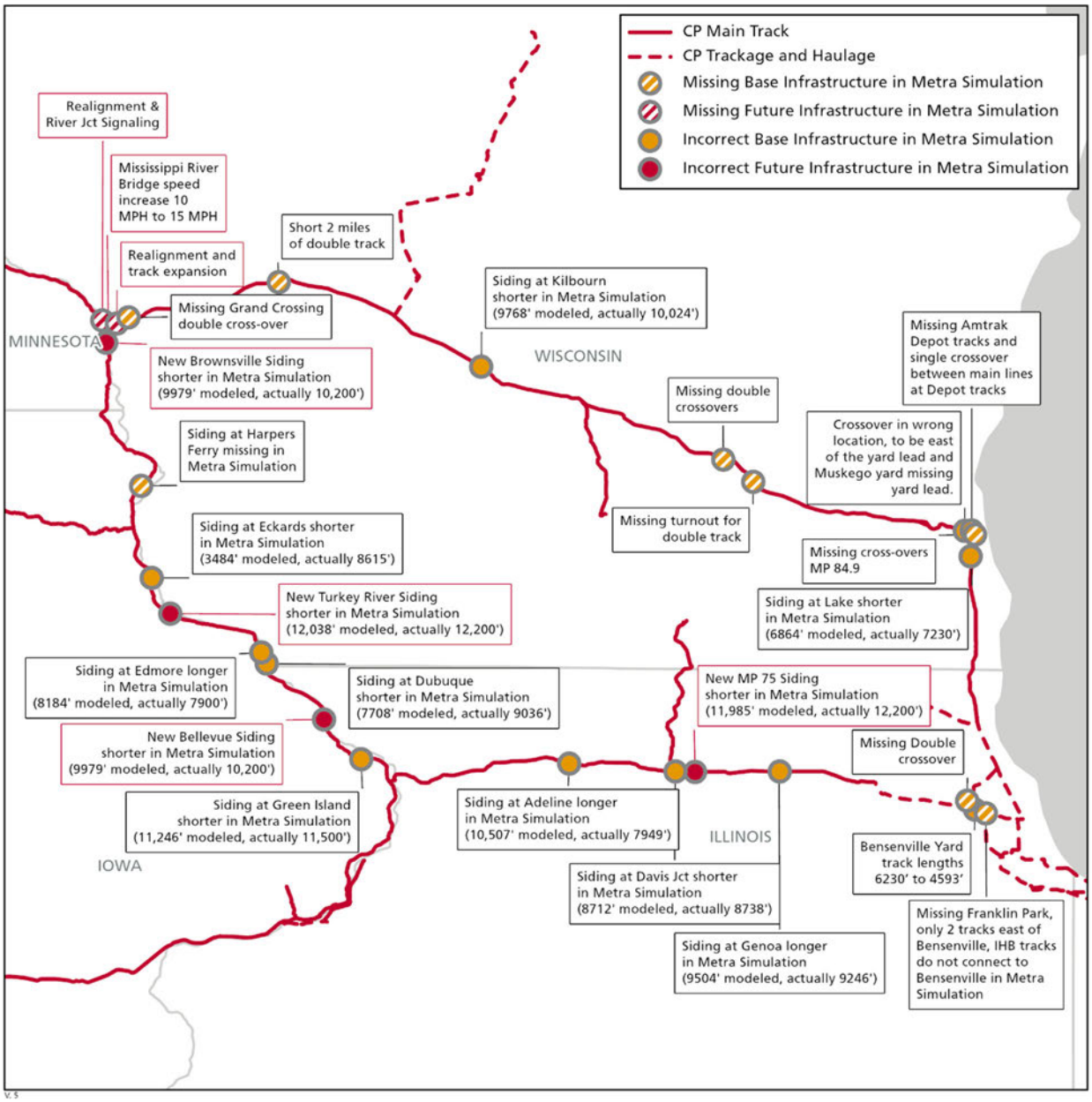
[266] Crowley explains that he was "forced to move trains off the Marquette Subdivision onto the Mason City Subdivision (at Marquette) to accommodate train meet/pass events in the RTC model." METR-7, Crowley/Mulholland V.S. at 60-61; CN also inaccurately raises concerns regarding the sufficiency of the capacity on the Marquette Subdivision. *See* CN-13, Randall V.S. Appendix B, Exh. B-1.

Upon examination of the inputs to Mr. Crowley's model, it is not surprising that it returns unreliable results, stemming from Mr. Crowley's fundamental misunderstanding of CP infrastructure and operations before the Transaction, as well as CPKC's plans post-Transaction. The complete list of those errors is addressed in detail in Mr. Elphick's reply testimony and the report prepared by CP and its consultants who have extensive experience conducting simulations using the RTC tool. *See* Elphick R.V.S. at ¶¶ 43-53. We highlight a few of the most egregious errors here.

First, Mr. Crowley's simulation omitted infrastructure causing results to deviate wildly from what would occur in the real world. *See id.* at ¶¶ 46, 50. Figure 12 below catalogs the most significant omissions. On the Marquette subdivision, along the Mississippi river, Mr. Crowley omitted key sidings that made it impossible for CP trains to operate in the way they do in the real world. This resulted directly in Mr. Crowley's incorrect conclusion regarding how CP would have to route its trains.

FIGURE 13
INFRASTRUCTURE OMITTED FROM METRA RTC MODELING



Second, Mr. Crowley's RTC Simulation incorrectly modeled CP freight trains by hard-coding actual departure times from the week of April 13, 2021, rather than using scheduled departure times, and allowing RTC's logic to dispatch trains, seriously contradicting real-world practices and eliminating the randomness of real-world operating events. Elphick R.V.S. at ¶ 50. *Third*, Metra's RTC model was forced to incur actual delay values from the April 2021 time

period, which drives the simulation to add delay over and above that incurred through its natural dispatching logic. *See id.* *Fourth*, Mr. Crowley incorrectly configured and applied dispatch settings by assigning incorrect rank and priority settings to different classes of freight trains, which led to incorrect meet/pass logic. *See id.* *Fifth*, Mr. Crowley's simulation completely omitted planned infrastructure changes to Bensenville Yard, which will contribute to smooth operations on the MD-W Line. *See id.* at ¶¶ 29-38, 50. *Sixth*, Crowley's simulation did not incorporate randomization, a key RTC attribute required by the FRA for RTC work in connection with FRA-sponsored projects, which means the simulation did not include any variation in freight train performance. *See id.* at ¶ 50. *Finally*, Mr. Crowley criticizes Applicants for using a "spreadsheet analysis" (i.e., a mathematical formula used to estimate capacity) instead of an RTC model,[267] yet the TRB report Crowley cites acknowledges this type of analysis is entirely appropriate for use on single-track segments, like the Marquette Subdivision.[268]

CP's operating team, assisted by consulting experts with extensive expertise in RTC modeling, corrected all of these errors, and re-ran the RTC model. Elphick R.V.S. at ¶ 51. As Mr. Elphick explains, once the RTC model is corrected, the RTC model shows that there will be no issues on the Marquette Subdivision, Elgin Subdivision, or any other segment of the CPKC system that will have an effect on Metra. *See id.* at ¶ 52. Indeed, the results of CP's simulation prove both that the current infrastructure on the Marquette Subdivision supports existing freight volumes, and that the capital improvements to that subdivision that CP plans will support continued fluidity with the addition of post-Transaction freight volumes. *See id.* The simulation

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267 METR-7, Crowley/Mulholland V.S. at 39.

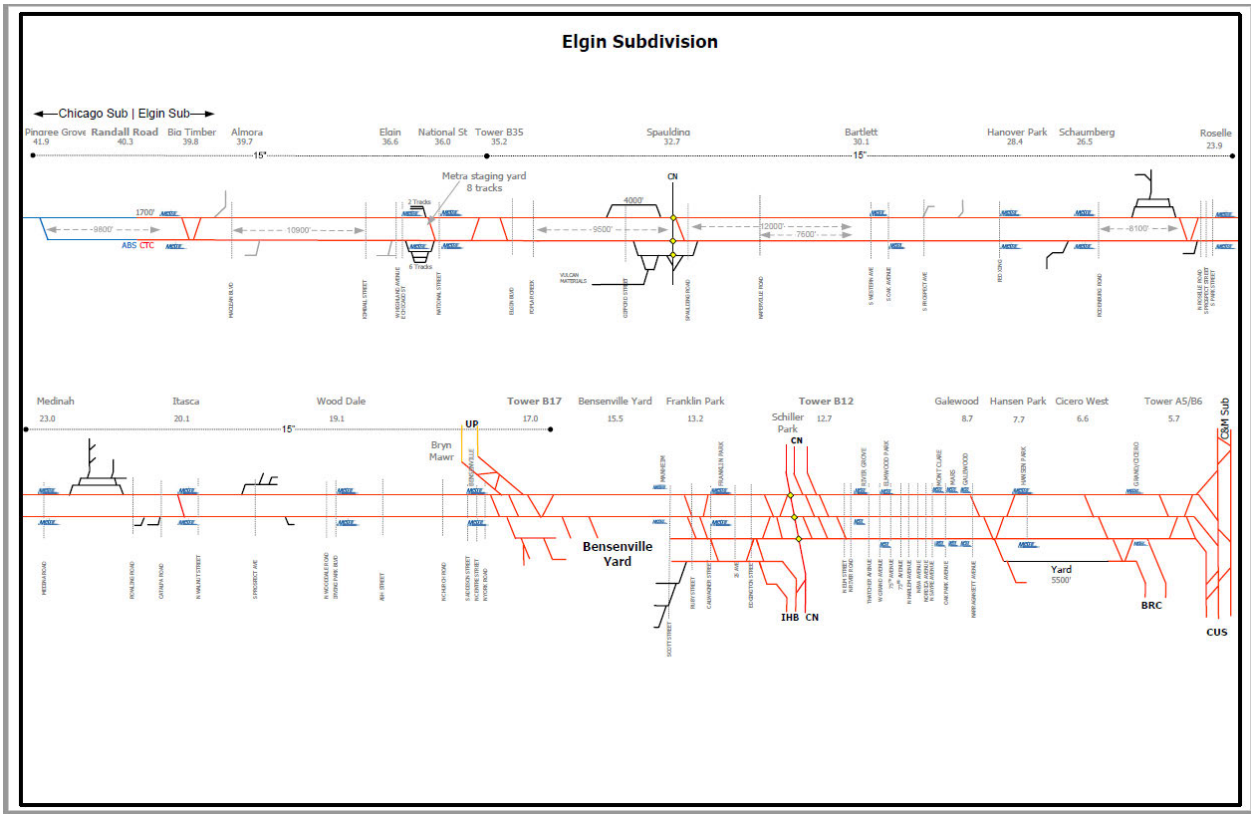
268 *Id.* at 46-47.

also shows there will be no additional delay to Metra passenger trains resulting from the modest number of additional freight trains that CP/KC will add to Metra's MD-W line. *See id.*

3. The MD-W Line West of Bensenville Yard Has Ample Capacity to Accommodate Eight Additional Daily Freight Trains

As noted, Applicants anticipate adding 8.0 trains per day to the Elgin Subdivision (or what Metra refers to as the MD-W Line) west of Bensenville but do not anticipate any other meaningful increases in traffic on the lines it shares with Metra. As Mr. Elphick explains an RTC analysis is not needed to conclude the Elgin Subdivision has ample capacity to handle eight additional daily trains. *See* Elphick R.V.S. at ¶¶ 15-25. The track schematics in Figure 14 below show the Elgin Subdivision from Tower A-5 to Randall Road where Metra's operations stop entirely. That segment is double track with frequent crossovers and extensive capacity.

FIGURE 14
DIAGRAM OF MD-W LINE/CP ELGIN SUBDIVISION: TOWER A5 TO RANDALL ROAD



As Mr. Elphick explains in detail, this infrastructure provides exclusive ability to add additional freight trains without interfering with Metra's trains. *See* Elphick R.V.S. at ¶¶ 19-21. His analysis shows the ease with which CP's four additional trains each way could flexibly be slotted between Metra's tightly scheduled trains without touching Metra's peak operating windows. Metra witness Oppenheim confirmed in his deposition testimony that numerous such slots are available, as reflected in Mr. Walker's Reply Verified Statement.[269] Those slots occur and would support many more than the eight additional trains CP plans. Elphick R.V.S. at ¶ 19.[270]

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269 Deposition of Rich Oppenheim dated June 7, 2022 ("Oppenheim Dep. Tr.") at 175:4-176:20.

270 *See also* "B17 and B12 – Freight windows-A – referenced in Deposition held on 06-07-2022.xls".

It bears mentioning that Metra's MD-W Line historically hosted many more freight trains than it does currently, and more than CPKC will operate post-Transaction. During the 1980s and 1990s, Mr. Oppenheim acknowledged at his deposition that the MD-W Line hosted between 13-14 trains on the low end and 15-16 trains on the high end depending on the number of bulk trains per day.[271] Applicants project just 11 trains on the MD-W Line post-Transaction.[272] In 2019, Metra acknowledged that the line had no trouble handling 10 additional freight trains, without affecting Metra traffic when an outage on CP's Marquette Subdivision required detouring.[273]

4. Developments Independent of the Transaction Will Further Improve the Performance of Metra's Trains on Lines Shared with CP

An examination of Metra's concerns regarding pre-existing conflicts between CP's freight trains and Metra's MD-W trains reveals that a focal point of those issues involved CP trains entering and exiting Bensenville Yard, and also moving between Bensenville Yard and CP's nearby Schiller Park intermodal and automotive terminal. In particular, approximately two-thirds of the non-cascading delays discussed in the emails Metra collected from Oppenheim's inbox (and compiled as Metra Exhibit B-2) involved the tracks around the Bensenville Yard.[274]

Work being undertaken by CP independent of the Transaction will go a long way to addressing these issues, and also ensure that the new trains CPKC plans to run into and out of Bensenville Yard from/to the west will not impact Metra's operations. As Walker and Elphick

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271 Oppenheim Dep. Tr. at 24:1-25:13; *see also* Reply Verified Statement of Adolph Gameiro ("Gameiro R.V.S.") at ¶ 27.

272 *See* Amended Operating Plan, Appendix A at 4 (showing 11.20 trains under the "Growth Plan Year 3 Train Count" column for Segment No. 81. For reasons explained above, only Segment No. 81 captures the projected train count increases to the mainline tracks of the MD-W Line).

273 METR-7, Verified Statement of Rich Oppenheim ("Oppenheim V.S."), Ex. B-7; *see also* "B17 and B12 – Freight windows – A – Referenced in Deposition Held on 06-07-2022.xls" (Elphick Exhibit 2); Oppenheim Dep. at 175:4-13.

274 *See* "Summary of CP Delay Event 2016-2021.pdf" (Vol. 3, Exhibit 48).

cover in more detail in their respective Reply Verified Statements, CP is embarking on a major reconfiguration of Bensenville Yard that will dramatically improve the ability of this facility to receive and depart trains efficiently. *See* Reply Verified Statement of Nick Walker ("Walker R.V.S.") at ¶¶ 54-58; *see also* Elphick R.V.S. at ¶¶ 29-38. The major reconfiguration of Bensenville Yard will eliminate or reduce the problem of trains doubling or tripling out of yard, which accounts for many of Metra's "complaints" and will improve the handling of intermodal (and automotive) traffic, allowing trains to move directly into the yard and eliminating moves to or from Schiller Park. *See* Elphick R.V.S. at ¶¶ 33-34. As such, CP expects the reconfiguration will greatly improve the performance of Metra's trains on MD-W. *See* Walker R.V.S. at ¶ 58.

To confirm this conclusion, one of Applicants' corrections to Metra witness Crowley's flawed RTC simulation was the inclusion in the model of the improved arrival and departure tracks for intermodal trains arriving and departing Bensenville. *See* Elphick R.V.S. at ¶ 51. As the simulation results confirm, those tracks will help the new CPKC trains – most of which will be intermodal – move to and from Bensenville without imposing incremental delay on Metra operations. *See id.* at ¶ 52. *Second*, as discussed below at page 185, all of the other sources of Metra's pre-Transaction concerns about conflict between Metra trains and CP will be entirely unaffected by the Transaction.

B. CP Values Its Partnership with Metra and Regrets that Metra's Comments Have Mischaracterized Metra's Solid Performance on Lines Shared with CP

Metra's Comments attempt to give weight to its unfounded concerns about the Transaction's impact by dragging CP's pre-Transaction performance through the mud and suggesting that CP will be callously indifferent to the impacts of its new trains on Metra's operations. There is absolutely no valid foundation for this accusation. As a matter of objective fact, CP performs very well for Metra, and CP's senior leadership – from CEO Creel on down –

are committed to cooperation with Metra so that the needs of both railroads and their customers can be met on the lines the two must share.

1. Metra Has Consistently Performed Well on CP's Lines

Metra refers to on-time performance as a "keystone[]" of successful commuter service,[275] and the truth is that both MD-W and MD-N perform very well in that regard. According to Metra's own data, CP dispatching and freight operations are almost always successful in avoiding any delay to Metra trains. Walker R.V.S., at ¶¶ 32-35. Metra's allegations that CP is responsible for "continual" and "routine" delays[276] to Metra trains on the MD-W Line, and that CP's dispatching leads to "regular – weekly, and in some cases daily – interference with Metra's peak and non-peak train service,"[277] are simply not supported by Metra's own data.

Metra states that its goal is to achieve 95 percent on-time performance, reflecting its acknowledgement that perfect performance is unachievable because "there are scores of unpredictable variations from those perfect conditions that can have small but cascading impacts on Metra's schedule."[278] With over many dozens of trains running across the line Metra shares with CP every day, Metra's 95% on-time performance goal implies that one would expect a meaningful number of delays every week, month, and year.

In fact, the MD-W Line has consistently been above or close to the 95% performance goal, performing better than many of Metra's other lines, and helps Metra outperform its peer commuter railroads. *See* Walker R.V.S. ¶ 29. To illustrate, Figure 15 below, using Metra's own

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275 METR-7, at 23.

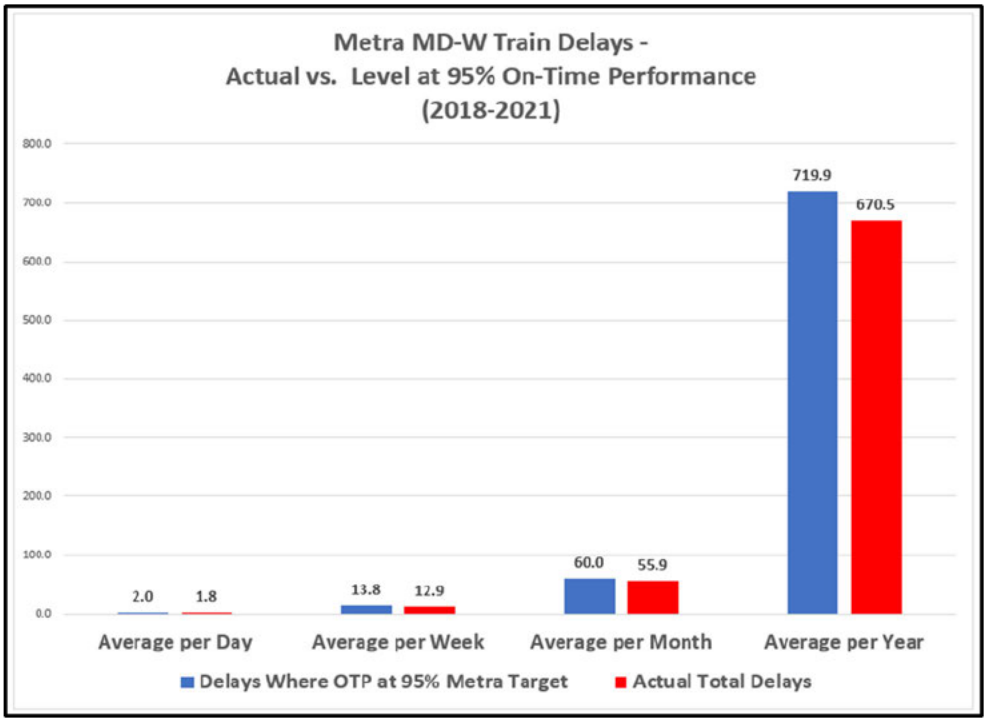
276 METR-7, at 21, 30-31; *id.* Exhibits C-5, C-6, C-7.

277 METR-7, at 2.

278 Metra Website, https://metra.com/time-performance-reports#Metra_and_On_Time_Performance (Vol. 3, Exhibit 49); METR-7, at 24.

data, shows that only 4.6% of the trains that operated in the MD-W Line between 2018 and 2021 experienced any delay for any reason at all.

FIGURE 16[279]
DELAYS TO METRA MD-W TRAINS 2018-2021 VS. DELAYS HAD OTP BEEN 95%

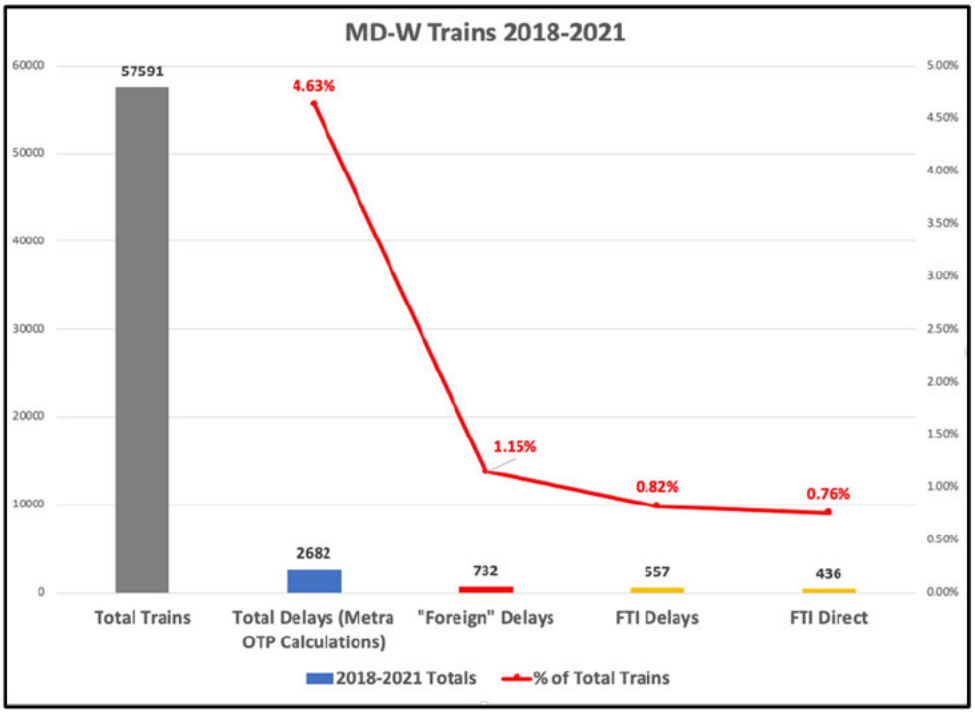


A closer look at these numbers reveals the number of delays caused by the presence of CP freight trains, as opposed to some other factor, is quite low. Metra's own data breaks down the sources of delays and which Metra trains were involved. As shown in the fourth columns of Figure 17, below, delays associated with "freight train interference" (the only delays related to CP dispatching) accounted for just 0.82% percent of all MD-W trains. Metra witness Oppenheim admitted that these data may even overstate CP's responsibility for delays, as "sometimes it's not clear what the cause was, or could be multiple causes, and somebody's got to

279 Walker R.V.S. at n.39.

take the blame for it, essentially."[280] And even assuming the delays were due to "freight train interference," some of those delays may not have been avoidable, as David Rodriguez, Metra's Manager of Train Operations/CTCO and Greg Godfrey, Metra's Director of the Consolidated Control Center (train dispatching office) acknowledged.[281]

FIGURE 17[282]
A VERY SMALL PERCENTAGE OF METRA MD-W TRAINS ARE DELAYED



Even the 0.82% figure is an overstatement of CP-caused delays, as it includes "indirect" or "cascading delays," *i.e.*, delays that occur when a train that is directly delayed en route to destination by some event causes another train to be delayed because it uses the same

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280 Oppenheim Dep. Tr. at 109:7-10; *see also* Deposition of David Rodriguez dated June 8, 2022 (Exhibit 96) ("Rodriguez Dep. Tr.") at 90:21-25, 91:1-25, 92:1-22.

281 *See, e.g.*, Deposition of Greg Godfrey on June 9, 2022 (Exhibit 95) ("Godfrey Dep. Tr.") at 48:16-24 ("[W]e would like to minimize controllable delays) (emphasis added); Rodriguez Dep. Tr. at 91:6-7 ("There might have been no way for any dispatcher to avoid the interference.").

282 *See* "Metra Data Workpaper," Tab "Fig 5."

equipment.[283] As a result, a single dispatching decision that causes delay to Metra can result in multiple reported delays.[284] "Direct" delays are the better measure of how often CP's dispatching decisions may have caused a Metra train to be delayed, as Mr. Godfrey confirmed.[285] As shown in Figure 17, above, over the four years from 2018 through 2021 just 0.76% of all Metra MD-W trains incurred direct delays from freight train interference.

Annual data shows the same pattern. As Figure 17 shows, CP dispatchers consistently support Metra operations at very high levels of on-time performance, with 98-99% of trains receiving no direct freight-train interference delays according to Metra's own records (as shown by the green line in Figure 18 below, ranging from 98.9% to 99.7%).

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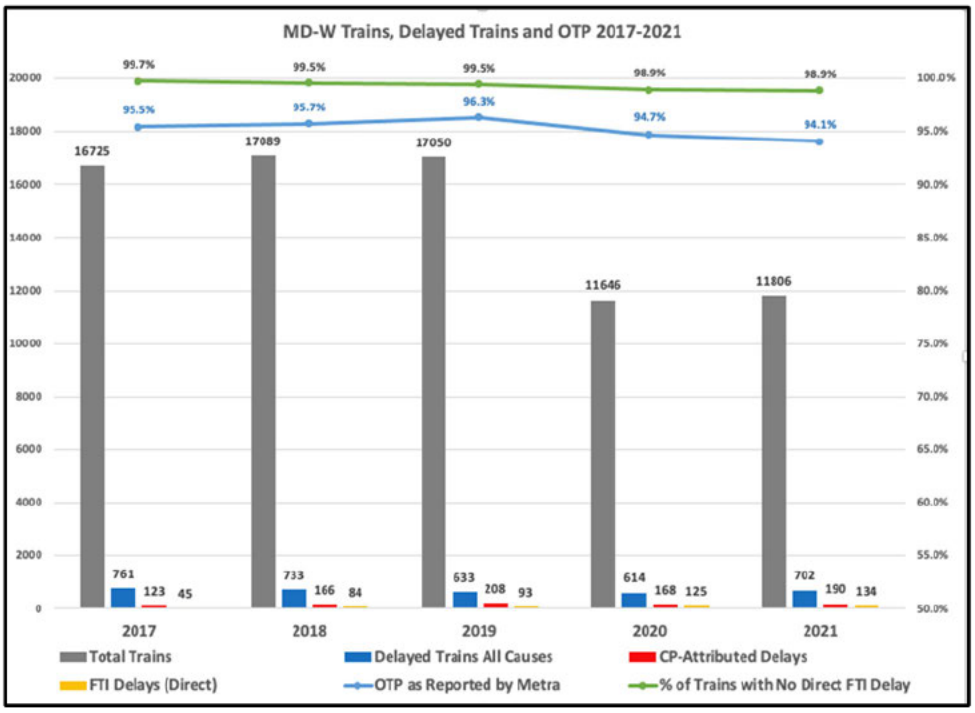
283 METR-7 at 32.

284 Metra, "On-Time Performance - December 2021," available at https://metra.com/sites/default/files/inline-files/On-Time%20Performance%20Report%20-%20December_2021.pdf (Vol. 3, Exhibit 49).

285 Godfrey Dep. Tr. at 43:12-19.

FIGURE 18[286]
METRA MD-W DELAYS AND OTP 2017-2021



Metra alleges that CP dispatchers "regularly" prioritize freight trains ahead of Metra trains during agreed "peak" periods during the morning and afternoon commuter rush hours.[287] Metra's data undermines its own argument. As Figure 18 shows, again focusing on the trains that suffer "direct" delays due to freight train interference, CP performs incredibly well in dispatching Metra's peak-period trains. In fact, only 0.57 percent of peak-period trains realize direct freight train interference delays, amounting to 126 total delays over the course of four years, or about *one delay every eight business days*.

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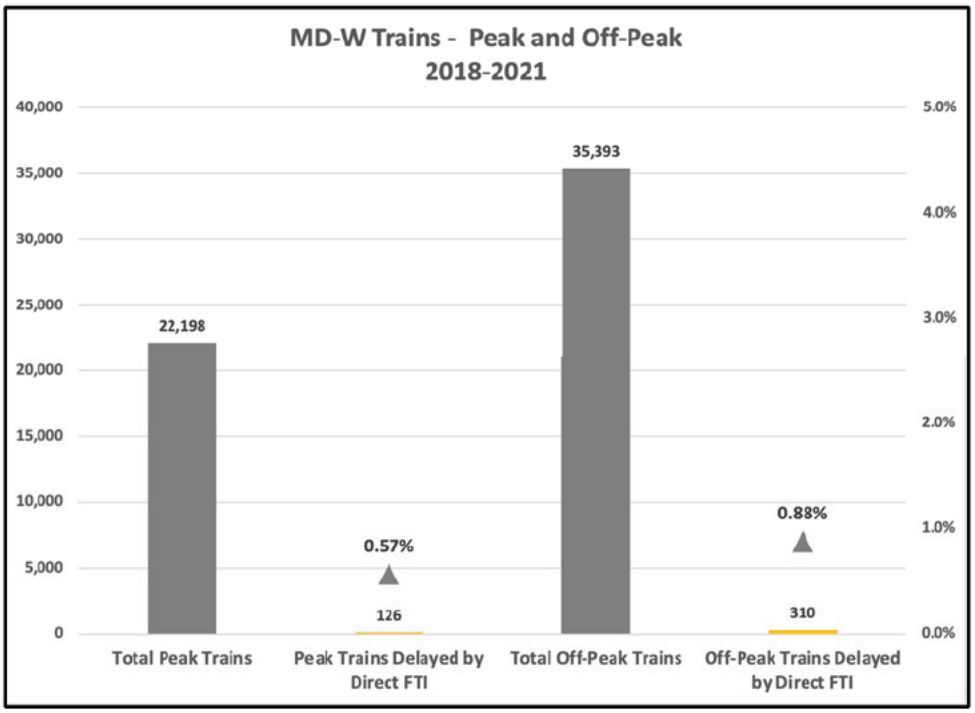
286 *See* "Metra Data Workpaper," Tab "Fig 6."

287 METR-7, Verified Statement of Greg Godfrey ("Godfrey V.S."), at ¶ 12.

FIGURE 19[288]
MD-W FREIGHT TRAIN INTERFERENCE DELAYS PEAK VS. OFF-PEAK

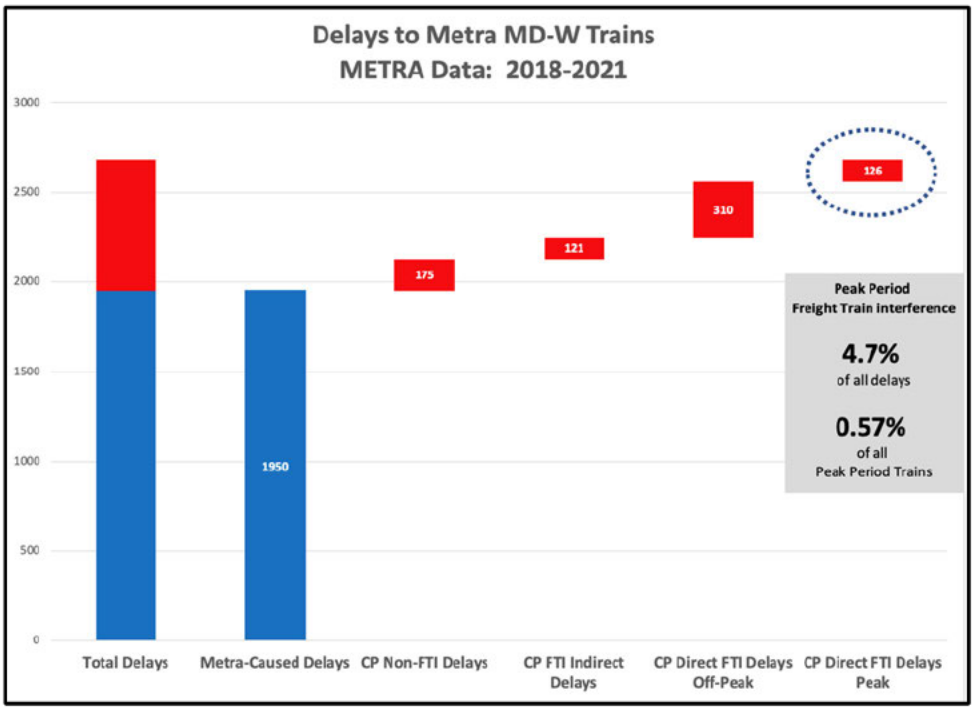


Another useful perspective is how the delays attributable to CP compare to the delays that Metra attributes to itself. As Figure 20 below shows, the small numbers of delays attributable to freight train interference are dwarfed by the delays caused by Metra's own actions. Metra's Comments unfairly lump all of these delays together and blame CP for all of them.[289]

288 *See* "Metra Data Workpaper" Tab "Fig 7."

289 *See, e.g.*, METR-7 at 34-35.

FIGURE 20[290]
SOURCE OF DELAYS TO METRA MD-W TRAINS 2018-2021



Other Metra data confirm that Metra performs well on the CP-dispatched MD-W Line relative to the lines used by Metra that are dispatched by other freight railroads. Only 21.3% of delays on MD-W from 2016 to 2021 were attributed to CP. This is a lower percentage of delays than on the nearby UP-West line or the BNSF line, where a greater portion of delays were caused by those other "foreign carriers."[291] Indeed, though Metra seeks to portray CP as though it were a particularly bad performer, Metra's witness Rodriguez testified that Union Pacific caused the most freight train interference with Metra's trains,[292] or as Mr. Godfrey described it: Union Pacific is "struggling tremendously right now."[293] Mr. Rodriguez was asked at what locations

290 *See* "Metra Data Workpaper," Tab "Fig 8."

291 *See* Walker R.V.S., Figure 11.

292 Rodriguez Dep. Tr.at 11:4-9.

293 Godfrey Dep. Tr. at 85:6-10.

CN causes freight interference with Metra trains, and he responded: "It's a long list."[294] NS, CSXT and BRC also cause freight trains to delay Metra trains as Metra witness Rodriguez acknowledged.[295]

By any measures then, CP's performance is strikingly good. In an attempt to sidestep the import of this data, Metra argues that its own on-time performance metric is not an accurate measure of CP's performance because it does not capture delays unless they result in a train arriving at its final destination more than five minutes and 59 seconds late.[296] Metra's argument is flawed for a number of reasons.

First, any suggestion by Metra that on-time performance data is a misleading measure of performance is belied by the fact that Metra itself reports its performance to its customers and the public in terms of on-time performance data.[297] It tells customers that on-time performance metrics provide "a truer reflection" of "how [Metra is] doing and where [it] need[s] to improve," and it asserts that the on-time performance goals it employs "have been standard in the railroad industry for longer than Metra has existed."[298] And it compares itself publicly to other transit companies by touting its superior on-time performance.[299]

Second, the more comprehensive data that Metra says is a better reflection of delays caused by CP confirms that CP performs very well. Metra witnesses Godfrey and Rodriguez

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294 Rodriguez Dep. Tr. at 62:20.

295 *Id.* at 62-66.

296 *See, e.g.*, Metra Comments at 26.

297 *See* Metra Website, On-Time Performance Reports, https://metra.com/time-performance-reports (last accessed July 9, 2022).

298 *Id.*

299 *See* Walker R.V.S. at ¶ 30.

rely upon data compiled by Mr. Rodriguez purporting to show all delays to Metra trains on the MD-W and MD-N Lines caused by CP freight trains from February 2020 to October 2021.[300] Mr. Rodriguez's data shows that only 1.5 percent of Metra's trains experienced a delay during the period from February 2020 to October 2021. *See* Walker R.V.S. at ¶ 28.

On the MD-W Line, which is the only line CP and Metra share where train counts will increase as a result of the Transaction, Mr. Rodriguez's data identifies 273 freight-caused delays for a total of 2,394 minutes of delay.[301] Given the 19,914 total Metra trains that Metra operated on the MD-W Line during that period, this works out to just 7.2 seconds of delay per train.[302] But of those 273 freight-caused delays, 44 were "non-controllable" by CP, and had nothing to do with CP's dispatching.[303] Another 25 of these delays were attributed to cascading delays which, as discussed in this section, should be excluded when properly assessing the number of incidents where CP freight trains or dispatching decisions caused a delay.[304] Once these categories are removed, Mr. Rodriguez's data shows 204 total "controllable" delays caused by CP on the MD-W Line over the 21 month period from February 2020 to October 2021.[305] As Figure 21 below shows, this means *over 99 percent* of Metra trains operating on the MD-W Line during that period *did not* encounter a CP-caused freight interference or dispatcher-caused delay.[306]

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300 METR-7, Verified Statement of David Rodriguez ("Rodriguez V.S."), at ¶ 6.

301 Walker R.V.S., at ¶¶ 23, 26; "Workpaper_Walker_Godfrey_Rodriguez.xlsx," Tab "Rodriguez Data."

302 Walker R.V.S., at ¶ 26; "Workpaper_Walker_Godfrey_Rodriguez.xlsx," Tab "Rodriguez Data."

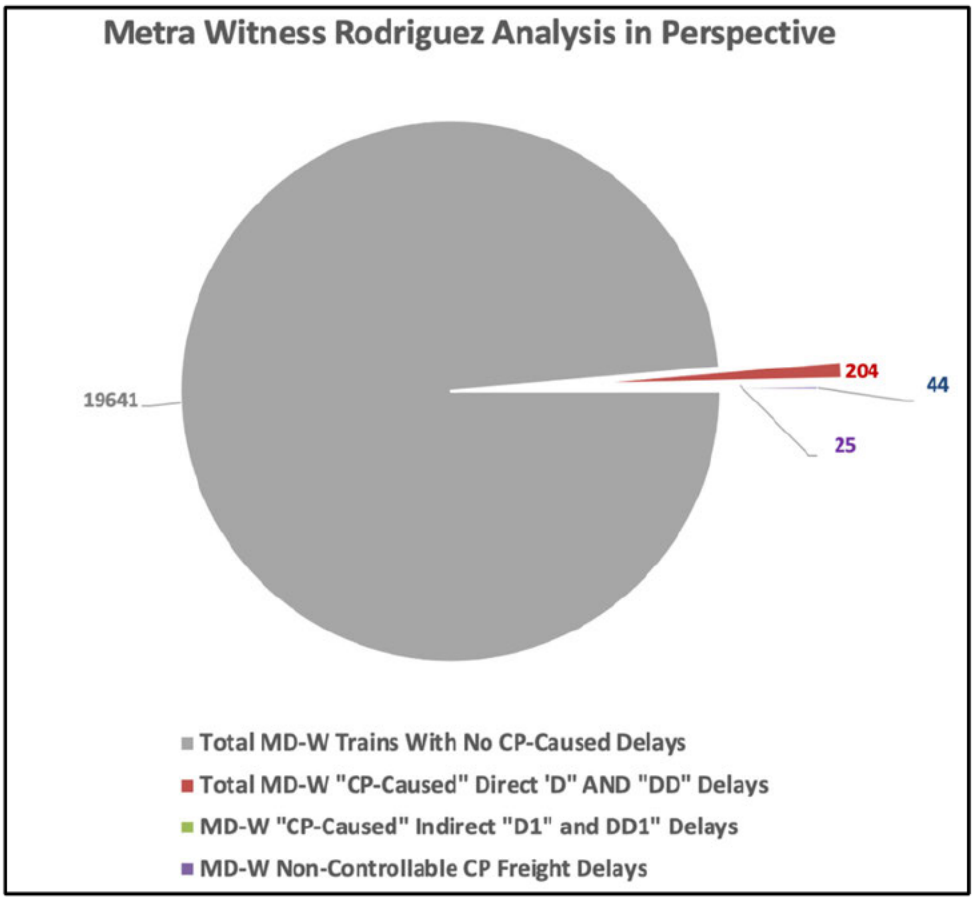
303 Walker R.V.S., at ¶ 23.

304 *Id.*

305 *Id.* at ¶ 24.

306 Oppenheim attempted to supplement Metra's official delay data with a compendium of emails discussing delays that he attached as Exhibit B-2 to his Verified Statement. After asserting that this compendium of emails was prepared with the goal of capturing "100 percent" of the delay issues he was

FIGURE 21[307]
NEARLY ALL OF METRA'S MD-W TRAINS INCUR NO CP-CAUSED DELAY



Rodriquez's criticism of CP is further undermined by his default to blame CP. Rodriguez admitted at his deposition that some of these delays had multiple causes but were attributed to CP.[308] He further admitted that some of the delays he captured in his data could not have been

testifying about, *see* Oppenheim Dep. Tr. at 135:18-22, Oppenheim testified that a CP 473 freight train delays a Metra 2225 passenger train "twice a month," *id.* 162:8. Confronted with the fact that this specific type of incident only appeared twice in Oppenheim's entire dataset, which spans from January 2016 to March 2022, *id.* 162:8-163:11, Oppenheim then attempted to backtrack and stated that his dataset is "a representative sampling" and cannot be relied upon to be complete, *id.* 165:15. After conceding his dataset was incomplete, he referred Applicants back to the official TOPS data. This data, as Applicants demonstrate, does not remotely support Metra's contentions about the "continuous" nature of CP-caused delays.

307 *See* "Workpaper_Walker_Godfrey_Rodriguez.xlsx," Tab "Rodriguez in Perspective."

308 *See* Rodriguez Dep Tr. at 34:17-35:15.

avoided by better dispatching decisions.[309] The more we whittle away delays that Rodriquez unfairly attributes to CP, the more Mr. Rodriguez's data paints the same picture – that CP has done a good job dispatching Metra's lines.

The delay statistics Mr. Godfrey cites paint the same picture. Mr. Godfrey reviews data from Metra's data warehouse, known as the "Train Operations and Performance System, " which is Metra's "most accurate count of reported delays, and which is the same data used to produce Metra's on-time performance statistics reviewed above.[310] He noted that this delay data can be misleading because it might attribute to CP a delay to a Metra train on the MD-W Line even if it was the responsibility of another railroad on an adjacent subdivision.[311] Nonetheless, he calculated the total number of delays to the MD-N and MD-W Lines for each year from 2000 to 2021 and found that, during that time, freight-related delays impacted 1.23 million Metra customers with delays totaling 57,048 minutes, or nearly 40 days and nights.[312] We can break that down for all Metra MD-W and MD-N trains combined like this:

TABLE 2
METRA DELAY HISTORY PUT IN PERSPECTIVE

	Over 21 Years	Per Year	Per Week	Per Day (assuming 5 days/week)	Per Train (assuming 122 weekday pre-COVID trains per weekday on MD-N and MD-W line)
Minutes	57,048	2,716	52	10.4	5.1 seconds
Passengers	1.23 million	58,571	4,880	976	8

309 *See id.* at 90:21-91:8, 91:23-92:7.

310 Godfrey V.S., at ¶ 7.

311 Godfrey Dep Tr. at 59:16-60:7.

312 Godfrey V.S., at ¶ 9.

Assuming a five weekday schedule, 57,048 minutes in delays amounts to about 10.4 minutes of delay per day total, including cascading delays, in an industry where delaying a train by fewer than six minutes is considered on-time performance. And given Metra's estimated ridership for the MD-W and MD-N Lines in January 2019, pre-pandemic, was estimated at 975,482,[313] that means the 4,880 customers impacted by delays in a month equates to just 0.5% of Metra's monthly ridership. Impacting only 0.5% of customers, including via cascading delays, in an industry where normal delays are expected, is quite remarkably good performance. Similarly, an average of *five-to-seven seconds of delay per weekday train* is a far cry from the "continual" and "routine" delays that Metra assails CP for delivering.

CP strives to minimize the delays it causes, but Metra's suggestion that any amount of delay to its trains proves malfeasance is simply wrong. While CP believes there is always room for improvement, and it regrets the rare occasions when its decisions have led to delay that could have been avoided, the record of Metra's performance on the lines it shares with CP – and CP dispatches – is one of which any railroad could be proud. It is certainly not a basis for fundamentally re-writing longstanding contractual rights.

2. CP Leadership Is Committed to Supporting Metra's Operations, Consistent with Its Contractual Obligations.

The track record confirmed by the hard data should leave no room for doubt about CP's commitment to supporting Metra's passenger service. Contrary to the overheated rhetoric of Metra's Comments, CP has strived to be a good partner to Metra. As CP CEO Keith Creel states

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[313] *See* Metra, Ridership Trends, (Jan. 2019), available at https://metra.com/sites/default/files/assets/planning/ridership/jan_2019_ridership_report_standalone.pdf (Vol. 3, Exhibit 50).

unequivocally: "The Transaction will not get in the way of our intention to be a good partner to Metra on the lines we share." Creel R.V.S., at ¶ 11.

CP is offended by the suggestion that there has been a lack of leadership commitment to supporting Metra, particularly the accusations that "senior leadership has actively refused to take action that would reduce Metra delays"[314] and that CP "dispatchers have been directed by senior management to move CP trains, regardless of the impact on the network."[315] To be clear: CP takes great care to help ensure Metra's trains perform well on the MD-W and MD-N Lines.[316] As Nick Walker, CP's Vice President of Operations for the Western Region, explains in his Reply Verified Statement, CP dispatchers understand the priority to which Metra trains are entitled. CP dispatchers consider all relevant factors and circumstances when dispatching passenger and freight trains alike, and no decision to move a CP train is made "regardless of the impact on the network."[317]

The truth is that it would be counterproductive for CP to make decisions that disregarded the impact on Metra trains, since blocking Metra's trains needlessly would clog up the network, undermining the movement of all trains.[318] Metra's own chief dispatcher Mr. Godfrey agrees, acknowledging all dispatchers, no matter by whom employed, have to make decisions based on the network as a whole, not solely in the interest of moving any individual train (*i.e.* a Metra train, as Metra would prefer), particularly in the Chicagoland network, which is "so

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314 METR-7, Oppenheim V.S., at ¶ 35

315 METR-7 at 38; *see also* METR-7, Oppenheim V.S., at ¶ 35.

316 Walker R.V.S. at ¶ 6

317 Walker R.V.S. at ¶ 10.

318 *Id.*

complicated."[319] Indeed, Mr. Godfrey has "directed [himself] and [his] staff to delay some passenger trains in order to keep other freight trains moving in order to help other passenger trains" to "keep the network healthy."[320]

The evidence that Metra has submitted to the Board in this proceeding directly contradicts Metra's condemnation of CP management. Most of the documents submitted by Metra as exhibits to the Verified Statement of Oppenheim demonstrate good faith attempts by CP employees to address operational issues that come up from time and to seek to minimize their recurrence and impact on Metra. For example, when notified of a set of issues, CP's Senior Vice President directed the team: "I also want you to ensure the 3 items below are implemented and executed!"[321] In another instance, CP reacted promptly: "I did discuss the implication with the Yardmaster/Train master after the fact."[322] Another example shows CP's responsiveness: "We are working back through the root cause and will update this morning."[323]

Other emails authored by Mr. Oppenheim himself demonstrate that, while delays do occur, CP has worked collaboratively with Metra to address them. For example, in one email recounting an unfortunate series of delays that occurred in January 2021, Mr. Oppenheim starts off: "Let me preface this by saying *how much we appreciate CP's recent willingness to discuss our respective operational concerns* and the need to work together to insure that our goals are

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319 Godfrey Dep. at 82:9-83:6.

320 *Id.* at 136:8-17; *see also id.* at 82:15-19 ("[N]ot delaying one Metra train, let's say at 9:00 a.m., could result in delaying six Metra trains at 1:00 p.m.").

321 METR-7, Oppenheim V.S., Exhibit B-2 at 322.

322 *Id.* at 332.

323 *Id.* at 334.

met."[324] Towards the end of the email, Mr. Oppenheim reiterates that "[a]s we have said repeatedly on our calls, we truly believe that CP's intentions are sincere in trying to protect Metra's schedules."[325] Mr. Oppenheim's contemporaneous sentiments are incompatible with the idea that "senior leadership has actively refused to take action that would reduce Metra delays."[326] And notwithstanding Mr. Oppenheim's incendiary remarks in his Verified Statement, he testified at his deposition that "a big Metra supporter, very high ranking at CP for a number of years . . . went so far as to fire some of the dispatchers that were moving freight trains in front of Metra."[327]

Metra tries to make much of a March 6, 2022 email sent by Mr. Oppenheim about an instance where a dispatcher in CP's Minneapolis Operations Control ("MOC") center made a game-time decision – with which Mr. Oppenheim disagreed – based on the best information available to him on the ground that CP's management must have known that "it was not possible for a successful outcome."[328] But that example merely illustrates that freight dispatching is complicated and, at times, dispatchers are faced with difficult choices, any of which would lead to a suboptimal outcome. CP does not dispute that, especially with the benefit of hindsight, some of the decisions its dispatchers made in these situations could be open to after-the-fact criticism. But that does not mean that they are bad at their jobs, much less that they seek to delay Metra trains. In fact, Mr. Rodriguez, who serves as a liaison between Metra and the freight railroads Metra interacts with, acknowledges the plain fact that there often may not be a way for

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324 METR-7, Oppenheim V.S., Exhibit B-2 at 204.

325 *Id.*

326 METR-7, Oppenheim V.S., at ¶ 35.

327 Oppenheim Dep. Tr. at 166:22-25.

328 METR-7, Oppenheim V.S., Exhibit B-2 at 331.

any dispatcher to avoid freight interference.[329] In any event, Mr. Oppenheim's emails *do not* show intent or direction by CP senior management to direct dispatchers to take actions adverse to Metra trains or to "move CP trains regardless of the impact of the network." {{[redacted]}}.

In order to cultivate a false impression of malice, Metra also points to Mr. Godfrey's Verified Statement in which he claimed that "[o]n a number of recent occasions my staff and I have witnessed CP dispatchers who are able to prioritize or avoid delay to Metra being directly told by senior management to move CP trains, regardless of the impact on the network."[331] At his deposition, however, Mr. Godfrey readily admitted that he did not have first-hand knowledge of these occasions, and was merely told by Mr. Oppenheim.[332] In addition, Mr. Godfrey could also only recall one or two of these incidents—far from "a number of recent occasions"—and could not recall the identity of the person he identified as "senior management" or when these incidents occurred.[333]

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329 Rodriguez Dep. Tr. at 90:21-25, 91:1-25; *see also* Deposition of Greg Godfrey ("Godfrey Dep. Tr.") at 77:7-12.

330 Oppenheim Dep. Tr. at 168-72, 185-187. {{[redacted]}}

331 Godfrey V.S., at ¶ 16.

332 Godfrey Dep. Tr. at 123:1-25.

333 *Id.* at 125:5-126:16.

In sum, nothing in the record contradicts the simple truth that CP leadership has been and remains committed to supporting Metra's operations and honoring CP's obligations to dispatch Metra's trains well, with or without the Transaction. *See* Walker R.V.S. at ¶ 9.

C. None of Metra's Complaints About CP Are Related to the Transaction

As explained above, the Transaction's impact on Metra boils down to Applicants' adding 8.0 trains to the MD-W Line west of Bensenville. The existing infrastructure and available operating slots on Metra's MD-W Line will easily accommodate those trains.

Shorn of its flawed RTC simulation evidence – which when corrected actually confirms that there will be no adverse impact on Metra – the entirety of Metra's case boils down to a laundry list of pre-Transaction grievances and efforts to re-write the governing contracts and fundamentally alter the pre-Transaction relationship between CP and Metra. Even if everything Metra says were true, it would not support the conditions Metra desires to have imposed on the Transaction. But what Metra says is not true, and as set forth in the testimony of CP witnesses Walker and Elphick, CP desires to set the record straight about how it has interacted with Metra in the past, while simultaneously demonstrating that the issues Metra raises are unrelated to the Transaction and certainly not made worse by the Transaction.

1. Most of Metra's Pre-Transaction Dispatching Concerns Relate to Operations that Will Be Unaffected by the Transaction

Setting aside the irrelevance of a series of anecdotes about specific dispatching decisions against a mountain of evidence that almost every one of Metra's trains is dispatched without any delay whatsoever, the critiques that Metra lobs against CP's dispatchers are both unfair and completely irrelevant to the Transaction.

Dispatching Issues Relating to Freight Trains North and East of Bensenville Yard.

First, the focus of Metra's criticisms is on areas that will be unaffected by the Transaction, or addressed by developments unrelated to the Transaction. Metra witness Oppenheim lists seven categories of "issues" that he has had with CP's dispatching over the years.[334] Whatever the merit of his concerns about these issues, each and every one of them necessarily pre-dates the Transaction. And as Messrs. Walker and Elphick explain, none of those issues has any bearing on the Transaction's effects. The issues either involve operations associated with Bensenville Yard – which will be addressed by the reconfiguration already underway – or they involve train operations to the east or north of Bensenville that will not be impacted by the Transaction.

For example, Metra complains that a "typical example of CP-caused delays" occurs when CP makes a crew change on mainline tracks outside of Bensenville Yard.[335] As explained by Mr. Elphick, to the extent this occurs, it is usually for trains coming from Milwaukee on the MD-N Line seeking to enter Bensenville Yard at Tower B17, which cannot enter yard tracks in a fluid manner from that direction. Elphick R.V.S. at ¶ 44. None of the new CPKC trains fall into this category, and in any event CP is working to eliminate the need to make crew changes on

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334 METR-7, at 39-40; METR-7, Oppenheim V.S., at ¶ 36. Those categories are: (1) "Operation of trains over 10 thousand feet in length between Bryn Mawr and Shermer that arrive at Tower B17 or Tower A20 without a sufficient time window to allow them to move without interfering with scheduled Metra trains, and without sidings long enough to allow faster Metra trains to pass;" (2) "Lack of planning for routes through the Bensenville Yard that cause entering CP freight trains to stop and block B17 while throwing yard switches;" (3) "CP crew changes, power, marker light changes, or pick up, or set out of cars, or other activities that should be confined to yard tracks on Metra's main tracks;" (4) "Poor operational and dispatching control of freight trains entering and exiting Bensenville that result in use or fouling of Metra mainline;" (5) "Dispatching of CP freight trains between Rondout and Tower A20 in a manner that delays scheduled Metra traffic;" (6) "Failure of CP westbound freight trains to clear tower A20 a minimum of ten minutes ahead of scheduled Metra and Amtrak trains;" and (7) "Failure of CP eastbound trains to clear Rondout a minimum of fifteen minutes ahead of scheduled Metra and Amtrak trains." METR-7, Oppenheim V.S., at ¶ 36. Each of these categories is addressed by Mr. Walker in his Reply Verified Statement. Walker R.V.S. at ¶ 61.

335 METR-7 at 40.

mainline tracks for its existing trains as well.[336] Similarly, Metra complains that CP dispatches freight trains on the MD-N Line "between Rondout and Tower A20 in a manner that delays scheduled Metra traffic."[337] But the Transaction will have no effect on freight dispatching between Rondout and Tower A20 because, as discussed above, *no new trains* will be added to the MD-N Line as a result of the Transaction.

Dispatching Freight Trains During Peak Periods. Metra makes several claims throughout its Comments that CP "regularly" dispatches freight trains during Metra's "peak periods" (during the morning and evening rush hours) despite being contractually obligated to not interfere with Metra's peak period trains.[338] The facts do not support this claim.

First, CP *does not* schedule freight trains during Metra peak periods, and the new CPKC trains that Applicants anticipate will similarly be scheduled during the extensive periods of the day when they will not get in the way of Metra's passenger trains. Walker R.V.S., at ¶ 38; Amended Operating Plan at ¶ 209; Elphick R.V.S. at ¶¶ 16, 18, 22.[339]

Second, sometimes freight train operations do not proceed exactly as planned, but CP's dispatchers nonetheless strive to avoid creating any conflicts at all with Metra during its peak periods. Walker R.V.S., at ¶ 38. The objective historical data confirm that freight interference during Metra's peak periods almost never occurs. *Id.* at ¶ 38, Figure 8.

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336 *Id.*

337 METR-7 at 39; METR-7, Oppenheim V.S., at ¶ 36.

338 METR-7, Oppenheim V.S., at ¶ 64; *see also* METR-7, at 13

339 Importantly, CP is not prohibited outright from operating freight trains on Metra-shared lines during peak periods, a point Metra witness Oppenheim acknowledged. *See, e.g.*, Oppenheim Dep. Tr. at 307:13-17 (Q. "[Y]ou are not testifying today that . . . there should be no freight train operations during peak . . . periods." A. "Absolutely, I'm not saying that at all.").

Finally, CPKC's ability to avoid conflicts with Metra's operations during peak periods will be improved by the additional capacity the Transaction will bring between Davenport, and the west end of Metra's MD-W line. The additional sidings, including one being added west of Randall Road, will support the staging of CP's freights so they can be moved towards Bensenville when least likely to create a conflict during Metra's peak periods. Elphick R.V.S., at ¶¶ 22-25.

2. Dispatching Metra Trains on the "Wrong Track" Is A Pre-Transaction Concern Without Merit

Metra asserts that CP "regularly dispatches Metra trains on different mainline tracks from the ones that Metra has identified for use by its passengers heading in a specified direction."[340] According to Metra, this "regular" practice results in dangerous situations where "passengers must get to the opposite side of the tracks, often by darting across the tracks in the face of an oncoming freight train, or around a stationary one."[341] Again, this is a pre-Transaction complaint.

On the merits, however, Metra's assertions about safety are unfair and inaccurate. Metra does not mention that most Metra stations are designed such that passengers *must* cross tracks at one end of their commute or the other (*e.g.*, between the station parking lot and the inbound or outbound platform). As Mr. Oppenheim admits, it is "designed into the system that passengers are crossing the tracks," and that "on a regular basis, passengers do cross the tracks" even when

340 METR-7, at 27.

341 *Id.* at 28.

no train is being operated on the "wrong" tracks.[342] Indeed, all four of the social media posts[343] that Metra cites as support for the claim that CP dispatches passenger trains on the "wrong" tracks depict locations that have level crossings over tracks that passengers must cross. None of the posts demonstrate that the passenger's train was on the "wrong" track. Walker R.V.S., at ¶ 49.

In addition, as Mr. Walker explains, even when Metra trains *are* operated on the opposite track from what commuters might expect, there are good reasons for it. For example, it is good dispatching to run an express Metra train around slower local trains or slower CP freight trains, allowing Metra trains to maintain their schedules while simultaneously accommodating other operations on the line. Mr. Oppenheim conceded as much at his deposition.[344] Prohibiting the use of both tracks would interfere with fluid operations and sacrifice capacity and cause unnecessary delays. Walker R.V.S., at ¶ 51. Indeed, Metra itself has advocated for adding crossovers on the MD-W line, meaning that Metra necessarily *supports* the use of both tracks, not just the "right" one.[345]

And there is nothing unsafe about this practice. Walker R.V.S., at ¶ 52. Metra's stations are equipped with loudspeakers that provide advance announcements regarding arriving trains

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342 Oppenheim Dep. Tr. at 151:18-24. In light of this acknowledgment, CP is offended that Metra used this merger proceeding to cast it as an unsafe rail operator, even going so far as to say CP causes Metra "to fear for the safety of its passengers." METR-7, at 23.

343 These posts depict freight trains operating outside Metra's peak periods; Metra's claim to the contrary failed to adjust the timestamps of the posts to account for local Chicago time.

344 Oppenheim Dep. Tr. at 252:4-9 (Q: "[T]he right dispatching move is to cross the Metra train from track 2 to track 1 to avoid delay; isn't that right?" A: "No, if that is the only way – the only option that you have to run, yes.").

345 *Id.*

and the tracks they will be on, giving passengers ample time to get to the correct platform.[346] It is standard operating procedure for trains to enter the station at slow speeds to ensure they can stop if needed to avoid pedestrians crossing the tracks at the last minute. If Metra viewed these practices as unsafe, most Metra stations would not be set up to cause commuters to cross tracks "on a regular basis."[347]

3. Metra's Disagreement with CP About Changes to Its Off-Peak MD-N Line Schedules in 2019 Are Pre-Transaction Issues Having No Bearing on this Proceeding

Metra dredges up past discussions from 2019, unrelated to this Transaction, in which Metra and CP did not reach agreement to add additional non-peak Metra trains.[348] In an attempt to tie these episodes to the Transaction, Metra argues that despite denying its requests "presumably because there was no capacity," CP is now proposing to add trains "on the lines."[349] Metra evidently ignores the fact that in both instances the trains it proposed to add were to the MD-N Line, not the MD-W Line, and Applicants do not propose to add any Transaction-related trains to the MD-N Line.[350]

In any event, as explained in Walker's Reply Verified Statement, CP did not deny these requests because there was insufficient capacity on the MD-N Line. Walker R.V.S., at ¶¶ 85-90. Instead, Metra's request came at a time when the demands placed on the line were in flux

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346 *Id.* at ¶ 46; Oppenheim Dep. Tr. at 152:9-16.

347 Oppenheim Dep. Tr. at 151:18-24.

348 METR-7 at 41-43.

349 *Id.* at 41-42.

350 *See id.*; *see also* Amended Operating Plan, Appendix A, at 3. Potential additional Amtrak trains are not attributable to the transaction, and Amtrak has committed to the addition of infrastructure on this line in connection with its new train services. *See* Amtrak-Canadian Pacific Agreement (filed Feb. 2, 2022) at §§ 1, 2.

(including the potential for Amtrak to add additional trains there), and CP was concerned that the particular changes Metra proposed would effectively expand the duration of its near-exclusive access to the line during peak periods. CP was not unwilling to consider Metra expanding its service on the MD-N line, but thought that the proposal required more thorough assessment of its consequences for CP and other users, and consideration of alternatives for Metra as well.

4. Metra's Complaints About PTC Implementation Issues Are Irrelevant and Unfair

Metra also raises grievances relating to the implementation of Positive Train Control that are unrelated to the Transaction. Metra states that "[b]oth Metra's MD-W and MD-N . . . are dispatched using Wabtec Train Management Dispatching Systems ('TMDS') computer-aided dispatch ('CAD') systems," which are "a critical component in Metra's operation," and "a requisite for implementing federally mandated Positive Train Control ('PTC') requirements."[351] Metra charges that "[i]n 2021, when upgrading new TMDS CAD software in Metra and CP systems, some Metra installations had to be delayed to accommodate interoperability with CP's other systems on non-Metra owned lines."[352] As Mr. Walker explains, this critique is "baffl[ing]" and "seems entirely contrived." Walker R.V.S., at ¶ 91. As Mr. Godfrey acknowledged, "CP and Metra spen[t] considerable time working together to provide for TMDS to function safely on CP's dispatching systems," and "CP invested significant resources in doing that."[353] Indeed, implementing PTC has been a challenge to every railroad company. Walker R.V.S., at ¶ 92. To the extent there may have been occasional delays or glitches, this is no

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351 METR-7 at 44.

352 *Id.*

353 Godfrey Dep Tr., at 33:22-34:2; *see also* Walker R.V.S., at ¶ 79.

different from the challenges other railroads have experienced, including that Metra itself has experienced. And more to the point, those challenges are essentially over, as the work of integrating TMDS into CP's dispatching systems is already substantially complete.[354]

D. Applicants Are Committed to Reassure Metra and Its Ridership that the Transaction Will Not Impact Metra's Passenger Service

Applicants desire to foster a strong relationship with Metra. To that end, while Applicants firmly believe that the Transaction will not cause any harm to Metra's commuter service, Applicants are making a number of commitments to provide reassurance the Transaction will not adversely impact Metra's operations or its passengers. As Mr. Creel outlines, *see* Creel R.V.S., at ¶ 16, CPKC has committed that:

- Will not route CPKC's Kansas City-St. Paul freight trains via Chicago (except in emergencies);
- Will not object to Metra's return to its pre-COVID passenger schedules;
- Will commit to a collaborative assessment of proposed Metra schedule changes outside peak windows; and
- Will put in place processes designed to improve real-time communication with Metra about the dispatching of its trains, accompanied by a formal escalation process to address any recurring performance issues that arise.

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[354] Walker R.V.S., at ¶ 93. To the extent Metra suggests that giving Metra dispatching authority could make Metra's own PTC implementation any easier, it is simply wrong. Aside from the fact that integrating TMDS with CP's dispatching systems is already substantially complete, even if Metra controlled dispatching over the MD-N and MD-W Lines, CP freight trains would still have to transition safely between CP-owned and Metra-owned trackage. The "challenges of efficient PTC implementation and maintenance would not be eliminated." *Id.*

CP (and CP/KC if the Transaction is approved) will work with Metra to reach mutually acceptable solutions to any issues that arise in their relationship, including any unforeseen issues caused as a result of the Transaction. As the Board has recognized, commercial negotiations between the parties are the best avenue to resolve any such operating, dispatching, and compensation matters, not the Board's conditioning powers.[355] That is particularly so where, as here, Metra seeks conditions "to ameliorate longstanding problems [or issues] which were not created by the merger."[356]

E. The Relief Metra Requests Is Vastly Out of Proportion to the At-Most Minor Impacts of the Transaction

Setting aside that the Transaction will cause no adverse impacts to Metra's operations, and that no conditions whatsoever are warranted, the specific condition requests that Metra puts forward are both overreaching and likely to prove affirmatively counterproductive.

1. Metra's Requests to Force a Shift of Dispatching to Metra Would Override CP's Contractual Rights and Undermine Rather Than Improve the Handling of Metra Trains

First, Metra requests a condition requiring CPKC to transfer dispatching control of the MD-W and MD-N Lines to Metra.[357] Such a request is overreaching and would override CP's longstanding contractual rights without any foundation in harm from the Transaction. Metra's demand is ultimately founded on Metra's *pre-Transaction desire* to control dispatching on these

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355 *BN/Santa Fe*, 360 I.C.C.2d at 769.

356 *BN/Santa Fe*, 360 I.C.C.2d at 729-30; *BN/Frisco,* 360 I.C.C. at 952.

357 METR-7 at 70.

lines, which it has twice previously brought to the Board in the merger review context, only to be rejected both times. The Board should reach the same conclusion here.[358]

a) The Trackage Agreements Allocate to CP the Right to Operate and Dispatch Traffic on the MD-W and MD-N Lines

The contractual arrangement between CP and Metra governing the MD-W and MD-N Lines originated in the Milwaukee Road's bankruptcy and preserved CP's role as the freight common carrier on these vital lines connecting CP's network with Chicago, as explained in the Reply Verified Statement of Adolph Gameiro. CP's agreements with Metra preserved the traditional control that freight railroads have over dispatching – and that Milwaukee Road had historically when it operated commuter trains. Gameiro R.V.S. at ¶¶ 6-15. To summarize the pertinent history, when Metra acquired ownership of the MD-W and MD-N Lines, it did so subject to the terms of a 1985 Trackage Agreement entered into with CP in 1985 that expressly grants CP the right to (1) direct movement of all trains on the MD-W and MD-N Lines and (2) operate freight trains on the MD-W and MD-N Lines, with the limited exception of specified peak periods when Metra's commuter service operations and schedule are to receive priority over freight trains, except in an emergency.[359] Metra itself renegotiated this agreement in 1993 and reconfirmed CP's responsibility for the lines' dispatching.

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[358] For the same reasons, the Board should reject Metra's alternative request that the parties be required "to adopt clear, binding and enforceable dispatching standards that reflect and more clearly define CP's existing dispatching obligations." METR-7 at 80. Applicants have shown that the Transaction will not adversely impact Metra's operations. The existing contractual arrangement between Metra and CP adequately sets forth CP's dispatching obligations, including that CP not interfere with Metra's peak period trains. Thus, Metra's request for more defined and binding dispatching standards is unrelated to the Transaction but rather aimed at redressing its pre-Transaction concerns. In any event, as noted above, CPKC understands the priority to which Metra's passenger trains are entitled and is committed to working closely with Metra in the proper dispatching of all trains on the MD-W and MD-N lines, Metra's included. *See* Part VII.D above.

[359] *Id.* When Metra acquired ownership of Milwaukee's "commuter assets," it did not seek the Board's authorization, confirming that (under the State of Maine doctrine) Metra's role as owner would

The agreements give Metra important rights as well, including the creation of peak periods during which CP may not interfere with Metra's operations and when Metra is also free to add trains without limitation beyond the physical capabilities of the infrastructure (though CP is not prohibited from running freight trains).[360] Outside those peak windows, Metra is permitted to run only an agreed upon number of trains on a set schedule, and must seek CP's consent (not to be reasonably withheld) for changes to its schedule or the addition of new trains.[361]

b) Metra Has Long Sought Control of Dispatching on the MD-W and MD-N Lines

Metra's desire to use the Board to upend CP's contractual right to control dispatching on the MD-W and MD-N Lines and transfer that important right to Metra long predates this Transaction. In the Board's Major Merger Rules proceeding in 2000, Metra tried to persuade the Board to adopt a new rule that would enable the Board to override provisions of Metra's contracts with freight railroads.[362] Despite making sweeping changes to its Merger Rules (albeit ones not applicable in this proceeding), the Board nonetheless rejected Metra's proposal. The Board made clear that it did not view changes to the contractual relationship between freight and passenger railroads as warranted, even under the new rules:

> "Even though we will impose conditions where appropriate to protect passenger railroads from merger-related harm, *we will not impose remedies that are inconsistent with passenger service contracts*, and we will not require applicants to subsidize passenger service. As we have noted in prior merger decisions, most contracts with passenger authorities already include incentives and penalties for service performance. There is *no reason here to attempt to change the fundamental contractual relationship between freight and passenger carriers*. Adherence to these

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not interfere with CP's role as freight common carrier on the lines. *See State of Maine—Acquisition & Operation Exemption—Maine Central R.R.*, 8 I.C.C.2d 835, 837 (1991); Gameiro R.V.S., at ¶ 12.

360 Gameiro R.V.S., at ¶ 12; *see, e.g.*, Oppenheim Dep. Tr. at 307:13-17.

361 *Id.*

362 *Major Rail Consolidation Procedures*, 5 S.T.B. at 711.

> contractual terms is, in most instances, the best way to resolve the sometimes conflicting needs of these parties."[363]

Undeterred by this defeat, Metra sought to capitalize on CP's proposed acquisition of DM&E in 2008 to re-write the same set of contracts – and in the same way – that it now seeks in this proceeding. As it does here, Metra (1) complained about CP's dispatching of the MD-W and MD-N Lines, (2) argued that a transfer of dispatching would be the only way Metra could protect its own service, and (3) asked the Board to condition its approval on a transfer of dispatching from CP to Metra.[364] The Board rejected Metra's request, for reasons that compel the rejection of Metra's identical request in this proceeding:

> "Metra seeks material changes to (or extensions of) existing agreements, or to compel new contractual commitments from CPRC to protect Metra from potential traffic increases that it might not have considered during prior contractual negotiations. *We will not use our conditioning power here to compel resolution of potential differences between CPRC and Metra with respect to operating, dispatching, and compensation matters.* Given the intricate details involved in coordinating freight and passenger rail operations, capital expenditures, and compensation, commercial negotiation seems to be the better avenue for resolving such issues. CPRC has indicated that it remains committed to working cooperatively with Metra, and the Board strongly encourages both parties to work together to achieve a mutually acceptable arrangement to govern joint operations."[365]

This same rationale applies here. Just as it did in *CP/DM&E*, the Board should allow Applicants and Metra to work together to resolve dispatching issues, especially because Applicants "ha[ve] indicated that [they] remain[] committed to working cooperatively with Metra." *CP/DM&E* at 15; *see also infra* Section VII.E.

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363 *Major Rail Consolidation Procedures*, 5 S.T.B. at 564-65 (emphasis added).

364 *CP/DM&E*, Finance Docket No. 35081, Metra Comments (filed Mar. 4, 2008) at 4, 9, 13.

365 *CP/DM&E*, Finance Docket No. 35081 (Decision No. 11 decided Sept. 29, 2008) at 15 (emphasis added).

c) The Board's Precedents Sharply Disfavor Forced Shifts in Dispatching

The Board's decision in *CP/DM&E* rejecting Metra's request to shift dispatching control is not an outlier. The Board has consistently rejected requests by commuter agencies and freight railroads alike to force changes in dispatching responsibility established by contractual relationships. Most recently, in the *CSX/Pan Am* proceeding, the Board rejected a request by the Boston-area commuter agencies (MBTA and MassDOT) for a condition requiring CSX to cede responsibility for dispatching lines owned by MassDOT and used by CSXT.[366] As here, however, there was no evidence demonstrating that "CSX's or B&E's ability to dispatch will be less efficient than the dispatching that occurs today"[367] as a result of that transaction. Likewise, the CP/KCS Transaction will not alter CP's dispatching of Metra's MD-W or MD-N Lines.

The Board reached a similar conclusion in the *UP/SP Houston/Gulf Coast Oversight Proceeding*, where a coalition of commenters sought to have dispatching of UP-owned lines in the Houston area shifted from UP to PTRA (a neutral Houston switching railroad).[368] The Board rejected that condition, observing that "[i]t is the nature of dispatching decision-making that some dispute and delay will occur when multiple trains are moving over track."[369] The Board concluded that a forced transfer of dispatching would be "exceedingly disproportionate" and "too unpredictable" in comparison to status quo operations that appeared to be successful.[370] The same reasons apply fully to this case as well.

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366 *See CSX/Pan Am*, Finance Docket No. 36472 (Decision No. 9) at 29.

367 *Id.* at 30.

368 *UP/SP Houston/Gulf Coast Oversight*, 3 S.T.B. at 1042.

369 *Id.* at 1050.

370 *Id.* at 1054.

d) Transferring Dispatching Control to Metra Would Create More Issues Than It Resolves

Contrary to Metra's assertions, CP dispatches Metra-shared lines well and Applicants have shown that the Transaction will not adversely impact Metra's operations. Walker R.V.S., at ¶¶ 5-24, 54-55.[371] There accordingly is no justification to even consider a transfer of dispatching control to Metra. To the contrary, transferring dispatching control to Metra would be counterproductive and create more issues than it resolves. *See* Walker R.V.S., at ¶¶ 70-82.

First, it is no coincidence that the Metra lines that see the most freight traffic are uniformly dispatched by the freight railroads operating over those lines: BNSF, UP, CN, and CP. Walker R.V.S., at ¶ 69. Metra's dispatchers, on the other hand, only have limited experience dispatching freight and passenger trains on Metra's Rock Island Line and portions of the Southwest Service Line, where freight traffic levels are very light.[372]

CP dispatchers, who are trained and experienced to operate around the clock and are familiar with the complexities associated with dispatching freight trains alongside passenger trains, by placing them with Metra dispatchers, who are primarily focused on the operation of passenger trains between the early morning hours and late evening hours, would create a host of potential issues. *See* Walker R.V.S., at Section II. Metra does not operate trains on the MD-W and MD-N Lines around the clock, but instead goes dark between the last train of the night at 12:05 am and the first train of the following morning at 4:52 am on weekdays. On weekends and

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371 *See also supra* at Section VI.A.

372 *See* Walker R.V.S., at ¶ 68; *see also* Metra's Objections and Responses to Applicants' First Set of Interrogatories, Requests for Production of Documents, and Requests for Admission ("Metra R&Os") (Exhibit 52), at 4 ("…Metra responds by stating that its dispatchers currently dispatch both passenger and freight trains on Metra's Rock Island Line and portions of the Southwest Service Line.").

holidays, this dark period is even longer.[373] If Metra controlled dispatching of the MD-W and MD-N Lines, it would need to set up a dedicated staff to dispatch only CP's freight trains during the night hours. This would likely be a skeleton staff that would not have experience dispatching CP's freight trains. Walker R.V.S., at ¶ 66. Mr. Godfrey admits Metra's dispatchers lack the experience looking at the broader CP network on a day-to-day basis that is necessary to make appropriate dispatching decisions.[374]

Second, transferring dispatching control to Metra would undermine the efficient coordination of freight and passenger operations on the lines shared by CP and Metra, because it would squander the broader geographical and temporal perspective that CP's despatchers are able to bring to bear on their minute-by-minute dispatching judgments. Transferring dispatching control to Metra would effectively bifurcate responsibility for dispatching CP's lines to and from Chicago into two insular and separately-accountable groups: CP's dispatchers beyond the limits of Metra ownership and Metra dispatchers within those limits. But whereas Metra's passenger operations adhere to those boundaries, freight operations do not.

With Metra dispatchers responsible east of Randall Road (on the MD-W line) and south of Rondout (on the MD-N line), coordination between CP and Metra would be inherently less efficient and more difficult than coordination between different sets of CP dispatchers who bring a broader network perspective to their decision-making. *See, e.g.*, Walker R.V.S., at ¶ 76 (illustrating how dividing dispatching between Metra and CP would curtail efficiency). Efficiently dispatching these lines requires awareness in real time of conditions on other part of

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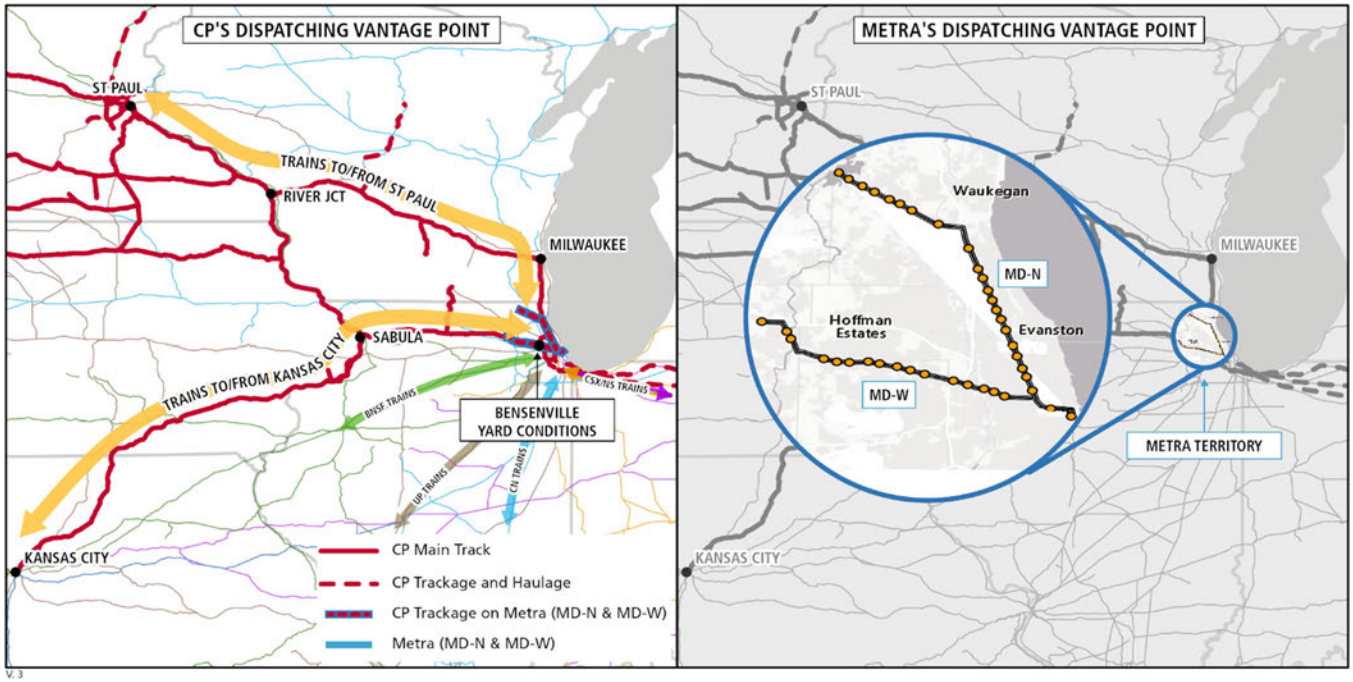
373 *See* Metra R&Os (attached as Exhibit 52) at 8 ("Metra operates dozens of passenger trains on MD-W and MD-N. None of Metra's inbound trains operate scheduled service for over seven hours between 9:45 p.m. and 4:52 a.m. during the week, and none of its outbound trains operate scheduled service for over six hours between 12:05 a.m. and 6:21 a.m. during the week."); Walker R.V.S., at ¶ 65.

374 Godfrey Dep. Tr. at 83:25-84:21; 122:2-23.

the network well beyond Metra's operational boundaries including not only CPs own lines as far away as Kansas City and St. Paul, MN, and the inner workings of CP's important Bensenville Yard, but also lines controlled by UP, IHB, BRC and others. *See* Walker R.V.S., at ¶ 72. CP dispatchers have the experience, knowledge, and situational-awareness necessary to coordinate with the rest of the CP network and to juggle these moving pieces. Metra dispatchers almost certainly would not. Walker R.V.S., at ¶¶ 73-82.

Mr. Walker's Figure 13 illustrates how the different perspectives of CP and Metra's dispatchers would handicap efficient operation of the MD-W and MD-N lines. Metra's perspective would be focused on Metra's own lines and operations, and thereby sub-optimize the movement of all trains across the network. This would yield a greater potential to disruption to freight and passenger operations in the Chicago terminal, and beyond.

FIGURE 22[375]
DIFFERENT PERSPECTIVES OF CP AND METRA DISPATCHERS



375 Walker R.V.S., at ¶ 73.

In his Reply Verified Statement, Mr. Walker walks through three examples to illustrate how Metra control of dispatching likely would undermine the goal of both CP and Metra in the efficient co-existence of freight and passenger operations on the lines we share.[376] Each example clearly shows how the complexities of dispatching freight and passenger operations on the MD-W and MD-N Lines require intense coordination between Metra's passenger operations and CP's freight operations – both beyond Metra's lines and within CP's Bensenville Yard. That degree of awareness and coordination would not be possible were operational (*i.e.*, dispatching) responsibility bifurcated in the way Metra desires. Walker R.V.S., at ¶¶ 73-82.

2. Metra's Request to Alter the Compensation Terms of the CP-Metra Agreement Are Overreaching

Metra has tried unsuccessfully before to use the Board's review of a transaction to rewrite contract provisions between it and CP. As the Board has recognized, this is improper.[377] The Board held that using its conditioning power "to compel resolution of potential differences between CP and Metra with respect to . . . compensation matters" is inappropriate and that "given the intimate details involved in . . . capital expenditures, and compensation, commercial negotiation seems to be the better avenue for resolving such issues."[378] Ignoring this precedent, Metra requests several "[f]inancial" conditions to the Transaction, including conditions requiring CP to pay for the full cost of capital projects on the MD-W and MD-N Lines "if increases in its traffic volume, weight, and frequency, as well as the length of trains, is the reason that the capital project is pursued;" a requirement to "compensate Metra for maintenance … by changing CP's

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376 *Id.* ¶¶ 75-80.

377 *See CP/DM&E* (Decision No. 11) at 15.

378 *Id.*

maintenance contribution from a flat fee based on train counts and gross ton miles;" and "a change in CP's rental terms from a flat fee to a dollar per car mile."[379] Metra also requests that the Board require CP to "compensate Metra for avoidable delay/interference events" and pay Metra "performance penalties" as well as penalties for non-compliance with any conditions imposed by the Board.[380] In other words, Metra seeks more compensation for the impact of potential increases in freight traffic on these lines than its contract with CP provides.[381]

There is no reason for the Board to depart from its precedent denying Metra's similar attempts to use merger proceedings to alter pre-existing contractual relations and thereby squeeze additional compensation out of CP.[382] As explained above, this Transaction will not adversely impact Metra's operations. The additional gross ton miles that Applicants project are modest, especially given that the nature of increased traffic from the Transaction is heavily intermodal. To the extent Metra is complaining that CP's flat fee should go up as train counts rise, that is not what the contract provides and in any event there will be no increase on the MD-N line and, as already explained, during the 1980s and 1990s, as many if not more trains than the traffic they will see post-Transaction operated on the MD-W line. Gameiro R.V.S. at ¶ 27. In fact, freight trains used to account for a higher share of traffic on the MD-W Line than CP's freight trains

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379 METR-7 at 78.

380 *Id.*

381 Metra's suggestion that it should be excused from contractual terms it no longer likes because it did not negotiate the agreements that pre-dated its acquisition of Milwaukee Road's commuter assets is incorrect. As Mr. Gameiro explains in his Reply Verified Statement, Metra understood that it was acquiring those assets subject to the 1985 Trackage Agreement. *See* Gameiro R.V.S. at ¶¶ 12-14. And Metra itself renegotiated the compensation terms governing CP's uses of Metra-owned line in 2003. *Id.* at ¶ 15.

382 *See CP/DM&E* (Decision No. 11) at 15.

will account for post-Transaction because the number of Metra passenger trains have increased significantly as well.

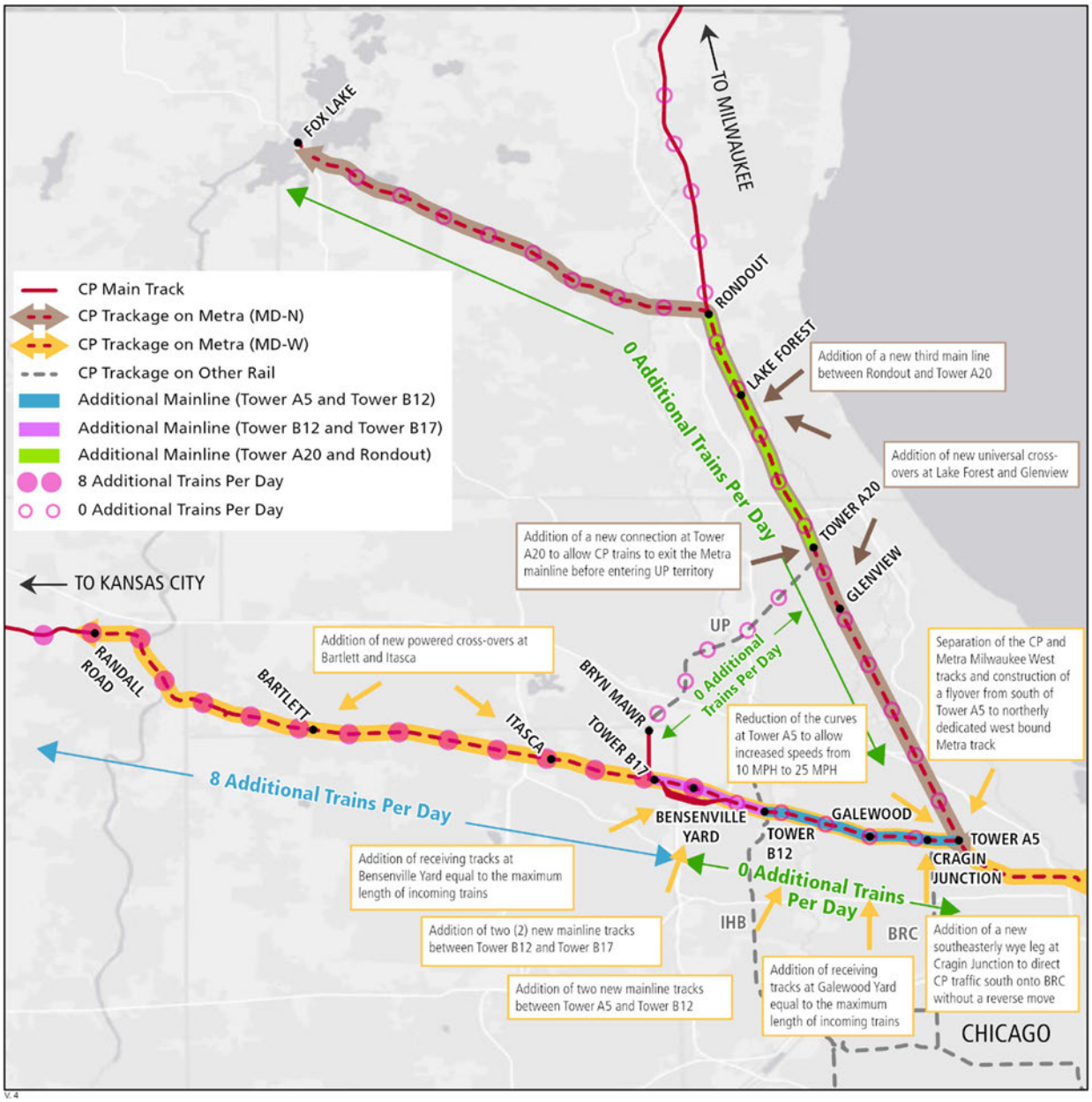
Metra's other request that the Board require CP to indemnify Metra for additional charges imposed by Amtrak for delays caused by CP dispatching is without merit and unrelated to the Transaction.[383] Of the lines CP and Metra share, Amtrak trains only operate on the MD-N Line. The Transaction will have no impact on CP's operations there, nor will it increase the number beyond Amtrak's already pre-existing plans.

3. Demands for Hundreds of Millions in New Infrastructure Are Either Wildly Overreaching or Already in Progress

Metra requests that Applicants be required to make 11 separate capital improvements to the MD-W and MD-N Lines, as detailed in Figure 23 below. As Mr. Elphick explains, these projects would come at the prohibitive cost of over $1 billion. *See* Elphick, App. A.

383 METR-7 at 79.

FIGURE 23
METRA PROPOSED INFRASTRUCTURE



Nine out of the 11 would improve portions of Metra's network untouched by Transaction-related train count changes, namely on Metra's MD-N line, on its MD-W line from Tower A-5 to Tower B-12 (east of Bensenville yard), or at Tower A-5 on the MD-W line. Elphick R.V.S., at ¶ 59. None of these projects are needed to mitigate Transaction impact.

As further explained by Mr. Elphick, at least four of Metra's requested conditions are physically feasible. *See* Elphick R.V.S. It is not possible to add a new wye leg at Cragin Junction to direct CP traffic south onto BRC without a reverse move because there are a number of warehouses and other buildings and businesses in the way. Nor is it possible to construct a new third mainline track from Rondout to Tower A-20 because this would require adding 12 miles of new track, which could not be added without rebuilding four Metra stations and four grade separations. And adding a new dedicated double track alongside Metra's existing double track is not only unnecessary – especially east of Bensenville where CREATE Project work has already invested in making this segment triple – but also simply impossible east of Tower B-17 because of the Illinois Tollway, UP trackage, and O'Hare Airport. *Id.*

Some of Metra's handful of remaining requests involve locations where Applicants are already planning infrastructure expansion. Specifically, Metra's request that CP be required to construct receiving tracks equal to the length of incoming trains or equal to the maximum length possible at Bensenville Yard[384] is already being addressed through Applicants' planned reconfiguration of Bensenville Yard. Elphick R.V.S., at ¶ 63.

4. Metra's Request For a Binding Standard and Process For Schedule Changes and New Trains Improperly Seeks to Improve Its Contractual Rights

Metra's request for a condition imposing a process and substantive standard for proposed changes or additions to Metra's passenger schedules is both inappropriate and unnecessary. First, as shown above, Metra's concerns in this area are entirely derivative of its own pre-Transaction dissatisfaction with CP's response to two proposals in 2019 that involved the MD-N

[384] METR-7 at 70.

Line, where the Transaction will have no effect. As to the MD-W line, where CPKC does anticipate a handful of new freight trains, there will be no impact on Metra's ability to add trains during its peak windows without the need for CPKC consent. Nor will there be any change in CP's contractual obligation to consider in good faith any scheduling changes or additions Metra might propose outside those peak windows, and to not withhold consent unreasonably. The requested condition would also be thus at odds with longstanding agreements governing CP and Metra's relationships for adding new trains or changing schedules. As explained above, the contracts set capacity-allocation rules based on two windows—peak periods and non-peak periods. Gameiro R.V.S., at ¶ 21.

Second, and just as important, Metra's proposed condition is also unnecessary because Applicants are committing to engage with Metra in a collaborative assessments of proposed operational changes during the off-peak periods when Metra requires CP consent to adjust its schedules. Creel R.V.S. at ¶ 16. Against this backdrop, a condition would be unnecessary even if it were supported by Transaction-related harm.

Third, Metra's related request that CPKC be required to adopt Metra's RTC modeling or cooperate in refining RTC modeling for Metra's lines in order to objectively gauge capacity and assess the impact of future proposals is similarly unnecessary and would be inappropriate to impose as a condition. As shown above, CP has already performed extensive work correcting the errors in RTC modeling. If during the collaborative process of addressing potential future schedule changes CPKC and Metra were to conclude that it would be productive to revisit that RTC modeling work, or develop new RTC simulations, to address the issues at hand, CPKC would be supportive. But RTC modeling is expensive and burdensome and likely would not be

necessary in every case, such that a condition giving Metra the right to demand such modeling in all circumstances would be inappropriate.

5. Metra's Requested Oversight Conditions Are Inappropriate and Unnecessary

Finally, Metra proposes two unnecessary oversight conditions. First, Metra asks that the Board "[i]mpose a 10-year STB oversight condition of CP dispatching practices . . . , and require that CP and Metra agree to binding workable dispatching standards that do not interfere with Metra's service and that prioritize Metra's peak period service."[385] Second, Metra asks that the Board "[i]mpose a 10-year STB oversight condition of any other conditions imposed with respect to Metra's service."[386]

Applicants have assented to a five-year period of formal Board oversight, which is at the outer limit of what has been required in any major merger case. That period will be ample to ensure appropriate scrutiny of the (non-existent) impacts of Transaction-related changes on Metra. Again, the Transaction will not adversely affect Metra's commuter service, and conditions to address issues unrelated to the Transaction are inappropriate. *See supra* Part VII.B. Metra and CP already have an operating agreement governing issues like supposed "interference" by CP with Metra trains, and the Board oversight process would not be a suitable forum for revising the parties' contract rights or litigating noncompliance with that agreement. *See supra* Part VII.B, D.2.

Further, such drastic relief would be an unnecessary waste of Board resources. Metra has all the information it needs about CP's operations on Metra's lines to raise any contractual issues

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385 METR-7 at 3.

386 *Id.*

with the appropriate court. But more importantly, Applicants commit to close collaboration with Metra about evolving train service on their lines as Applicants implement the Transaction, and to work with Metra to mitigate material impacts of the Transaction on Metra's passenger service in the unlikely event any occur. *See infra* Part VII.E.; Creel R.V.S. at ¶ 16.

VIII. OTHER DEMANDS BY CLASS 1 RAILROADS FOR PROTECTION AND OTHER RELIEF SHOULD BE REJECTED

A. The Board Should Reject CN's Proposed "Inconsistent" Purchase of CPKC's Springfield/East St. Louis Line

The Responsive Application filed by Canadian National ("CN") seeking an order requiring the divestiture of KCS's lines between Kansas City and Springfield, IL and East St. Louis, IL (the "Springfield/St. Louis Line"),[387] is yet another attempt by CN to disrupt and delay this Transaction and undermine CPKC's future competition against CN. After failing to generate sufficient revenue to justify continued operation, CN's predecessor sold off the Springfield/St. Louis Line years ago when it was near death.[388] KCS later acquired the line as part of the

[387] CN defines the Springfield/St. Louis Line as consisting of the following KCS lines: (1) 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); (2) 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); (3) The Jacksonville Branch from MP 226.7 at Murrayville, IL to MP 216.3 at Jacksonville, IL; (4) 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. CN-14 at 6.

[388] Illinois Central Gulf (ICG) sold the line to Chicago, Missouri & Western (CM&W), which went bankrupt within about a year. Gateway Western Railway Company (GWWR) was formed to acquire, and did acquire, from the CM&W bankruptcy trustee at the end of 1989 the line from Godfrey to Roodhouse, IL and from Cockrell, IL to Kansas City, MO, and a 50% ownership interest in a pair of largely parallel lines between Godfrey and East St. Louis. GWWR subsequently formed a subsidiary, Gateway Eastern Railway Company (GWER) that acquired from Conrail an approximately 13-mile segment of the parallel tracks that CM&W had not owned.

Gateway Western Railroad and invested heavily in it over the years, making it an integral and important part of the KCS system.[389]

In 2022, CN tried and failed to buy all the assets of KCS. Seeking another chance to acquire KCS assets, and motivated to undermine the intensified competition that CPKC will bring, CN is now pursuing this portion of KCS's system. When it withdrew its own Notice of Intent to acquire all of KCS (following KCS's decision to accept CP's bid and the Board's decision rejecting CN's proposed use of a voting trust), CN indicated that it would be an active participant in this proceeding. CN now seeks a Board order forcing KCS to sell a substantial part of its network to CN notwithstanding that it failed to persuade KCS's board of directors to enter into a transaction with CN.

CN's gambit should be rejected outright for at least five reasons:

- It is a transparent effort to delay, disrupt, or dismember the procompetitive CP/KCS Transaction;
- It is unsupported by any predicate harm to competition arising from the CP/KS Transaction;
- It would significantly harm the public interest by blocking the public benefits of the CPKCS Transaction and even depriving existing KCS shippers of single-line routes from which they have benefitted for years;
- It is unnecessary to achieve the posited "competitive enhancements" that CN suggests are its motivation for the relief it seeks; and

[389] KCS acquired control of GWWR in 1997, and GWWR was merged into KCSR in 2001, with GWER being a subsidiary of KCSR. Naatz R.V.S at ¶ 92.

- It is procedurally improper, in that divestitures are strongly-disfavored extraordinary remedies, and a divestiture specifically to CN would not be the only – or even a desirable – way of remedying the harm CN alleges *even if* CN's claimed harm (which is non-existent in fact) were accepted.

We address each of these issues in the sections that follow.

1. CN's Gambit Is Yet Another Round in CN's Effort to Disrupt or Delay the CP/KCS Transaction

CN has long sought to ensure that any transaction involving KCS would be to CN's benefit, and simultaneously to prevent its rival CP from becoming a stronger competitor. Documents produced in discovery in this case reveal that {{ }}[390] {{ }} KCS announced its agreement to be acquired by CP, CN's first step was to try to persuade the Board to impose the more-onerous 2001 merger rules to CP's proposal.[391] The Board rejected that position in Decision No. 4.

CN's next step was to put forward its own bid to acquire KCS out from under CP. Almost four months later, after the Board rejected a voting trust proposed by CN, KCS announced that its Board of Directors had unanimously determined that its acquisition by CP was a superior proposal to the proposal made by CN, and CN abandoned its effort.[392] CN's internal

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390 {{ }}

391 Canadian National Railway Company's Objection to 49 C.F.R. 1180.0(b) Waiver (CN-1) (filed Apr. 1, 2021) at 2-3.

392 "Kansas City Southern Terminates Canadian National Railway Merger Agreement and Is Entering Into Merger Agreement with Canadian Pacific Railway," Kansas City Southern (Sept. 12, 2021), https://investors.kcsouthern.com/news-releases/2021/09-15-2021-134522975.

documents obtained in discovery show that one of CN's motivations for seeking to acquire KCS was {{ }}. A key presentation addressing {{ }}[393] In the same vein, CN's {{ }}[394]

At that point, CN announced that it intended to remain an "active participant" in this proceeding,[395] and it doubled down on its efforts to delay or disrupt the completion of the CP/KCS Transaction. CN's strategy was plainly motivated by a judgement that even if it cannot own KCS and thereby keep KCS out of the hands of its arch-rival, it can at least delay and impose costs on CP's completion of the transaction.

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393 CN0000187, {{ }} (emphasis added). The same presentation noted that {{ }}

394 CN0000049-HC, { }} (Vol. 3, Exhibit 54).. Similarly, {{ }} (Vol. 3, Exhibit 55).

395 *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* ("*CN/KCS*"), FD 36514, CN Letter to the Honorable Cynthia T. Brown (CN-28), (filed Sept. 16, 2021) (Vol. 3, Exhibit 56) at 2 ("CN will participate actively in [the CP-KCS] proceeding…").

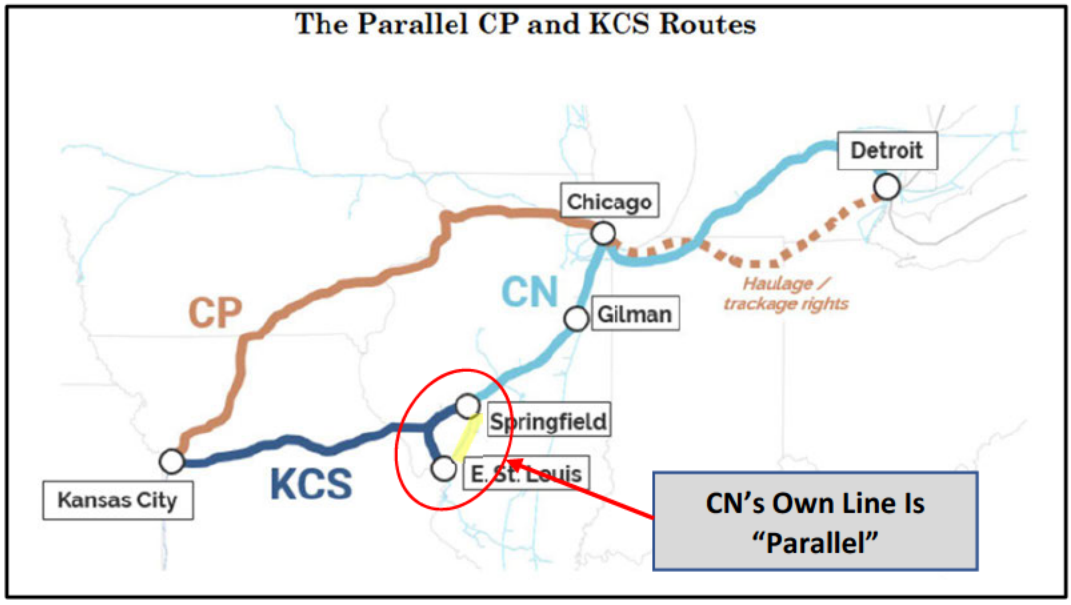
CN's Responsive Application is the pinnacle of this strategy, seeking an order from the Board compelling KCS to sell part of its network to CN notwithstanding the failure of CN's proposed bid to acquire all of KCS. If successful, this gambit would achieve two things for CN: it would deprive CPKC and the public of important public benefits, and diminish CPKC's ability to compete more effectively against CN, and it would give CN a windfall untethered to any Transaction-related harm. When CN evaluated its options in March 2021 in light of the CP/KCS announcement, one of the options it considered {{[redacted]}}[396] CN's goals here are not aligned with the public interest.

2. There Is No Competitive Harm to Address

The sole predicate offered by CN for its proposed relief is the thesis – based entirely on a simplistic map – that KCS's Springfield/St. Louis Line is "parallel" to CP's Kansas City-Chicago Line. This map is the centerpiece of CN's Responsive Application, and we reproduce it below.

[396] CN0000187-HC, {{[redacted]}}.

FIGURE 24[397]
CN'S "PARALLEL ROUTES" MAP



One take-away from this map is that, were CN correct that mere "parallelism" sufficed to warrant the extraordinary remedy of divestiture, CN's own proposal would be disqualified. As we have highlighted in yellow on CN's map, CN is proposing to acquire a KCS line (between Springfield and East St. Louis) that is *parallel to CN's own lines between those two endpoints*.

A set of route diagrams prepared by CN for its "Connected Continent" website makes this parallelism unmistakable, as shown in Figure 25 below.[398]

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397 CN-14 at 10.

398 Other CN internal documents {{ }} (Vol. 3, Exh. 57). The CN and KCS Springfield-St. Louis routes fit this description precisely. {{ }} CN0000137, {{ }}

FIGURE 25[399]
CN AND KCS'S PARALLELISM EXTENDS TO THE SPRINGFIELD-EAST ST. LOUIS SEGMENT

Mere parallelism is not sufficient predicate for divestiture (or any other) relief. Under the Board's precedents, the Board must first find that the Transaction would cause some substantial competitive harm that the proposed relief would narrowly remedy.[400] CN does not even try to make a serious showing of any such harm. The sum total of its argument is that:

- Shippers *at some points in time* over the past 100 years "have moved freight" between Kansas City and Chicago over the Springfield Line,[401] and
- Referring to *CN's own proposal to acquire KCS*, that "[p]rior 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."[402]

CN's factual assertions are the furthest cry from a demonstration of any competitive issue warranting a remedy. CN's own candid confidential communications with shippers give away the ghost: writing to one major customer in December 2021, CN explains: {{

399 Excerpt from CN0000147-HC, at 2 (Vol. 3, Exhibit 59).

400 *See* UP/SP, 1 S.T.B. at 433-34 (refusing to "impose conditions that will restructure the competitive balance among railroads with unpredictable effects, which is what divestiture to KCS or Conrail would result in here," when "divestiture would be greatly inferior to the remedy we have chosen.").

401 CN-14 at 10-11.

402 *Id.* at 11.

[redacted]}}[403]

Aware that the facts (which we discuss further below) conclusively disprove any contention that the KCS-CN route via Springfield plays a meaningful competitive role in the transportation marketplace, CN shifts gears and argues that there would be what CN calls a "significant competitive concern" "[e]ven if there were *no traffic being moved* between Kansas City and Chicago today over the Springfield Line." CN-18 at 12 (emphasis added). Why is this? Because, CN contends, "KCS previously touted the potential for this line to be upgraded to create a Kansas City Speedway." CN-18 at 12. The sole source of that "potential," however, was *CN's own proposal* to acquire KCS. CN's argument about competition thus boils down to a desire to bootstrap its own failed effort to buy KCS into support for a renewed effort to buy part of KCS. The Board should not condone this.

The incontrovertible facts show that the supposed "KCS-Springfield-CN" route plays no role at all – much less a meaningful one – in the transportation marketplace. As KCS's CEO and Chief Marketing Officers explain, the history of KCS-CN interline traffic via the interchange at Springfield shows that there is no realistic prospect of this route becoming the robust competitive option that CN describes for traffic moving between Kansas City and Chicago and beyond. The Line is a key part of the KCS network, servicing traffic to/from on-line shippers and the East St. Louis gateway, but is not part of a "speedway" in competition with the four other single-line routes between Kansas City and Chicago. Naatz R.V.S. at ¶¶ 92-94.

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[403] CN0000185-HC, {{[redacted]}} (emphasis added) (Vol. 3, Exhibit 60).

First and foremost, traffic data shows that the route is not a material competitive option. Messrs. Brown and Zebrowski examine traffic data in the carload waybill sample and CN's and KCS's 100% traffic tapes, which demonstrate that there has been essentially zero interchange between KCS and CN at Springfield in recent years, and even less traffic via that route in lanes that include the Kansas City-Chicago corridor. The principal corridors in which – according to CN's hypothesis – the Springfield route could conceivably be an option are shown in Figure 26 below. [404] The shares of traffic moved by various routes are represented in different colors, with traffic using the CP-Springfield-Kansas City route shown in red. As can be seen by the almost complete absence of red, that route is not a meaningful, competitive option chosen by any shippers. Brown/Zebrowski R.V.S. at ¶ 93:

[404] The major corridors include Kansas City-Chicago, Mexico/Border Crossing-Chicago, Kansas City-Detroit, Mexico/Border Crossing-Detroit, Kansas City-Toronto, Mexico/Border Crossing-Toronto. Brown/Zebrowski R.V.S. at Figure 12.

FIGURE 26[405]
2015-2019 WAYBILL DATA SHOWS DE MINIMIS CP-KCS PARTICIPATION VIA SPRINGFIELD IN KANSAS CITY-CHICAGO LANES

{{

Further, as Mr. Naatz explains, even these de minimis traffic figures overstate the role of the Springfield route. Much of the traffic waybilled as moving via Springfield is in fact physically interchanged between KCS and CN at East St. Louis. Naatz R.V.S. at 96. And that traffic is not using the KCS-CN route for overhead movement between Kansas City and Chicago; this is primarily local traffic moving to and from on-line KCS and CN shippers.

This is not to say that KCS's Springfield/St. Louis line is moribund, it is not. It is just that it primarily services local traffic and overhead traffic to/from the East St. Louis gateway, *not* traffic moving in the Kansas City-Chicago corridor via Springfield. This is shown in Figure 27 below. Brown/Zebrowski R.V.S. at ¶ 89:

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405 Brown/Zebrowski R.V.S. at ¶ 93 Figure 12.

FIGURE 27[406]
2019 TRAFFIC ON KCS SPRINGFIELD LINE BY MOVEMENT CATEGORY

Movement Category	2019 Units	Percent
Traffic Locally Served on Springfield Line	{{ [redacted] }}	{{ [redacted] }}
Overhead Traffic to/from East St. Louis	{{ [redacted] }}	{{ [redacted] }}
CN-KCS Interchange Traffic Waybilled via Springfield	{{ [redacted] }}	{{ [redacted] }}
Total 2019 KCS Springfield Line Traffic	{{ [redacted] }}	**100.0%**

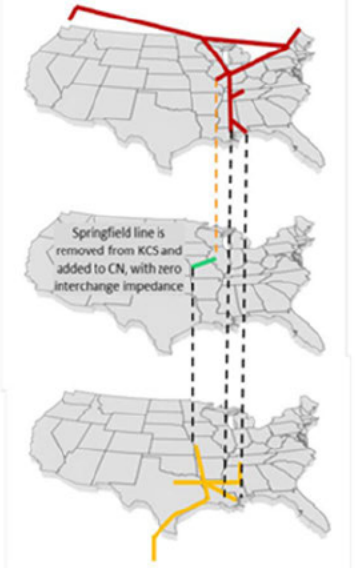
CN's own traffic analyst – Mr. Hunt – confirms the trivial importance of the Springfield interchange between KCS and CN. His analysis assigned "impedances" to various routes reflecting the degree to which a given route is viewed by shippers as a viable option. To illustrate how impedances work, he gave as an example his assessment of the CN-KCS route via Springfield. His conclusion was that this route should be assigned the highest possible impedance – with interchange being treated as the equivalent of 650 extra route miles, meaning that it was a highly disfavored route. This assessment was driven by the fact that "CN and KCS have low interchange volumes at Springfield/Cockrell," amounting to "< 2 loaded units/day." Mr. Hunt's graphic is reproduced below as Figure 28.

406 *See* Brown/Zebrowski R.V.S. at ¶ 89.

FIGURE 28[407]
CN'S ANALYSIS CONFIRMS IRRELEVANCE OF CN-KCS SPRINGFIELD ROUTE

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

The corridor CN gives the most attention to in its Comments is the route between Kansas City and Toronto, where CN claims that the Springfield Line would provide a competitive alternative to CP. Based on traffic data, however, it is clear that the Springfield Line plays *literally zero* competitive role in the lane today. CN participated in meaningful volumes of traffic in the Kansas City-Toronto corridor in 2019, *but with BNSF and UP and never with KCS,* as shown in Table 3 below.

407 CN-14, Hunt V.S. at 38.

TABLE 3[408]

KANSAS CITY AND TORONTO IN 2019 {{

}}

CN's assertions about the potential future competitive role of the Springfield line also ignore the significant disincentives KCS and CN have as separate companies in making investments in this route because there is already strong, single-line competition in the corridor. BNSF, UP, NS, and CP already have single-line routes between Kanas City and Chicago, and NS has a straight-arrow single-line route between Kansas City and Detroit, where it provides premium intermodal service today. Any effort to pull the KCS-CN route out of the weeds would have to confront this competitive environment.

A look at the ICC's decision in the *UP/MKT* case, decided under the pre-2001 merger rules, is instructive.[409] In that case, parties sought trackage rights—a far less intrusive and destructive condition than divestiture—based on an alleged reduction in competition in several corridors. The ICC rejected the relief, despite the "parallelism" of the merging parties routes. It "examine[d] carefully the competitive options that would remain in these corridors after a UP-MKT merger" and concluded that "rail competition will remain effective in the post-merger environment. Post-merger, four railroads (ATSF, BN, KCS, and SP) will continue to compete with the merged carrier. The particular array of competitors varies to a certain extent, corridor to

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408 Brown/Zebrowski R.V.S. Figure 12; Workpaper Historical Springfield Line Analysis.xlsx.

409 UP-MKT, Finance Docket 30800, 4 I.C.C. 2d 409, 437 (1998).

corridor (this is considered more fully in our examination of the several corridors), but one basic fact remains constant: in each of the corridors in which MKT operates today, there will be effective post-merger rail competition. The four competitive railroads—ATSF, BN, KCS, and SP—will be able to compete, as they do now, for commodity flows moving in the corridors in which they operate." *Id.* at 436, 449.

Even if the Board were to imagine a competitively vibrant KCS-CN Springfield route which does not currently exist (and likely will never exist), it would still have to conclude that there is no competitive harm in the Kansas City to Chicago corridor where four effective competitors are already present. The same was true in *UP-MKT* for the Dallas to Chicago corridor:

> "In the Dallas—Chicago corridor, four railroads—BN, ATSF, KCS, and SP—will compete with the merged carrier in either single-line service (BN and ATSF) or joint-line service (KCS and SP). The mileages involved, at least for three of these competitors, are similar: 988 miles for UP/MKT; 1,028 miles for BN; 1,088 miles for ATSF; and 1,026 miles for the SP-CMW interline. Here, again, although the merged carrier will have the shortest route, the mileage discrepancies are insignificant in relation to the overall mileage and would not impede BN, ATSF, and SP in their Dallas—Chicago operations."

Id. at 451. Just as the Board found adequate competition in *UP-MKT*, here it should find that the competition provided by UP, BNSF, and NS between Kansas City and Chicago is more than adequate.

Second, a compelling reflection of the unimportance of KCS-Springfield-CN interline routes is the fact that just three years ago CN sought to *shut down interchange at Springfield entirely*. In July 2019, Rhonda Anderson, CN's Director-Service Design, wrote to Michael Wilkinson, KCS's Superintendent-Service Design, asking KCS to close the Springfield gateway. CN's reasoning: "[v]olumes are small and from what I can see, neither of us is doing a bang up

job of pulling. From our perspective, East St Louis looks like the best alternative gateway."[410] This is not the proposal of a railroad that regards the Springfield gateway as offering a viable competitive alternative for Chicago-Kansas City traffic flows.

Third, other CN documents consistently confirm CN's view that KCS's Kansas City-Springfield line is not part of a competitively viable through route *to anywhere*. For example:

- In the presentation CN prepared for delivery to ratings agencies in connection with its own proposal to acquire KCS in 2021 it CN described KCS's Springfield Line as a {{[redacted]}}[411]
- The slide deck that CN has used to persuade third parties to support the divestiture to CN of KCS's Springfield Line touts (as reproduced in Figure 29 below) that the proposed Springfield route {{[redacted]}}[412]

410 Email from Rhonda Anderson (CN) to Michael Wilkinson (KCS), "Cockrell interchange to be closed asap" (July 2, 2019), Naatz R.V.S. Exhibit 4.

411 *See* CN0000167-HC, {{[redacted]}} (Vol. 3, Exhibit 61).

412 *See, e.g.*, CN0001142-HC (Vol. 3, Exhibit 62) at 2.

FIGURE 29
KCS-SPRINGFIELD-CHICAGO ROUTE {{ }} {{

}}

- As recently as this year, CN's internal documents relating to its proposed divestiture emphasis that there is no viable route between CN's network and Kansas City today, with one email acknowledging that {{ }}[413]
- Other CN documents recount CN's aim to {{ }} confirming that there is no viable interline route providing that access today.[414]

[413] CN0000783-HC, {{ }} (Vol. 3, Exhibit 63).

[414] CN0000708-HC, { }} (Vol. Exhibit 64).

In 1998, KCS and CN entered into a 15-year marketing alliance the goal of which was to pursue interline traffic opportunities via the gateways where CN and KCS connected, including Jackson, MS and Springfield, IL.[415] When it was announced, CN and KCS explained that "[t]he marketing alliance will offer shippers pro-competitive connections to new rail routes for their products and the ability to tap new markets through a coordinated rail network. Services will link points in Canada with the major U.S. Midwest markets of Detroit, Chicago, Kansas City and St. Louis, along with the key Southern markets of Memphis, Tenn., Dallas and Houston."[416] To implement the Alliance, KCS sought to improve its physical interchange with CN at Springfield by seeking in the *CN/IC* case terminal trackage rights over a UP line in Springfield, but that effort was denied by the Board.[417]

Despite the CN/IC/KCS Alliance's ambitious goals, it failed to generate meaningful business opportunities over the Springfield gateway. CN made no serious efforts to develop interline traffic via Springfield. Naatz R.V.S. at ¶ 99. CN tended to prefer its long-haul via the Jackson gateway, and there was no meaningful customer demand for routings via Springfield. Naatz R.V.S. at 98. The end of the marketing alliance in 2013 did not change CN's lack of interest in developing traffic over the Springfield/St. Louis Line, and in 2019, CN tried to close the interchange permanently. Naatz R.V.S. at ¶ 98-99.

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415 *CN/IC*,4 S.T.B. at 135 n.50 ("The Alliance will use two main gateways for interchange: Springfield, IL, for traffic moving between CN territory or northern IC territory, on the one hand, and, on the other, Midwest KCS territory.").

416 "Canadian Natl, Illinois Central, KCSR In Shipping Central," Bloomberg (Apr. 16, 1998), https://www.bloomberg.com/press-releases/1998-04-16/canadian-natl-illinois-central-kcsr-in-shipping-alliance.

417 *CN/IC*, 4 S.T.B. at 175 ("Applicants have not shown, nor do they even allege, anticompetitive conduct by UP or any other carrier at the Springfield interchange. Accordingly, the application in Sub-No.1 for terminal trackage rights will be denied.").

CN's internal documents confirm the competitive futility of this interline route, in part as a result of CN's own lack of interest. For example:

- An internal CN email from 2013 provides some insight into why CN had so little interest in traffic via Springfield: {{ }}[418]
- In March 2013, CN analyzed "potential traffic via Springfield" and concluded that "we are [] left with very little traffic that could switch over CN via Springfield…[v]ery little compared to the potential that originates on CN with the other carriers, although [*sic*] was quite small from CN as well."[419]
- In the same document, CN's former CEO Ruest noted, {{ }}[420]

418 *See* CN0000415-HC (Vol. 3, Exhibit 65).

419 CN0001255-HC (Vol. 3, Exhibit 66)

420 *Id.*

- {{[redacted]}}[421]

In light of its own decision to {{[redacted]}} it is a stunning display of hubris for CN to come before this Board to argue that allowing CP to acquire this line as part of the integrated KCS network would cause "significant competitive harm."

Fourth, CN confirmed again that KCS's Springfield line plays no viable competitive role in the pre-Transaction Kansas City-Chicago transportation marketplace when it represented to the Board (and investors) that the transformation of the line would be one of the important public benefits of CN's own proposed acquisition of KCS. CN consistently embraced the application of the 2001 merger rules to its KCS acquisition[422], and as CN knows, one of the precepts of those rules is that a benefit is not cognizable if it can be achieved without a full-blown merger.[423] By claiming that the CN/KCS transaction would create a "new" competitive option between Kansas City and Chicago, CN was thus acknowledging that no such option would emerge absent the CN acquisition.

CN made this claim consistently and repeatedly to investors and the Board, For example:

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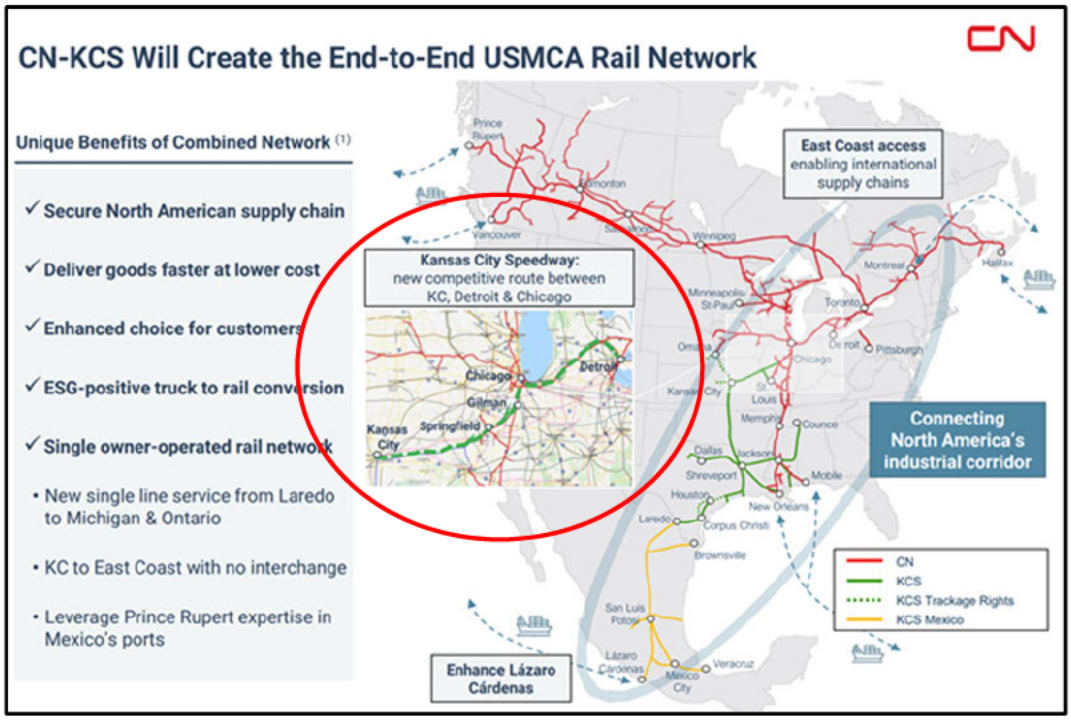
421 CN0000187-HC, {{[redacted]}}.

422 Finance Docket No. 36514, CN-14 KCS-1 at 2.

423 "In addition, when evaluating the public interest, the Board will consider whether the benefits claimed by applicants could be realized by means other than the proposed consolidation." 49 C.F.R. § 1180.1(C).

- In April 2021, CN touted to investors that the "Kansas City Speedway" – CN's moniker for its plan to invest in the KCS-CN route from Kansas City to Chicago via Springfield – would provide "new" competition between Kansas City, Detroit and Chicago, as shown in the slide replicated below.[424]

FIGURE 30[425]
CN INVESTOR PRESENTATION TOUTING SPRINGFIELD AS "NEW" COMPETITIVE OPTION



- In CN's application for a voting trust in Finance Docket No. 36514, CN touted the same alleged benefit. CN's then-CEO Jean-Jacques Ruest characterized the "Kansas City Speedway" as the "*new competitive route* between KC, Detroit & Chicago," and presented a map showing KCS's Kansas City-Springfield Line as

424 CN investor deck (April 2021), "CN-KCS Will Create the End-to-End USMCA Rail Network" at Slide 9 (Vol. 3, Exh. 67).

425 *Id.* (Vol. 3, Exhibit 67).

an important part of that "new competitive route."[426] Ruest went on to explain that CN would need to make "infrastructure investments in key areas across the new network, including Illinois, Missouri, Michigan, Louisiana, and Texas, [including] investments in the route between Kansas City, Missouri and Springfield, Illinois," which CN asserted were themselves merger benefits that would be unattainable otherwise.[427]

- In July 2021, CN reiterated that CN's planned "'Kansas City Speedway' … between Kansas City, Springfield, Gilman, Chicago, and Detroit" would be "*a new high-quality line* that will create faster, safer and more economical rail option. [sic]." It would "be the connection between the KCS and CN networks to offer *a new competitive alternative* to compete with trucks for traffic moving from Mexico, through the U.S. heartland to Canada."[428]
- In the same pleading, CN witness William Rennicke explained how the Kansas City Speedway would be a merger benefit: "The Meridian Speedway operated by KCS and NS provides an efficient route for traffic moving between points in Mexico and Texas served by KCS and points in the Southeast served by NS via a connection at Meridian, MS. CN and KCS have committed, as part of the proposed merger, to creating a similar 'Kansas City Speedway' linking points in Kansas, Missouri, and Illinois served by KCS with points in Indiana, Ohio, and

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426 *CN/KCS*, Finance Docket No. 36514, CN-18 KCS-1, Verified Statement of Jean-Jacques Ruest ("Ruest V.S.") at 4.

427 Ruest V.S. (Vol. 3, Exhibit 68) at 4.

428 *CN/KCS,* Finance Docket No. 36514, CN-26 KCS-9, Reply Verified Statement of Jean-Jacques Ruest ("Ruest R.V.S.") at 3 (filed July 6, 2021) (emphasis added).

> Pennsylvania served by NS and CSX. This *new, more efficient route* will enhance competition in this corridor and provide better options for shippers."[429]

CN's representations to the Board about the benefits of a CN/KCS transaction – made against the backdrop of their recognition that benefits are not cognizable if achievable absent the proposed transaction – make overwhelmingly clear that CN understood that the so-called Springfield Speedway (or more prosaically the joint-line KCS-CN route via Springfield) would not be a competitively viable option without the CN/KCS transaction.

3. Any Divestiture of the Springfield/East St. Louis Line Would Harm the Public Interest, Not Enhance It

Absent any predicate harm to competition, CN is left with the argument that its proposed use of KCS's Springfield Line would provide more benefits than allowing the line to stay part of the CPKC network. In substance, CN's argument is that its proposal would "enhance competition."[430] CN is wrong on two important counts: the law and the facts.

CN is wrong on the law.

The Board's rules and precedents provide the Board with no authority to attach to proposed transactions whatever bells and whistles some party may contend would "enhance" the public interest. A transaction as proposed either is or is not in the public interest. If it would cause some public interest harms, the Board may impose conditions aimed narrowly as overcoming those harms. But it has no authority to use a proposed transaction as a free pass to

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429 *Id.*; Reply Verified Statement of William Rennicke ("Rennicke R.V.S.") at 49 (emphasis added).

430 CN's Responsive Application is unabashed about this: "CN is committed to making substantial investments" to "upgrade" the Springfield/St. Louis line "into a faster, more efficient route with enhanced intermodal and automotive traffic capacity." CN-14 at 3-4.

engage in whatever "industry restructuring" might be viewed as desirable. The Board's pre-2001 precedents quite definitively rule this out:

> "[W]e will not impose public interest conditions on a railroad consolidation *unless* we find that the consolidation may produce effects harmful to the public interest (such as a significant reduction of competition in an affected market), that the conditions to be imposed will ameliorate or eliminate the harmful effects, that the conditions will be operationally feasible, and that the conditions will produce public benefits (through reduction or elimination of the possible harm) outweighing any reduction to the public benefits produced by the merger. We are also disinclined to impose conditions that would *broadly restructure the competitive balance among railroads with unpredictable effects*."[431]

> "A condition must address an effect of the transaction, and will generally not be imposed 'to ameliorate longstanding problems which were not created by the merger.' Finally, a condition should also be tailored to remedy adverse effects of a transaction, and should not be designed simply to put its proponent in a better position than it occupied before the consolidation."[432]

CN plainly desires a do-over of the Board's decision that the pre-2001 rules apply to this proceeding so that it can try to foist upon Applicants CN's proposed "enhancement" to competition. But even under the 2001 rules, applicants' obligation to demonstrate that their "proposed transaction would enhance competition" applies only where "necessary to offset negative effects of the transaction, such as competitive harm."[433] No matter what rules are applicable here, absent such harm, there is no basis for CN's proposed divestiture.

Recently, the Board was asked by DOJ to consider a divestiture of Pan Am Southern lines in connection with CSX's acquisition of Pan Am Railways. The Board declined in words

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431 *Union Pacific Corp., et al. – Control – Missouri-Kansas-Texas R.R. Co., et al.*, 4 I.C.C.2d 409, 452-458 (1988) ("*UP/MKT*") (emphasis added).

432 *CN/IC*, 4 S.T.B. at 141-42.

433 *Major Rail Consolidation Procedures,* EP 582 Final Rules; *see also* Press Release dated June 11, 2001, Surface Transportation Board Issues New Rules Governing Major Railroad Mergers & Consolidations at 1, available at https://www.stb.gov/wp-content/uploads/archived-press-release/htmls/72AC2E784AE07A3485256A680050E630.html.

equally applicable here: "In rejecting divestiture here, the Board also notes that it closely scrutinizes conditions that could alter the competitive balance otherwise to be realized from a merger, including whether those conditions could have unpredictable effects. *UP/SP*, 1 S.T.B. at 418; *see also UP/MP/WP*, 366 I.C.C. at 564 (finding the agency "should not use our conditioning powers to make consolidation proceedings vehicles for rail system restructuring.") *CSX/Pan Am* at 21 n.46.

CN is wrong on the facts.

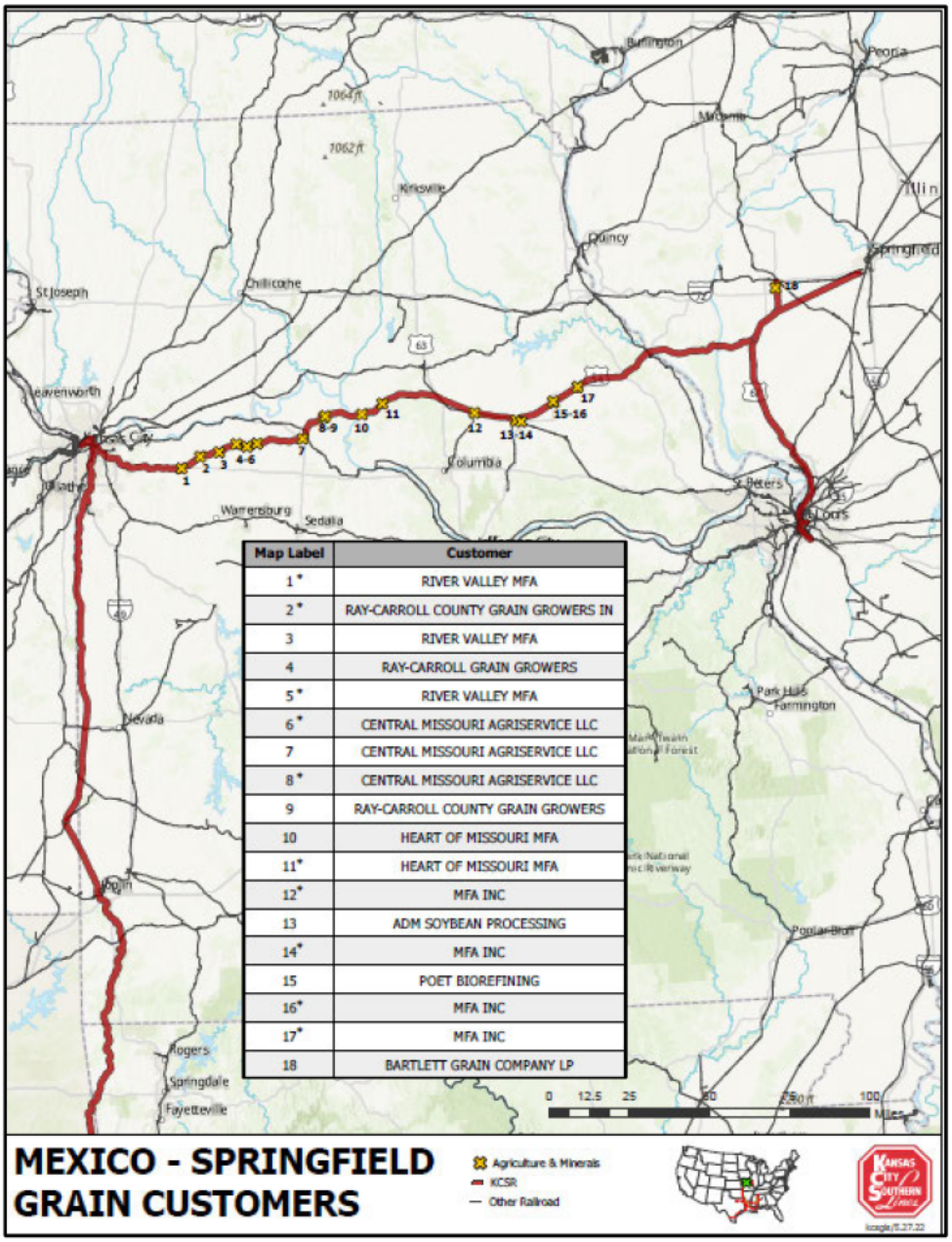
The facts demonstrate that CN's proposed divestiture would not be an "enhancement." It is a Transaction-killer – a "dagger aimed into the vital organs of the CP/KCS Transaction," as Mr. Brooks describes it. Brooks R.V.S. at 48. A forced divestiture of the Kansas City-Springfield/St. Louis Line would significantly undermine the public benefits of the proposed Transaction and also cause serious harm to existing KCS customers on the line.

A Divestiture Would Sever Existing KCS Customers From the Rest of KCS's Network. First, a divestiture of the line, even with the haulage rights that CN proposes to grant back to CPKC, would cause immediate *harm to existing KCS shippers*, which today benefit from KCS's single-line network access to markets in Mexico and elsewhere that would be severed were CN to take over the Springfield/St. Louis Line.

Numerous on-line KCS customers ship to and from parts of the KCS network that would be severed from the Springfield/St. Louis line were the Board to order a divestiture of that line. Focusing just on shippers with significant traffic to and from Mexico via KCS's existing single-line routes reveals the extensive web of existing shipping patterns that would be disrupted by CN's proposed relief. As Mr. Naatz and many of these customers explain in detail, they would

be harmed by a divestiture, deprived of the single line service that they have benefitted from and that undergirded significant investments they have made in their facilities.

FIGURE 31[434]
KCS GRAIN CUSTOMERS ON SPRINGFIELD/ST. LOUIS LINE
SHIPPING SINGLE-LINE TO MEXICO TODAY



Map Label	Customer
1*	RIVER VALLEY MFA
2*	RAY-CARROLL COUNTY GRAIN GROWERS IN
3	RIVER VALLEY MFA
4	RAY-CARROLL GRAIN GROWERS
5*	RIVER VALLEY MFA
6*	CENTRAL MISSOURI AGRISERVICE LLC
7	CENTRAL MISSOURI AGRISERVICE LLC
8*	CENTRAL MISSOURI AGRISERVICE LLC
9	RAY-CARROLL COUNTY GRAIN GROWERS
10	HEART OF MISSOURI MFA
11*	HEART OF MISSOURI MFA
12*	MFA INC
13	ADM SOYBEAN PROCESSING
14*	MFA INC
15	POET BIOREFINING
16*	MFA INC
17*	MFA INC
18	BARTLETT GRAIN COMPANY LP

434 Naatz R.V.S. at Exhibit 5.

Neither single-line access to the CN system nor the haulage rights CN proposes to grant back to CPKC would avoid this harm. CN does not reach the Mexican markets to which many of KCS's on-line customers ship, and haulage rights for CPKC would not be a substitute for the single-line services to which these shippers have been accustomed. Naatz R.V.S. at ¶ 107.

The haulage rights that CN proposes to grant would convert what are efficient single-line movements on KCS's network today into more complicated and less efficient multi-carrier shipments. CN would control all aspects of the on-the-ground service to on-line shippers, with KCS merely receiving cars and delivering cars at Kansas City via a new operational interchange there. KCS would not be able to customize service to these shippers, and would be entirely dependent on CN's performance. But with only a short haul to Kansas City, and an interest in undermining CPKC's competitiveness, CN would not be highly motivated to perform well.

KCS's experience with CN-provided haulage supports these concerns. KCS is currently dependent on haulage rights over CN to reach the port of Mobile, AL (via CN haulage between Jackson, MS and Hattiesburg MS). CN chooses, for its own operational convenience, to route Mobile-bound cars received from KCS at Jackson north to Memphis, and then back south to Mobile, taking these cars many hundreds of miles out of route and diminishing the competitiveness of KCS's service. Elphick/Orr R.V.S. at ¶ 103.

KCS's customers on this line speak very clearly to these concerns. KCS's largest single customer – Bartlett Grain – filed comments expressly opposing CN's proposed relief on this ground, explaining that "we do not want our Mexican investments stranded by a CN takeover of the KCS line that serves our Jacksonville facility, which would deprive us of the single-line service on KCS that we benefit from today."[435] Bartlett made major investments at its facility in

[435] Knief V.S. at 2.

Jacksonville, MO based on its expectation that KCS would be able to provide single-line access to Mexico, and it "does not want to jeopardize its substantial investments in delivering grain to the Mexican market."[436] Haulage rights with operations controlled by CN and a newly-created handoff to CPKC at Kansas City will not protect Bartlett's interest. Naatz R.V.S. at ¶ 107.

Other customers are similarly vocal. Central Missouri Agri-Service ("CMA"), with facilities at Marshall, Missouri expresses acute concern about a divestiture, which would undermine the "economics of our single-line hauls with KCS to serve customers to the south and west."[437] CMA explains that it is "concerned that haulage is not a real solution to allow us to continue to efficiently move our grain to our customers. Added interchanges between CN to CPKC would not be as efficient as our single-line haul on the KCS system."[438] Ray Carroll, another significant KCS grain customer, likewise explains that "[t]he markets that we serve are Mexico and other points reached via KCS's line via Kansas City to the west of our facility…If the line were divested to CN, we believe that the options for our grain would be constrained," and "Haulage, which would require CN to take our railcars towards Kansas City for interchange to CPKC, is a much less efficient process than what we have today with single-line service from KCS."[439] Another major grain shipper, Richardson International, recognizes that CN has asked the Board to "grant[] haulage operating rights back to KCS" but nonetheless "oppose[s] Canadian National's request that the Board divest the Springfield/St. Louis Line to it because it

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436 *Id.*

437 Central Missouri Agri-Service R.V.S. (Vol II, Ex. T) at 1.

438 *Id.*

439 Ray Carroll R.V.S. (Vol. II, Ex. Y) at 2.

would eliminate single-line service – both on routes that currently exist and routes that will become available as a result of the CP-KCS Transaction – that are important to us."[440]

CPKC Will Not Downgrade the Springfield-St. Louis Line. Second, contrary to CN's unfounded allegations,[441] the Springfield/St. Louis Line will be an integral and vital part of the CPKC network. It will not be "downgraded." Instead, it will help drive meaningful Transaction-related synergies and will continue to support organic traffic growth by on-line customers. It will also provide CPKC with access to the important East St. Louis gateways, where CPKC will be looking to grow traffic with CSX and other connections. And it will provide CPKS with access to important shortline connections capable of expanding customer routing options and extending the reach of the CPKC network.

Messrs. Naatz and Brooks describe in detail the role this line will play as part of the CPKC network. Naatz R.V.S. at ¶ 94; Brooks R.V.S. at ¶¶ 49-54. A few highlights:

- As set forth in the Amended Operating Plan, Applicants anticipate that the line will see *increased traffic* as part of the CPKC system, some from organic growth independent of the Transaction, and some from the new traffic opportunities unlocked by the Transaction. Table 4 below shows the percentage increases in traffic for these line segments. These are relatively light-density segments and they will remain so, but Applicants anticipate continued traffic growth on them. They will not be downgraded.

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440 Richardson International R.V.S. (Vol. II, Ex. Z at 1).

441 *See* CN-14 at 2-3 (alleging that "the CP-KCS Application makes clear that CP will favor its existing Chicago-Kansas City route over potential routings involving the parallel Springfield Line").

TABLE 4[442]
TRANSACTION-RELATED CHANGES ON KANSAS CITY-SPRINGFIELD/ST. LOUIS SEGMENTS

Segment No.	Segment	Base mGTs	Organic Growth Increase in mGTs	Transaction-Related Increase in mGTs	Overall Percentage Increase in mGTs
Kansas City-St. Louis Segments					
119	Kansas City-Slater, MO	6.17	1.26	0.80	33.2%
120	Slater, MO-Mexico, MO	4.28	0.85	0.56	32.9%
121	Mexico, MO-Roodhouse, MO	4.02	0.79	0.52	32.6%
126	Roodhouse, MO-Godfrey, IL	1.05	0.21	0.18	37.1%
127	Godfrey, IL-East St. Louis, IL	6.84	1.37	1.18	37.3%
Roodhouse-Springfield Segments					
122	Roodhouse, MO-Murrayville, IL	1.00	0.20	0.00	20.0%
123	Murrayville, IL-Springfield, IL	0.17	0.04	0.00	23.5%
125	Murrayville, IL-Jacksonville, IL	1.33	0.25	0.00	18.8%

- KCS serves dozens of important customers on the Springfield/St. Louis Line that generate significant volumes of traffic, and CPKC will be eager to retain that traffic and improve the service these shippers receive. Naatz R.V.S. at ¶ 92.
- The strategic importance of the Springfield/St. Louis line as part of the CPKC network transcends its current traffic levels. The line will provide CPKC with its only access to the St. Louis gateway and important markets in the St. Louis area. Applicants see significant potential to attract new traffic to the CPKC network by linking the CP network to St. Louis, as Mr. Brooks explains. Brooks R.V.S. at ¶ 51.
- In addition, this line will provide strategic opportunities for CPKC, working with smaller railroads, to develop new routing options for shippers, such as a potential

442 Amended Operating Plan, Appendix T, pages 7, 11.

route lining CP's network with Springfield via a "shortcut" route over IAIS and other shortlines via Davenport and Peoria. Brooks R.V.S. at ¶ 57.

A Divestiture Would Undermine Transaction Benefits. Third, as a direct corollary to the importance of this line in the future CPKC system, CN's proposed divestiture would significantly undermine the benefits generated by the proposed CP/KCS Transaction. Those impacts will have at least three key dimensions: (a) precluding CPKC from offering new single-line services connecting CP territory with both shippers on the line and the St. Louis gateway; (b) depriving CPKC of full access to KCS's important International Freight Gateway terminal near Kansas City, in which CN would acquire a half interest; and (c) targeting other CPKC traffic moving between Kansas City and Chicago, potentially depriving CPKC of the density needed to support the efficient new services that the Transaction would otherwise unlock.

A divestiture would prevent CPKC from realizing the Transaction's promise to expand shippers' access to new markets :

- It would extinguish the Transaction's new single-line routes between points on the CP network in the Upper Midwest and Canada and shippers on KCS's Springfield's Louis line. As Mr. Brooks explains, CPKC will deliver better, single-line service to shippers on the Springfield/St. Louis line, generating traffic growth across numerous commodities including grains and fertilizers.
- Numerous shippers served by this line have expressed interest and excitement in these new services, with many planning to make significant investments in order to take advantage of improved access to market that the Transaction will generate. KCS customer Ray Carroll, for example, anticipates "making new investments in this corridor in the foreseeable future" because the Transaction "will open new

business opportunities for us."[443] Other important customers in the St. Louis area see similar benefits. Richardson International, a grain shipper with facilities across Canada and the Upper Midwest, "recently acquired St. Louis-based Italgrani USA, Inc." and "[t]he transaction assets included a milling facility in St. Louis."[444] Richardson "has reviewed the CP-KCS Transaction and believes it opens new markets to our company."[445]

CN's proposed operations would not be restricted to trackage it would acquire from Applicants. CN would operate its trains into and out of CPKC's Joint Agency in Kansas City, over CPKC's mainline between Kansas City and the IFG intermodal facility 24 miles south of Kansas City, where other shippers express worries about increased train traffic interfering with their service. As Messrs. Elphick and Orr explain, these operations would unnecessarily complicate rail operations in and around the Kansas City terminal, degrading the efficiency of CPKC's operations and potentially coming at a cost to the service levels that CPKC can provide to its shippers. Elphick/Orr R.V.S. at ¶¶ 104-105.

CN's demand to acquire 50% ownership of KCS's International Freight Gateway terminal near Kansas City would also interfere with the procompetitive potential of the CP/KCS Transaction.[446]

- CN half-ownership of the IFG facility would inevitably interfere with CPKC's ability to use that facility to support the new intermodal services that CPKC will

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443 Ray Carroll R.V.S. (Vol. II, Ex. Y at 1).

444 Richardson R.V.S. (Vol II, Ex. Z at 1).

445 *Id.*

446 CN-14 at 5.

be introducing in North-South lanes via Kansas City. Elphick/Orr R.V.S. at ¶¶ 104-105.

- In addition, the IFG facility offers extraordinary opportunities for CPKC to support the development of innovative new services, such as cold storage warehousing, seasonal transloading of fertilizer, and many other potential market-expanding opportunities, all of which would be jeopardized by CN's half-ownership of this facility. Brooks R.V.S. at ¶ 61.

CN's proposed divestiture of the Springfield/St. Louis Line also would threaten CPKC's planned investments in its core North-South corridor. Although CN's rhetoric implies that it would be targeting truck traffic that would stay on the highways unless CN is allowed to buy this line, in actuality CN's ambitions are far broader. CN witness Mr. Hunt makes clear that CN is not just thinking about taking trucks off the highway. More than a third of the new traffic CN claims it will attract will be diverted from other railroads. CN-14, Mr. Hunt V.S. at Exhibit 3-3. The testimony of CN marketing personnel supporting the Responsive Application express exuberance about going after whatever traffic might be available, and the traffic diversion estimates of CN's witnesses are by no means limited to truck diversions. Were CN to acquire the Springfield/St. Louis Line, it would be targeting traffic opportunities between Kansas City and Chicago that CPKC will also be seeking to serve via CP's routes north of Kansas City – essentially turning KCS's own past investments in the Springfield Line against CPKC's future success. The result could well undermine CPKC's incentives and ability to build density north of Kansas City and make the investments necessary to drive the service improvements that Applicants contemplate. At the very least, a transfer of this line to CN would amount to an industry restructuring with unpredictable consequences for the future of the rail network.

4. If CN Is Right About the "Truck Diversion" Potential of Joint Investments in the Springfield Line, a Divestiture Would Not Be Necessary to Achieve It

As noted, the centerpiece of CN's case for its proposed divestiture is a claimed "enhancement" to competition that will take thousands of trucks off the highway and generate hundreds of millions of railroad revenues that would otherwise lie dormant despite there *already* being four single-line routes to Chicago from Kansas City: BNSF's, UP's, NS's, and CPKC's. A CN "Springfield Speedway" would be the fifth entry into this lane.

Applicants do not regard CN's assessment of the future potential of the so-called Springfield Speedway as credible. As Messrs. Brown and Zebrowski explain, the traffic diversion analysis of CN's witnesses is riddled with errors (Brown/Zebrowski R.V.S. at ¶ 66), and as explained by Mr. Mutén, CN's estimate of truck diversions is particularly flawed. Reply Verified Statement of Bengt Mutén ("Mutén R.V.S.") at ¶¶ 8-9, 16. The lack of credibility inherent in CN's forecasts is strongly undergirded by the futile experience of KCS in seeking to develop interline traffic opportunities with CN over Springfield, as we discuss above and Mr. Naatz explains. *See* Naatz R.V.S. at ¶¶ 98-99.

There are extensive and credible reasons for the Board to doubt CN's estimates of potential truck traffic diversions, as Mr. Mutén summarizes:

- Many of CN's posited truck diversions are movements from St. Louis to points north and east, but CN already serves St. Louis (illustrating again the competitive reductions associated with a CN purchase), and CN would improve its route from St. Louis to Chicago by only about 50 miles, a trivial distance in railroad intermodal terms. Mutén R.V.S. at ¶ 17 .

- Many of CN's posited truck diversions make no sense form the standpoint of shipper economics, as they would require extensive truck drays in the opposite direction from the route of travel, sacrificing reliability for marginal-at-best improvements in cost. Mutén R.V.S. at ¶¶ 14-15.

The unreliability of CN's truck-to-rail diversion estimates is corroborated by its sloppy and unreliable analysis of the potential for other rail traffic to divert to the new CN routes via Springfield. Messrs. Brown and Zebrowski examine CN's analysis of rail traffic shifts and conclude that they are badly flawed and unreliable. For example:

- Fully a third of Mr. Hunt's rail-to-rail diversions involve intermodal traffic already moving between Kansas City and Chicago or between Kansas City and Detroit via single-line rail routes. A majority of those diversions involved shifts of traffic away from NS traffic between Kansas City and Detroit to the new CN route. As Messrs. Brown and Zebrowski explain these NS movements involve NS's specialized Triple Crown RoadRailer service between Kansas City, and it is simply not plausible that CN would have any chance of attracting nearly as much of this traffic as Mr. Hunt forecasts. Brown/Zebrowski R.V.S. at ¶ 71.
- Another significant portion of Mr. Hunt's forecasted new traffic involved CN achieving a marginal improvement in its route between Chicago and St. Louis by using the parallel KC route between Springfield and East St. Louis. As Brown and Zebrowski explain, however, Hunt {[redacted]} *See* Brown/Zebrowski R.V.S. at ¶ 73. The fact that CN

already has a single-line route to St. Louis blows these estimates out of the water. *See id.*

- For this and other traffic that Mr. Hunt forecasts for diversion to CN's supposed new route, he used random and unreliable diversion percentages. As explained by Messrs. Brown and Zebrowski, Mr. Hunt "estimates on models that use coefficients that are statistically insignificant and produce diversion percentages that contradict real-world expectations (for example, by diverting more traffic as relative route length becomes longer)." Brown/Zebrowski R.V.S. at ¶ 66.

Messrs. Brown and Zebrowski catalog many other errors in CN's estimates of the traffic likely to be prompted by a divestiture to CN of the KCS's Springfield/St. Louis line.

At bottom, however, the Board need not adjudicate the precise amount of traffic that a divestiture of the Springfield/St. Louis line would shift to CN. First, there is simply no basis for any relief involving that line, no matter how much potential it would have under CN ownership, because as part of the future CPKC network there will be no reduction in competition whatsoever, and no public interest harms to remedy. Instead, the Springfield/St. Louis Line will be an integral part of the procompetitive benefits generated by the CP/KCS Transaction. As such whether or not CN's acquisition of the Springfield/St. Louis line would enable new services that take trucks of the highways is irrelevant, as the line is not for sale.

Second, if it turns out that CN is right about the truck diversion potential of the Springfield/St. Louis Line, CPKC will have strong incentives to cooperate with CN to achieve that potential. As Mr. Creel explains, and as he has told CN's CEO directly, he would not hesitate to set aside any bitterness between CP and CN to {[redacted]

[redacted]} A divestiture of the Springfield/St. Louis Line is not remotely necessary to unlock this potential, nor is it in any meaningful respects a real one. Creel R.V.S. at 23. That cooperation could take many forms, including a joint venture, haulage rights for certain traffic, or trackage rights for a discrete train pair. All of those solutions can be pursued by private parties without the need for a divestiture.

5. Were the Board to Conclude that a Remedy is Required, It Should Not Order a Sale of the Line, Much Less Specify CN as the Buyer

Even were the Board to conclude that there was sufficient potential for significant competitive harm to warrant a remedy – though such a conclusion would be devoid of evidentiary support – the proper procedural path *would not* be to order a divestiture, much less one specifying CN as the only permissible purchaser.

Under Board precedent, divestiture is an extreme and disfavored remedy, especially when alternatives short of divestiture would suffice (such as limited purpose overhead trackage where some subset of traffic would lose an existing competitive option). Divestiture is fundamentally disruptive, and is "to be imposed only under extreme conditions, when no other less intrusive remedy would suffice."[447] In its decision in *UP/SP*, the Board gave detailed consideration to whether a divestiture of SP liner should be ordered and, rejected that remedy despite the need in that case for some remedy to prevent the elimination of head-to-head competition between UP and SP.[448] The Board concluded that, "while divestiture of certain of applicants' lines may have a surface appeal, it also entails its own very substantial problems[.]"[449] A divestiture would (1) "add an additional railroad, reducing volume efficiencies, despite the fact that the merger as

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447 *UP/SP*, 1 S.T.B. at 434.

448 *Id.* at 433-435.

449 *Id.* at 433.

conditioned will not result in competitive harm," (2) "transfer large volumes of business at exclusively served points to the acquirer, without any competitive justification," and also (3)"take the railroad system backwards by destroying, rather than creating, single-line service. Many shippers who would have received new single-line service, or who would see existing single line service eliminated, would no longer share in the merger's benefits."[450] The same is true here. Furthermore, here, even if there was any justifications at all for giving railroad rights between Kansas City and Springfield – which there is not – such a remedy would not necessitate giving anyone rights between Roodhouse and St. Louis, much less severing any of these lines from the future CPKC system in a forced sale.

Finally, were the Board to conclude that divestiture was the only option – despite its adverse consequences for on-line shippers and the CP/KCS Transaction – the proper path would not be to order a sale to CN specifically, much less on the specific terms CN has put forward. Board precedent instead would entitle Applicants to take the initiative in finding a suitable acquirer – subject of course to the need for Board approval of any sale transaction (as required by the terms of the Voting Trust Agreement).[451] Indeed, there are reasons to think that CN would be a uniquely poor choice of acquirer, given that it already reaches St. Louis and would compete with CPKC for traffic between there and Canada and the Upper Midwest. A divestiture to CN would itself involve a combination of "parallel lines" in both a narrow sense (*i.e.*, CN's line between Springfield and St. Louis with KCS's "parallel" line between Springfield and St.

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450 *Id.* at 435.

451 *See RGI/Soo,* 4 I.C.C.2d 834, 837 (1988) *("*We said in our divestiture order in Finance Docket No. 30400, *Santa Fe Southern Pacific Corp. -Control-SPT Co*., 3 I.C.C.2d 926 (1987), (SPSF II) that we would not direct a sale to any particular buyer as long as a proposal is in the public interest and constitutes a valid divestiture"); *see also Santa Fe Southern Pacific Corp. – Control – Southern Pacific Transportation Co.*, 2 I.C.C. 709, 834-35, 852 (1986).

Louis) and a broader competitive sense (restricting CPKC's future head-to-head competition with CN for East St. Louis traffic).

B. NS's Requested Relief Is Based on a Misreading of the Operating Plan and Would Inappropriately Alter Pre-Existing Contractual Rights to NS's Commercial Advantage

NS's Amended Comments and Request for Conditions ("NS-12") and its accompanying Amended Responsive Application ("NS-13") describe a purported solution in search of a problem. NS's stated problem – speculative worries about the Transaction impacting service to NS intermodal traffic moving on the KCS line between Shreveport, Louisiana and Wylie, Texas, and at KCS's Wylie Intermodal Terminal near Dallas – is nonexistent, as NS's own internal documents {{[redacted]}} concede. And NS's proffered solution – re-writing the terms of the contractual arrangements entered into between NS and KCS when the Meridian Speedway joint venture was formed – is unwarranted and overreaching.[452] The Board should deny NS's requests.[453] [454]

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[452] Specifically, NS opportunistically asks the Board to "[g]rant NS contingent trackage rights for intermodal traffic, the rail movement of which originates or terminates at the Wylie Intermodal Terminal, over the Shreveport-Wylie Section, exercisable in the event that NS elects to purchase the Wylie Intermodal Terminal and CPKC fails to meet established service standards for haulage service for NS intermodal shippers." NS-12 at 8 (emphasis in original).

[453] One of NS's requests seeks conditions to keep Meridian and other gateways open on commercially reasonable terms. *See* NS-12 at 42-46. To the extent there is traffic today moving via interchange points between KCS and NS (or CP and NS) for which the Transaction would give CPKC a longer or single-line haul, Applicants' gateway conditions will apply and there is no need for further relief. In addition, as discussed below, NS has ample contractual protections with respect to traffic that uses the Meridian Speedway.

[454] Applicants note that, despite having served the vast majority of their discovery requests upon NS over three months ago between Feb. 28, 2022 and March 31, 2022, NS untimely produced over 15,000 pages of documents on July 5, 2022, just seven days before Applicants' response to all Comments and Responsive Applications was due. This left Applicants little to no time to review NS's production before the July 12, 2022 deadline and Applicants therefore reserve the right to supplement the record.

In short, NS seeks to use the Board to renegotiate a commercial arrangement to receive expanded rights for which it did not bargain or pay for when it entered into the Meridian Speedway deal with KCS. NS and KCS engaged in extensive negotiations and entered into voluminous, detailed documentation of their agreements regarding the Meridian Speedway and related segments (collectively, the "MSLLC Agreements"). *See* Simmons R.V.S. at ¶¶ 61, 69. NS's rights under those agreements include: a revenue split for certain traffic moving over the Meridian Speedway, trackage rights over certain segments, and haulage rights for other segments.[455] They also include the rights to certain, limited remedies in the event of service failures (as described in those agreements).[456] NS and its customers receive, and will continue to receive, the benefits of that bargain because they are unchanged by this Transaction. There is no harm to remedy: the Transaction does not change anything, much less in an anticompetitive way.

As we demonstrate in this section, (1) NS's fears of service decline due to projected traffic changes are unfounded; (2) granting NS's request would be operationally disruptive and counterproductive; and (3) NS's proposed relief would unjustifiably re-write in NS's favor the carefully-negotiated terms of the MSLLC Agreements, giving NS a windfall that it neither negotiated nor paid for when the parties forged their relationship. NS's opportunistic condition requests are particularly egregious given that NS knows full well that the Transaction will cause no cognizable harm. NS's internal documents {{[redacted]

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455 *See, e.g.*, Limited Liability Company Agreement of Meridian Speedway LLC (Simmons Exh. 13) § 3; NS Joint Use Agreement (Simmons Exh. 12) § 2(a)(ii); Dallas Intermodal Marketing Agreement (Simmons Exh. 10) § 5(a)(i).

456 *See, e.g.*, NS Joint Use Agreement (Simmons Exh. 12), Appendix B, §§ 2, 4; Western Haulage Agreement (Simmons Exh. 11) § 2(c); NS Joint Use Agreement (Simmons Exh. 12) §§ 2(a)(ii); *see also* Simmons R.V.S. at ¶ 69.

[redacted]}}[457] Other internal NS documents {{[redacted]}}[458]

1. CPKC Will Be Highly Motivated to Continue to Reap the Rewards of the Successful MSLLC Joint Venture

NS spends considerable time extolling the success of the Meridian Speedway joint venture in generating traffic growth and attracting rail traffic from the Nation's highways. As NS acknowledges, the MSLLC Agreements governing that joint venture were designed to be "pro-growth, pro-competitive, and allowed shippers to utilize a highly efficient route service" between the growing Southeastern and Southwestern regions of the United States.[459] And there

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[457] *See, e.g.*, HIGHLY CONFIDENTIAL NS00000001 (Vol. 3, Exh. 70) at -09 (noting that {{[redacted]}}), -10 (noting on a slide titled {{[redacted]}}), and -16 (noting that {{[redacted]}}).

[458] HIGHLY CONFIDENTIAL NS00000991 (Vol. 3, Exh. 71) at -996 ({{[redacted]}}) and at -1003 (noting under a section titled {{[redacted]}}). Other NS documents {{[redacted]}}. *See* HIGHLY CONFIDENTIAL NS00000018 (Vol. 3, Exh. 72) at -28 (noting that {{[redacted]}}); HIGHLY CONFIDENTIAL NS00000954 (Vol. 3, Exh. 73) (noting that {{[redacted]}}).

[459] NS-12 at 10; Growth is also inherent in those agreements as they anticipate capacity constraints and the future need for additional capacity. For example, Section 6(b) of the Kansas City Southern Ry. Co. – Meridian Speedway LLC – Joint Use Agreement (Simmons Exh. 16) provides: " . . .the Parties acknowledge that there may be capacity constraints from time to time for traffic covered under this agreement. Whenever capacity of the Subject Trackage is insufficient to handle the total traffic demands of KCSR and NSR, the following capacity allocation rules apply: . . ." Further, Subsection (iii) of that agreement contemplates that that growth could lead to the need for "additional incremental daily overhead train starts." Section 2(a) of The Dallas Terminal Marketing Agreement (Simmons Exh. 10) also provides: " . . . KCSR and NSR shall jointly work to market the movement of Dallas Intermodal Terminal

is no dispute that the joint venture has been successful: NS itself notes that investments to the Meridian Speedway "continue to support NS's ability to deliver the premium service intermodal customers demand and help achieve the public benefits supported by the Board."[460]

As the operator of the Meridian Speedway, KCS has delivered reliable, high-quality service that has supported this traffic growth. Ever since the Major Service Standard Failure provision of the NS Joint Use Agreement took effect, KCS has never even been close to triggering it. *See* Simmons R.V.S. at ¶ 58. And, of course, KCS shares directly in the financial rewards that flow from this success as 70% owner of the MSLLC joint venture and thus is highly incentivized to continue delivering such a high-quality service.[461] As NS notes, CP will "{{ }}" and as a result it too will have a strong incentive to support the continued success of the line from Wylie to Meridian.[462] When Applicants forecast Transaction-related increases in traffic on this route – albeit modest ones – on top of the organic growth that KCS forecasts, they reveal that supporting high-quality service on this route. Neither NS nor the Board has any reason to be concerned that CPKC will be a good steward of service on this route.

2. The Facts Contradict NS's Concerns About Service Impacts

The evidence in the record confirms NS's {{ }}[463]

Traffic on an interline basis with the intent that both Parties can receive greater benefits than handling the traffic over alternate routes. . ."

460 NS-12 at 7.

461 *See* Transaction Agreement (Vol. 3, Exh. 74) §§ 2.1(a) and 3.1(a).

462 *See* supra at n. 458.

463 *See* supra at n. 458, 459.

As a starting point, Applicants' anticipated Transaction-related operational changes on the Meridian Speedway are almost trivial. As set forth very clearly in the Amended Operating Plan, Applicants anticipate that the Transaction will result in very small percentage increases in traffic on the KCS segments between Shreveport and Meridian and *reductions* in the number of trains over the Meridian Speedway, all as reproduced in Table 5 below.[464]

TABLE 5[465]
TRANSACTION-RELATED CHANGES ON WYLIE-MERIDIAN SEGMENTS

Segment No.	Segment	Transaction-Related Train Count Increase	Transaction-Related Percentage Increase in mGTs
138	Wylie-Greenville	1.29	49.9%
139	Greenville-Shreveport	1.28	38.7%
162	Shreveport-Sibley	-1.43	14.4%
163	Sibley-Gibsland	-1.43	14.3%
164	Gibsland-Monroe	-1.43	14.0%
165	Monroe-Vicksburg	-1.43	12.4%
166	Vicksburg-Jackson	-1.43	9.8%
167	Jackson-Newton	-1.43	7.5%
168	Newton-Meridian	-1.43	15.8%

These changes will have no effect whatsoever on the service levels that CPKC will provide for NS intermodal traffic moving on this line. In an effort to concoct a basis for concern where there is none, NS focuses on three phantoms: the claim that CPKC will run too many additional trains on the Wylie-Shreveport segments; the speculation that such trains will be burdened by "[l]arge increases in bulk traffic"; and the observation that CPKC plans to operate

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464 Applicants' Operating Plan contemplates a reduction in the number of trains over the Meridian Speedway because of operating efficiencies and new train design achieved by Applicants' Optimized Plan. *See* Amended Operating Plan, Appendix H, at 2.

465 *See* Amended Operating Plan, Appendix A at 6-8 and Appendix T, at 10-11. For the second time in this proceeding, NS mischaracterizes Applicants' Operating Plan. NS Exhibit 7 (*see* NS-12 at 22 & n.67) purports to rely on the Amended Operating Plan, Exhibit T, but the figures in NS Exhibit 7 are nowhere to be found there. The precise reason behind NS's miscalculations is unclear, but it appears to involve NS ignoring the effect of organic growth. Regardless, Applicants reiterate that the appropriate way to measure merger-related growth in mGTs is by comparing the "2027 No Merger" and "2027 With Merger" columns in Appendix T; this information is included in the "Merger-Related Growth Percentage" column of Appendix T and reproduced here in Table 5.

certain trains with "mixed" blocks of both NS intermodal traffic and manifest traffic on them.[466] None of these points provides a valid basis for concern.

One extra train per day between Wylie and Shreveport. NS asserts that Applicants anticipate Transaction-related traffic increases averaging "53%" for the Wylie-Shreveport Section.[467] First of all, as explained in the Elphick/Orr R.V.S, NS is incorrect. Elphick/Orr R.V.S. at ¶ 114. Though NS says this figure is derived from Appendix T of Applicants' Amended Operating Plan, the figures that NS quotes in NS Exhibit 7 are nowhere to be found in Appendix T. The correct figure is 44.3%.[468]

In any event, these modest traffic increases will have no impact on the operation of NS intermodal traffic between Wylie (or Shreveport) and Meridian. As NS acknowledges, the Transaction-related traffic growth will not cause a significant increase in the number of trains on the line. NS states that there will be "approximately one net train *pair* per day on the line."[469] But this is double Applicants' actual forecast – of just *one* additional daily train operating over the Wylie-Shreveport Section. Elphick/Orr R.V.S. at ¶ 107. A single additional train will not adversely affect service levels. *Id.* Even with the organic growth in existing traffic volumes that KCS forecasts on this line, the number of additional trains will be *fewer than 1.5 per day*.[470] There is nothing for NS to worry about here.

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466 NS-12 at 23.

467 NS-12 at 22-23.

468 *See* Amended Operating Plan, Appendix T, at 11, Segments 138 and 139, "Merger Related Growth Percentage" column (showing 49.9% and 38.7% merger-related growth percentages, for an average of 44.3%).

469 NS-12 at 23 (emphasis added).

470 *See* Amended Operating Plan, Appendix T, at 10, Segments 138 and 139 (2027 With Merger compared to Base).

No transaction-related increase in bulk traffic. NS next objects that the Transaction will add bulk traffic, asserting that "[l]arge increases in bulk traffic can strain the current capacity of the Shreveport-Wylie Section and would have adverse impacts on the speed and reliability of intermodal traffic moving over the Meridian-Wylie Route."[471] But NS is incorrect. The Transaction will not increase the volume of bulk traffic on this segment. Elphick/Orr R.V.S. at ¶ 106. Any increase in bulk traffic will be from organic growth, which as NS concedes is not Transaction-related because it "would have occurred in the ordinary course of business absent the CP-KCS Transaction." *See* NS-12 at 22 n.67.

Mixed Trains. NS's expression of concern about the possibility that CPKC will operate certain trains between Wylie and Meridian with blocks of both intermodal and manifest traffic "to the detriment of current shippers" is disingenuous at best.[472] CPKC will apply this practice in order to *increase* train frequency and *improve* service, to the benefit of both NS and intermodal shippers.

Mixing intermodal and manifest traffic on the same train is a well-recognized way to improve railroad operations. Elphick/Orr R.V.S. at ¶ 108. In fact, NS uses the same approach under its recently announced NS ("TOP/SPG") operating plan, and it has previously explained the benefits of the practice, with manifest traffic having no difficulty moving at the higher speeds typical for intermodal trains.[473] *Id.* As explained the Elphick/Orr R.V.S., Applicants' Optimized

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471 NS-12 at 23.

472 NS-12 at 23; NS's lack of a genuine concern with Applicants' plan to operate mixed trains { [redacted] }

473 *See* "New Norfolk Southern Operating Plan to Blend Traffic and Build Longer Trains," Trains (Feb. 12, 2019), available at https://www.trains.com/trn/news-reviews/news-wire/12-new-norfolk-southern-operating-plan-to-blend-traffic-and-build-longer-trains/ (Vol. 3, Exh. 76).

Plan will improve service on the Meridian Speedway by increasing the day-of-week frequency of intermodal service while reducing the overall number of trains by operating intermodal and manifest traffic (in separate blocks) in the same trains. *See* Elphick R.V.S. at ¶¶ 109-112. This will reduce the number of trains operating between Wylie and Meridian, benefit shippers with more frequent service and significantly less dwell, allow for higher velocity, and improve overall transit times and services for the intermodal and manifest traffic moving over that route. *See id*. NS is consequently incorrect that Applicants' plan to utilize mixed trains will increase transit times.[474] Applicants' plan will do precisely the opposite. CP has used this approach efficiently and effectively for years and there is no reason to doubt CPKC will do so effectively for trains between Wylie/Shreveport and Meridian. Elphick/Orr R.V.S. at ¶ 108.

NS expresses a different concern about the length of these mixed trains, suggesting that they will exceed the length of sidings on the Wylie-Meridian route.[475] Again, NS is incorrect, and again its error stems from a basic misunderstanding of Applicants' planned operation. As Elphick and Orr explain, CPKC will not simply tack manifest traffic on the end of existing intermodal trains. Instead it will be increasing the day-of-week frequency of trains and spreading traffic across a greater number of trains (which NS's miscalculations ignored), meaning that there no issue with excessive train length. *See* Elphick/Orr R.V.S. at ¶¶ 108-112, 115.

3. The Wylie Intermodal Terminal Has Ample Capacity to Support Applicants' Projected Traffic Increases

NS expresses a separate concern about the impact of the Transaction on KCS's Wylie Intermodal Terminal, which supports NS intermodal traffic that KCS interchanges with NS at

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474 NS-12 at 24.

475 NS-12 at 24-25.

Meridian.[476] NS correctly notes that Applicants anticipate increased intermodal volumes at Wylie, as CPKC develops new services between Dallas and Chicago and Lazaro Cardenas and the U.S. Midwest (supporting expanded service to Dallas). In other words, Applicants plan to put the Wylie Intermodal Terminal to more competitive use. But NS is wrong when it asserts that Applicants' planned intermodal services "threaten[]to exceed capacity at the Wylie Intermodal Terminal."[477]

NS's assertion is premised on a faulty, overly-static assessment of the Wylie Intermodal Terminal's capacity. NS claims that "[t]he Wylie Intermodal Terminal has an annual capacity of 342,000 lifts," which is exceeded by the {{ }} lifts needed to accommodate NS intermodal traffic alongside planned CPKC traffic.[478] What NS ignores is the ease with which intermodal terminal capacity can be expanded in a variety of ways short of adding trackage. The throughput of an intermodal terminal does not depend solely on its physical footprint and track length, but on the interplay of a variety of assets and operating practices that contribute to the facility's productivity. To the extent traffic volumes call for more capacity there, CPKC will have ample ability to add it as necessary.

As explained by Messrs. Elphick and Orr, CPKC's options will include:[479]

- Increasing the number of working track cycles per day from 1.0 to 1.9, a change that would require no capital investment, only minor operating adjustments and increased switching resources. This step would enable the terminal to process

476 *See, e.g.*, NS-12 at 6.

477 *See* NS-12 at 25-27.

478 *See* NS-12 at 7, 26.

479 *See* Elphick/Orr R.V.S. at ¶ 116.

approximately 640,000 annual handlings. This operating adjustment, alone, is more than sufficient to accommodate the {{ }} lifts that NS cites.

- Completing track work – already in advanced planning stages – to add two new pad tracks at the south edge of the property, which would provide capacity for 320,000 additional handlings and, in addition the 640,000 additional handlings made available by increasing work track cycles as explained above, allow the terminal to process approximately 960,000 total handlings per year.
- Investing in additional cranes to increase the pace of container handling. Each additional crane would add capacity for approximately 90,000 annual handlings.
- Implementing planned paving projects, which have already been planned. CPKC could create 285 additional parking stalls (which could also be used for stacking of containers depending on the needs of the operation), supporting approximately 60,000 additional handlings. Another option, which involves creating 1,500 parking stalls in the Northeast corner of the yard, would enable 330,000 additional annual handlings.
- Shifting the destination terminal for intermodal containers moving from Mexico to Central Texas to KCS's lightly-utilized Kendleton Intermodal Facility.

In short, the Wylie Intermodal Terminal will have more than enough capacity to allow CPKC to respond flexibly and effectively to any reasonably foreseeable traffic growth.[480] NS's capacity concerns are unjustified.

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[480] On top of all the foregoing options, CPKC will also have the ability (assuming NS does not exercise its option to acquire the Wylie Intermodal Terminal) to greatly expand the physical footprint of the Wylie Intermodal Terminal – or build an entirely new facility in the event NS exercises its contractual option to purchase the Wylie Intermodal Terminal – by developing the 220 acres of land that KCS owns

4. NS's Proposed Contingent Trackage Rights Make No Sense as a "Remedy" for Potential Service Concerns

The contingent trackage rights that NS is seeking do not make sense as a remedy for the (non-existent) service concerns that NS raises, and would in fact exacerbate any service concerns that might trigger them.

As noted above, CPKC would continue KCS's practice of handling intermodal traffic moving between Dallas and the NS interchange at Meridian in dedicated intermodal service. *See* Elphick/Orr R.V.S. at ¶ 108-112. In the event of a "Major Service Standard Failure," converting these trains to trackage rights trains will do nothing except require that NS supply its own crews and locomotives at the Wylie Intermodal Terminal. *See* Elphick/Orr R.V.S. at ¶ 118-120. The identity of the locomotive engineer's employer will not "remedy" whatever service issues might have led to a conversion to trackage rights.

Also as noted above, CPKC will also handle some intermodal traffic between Dallas and Meridian in mixed trains, carrying a block of NS intermodal traffic along with other blocks of manifest traffic. Were NS to trigger its contingent trackage rights, doing so would disrupt this operation and add more trains to a line which – in NS's hypothetical – would already be suffering service issues. *See* Elphick/Orr R.V.S. at ¶¶ 118-120. Again, giving the (figurative) keys to the train to an NS engineer instead of a KCS engineer, while forcing CPKC to add an entirely new train for the non-NS traffic, would be counterproductive at best.

Even if the Transaction were to pose a threat to service levels for NS intermodal traffic between Wylie/Shreveport and Meridian (it does not), the NS conditions would not be the proper

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adjacent to the intermodal yard (outlined in yellow in Figure 21 of the Elphick/Orr R.V.S.). *See* Elphick/Orr R.V.S. at ¶ 117. (If NS does exercise the purchase option, NS would continue to be obligated to support CPKC intermodal services there, and CPKC could also augment its capacity by building its own facility on the adjacent land. *See* Elphick/Orr R.V.S. at ¶ 117).

remedy. Instead, NS's own submission makes clear that NS bargained for the appropriate degree of protection against such a contingency. Between Shreveport and Meridian, where NS invested in the Speedway, NS has the bargained-for protections in the MSLLC Agreements. As NS witness Michael R. McClellan acknowledges, NS's pre-existing contingent trackage rights over the Meridian Speedway "protect NS's investment in the Meridian Speedway, kicking in, for example, in the event KCSR degrades service to NS's traffic over the route."[481] On the segment between Wylie and Shreveport, where NS made no such investment, NS did not obtain any similar protection, and it instead is safeguarded by KCS's – and now CPKC's own interest in avoiding any service failure. Simmons R.V.S. at ¶¶ 60-61. All of the concerns that NS outlines in its Comments – no matter how fanciful – are ones that NS consciously contemplated in its negotiations with KCS: the risk that KCS would develop non-intermodal traffic that moves over the Wylie-Meridian route, the potential for future traffic growth on the Meridian Speedway and at KCS's Wylie Intermodal Terminal, the potential need for additional capacity, the possibility of future KCS service failures, and even the possibility of a change in control of KCS. Simmons R.V.S. at ¶ 69.[482] All of these eventualities and more were anticipated and the extensively-negotiated agreements between KCS and NS provide NS with its bargained for (and ample) protection against these risks. *Id.*[483] Given the extensive negotiations between NS and KCS that

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[481] NS-12, Amended Verified Statement of Michael R. McClellan at 3. In its negotiations with KCS in 2006, NS obtained contingent trackage rights over the Meridian Speedway, which vest upon the occurrence of a Major Service Standard Failure, yet did not obtain a similar provision for KCS's segment from Wylie to Shreveport. *See* NS Joint Use Agreement §§ 2(a)(ii) *see also* Simmons R.V.S. at ¶ 61.

[482] *See, e.g.*, NS Joint Use Agreement (Simmons Exh. 12), Appendix B, §§ 2, 4; Western Haulage Agreement (Simmons Exh. 11) § 2(c); NS Joint Use Agreement (Simmons Exh. 12) §§ 2(a)(ii), 6(b); Limited Liability Company Agreement of Meridian Speedway, LLC (Simmons Exh. 13) § 5.12; Dallas Terminal Marketing Agreement (Simmons Exh. 10) § 4(m).

[483] NS Joint Use Agreement (Simmons Exh. 12), Appendix B, §§ 2, 4; Western Haulage Agreement (Simmons Exh. 11) § 2(c); NS Joint Use Agreement (Simmons Exh. 12) §§ 2(a)(ii), 6(b); Limited

resulted in the MSLLC Agreements governing traffic moving over the Wylie-Meridian route, it logically follows from such recognition that NS did not deem contingent trackage rights from Wylie to Shreveport as necessary to protect its investment.[484]

5. NS's Request for Contingent Trackage Rights Would Improperly Convey to NS Commercial Rights that NS Did Not Negotiate or Pay for in 2006

Given the absence of any bona fide concerns about the Transaction's impact on intermodal service, and the ineffectiveness of NS's contingent trackage rights as a service remedy in any event, the unavoidable conclusion is that NS's true motivation in seeking these rights is to gain valuable commercial rights that it did not negotiate or pay for when it entered the MSLLC Agreements in 2006. Granting NS such rights in this proceeding would be unjustified and inappropriate. After the Transaction, NS will continue to receive the same exact benefits for which it bargained and there is no harm warranting an expansion of NS's contractual rights.

First, NS is quite up front that the new contractual rights it wants the Board to grant (for free) would expand the scope of the rights that NS obtained in 2006. NS is explicit that what it wants is to apply to the KCS-owned Wylie-Shreveport Section – in which NS made no investment whatsoever – the exact "same standard" as contained in the agreement covering only the Meridian Speedway.[485] NS effectively complains that the rights it did negotiate did not extend far enough, because (it claims) without contingent trackage rights for the Wylie-Shreveport segment similar to those it currently possesses for the Meridian Speedway, it will not

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Liability Company Agreement of Meridian Speedway, LLC (Simmons Exh. 13) § 5.12; Dallas Terminal Marketing Agreement (Simmons Exh. 10) § 4(m).

484 *See* Simmons R.V.S. at ¶ 61.

485 NS-12 at 48.

be able to "effectively hold[] CPKC to a service standard" because trains would traverse the Wylie-Shreveport segment "with KCS's (or CPKC's) power, crew, and train composition."[486] Yet, that is simply the pre-Transaction state of affairs under the MSLLC Agreements to which NS agreed in 2006.

NS cannot suggest that the parties failed to address this issue in their negotiations. In 2005, {{ }}[487] In January 2005, an {{ }}[488] Documents obtained in discovery from NS and BNSF show that {{ }}[489] Moreover, documents produced in this proceeding {{ }}.[490]

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[486] NS-12 at 49.

[487] NS00005474-82 at -5482, {{ }} (Vol. 3, Exh. 92).

[488] NS00004912-15 at -4913, {{ }} (Vol. 3, Exh. 93).

[489] *See* Simmons R.V.S. at ¶ 71.

[490] { }

NS now attempts to obtain from the Board the "contingent trackage rights" that it declined to obtain from KCS. Just as it denied requests in the *CP/DM&E* proceeding to overwrite a contract with CP, the Board should deny NS's attempt to "compel new contractual commitments from [CPKC] to protect [NS] from potential traffic increases it might not have considered during prior contractual negotiations."[491]

Second, in addition to granting NS operating rights that it did not negotiate, the relief NS seeks would fundamentally alter the economic relationship between NS and KCS, giving NS a significant financial windfall. NS's proposal is really about changing the amount of money NS pays KCS for traffic moved between the Wylie Intermodal Terminal and Shreveport.[492] A key component of the commercial arrangement entered into between NS and KCS involved an option for NS to purchase the Wylie Intermodal Terminal, and its related option to convert interline intermodal traffic between Wylie and Shreveport from interline traffic (for which KCS is the line haul carrier) to haulage traffic. Simmons R.V.S. at ¶ 61. But the existing MSLLC Agreements are clear that the haulage fees that NS would become obligated to pay KCS upon exercising that option for movements of NS's traffic between Wylie and Shreveport must preserve "the economics" of KCS's line-haul rates. *Id.*[493]

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491 *See CP/DM&E*, Finance Docket No. 35081 (Decision No. 11) at 15.

492 That NS's requested rights are a pure money grab is belied by NS's acknowledgement that nothing will change except the economics: "the same traffic that should have been moving in haulage service on the trains of CPKC would instead move along the exact same route via trackage rights on the trains of NS." *See* Letter To Danielle Gosselin, Director of the Office of Environmental Analysis of the Surface Transportation Board, From Brianne Kucerik, Counsel for NS (filed Mar. 8, 2022), at 3.

493 Specifically, § 5(a)(1) of the Dallas Terminal Marketing Agreement (Simmons Exh. 10) provides that "all NSR Dallas Intermodal Terminal Traffic shall move between Shreveport and the Terminal pursuant to terms and conditions substantially in conformance with that of the Western Haulage Agreement, except as to compensation (which shall be at a price that does not fundamentally alter the economics of the traffic moving pursuant to this Agreement at the time of the conversion from an interline relationship to a haulage relationship and which takes into account change in the identity of the

Under the trackage rights agreement that NS asks the Board to impose on CPKC, however, NS would not be so obligated to preserve KCS's line-haul economics. Indeed, under NS's proposed "Shreveport-Wylie Section Trackage Rights Agreement," NS would pay a trackage rights fee of {{[redacted]}}, which is a far cry from the level of KCS's existing line-haul revenues that NS's agreed-upon haulage rate would have to preserve. Simmons R.V.S. at ¶ 68.[494] As Mr. Simmons explains, NS would stand to gain {{[redacted]}} on every intermodal container moved between Wylie and Shreveport, as compared to the compensation arrangement under the parties' existing agreement. *Id.* This is a windfall to which NS is not entitled in light of the fact that, as illustrated above, the Transaction poses no threat to service for NS intermodal traffic traversing the Wylie-Shreveport Section or any portion of the Wylie-Meridian Route.

In substance, then, NS's proposed contingent trackage rights amounts to a request that the Board amend the MSLLC Agreements in NS's favor, granting NS rights it did not bargain for. Table 6 below summarizes the ways in which NS's proposal would alter the bargain struck in 2006.

party then absorbing the terminal charges and other charges associated with the movement of the traffic) and duration (which shall be until terminated by mutual agreement of the Parties)." (Emphasis added.)

494 *See also* NS-13 at 28 (Art. 4.1).

TABLE 6
NORFOLK SOUTHERN'S REQUEST FOR RIGHTS IT DID NOT NEGOTIATE

Topic	Negotiated NS Rights	NS's Request for Board Grant (if NS Acquires Wylie Terminal)
NS Operating Rights Wylie-Shreveport	No operating rights. Haulage rights only if NS acquires Wylie Intermodal Terminal[495]	Trackage rights springing from Major Service Standard Failure[496]
Concept of a "Major Service Standard Failure"	Limited to Shreveport-Meridian segment for Defined "NS Traffic" and "Dallas Intermodal Terminal Traffic"[497]	Expanded to (1) Include Wylie-Shreveport segment; and (2) Encompass *all* intermodal traffic to/from Wylie[498]
Compensation to KCS for "NS Traffic" and "Dallas Intermodal Terminal Traffic" Moving Between Wylie and Meridian (*if NS Acquires Wylie Intermodal Terminal*)	*Between Wylie and Shreveport*: Haulage Fee that does not alter economics relative to KCS's Line Haul Divisions[499] *Between Shreveport and* Meridian: Agreed Haulage Fee;[500] Agreed Trackage Rights Fee in event of Major Service Failure[501]	*Between Wylie and Shreveport*: Board-Imposed Trackage Rights Fee at {{[redacted]}}s in the event of a Major Service Failure[502] *Between Shreveport and Meridian*: Same

One important upshot of these changes – all of which would be contingent on NS's decision to exercise the option it has to purchase the Wylie Intermodal Terminal[503] – would be to create for NS a new set of incentives to exercise its option, above and beyond whatever incentives might exist in the pre-Transaction environment.[504] An NS acquisition of the Wylie Intermodal Terminal could have unpredictable effects for CPKC's use of the terminal for the

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495 Dallas Intermodal Marketing Agreement (Simmons Exh. 10) § 5(a)(i).

496 NS-13 at 27 (Art. 1.3).

497 NS Joint Use Agreement (Simmons Exh. 12) § 2(a)(ii).

498 NS-13 at 28 (Art. 3).

499 Dallas Intermodal Marketing Agreement (Simmons Exh. 10) § 5(a)(i).

500 NS Joint Use Agreement (Simmons Exh. 12) § 2(a)(ii).

501 NS Joint Use Agreement (Simmons Exh. 12) § 2(a)(vii).

502 NS-13 at 28 (Art. 4.1).

503 *See* NS-12 at 8.

504 One might doubt whether NS would exercise that option were NS unable to connect the Wylie terminal with NS's network via NS train service.

new intermodal services that the Transaction will enable CPKC to offer. Although NS would have an obligation as owner of the terminal to handle CPKC's intermodal traffic "on a nondiscriminatory basis,"[505] NS's single-minded focus on its own traffic gives Applicants some concern that NS might interpret this obligation narrowly, potentially jeopardizing Transaction benefits. The Board should resist NS's call to expand NS's pre-Transaction rights under these circumstances. The Board has repeatedly declined invitations to "compel new contractual commitments … to protect [a party] from potential traffic increases it might not have considered during prior contractual negotiations," and it should do so again here.[506]

C. The Board Should Reject the Relief Requested by CSX

1. CSX's Arguments about the Meridian Speedway Are Unrelated to the Transaction and Should Be Ignored

CSX argues that a set of pre-existing agreements between KCS and NS regarding the Meridian Speedway (the "Meridian Speedway Agreements"), which the Board authorized KCS and NS to carry out, are anticompetitive and should be undone.[507] CSX is wrong.[508] When it exempted KCS's and NS's formation of the Meridian Speedway LLC ("MSLLC") venture in 2006, the Board was well aware of the contractual provisions affording NS exclusive commercial

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505 Dallas Terminal Marketing Agreement (Simmons Exh. 10) § 5(a)(ii).

506 *See CP/DM&E*, Finance Docket No. 35081 (Decision No. 11) at 15. As explained above, Applicants project a reasonable and manageable level of traffic growth across the Wylie-Meridian Route and will not result in deteriorated service along the Wylie-Meridian Route. Thus, the Transaction will not result in any extraordinary risks or harms for which NS did not, nor could not, foresee at the time it entered into the contractual and operational arrangement that it agreed to with KCS.

507 CSX Transportation, Inc.'s Comments and Request for Conditions ("CSXT-8") (filed Feb. 28, 2022) at 7-21.

508 Applicants do not belabor the many reasons why CSX is also incorrect in arguing that the Meridian Speedway Agreements are anticompetitive. Applicants direct the Board's attention to the discussion in NS's amended comments of the procompetitive traffic growth generated by the joint investments in this high-service route. *See* NS-12 at 9-21.

rights with respect to certain traffic using the Meridian Speedway – tightly-defined flows of transcontinental intermodal traffic – in exchange for its considerable investment in the Speedway and ongoing obligations to share in the cost and risks associated with the venture.[509]

For purposes of the CP/KCS proceeding, however, the merits of CSX's arguments are beside the point. The contractual provisions about which CSX complains do not arise from the Transaction. Because they "[are] not a consequence of the merger and will not be exacerbated thereby … this proceeding is not the proper forum for considering the merits of [the] solution" proffered by CSX. *UP/SP*, 1 S.T.B. at 472.

CSX's suggestion that unconditioned approval of this Transaction might insulate the pre-existing terms of the Meridian Speedway Agreements from future challenge is equally wrong.[510] The Board's disposition of this proceeding will not affect any claims CSX might wish to pursue, one way or the other. The Meridian Speedway Agreements were exempted by the Board in 2006, which thereby also exempted KCS and NS – as participants "in that approved or exempted transaction" – "from the antitrust laws and from all other law, including State and municipal law, as necessary to let [them] carry out the transaction." 49 U.S.C. § 11321(a).[511]

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509 The parties' Notice of Exemption in the Meridian Speedway transaction could not have been clearer: "NSR will be the sole provider of service for transcontinental intermodal traffic over the Line. Specifically, NSR will be the sole provider, via haulage and trackage rights over the Line, of service for transcontinental intermodal container traffic moving on the Line that does not originate or terminate on KCS's current system and that both (a) originates or terminates in the United States at or east of Meridian and enters or exits the Line at Meridian, and (b) originates or terminates in the United States west of Fort Worth, Texas, and enters or exits the Line at Shreveport." *See* Finance Docket No. 34822, Notice of Exemption (filed Jan. 17, 2006) at 6 (excerpts are Vol. 3, Exh. 79).

510 CSXT-8 at 7.

511 Courts have confirmed that Section 11321(a) immunity applies to transactions exempted under Section 10502. *See UTU* v. *Burlington Northern Santa Fe R. Co.*, 528 F.3d 674, 679-80 (9th Cir. 2008).

CSX boldly acknowledges that its goal is not to address any adverse impact of the Transaction, but to instead "*re-establish the competitive status quo before 2006*."[512] CSX's transparent efforts to improve its position relative to its pre-Transaction position – and to "ameliorate longstanding problems not caused by the merger"[513] – should be rejected.[514]

2. CPKC Will Be Eager to Maintain or Explore Efficient Interline Relationships With CSX Via All Available Gateways, and There Is No Need for Relief Protecting CSX

Apart from its misguided effort to raise antitrust concerns with the Meridian Speedway Agreements, CSX's comments seek conditions that would impose new obligations on CPKC to protect or expand interline traffic opportunities at three gateways served by KCS: East St. Louis, IL, Meridian, MS, and New Orleans. CSX needs no such protection. Applicants have every incentive to work with CSX wherever feasible and efficient to compete hard for traffic moving to and from CSX's network, including via the three gateways CSX identifies. Imposing such protections via conditions would be unjustified and counterproductive.

East St. Louis. CSX requests an order requiring CPKC to maintain commercially reasonable rates and to provide service at or above current service levels on the KCS line between Kansas City and East St. Louis, IL.[515] CSX's assertion that Applicants propose to downgrade this line – which echoes CN's false assertions – is completely unfounded for reasons we address at length in Section VIII.A above. Nor is there any risk that the Transaction would

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512 CSXT-8 at 20.

513 *UP/SP* (Decision No. 103, STB served May 1, 2008) at 6.

514 At the same time, Applicants certainly agree with the sentiment of CSX's request that the Board reject NS's "responsive application seeking to expand its rights under the Meridian Speedway Agreements." CSXT-8 at 6. Although NS chose not to pursue all of its proposed modifications to the Meridian Speedway Agreements, the Board should reject any effort by NS to expand its rights thereunder relative to those negotiated and approved in 2006. *See* Section VIII.B above.

515 CSXT-8 at 22-23.

give CPKC incentives to shift traffic away from this gateway. To the contrary, by creating new single-line connections between CP's network and KCS's network, the Transaction will increase opportunities for interchange between CPKC and CSX at East St. Louis. Creel R.V.S. at ¶ 21; Wahba/Naatz R.V.S. at ¶ 5. Ironically, KCS's Kansas City-St. Louis line formerly hosted daily intermodal service via East St. Louis interchange with CSX, but CSX chose to discontinue that service in 2017 as part of its PSR-based network reconfigurations. Brooks R.V.S. at ¶ 50. CPKC would be eager to explore reinstituting that service if CSX were interested. *Id.* The only threat to efficient interline service between CPKC and CSX via East St. Louis is CN's request to force the removal of this line from the CPKC network. Accordingly, there is no basis whatsoever for a condition protecting CSX's rights via this gateway.

Meridian, MS. CSX requests an order requiring CPKC to "establish" an interchange at Meridian and to keep that gateway open.[516] This request is overreaching for several reasons. First, as confirmed by CSX's use of the word "establish," KCS has no interchange with CSX at Meridian. To the extent traffic flows between the two carriers via Meridian, it moves in KCS trains to Artesia, MS, and then via Watco's Alabama Southern Railroad, which leases most of KCS's Tuscaloosa Subdivision, to a connection with CSX between Tuscaloosa and Birmingham, AL. Traffic moving between KCS and CSX could also be delivered to the Meridian & Bigbee Railroad ("MNBR") at Meridian and moved via MNBR to a connection with CSX at Montgomery, AL.[517]

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516 CSXT-8 at 20-21.

517 CSX previously had a haulage agreement with MNBR between Meridian and Montgomery, but CSX cancelled that agreement in 2007. {{ }} *See* Simmons R.V.S. at 87.

Second, even if Meridian was an existing gateway for KCS-CSX interline traffic, that gateway would be unaffected by the Transaction. The CP-KCS combination will not give CPKC a longer haul for any traffic moving via Meridian as compared to the pre-transaction KCS systems. Brooks R.V.S. at ¶¶ 16, 88-90. Accordingly, the Transaction will *not* incentivize CPKC to divert traffic from Meridian to other "less efficient" routes.

Were it ever to become possible and efficient to "establish" a direct interchange with CSX at Meridian, CPKC would have every incentive to do so, but a condition requiring this alteration to the pre-Transaction status quo would be overreaching.

New Orleans. Finally, CSX asks the Board to modify an existing agreement between KCSR and CSX regarding the allocation of responsibility for interchange costs at New Orleans.[518] This is yet another overreach unrelated to any Transaction-related impact.

As background, the New Orleans Public Belt ("NOPB") recently imposed a substantial increase in the fee it charged for handling interchange traffic between CSX and KCS, whose lines do not connect directly in the New Orleans terminal. Simmons R.V.S. at ¶ 84. In response, KCS and CSX discussed each being responsible for the fees associated with its own deliveries to the other carrier, but CSX balked at paying NOPB's charges and threatened to shift the interchange from New Orleans to Gulfport, MS, or Birmingham, AL (via a third carrier between there and Artesia), which would be far more costly and degrade the service levels for traffic interchanged at New Orleans. *Id.* KCS had no choice but to relent, and it agreed to absorb the NOPB's increased charge on a temporary basis. *Id*. at ¶ 86. CSX and KCS specifically agreed that either party could terminate that agreement on 30 days' notice. *Id.* & Simmons Exh. 15.

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518 CSXT-8 at 21-22.

CSX's demand in this proceeding to require that KCS absorb those costs permanently is an unjustified grab with no nexus to the Transaction. The Transaction will have no effect on CPKC's interest in connecting with CSX via the New Orleans gateway. Brooks R.V.S. at ¶¶ 12-13. There is no legal justification behind CSX's demand to alter mutually agreed-upon contractual terms governing the allocation of NOPB charges as these conditions are wholly unrelated to the Transaction. The fact (touted by CSX) that the NOPB charges CSX seeks to avoid sharing were occasioned by a series of transactions in 1985 and 2006 (to, among other reasons, facilitate state highway projects),[519] only underscore that CSX's effort to extract commercial advantage through conditions imposed on this Transaction are egregiously without merit.

Finally, CSX's miscellaneous requests are otherwise unrelated to the Transaction. *See* Ottensmeyer R.V.S. at ¶¶ 16-25.

D. BNSF's Veiled Threats to Demand Future Trackage Rights It Chose Not to Seek in this Proceeding Should Be Rejected with Prejudice

BNSF filed a Notice of Intent outlining three separate requests for trackage rights it anticipated seeking in this proceeding. BNSF ultimately opted not to file a Responsive Application, and it is thus disqualified from seeking that relief in connection with the Transaction, whether now or at some future time. Like CSX and UP, BNSF has waived its right to seek these rights by not presenting a Responsive Application. *See* Decision No. 12 (served

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[519] These transactions were undertaken with Board approval. *See The Kansas City Southern Ry. – Abandonment Exemption – in Jefferson Parish, LA*, Docket No. AB-103 (Sub-No. 20X) (served June 5, 2006); *Louisiana & Arkansas Ry. – Trackage Rights Exemption –Illinois Central Gulf R.R. & New Orleans Terminal Co*., Finance Docket No. 30639 (ICC served Apr. 17, 1985).

Jan. 26, 2022) (rejecting waiver sought by CSXT, and joined in by UP, from obligation to provide notice of potential conditions requiring Board approval/exemption).[520] Any trackage rights that BNSF might seek following Applicants' consummation of the Transaction would also be precluded by Applicants' inability to decide whether to proceed with the Transaction in the face of a potential grant of such rights.[521] Applicants nonetheless address BNSF's proposals because BNSF's comments repeatedly threaten to renew those requests in the future. In its comments, BNSF slips in a general request that the Board "[r]eserve jurisdiction to impose further conditions, including trackage rights, during the oversight period."[522] And BNSF's witnesses testify about the need for trackage rights to further BNSF's business objectives in Mexico.[523] While BNSF's failure to present a Responsive Application forecloses it from pursuing such relief, BNSF's proposals also fail on the merits; accordingly, BNSF's trackage rights requests should be rejected with prejudice.

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[520] This requirement is equally applicable to requests for "contingent" trackage rights of the sort BNSF indicated it would propose. *See Rio Grande Industries, Inc. – Purchase & Related Trackage Rights – Soo Line R.R. Line Between Kansas City, MO & Chicago, IL*, Finance Docket No. 31505, 1989 WL 246976 (ICC Decision No. 8, served Dec. 11, 1989) at *2 ("[T]he requirement for a responsive application is not only to determine the impact of proposed relief upon the transaction, but to ascertain whether the responsive applicant's proposal meets the statutory qualifications for the relief sought. KCS is seeking contingent trackage rights, should Soo discontinue operations. This requires an application.").

[521] *Guilford Transportation Industries, Inc. – Control – Boston & Maine Corp.*, 5 I.C.C.2d 202, 206 (1988) ("Even though the Commission has the power to impose trackage rights as a condition to a rail consolidation, the transaction is still dependent upon an agreement. If the carriers do not accept the conditions imposed by the Commission, they need not consummate the transaction. Now that the . . . consolidation transactions have already been consummated, the imposition of a trackage rights condition would lack the element of agreement.").

[522] BNSF-9 at 78.

[523] BNSF-9, Poltolarek V.S. at 16.

1. BNSF's Desire for Board Intervention in Support of Its Quest for a Future Mexican Concession Is Not Merger-Related and Would Improperly Involve the Board in Mexican Affairs

The Board should reject with prejudice BNSF's aborted application for Robstown-Laredo trackage rights and any other effort by BNSF to use the Transaction as a mechanism for improving BNSF's standing in connection with its revealed desire to participate in potential future Mexican rail concessions.[524] The Transaction has no impact whatsoever on BNSF's ability – or inability – to seek a Mexican rail concession at some speculative future point. If BNSF wants to pursue some future opportunity to obtain rights from the Mexican government, it will remain free to do so. CPKC may well oppose such a request, just like KCS almost certainly would have. But the Transaction does not preclude BNSF from doing whatever it might have done in the absence of the Transaction.

BNSF witness Dychter testifies that BNSF's lack of direct access to Laredo may handicap BNSF in its quest for a concession involving trackage over which KCSM operates,[525] but again this shortcoming is not the result of the Transaction. BNSF has never had direct access to Laredo. Quite simply, BNSF's lack of direct access to Laredo is a pre-existing condition unrelated to the Transaction.

Any contention that BNSF would need access to Laredo in order to participate in future Mexican rail regulatory matters also ignores the extensive *and direct* access to Mexico that BNSF already has – none of which will be affected whatsoever by the Transaction. BNSF

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[524] BNSF asserts that it might request that the Mexican government grant it rights to operate the nationally owned trackage in 2027 "when the exclusivity provision of KCSM's concession expires." BNSF-9 at 54.

[525] BNSF-9, Poltolarek V.S. at BNSF-16 ("To obtain such a concession, BNSF would need to be able to demonstrate to the Mexican government that it has a credible plan for accessing Mexico, which would require direct access to Laredo.").

already has *direct* (rather than interline) access to multiple Mexican gateways, including Brownsville (via UP trackage rights), El Paso, Eagle Pass (via UP trackage rights), and San Diego.[526] At El Paso and Eagle Pass, BNSF connects with FXE; at Brownsville, BNSF connects with KCSM.[527] BNSF has no need for trackage rights to Laredo to forge a connection with the Mexican rail network.

As discussed above, moreover, BNSF handles the vast majority of its Mexican traffic through El Paso and Eagle Pass – not Laredo or Brownsville. *See* Section VIII above; Majure R.V.S. at ¶ 75. As BNSF's internal documents reveal, BNSF itself {{[redacted]}},[528] and sees those other gateways as providing BNSF with more efficient access to Mexico given its network configuration.[529]

To be sure, BNSF undoubtedly *would like to have direct rather than interline access to Laredo*, but a desire to improve its lie is not a justification for a grant of trackage rights, a

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[526] BNSF Network Map, BNSF Railway, https://www.bnsf.com/ship-with-bnsf/maps-and-shipping-locations/mexico/network-map.html (last visited May 12, 2022) (Vol. 3, Exh. 80). BNSF's website touts that "BNSF Mexico is here to facilitate your Mexico transborder shipping with five key United States Gateways: San Diego, El Paso, Eagle Pass, Laredo and Brownsville." Gateway & Connections, BNSF Railway, https://www.bnsf.com/ship-with-bnsf/maps-and-shipping-locations/mexico/gateway-and-connections.html (last visited June 28, 2022) (Vol. 3, Exh. 81).

[527] In *UP/SP*, BNSF was granted trackage rights to provide a competitive alternative to UP in the Brownsville area and to connect with TFM (now KCSM) at the Brownsville/Matamoros gateway. UP/SP, 1 S.T.B. at 409-10, 422, 562. BNSF chose to negotiate haulage rights over these UP lines that it could convert into trackage rights, but thus far BNSF has apparently opted not to exercise its conversion rights.

[528] *See* BNSF0000932 (Vol. 3, Exh. 14).

[529] *See* BNSF0000166 (analyzing intermodal traffic between the United States and Mexico and concluding that BNSF {{[redacted]}}) (Vol. 3, Exh. 27); BNSF0000151 (concluding that {{[redacted]}}) (Vol. 3, Exh. 82).

principle BNSF itself persuaded the ICC to apply in its own merger case.[530] BNSF's desire for trackage rights to Laredo in fact long predates the CP/KCS Transaction. Long before KCS's acquisition of control of Tex Mex and TFM (what is now KCSM), BNSF petitioned the Board for such rights, and KCS successfully opposed BNSF's effort. In the 1998 *UP/SP Houston Gulf Coast Oversight* proceeding, BNSF sought overhead trackage rights over UP between San Antonio and Laredo to address the alleged "influence of KCS on Tex Mex's ability to work with BNSF at Laredo, and the unexpected lack of direct competition in the privatized Mexican rail system."[531] The Board rejected this request, finding that "none of the developments complained of by BNSF has caused any diminution of competition relative to the pre-merger period. Therefore, there is no basis for BNSF's request for a direct access to Laredo that SP never had."[532] That remains true today.

Finally, holding open the potential for BNSF to seek the trackage rights it claims to desire would affirmatively undermine the benefits of the Transaction and cause harm to the public interest:

- A reservation of potential future trackage rights would leave Applicants uncertain about the future commercial landscape, undermining their incentives to make investments in the future CPKC network.
- To the extent BNSF claims that trackage rights may be needed as a remedy for the failure of other conditions – or other developments arising from implementation

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530 *BN/Santa Fe*, 10 I.C.C.2d at 777 (denying request for trackage rights where they "would undoubtedly make GNBC's operations more efficient and allow GNBC access to an expanded traffic base, but they are not necessary to ameliorate any harm caused by BN/Santa Fe common control.").

531 *UP/SP Houston/Gulf Coast Oversight*, 3 S.T.B. 622, 629 (1998).

532 *UP/SP Houston/Gulf Coast Oversight*, 3 S.T.B. 1030, 1060 (1998).

of the Transaction – the Board will have inherent authority to assess what steps, if any, would be appropriate during the oversight period. Granting BNSF the option of seeking trackage rights between Robstown and Laredo (or anywhere else) would not be a constructive path, however, because it would give BNSF a powerful incentive to invent problems (and seek trackage rights as the reward) rather than working collaboratively to resolve any operating or other challenges that might arise.

- Any grant of trackage rights would also inject new operational complexity on the lines over which BNSF would operate, consuming CPKC network and terminal capacity and potentially contributing to congestion. Elphick/Orr R.V.S. at ¶ 90.

2. BNSF's Proposed Rights Between Dallas and Shreveport Would Grant Commercial Rights BNSF Chose Not to Acquire

BNSF similarly signals that it may renew its effort to seek trackage rights between Dallas and Shreveport, LA that it opted not to seek in this proceeding. BNSF initially says that it was considering seeking these rights to "address[] the impact of likely congestion on its route to New Orleans by filing a responsive application for trackage rights on a KCS line that would have allowed BNSF to shift its interchange location with Eastern railroads further north to Shreveport, La."[533] "BNSF now believes that it would be more appropriate for the Board to reserve jurisdiction to address this issue as it may arise during the oversight period. Many of the details that the Board would need to review to evaluate a request for trackage rights necessarily will be dependent on the conditions in effect when congestion occurs."[534]

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533 BNSF's Description of Anticipated Responsive Applications (BNSF-7) (filed Jan. 12, 2022).

534 BNSF-9 at 65 n.23.

The Board should close the door that BNSF seeks to hold open. The rights BNSF desires are not tailored to address any potential impact of the Transaction, they would improve BNSF's position relative to the status quo, they would be vastly overreaching, and they would undermine the Transaction and public benefits.

BNSF's description of its request was disingenuous from the beginning. There are no eastern carriers at Shreveport. Simmons R.V.S. at ¶ 74 n.46. BNSF has limited rights to operate through Shreveport over UP trackage rights, but it does not have the right to interchange with other carriers there. *Id*. BNSF could route any traffic it wishes over the Meridian Speedway via interchange with KCS at Dallas, but BNSF has opted not to do so, preferring instead to take its transcontinental intermodal traffic to Memphis for interchange with NS and CSX there, bypassing KCS. *Id*. Similarly, if BNSF desired to bypass the lines that CPKC will use between Houston and New Orleans, it already can reach Shreveport via its trackage rights over UP. Simmons R.V.S. at ¶ 40 n.20.

What is really behind BNSF's aborted request is a desire to obtain for free valuable commercial rights that it opted not to acquire when the Meridian Speedway venture was formed. KCS (and NS) invested heavily in the Meridian Speedway east of Shreveport, and KCS invested in its own line connecting Dallas to the Speedway. As Mr. Simmons explains, and as reflected in {{ }} when KCS was negotiating with NS over joint investments in the route between Shreveport and Meridian, it was simultaneously discussing with BNSF the possibility of joint investments in KCS's route between Dallas and Shreveport, which would have resulted in BNSF obtaining certain rights over that line. BNSF never reached an agreement with KCS on such a transaction, and so KCS proceeded to make investments in the

Dallas-Shreveport line on its own. Simmons R.V.S. at ¶ 73, 77.[535] Perhaps BNSF regrets its decision now in light of the success of the Meridian Speedway, and in particular, the UP-NS transcontinental traffic that flows over that route.

In this context, a grant of trackage rights between Dallas and Shreveport would have nothing to do with service on lines BNSF shares with CPKC in Texta, and everything to do with a desire to obtain for free rights BNSF now covets. Such a grant would be utterly inappropriate.

Even holding open the potential to consider such a grant would interfere with the Transaction. As noted above, BNSF would be encouraged to invent rather than help solve potential service problems in the hopes of triggering its desired windfall. And the possibility of a future effort to obtain these rights would create uncertainty that could undermine investments by CPKC in this line, which will play a vital role in CPKC's plan to compete head-to-head with BNSF in the Dallas-Chicago intermodal lane.

3. BNSF's Proposed Rights Between Savanna, IL and Clinton, IA Would Grant Commercial Rights BNSF Has Previously Sought

BNSF's Notice of Responsive Application indicated that BNSF planned to seek rights between Savanna, IL and Clinton, IL, but BNSF chose not to file the Responsive Application that would have been necessary to enable a grant of such rights. But BNSF has tried to leave the door cracked open, asking the Board to "reserve jurisdiction to address this issue."[536] The Board should also close this door.

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535 *See* BNSF0003259 ({ [redacted] }) (Vol. 3, Exh. 83); BNSF0003265 ({ [redacted] }}) (Vol. 3, Exh. 77).

536 BNSF-9 at 65 n.23.

First, as discussed above, BNSF's decision not to file a Responsive Application has consequences, and it is now foreclosed from seeking to impose a condition on the Transaction relating to trackage rights it chose not to see.

Second, the rights BNSF contemplated seeking would be unwarranted because they would grant commercial rights BNSF has long sought from CP but has failed to negotiate at arm's length. As explained in the Reply Verified Statement of Adolph Gameiro, in 1995 BNSF and CP exchanged rights on opposite sides of the Mississippi River north of Davenport, IA. Gameiro R.V.S. at ¶ 28. BNSF operates over CP between Davenport and Clinton, and CP operates over BNSF on the east side of the river. *Id.* BNSF tried to persuade CP to allow it to connect its Davenport-Clinton rights to the BNSF network by operating over 19.6 additional miles of CP lines from Clinton to Savanna – the same rights BNSF said it would seek from the Board. CP declined, for reasons Mr. Gameiro explains. *Id.* at ¶¶ 29-31. BNSF should not be permitted to obtain through Board fiat rights it long coveted but never possessed.[537]

Third, though BNSF postulated that the rights it demands would serve to overcome "congestion" on the Davenport-Clinton line, they would manifestly do no such thing. They would not take away BNSF's local service between Davenport and Clinton, and would instead add new train operations – and new congestion – on the 19.6 additional miles of CP trackage north of Clinton. Elphick/Orr R.V.S. at ¶¶ 90-91.

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[537] *See UP/SP*, Finance Docket No. 32760 (Decision No. 103, STB served May 1, 2008) at 6 ("The Board would not ordinarily impose a condition that would put the proponent of a condition in a better position than before the merger [because] [c]onditions were not imposed to ameliorate longstanding problems not caused by the merger."); *Guilford/D&H*, 366 I.C.C. at 41516 (emphasizing the idea that the Board should not use its "merger conditioning powers" to release the parties from commercial arms-length agreements and noting that it "would be extremely reluctant to negate contracts which [the parties] apparently entered freely.").

Fourth and finally, as with other trackage rights that BNSF wants the Board to "reserve jurisdiction" to grant — holding open the option for BNSF to seek Savanna-Clinton rights in the event of operational issues would create new incentives for BNSF to invent problems rather than working collaboratively to solve them. The Board should make clear that, if BNSF ever wishes to seek these rights, it would need to do so either through negotiations with CP or under some other statutory provision entitling BNSF to relief.

E. The Board Should Not Grant UP's Demand for Conditions Granting Compulsory Access to KCS's Self-Funded New Bridge at Laredo

In addition to its sweeping demand for unneeded protection from new CPKC single-line competitive initiatives for traffic moving via the Laredo gateway, UP asks the Board to protect it from potential operational changes at the Laredo gateway as well.[538]

The conditions UP requests are not necessary, however, because CPKC will step into the shoes of KCS's previous commitments – embodied in the Board's approval of the *KCS/Tex Mex* combination – to, among other things:

- treat all carriers fairly at the Laredo Bridge;
- not change the basic structure and operations of KCSM except through negotiations;
- abide by the existing dispatching and operating practices over the Bridge and not make any unilateral changes in the way the Bridge is dispatched and operated;
- continue to be bound by the contracts and agreements that now govern operations over the Bridge;[539]

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538 UP-10 at 15.

539 UP acknowledges that the numerous private agreements governing joint use and operations of the Laredo Bridge, including (a) the May 23, 1951 Agreement between Guy A. Thompson, Trustee, International Great Northern Railroad and The Texas Mexican Ry.; (b) a settlement agreement entered into in Feb. 1998, among UP, KCSR, Tex Mex, and Mexrail, which settled outstanding issues regarding the compensation paid by UP for the use of the Bridge and requires UP to pay $13.50 per car, subject to annual adjustments; and (c) a Memorandum of Understanding among UP, Mexrail, Tex Mex, and KCSR

- provide interline services such as pre-blocking rail cars, improving automated customs pre-clearance procedures, supplying cars for shipments, accommodating run-through train service, providing excellent service, and promptly quoting rates; and
- ensure safety remains a top priority with regard to CPKC operations at the Laredo Gateway.

Those commitments have been honored by KCS and supported efficient operations at Laredo for more than 17 years (and UP makes no contention otherwise). There is no reason why they will not suffice to address all of UP's concerns about operations at the Laredo gateway into the future. Quite simply, CPKC will have no desire, no incentive, and – in light of the commitments by which it must and will abide – no ability to undermine the operational efficiency of UP trains at Laredo. UP's trains, after all, will be carrying important freight for important CPKC customers reached by CPKC's Mexican rail network. In addition, anything that hindered efficiency at the gateway would also interfere with CPKC's own plans to move freight smoothly across the border.[540]

In one crucial respect, however, UP's demands about Laredo are overreaching and should be rejected. UP asks the Board not only to preserve the pre-Transaction status quo, but to affirmatively grant UP access to any new railroad bridge constructed in Laredo *on the same terms* as UP's access to the existing bridge.[541]

First, there is no need for his condition. To the extent that moving UP's trains across a new bridge would improve the overall efficiency of Laredo gateway operations, CPKC will have

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entered into in 2002 that superseded the 1998 settlement agreement. UP acknowledges that these agreements require KCS to perform service "impartially" with "no preference . . . to movements of cars by one of the parties." UP-10 at 31.

[540] Indeed, any effort by CPKC to prefer its trains or to degrade UP operations at the Laredo Bridge risks tit-for-tat retaliation by UP on the trackage rights lines KCS depends on to reach Beaumont, but which UP dispatches. If any party has operational and service power over another, it is UP's over CPKC.

[541] The fact that UP desires for the terms of its access to a new bridge to be the "same as" those governing its use of the existing bridge proves that UP is amply protected by these contracts today.

compelling incentives to move UP-KCSM interchange trains via that route. As UP notes, KCS has obtained a Presidential Permit to construct a new rail bridge at Laredo, and KCS has begun the construction process. Upon completion, CPKC has every incentive to divert CPKC trains away from the existing Laredo Bridge and onto the new bridge, freeing-up capacity for UP's trains on the existing bridge. And if operating UP trains on both bridges makes more operational sense for the gateway, CPKC will have strong incentives to do that instead.

Second, UP's request is overreaching. Allowing CP access – if operationally expedient – is one thing, but the financial and other terms for that access are quite another. By asking the Board to impose access to a new bridge in which KCS is investing {[redacted]} on the "same terms" as UP's access to the existing bridge, UP is seeking to leverage this proceeding to obtain rights and privileges that should be obtained through commercial negotiations, not through government fiat. UP would be piggybacking on ancient agreements, providing for compensation reflecting conditions many decades ago, and providing for no contribution to the construction costs of building a new bridge.

Whether UP is granted formal contractual rights to use the second, privately-funded Laredo bridge should be at the discretion of CPKC, and on terms that are operationally efficient and economical to CPKC. If it is efficient and economical to provide UP with access to the second bridge, the parties will negotiate those terms. *See* Naatz R.V.S. at ¶ 69. The combination of CP and KCS has no bearing on this issue whatsoever, much less the appropriate, arm's-length commercial negotiations between UP and KCS regarding contractual access terms.

IX. COMMENTS FROM RAIL LABOR

Applicants have read and considered the many filings by labor interests.[542] Applicants are pleased that these labor organizations recognize the job-creating features of the Transaction. Applicants have been engaged in ongoing discussions with these and other labor organizations on appropriate implementing agreements. *See* Creel R.V.S. As Applicants have previously indicated they do not object to (a) the Board's imposition of standard *New York Dock* protective conditions where applicable, and (b) being held to their representations regarding the applicability of the "Cramdown Agreement." *See also* Verified Statement of Myron Becker, (App. Vol. 2 at 240).

X. THE BOARD SHOULD NOT IMPOSE CONDITIONS TO ADDRESS COMMENTERS' ALLEGED ENVIRONMENTAL CONCERNS

Three interested parties, Itasca and the Chicago Coalition to Stop CPKC (together the "Coalition Communities"), Hennepin County, and Sierra Club, Delta Chapter (Sierra Club of Louisiana) (the "Sierra Club"), raise concerns about the potential environmental and safety impacts that increased freight traffic west of Bensenville Yard near Chicago will have on their communities.[543] As discussed below, many of their concerns are misguided, as they are based on

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[542] *See* Comments of ARU, BLET, IAM District Lodge 19, IBEW, and SMART-TD/ATDA (filed Feb. 28, 2022).

[543] *See* Opening Comments and Request for Conditions of the Coalition to Stop CPKC ("ITAS-1") (filed Feb. 28, 2022) at 7; Comments and Request for Conditions of Hennepin County, MN, and the Hennepin County Regional Railroad Authority ("Hennepin County Comments") (filed Feb. 28, 2022) at 7, 11; Sierra Club Letter to the Board ("Sierra Club Comments") (filed Mar. 2, 2022) at 1. Applicants note that the Coalition Communities make new arguments and assertions in their Supplemental Comments, filed on June 9, 2022. Applicants object to the extent any of these arguments or assertions are unrelated to the revisions the Board ordered Applicants to make in the Amended Operating Plan and Accompanying Workpapers, given that the Coalition Communities may only revise their Comments to address these revisions. See Decision No. 17, at 6 (Apr. 27, 2022).

overstated estimates of increased traffic and fail to appreciate that the Transaction is projected to actually *reduce* greenhouse gas emissions, not increase them.

In any case, the commenters' concerns, along with Applicants' Environmental Impact Statement ("EIS") and Safety Integration Plan ("SIP"), will be fully considered as part of the Board's Office of Environmental Analysis ("OEA") process. *See* 49 C.F.R. §1180.1(f). Applicants are confident that when the Board evaluates OEA's report and recommendations and the environmental and safety impacts of the Transaction, it will conclude that none of the conditions that the Coalition Communities, Hennepin County, and the Sierra Club request are based on well-founded concerns nor warrant any condition other than those recommended by OEA.

CP has the strongest safety record of any railroad in North America and expects to continue to work effectively with the OEA to address any safety and environmental issues.[544] Applicants have also attempted, in good faith, to engage with these communities to discuss potential reasonable mitigation measures that might alleviate any minor effects that Applicants' modest traffic growth plans might have on their communities. But the "anywhere but here" mentality that pervades the comments of some localities must not be allowed to undermine the substantial public benefits of this Transaction for shippers across North America and strength and resilience of the national rail network.

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[544] *See* Safety Integration Plan, FD No. 36500, at Part III.A.1, 3 (filed Dec. 28, 2021).

A. The Coalition Communities Demand Mitigation Measures Disproportionate to the Likely Effects on the Community

The Coalition Communities assert that the Transaction will substantially increase freight traffic on the MD-W Line west of Bensenville Yard, which "would literally shut down . . . communities from functioning and cause severe safety, environmental, and other issues."[545] These concerns are drastically overblown, and the Coalition Communities' proposed mitigation efforts exceed what is necessary to remedy any concerns.

To start, the Coalition Communities overstate the impact of the Transaction on their communities. CPKC traffic accounts for only a small percentage of traffic through the Coalition Communities. The Coalition Communities see over 55 Metra trains every weekday and on average more than 20 per day on weekends, amounting to a total of 332 Metra trains every week. Elphick R.V.S. at ¶ 65.[546] By contrast, even accounting for Applicants' plan to add eight trains per day on the MD-W Line west of Bensenville following approval of the Transaction,[547] the Coalition Communities will see just 78.4 freight trains per week.[548] Thus, even after the Transaction is approved, CPKC traffic will remain a relatively small percentage of traffic through the Coalition Communities, as shown in Figure 32 below. Elphick R.V.S. at ¶ 67.

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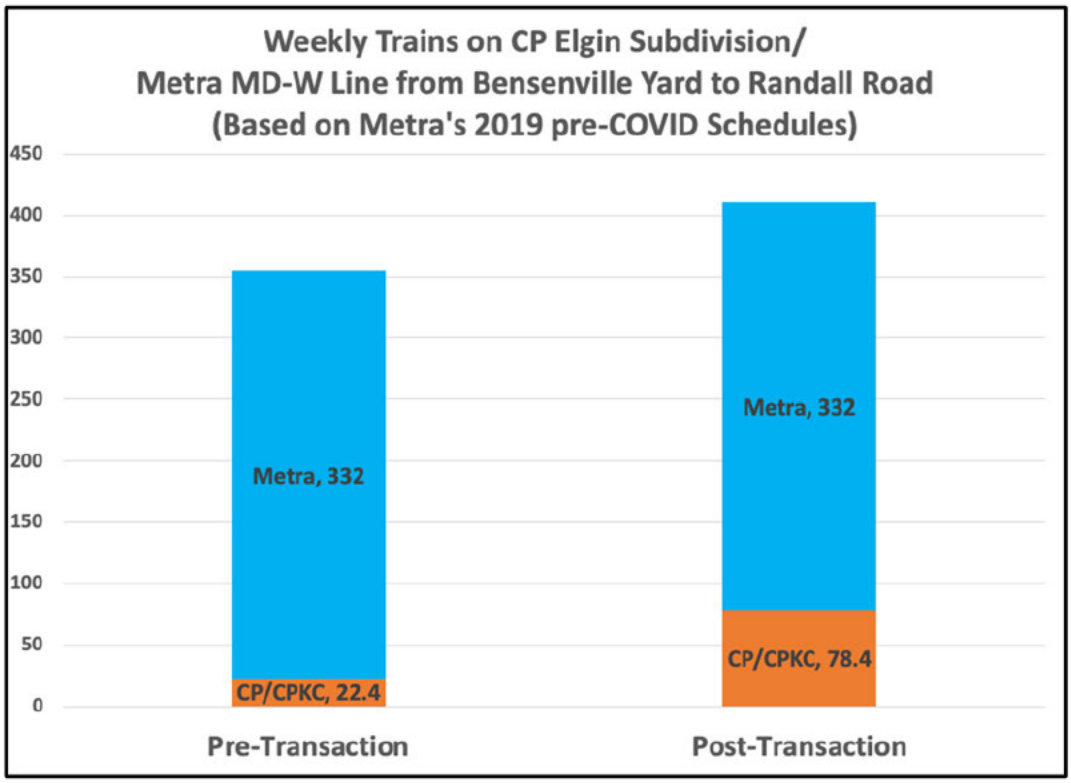
[545] *See* ITAS-1 at 14; Supplemental Opening Comments and Request for Conditions of the Coalition to Stop CPKC (ITAS-4) (filed June 9, 2022) at 3.

[546] While these traffic levels are down somewhat due to the pandemic, Metra anticipates a return to pre-COVID-19 levels. METR-7 at 6.

[547] *See* Amended Operating Plan, App. A. The Coalition Communities' assertion in their Supplemental Comments that Applicants increased the number of trains from 7.1 to 8.0 in their Amended Operating Plan, *see* Coalition Communities Supplemental Comments at 7, is based on a misreading of Applicants' Original Operating Plan, which like the Amended Operating Plan, relied on a projected increase of 8.0 trains per day. *See* Amended Operating Plan, Ex. U, at 5; *see also* CP Response to Information Request No. 1, EI 31352, (Vol. 3, Exh. 84) at 2-3 (Oct. 28, 2021) (also projecting an increase of 8.0 trains per day). Accordingly, the Board should disregard the Coalition Communities' demand that Applicants be directed to explain "why the additional train was excluded from the Original Operating Plan." *See* ITAS-1 at 8.

[548] *See* Metra Data Workpaper, "All Trains" tab.

FIGURE 32[549]
TRAINS THROUGH THE COALITION COMMUNITIES



The Coalition Communities have seen similar levels of freight traffic than this in the past, and it did not "shut down" their communities.[550] For example, the Village of Bartlett – one of the Coalition Communities – noted in 2016 that it receives about 10 freight trains (in addition to 58 Metra trains) per day.[551] During the 1980s and 1990s, there were approximately 12 scheduled freight trains on the MD-W line west of Bensenville Yard daily, plus locals. Gameiro R.V.S., at ¶ 27.

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549 *See* Metra Data Workpaper.

550 *See* ITAS-1 at 14;ITAS-4 at 3.

551 Village of Bartlett, Downtown TOD Plan (Oct. 18, 2016), available at https://rtams.org/sites/default/files/digital_documents/4099_Bartlett_TODPlan_2016.pdf.

Nor do the Coalition Communities provide any evidence that the Transaction will materially increase emissions locally or to some level that exceeds applicable emission standards.[552] CPKC's plan to add eight freight trains to the MD-W Line west of Bensenville CPKC will attract freight traffic that would otherwise be moved by trucks (which emit higher emissions) on highways or by other rail companies (many of which have worse environmental records)[553] through other communities. Thus, even if increases in traffic through the Coalition Communities result in higher (but still legal and safe) emissions levels in the Coalition Communities, emissions likely will decline overall. Verified Statement of Glen Wilson ("Wilson V.S.") at ¶ 22 (App. Vol. 1 at 311).

The relief the Coalition Communities seek to redress these modest traffic increases is simply untenable and disproportionate to any possible impact the Transaction will have on their communities. For instance, the Coalition Communities have asked for $5.5 to $9.5 *billion* dollars in infrastructure mitigation (more than $1 billion for each potential new freight train),[554] which is more than is spent across the CREATE Program—a public-private partnership that is investing $4.6 billion dollars in approximately 70 different vital projects across the entire Chicago railroad network.[555] As the map in Figure 33 shows, the MD-W Line on which the Coalition Communities are found will have relatively light rail traffic post Transaction when compared to many other communities in and around Chicago. Elphick R.V.S. at ¶ 71.

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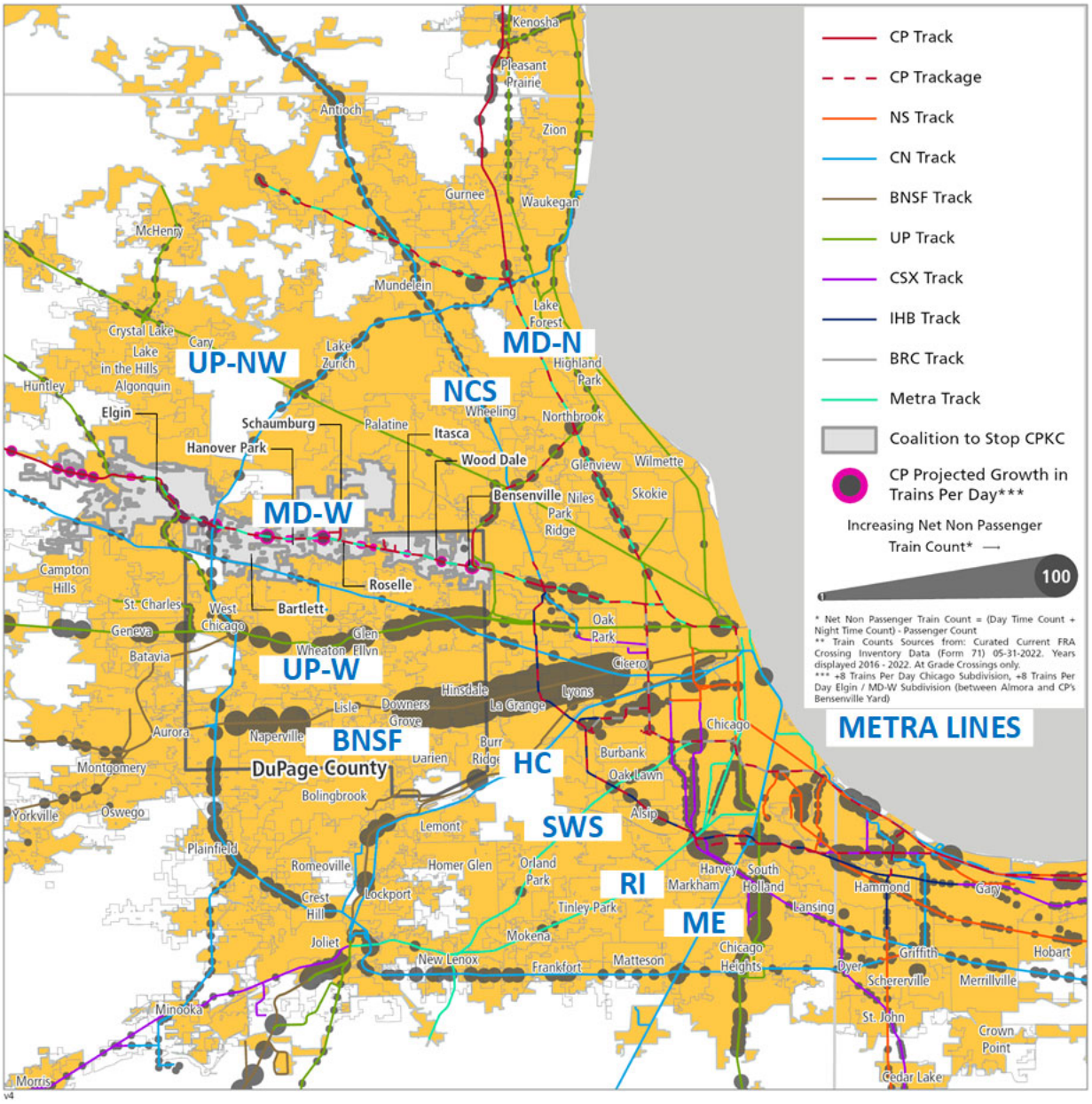
552 *See, e.g.* ITAS-1 at 14,

553 Wilson V.S. at 3.

554 ITAS-1 at 3.

555 CREATE: Keeping the Go in Chicago, https://www.createprogram.org/about-create/ (last visited Apr. 26, 2022) Vol. 3, Exh. 85).

FIGURE 33
COMPARATIVE TRAIN COUNTS FOR RAIL LINES IN CHICAGO AREA



Much of the relief the Coalition Communities seeks is not only overreaching, but also infeasible. Taking just one example, their proposal to "eliminate *any* additional freight rail traffic from traversing the western end of the Elgin Subdivision post-merger and to find other

routings for such traffic,"[556] would cut the CPKC network off from the rail network at and beyond Chicago, precluding competition for traffic moving to Detroit, eastern Canada, and the eastern United States. Moreover, it would send the same traffic through more circuitous routes – spanning hundreds of unnecessary miles, traversing dozens of other communities, and resulting in a myriad of additional costs and emissions. Elphick R.V.S. at ¶¶ 73-76. This is quintessential "not in my backyard," never mind the impact on the public as a whole.

Finally, the Coalition Communities' proposed condition "that (1) holds Applicants to their statement that average train size will be reduced over the Elgin Subdivision and (2) requires that the reductions shall not be accompanied by an increase in the number of trains"[557] would be inappropriate and counterproductive to operational efficiency and flexibility. First of all, these two conditions are contradictory because Applicants' projection of a decreased average train length is directly tied to a modest increase in the number of trains. Elphick R.V.S. at ¶ 79. And as previously explained, the Coalition Communities request that there be no "increase in the number of trains" traveling through its communities is unreasonable, comes at the expense of other communities, and disserves the public interest. Elphick R.V.S. at ¶ 78. Further, it would be inappropriate to condition approval of the Transaction on any guarantee that train sizes will not increase over the Elgin Subdivision, notwithstanding Applicants' projections, because it would deprive Applicants' of the flexibility they need respond to changing circumstances and match network conditions on a day-to-day basis. Elphick R.V.S. at ¶ 78.

In prior cases where mergers brought modest increases in freight train counts, the Board has at most imposed a condition requiring the Applicants to consult with the locality. Even then,

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556 ITAS-1 at 4 (emphasis in original).

557 ITAS-4 at 11.

it has terminated the condition when, after meeting, it was shown that "it is unlikely that additional consultation would result in mitigation that would be mutually acceptable to the parties."[558] Even that condition is not justified here, given that Applicants have indeed already consulted with the Coalition Communities, and it is clear that no reasonable, mutually acceptable mitigation is available.[559]

B. Hennepin County Concerns Fail For Similar Reasons

Hennepin County asserts that the Transaction "will bring more freight traffic to and through the County, bringing adverse impacts to the County's infrastructure" and "creat[ing] a greater risk of incidents involving hazardous materials."[560] Similar to the Coalition Communities, these concerns are overstated and do not warrant conditions.

Hennepin County notes that it is particularly concerned that "the diversion of the long-haul trucks . . . to reach CP's Minneapolis Intermodal Terminal at Shoreham Yard will aggravate existing problems and concerns."[561] But the anticipated additional daily volume of intermodal traffic to/from this facility is actually quite minimal. Applicants project that daily volume at the facility will increase by significantly less than one trainload per day. Elphick R.V.S. at ¶ 86. This increase is well within the range of seasonal traffic fluctuations at this terminal, and will return the facility to a level of volumes roughly comparable to what it saw in 2012-14. Elphick R.V.S. at ¶ 85.

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558 *BN/Santa Fe*, Finance Docket No. 32549, (decision No. 47 served Feb. 20, 1996).

559 *See* Letter from C. Anne Ergo to A. Giordano (May 24, 2022) (Vol. 3, Exh. 86) (asserting that Applicants' offered ten million dollar investment was "clearly not a serious attempt to reach a mutually acceptable settlement" in light of the Coalition Communities' demand for more than $9 billion dollars of mitigation).

560 Hennepin County Comments, at 5-6.

561 *Id.* at 7-8.

Outside of this one intermodal facility, the traffic projected increases about which Hennepin County complains are not even large enough to meet the Board's established thresholds for triggering environmental review. Under those thresholds, increases in rail traffic of less than eight trains per day in attainment areas or three trains per day in nonattainment areas – or comparable changes in gross ton mileage – normally do not require environmental review. *See* 49 C.F.R. §§ 1105.6(c)(1); 1105.7(e)(5). If Hennepin County wants OEA to depart from its precedent and study traffic changes that do not exceed these thresholds, it must make that case to OEA as part of the EIS process. This is not the proper place for such an argument.

In any event, none of these other projected traffic increases are cause for concern or conditions. Hennepin County asserts that it may experience increased "blocked crossings" as result of "more trains and longer trains, if industry trends continue."[562] The concern for continuing industry trends shows that Hennepin County's concern is not related to the Transaction. Indeed, Hennepin County calls the Board's attention to 14 crossings in particular that it is most concerned will be "directly and materially impacted by merger-related traffic increases,"[563] but issues with blocked crossings at this location are unlikely to result from the Transaction. Elphick R.V.S., at ¶ 90. *Second*, Hennepin County overstates the amount of additional hazardous traffic that will pass through Hennepin County, as it is counting empty tank cars returning for another load of the same commodity in its hazardous shipment volumes. Applicants informed Hennepin County of the error in its analysis,[564] but it did not adjust its

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562 *See* Hennepin Comments, at 13.

563 *Id.* at 14.

564 *See* Email from D. Meyer to A. Hirschkorn (Feb. 25, 2022) (Vol. 3, Exh. 89).

figures.[565] In fact, the volume of hazardous commodities routed through Hennepin County will not be large, and will be only slightly more than the hazardous materials that traversed Hennepin County in 2018 and 2019.[566] More importantly, CP is the safest railroad in North America based on FRA reportable incidents for Class 1 railroads, and the safety concerns relating to hazardous traffic are fully addressed in Applicants' Safety Integration Plan, which will be implemented in coordination with FRA.[567]

Finally, even after the Transaction, CPKC will remain a minority participant in the Hennepin County rail network, with BNSF having considerably more traffic in this region. *See* Elphick R.V.S. at ¶ 87. Taken in context, then, any concerns by Hennepin County about projected traffic levels after the Transaction are much more tied to BNSF traffic, which Applicants have no control over, than any traffic increases resulting from the Transaction.[568]

C. The Sierra Club's Requested Conditions Have No Nexus to the Transaction, Which is Expected to Lower Greenhouse Gas Emissions

The Sierra Club requests that the Board impose two conditions, neither of which is remotely related to the Transaction. Both should be denied, as "[t]he Board does not require

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565 *See* Hennepin Comments, Amfahr V.S., at ¶ 24.

566 *See* Elphick R.V.S.

567 *See* supra Part XI.A; Safety Integration Plan, FD No. 36500, at Part III.A.1 (filed Dec. 26, 2021).

568 *Canadian National Ry. & Grand Trunk Corp. – Control – EJ&E West Co.*, Finance Docket No. 35087 (Decision No. 18 served Jan. 16, 2009) ("Finally, it is worth noting that the EJ&E line is an active rail line today; thus, the current owners, as well as any carriers using that track pursuant to a trackage rights arrangement, could increase train traffic on that line at any time without Board approval and without any federal action triggering NEPA review or Board-imposed mitigation measures.").

mitigation for existing environmental conditions, such as the effects of current railroad operations."[569]

First, the Sierra Club requests that Applicants be "required to make climate commitments that meet the standards of the Intergovernmental Panel on Climate Change's recommendations and that KCS/CP and Amtrak make tangible, public-facing commitments to electrification of routes nationwide and any new routes in our state."[570] This request has no "nexus" to the Transaction, which has no impact on the feasibility of electrification.[571]

Second, the Sierra Club requests that Applicants be "required to make climate commitments that meet the standards of the Intergovernmental Panel on Climate Change's recommendations."[572] But the Sierra Club makes no attempt to demonstrate that the Transaction will raise greenhouse gases or otherwise harm to the environment in some way that justifies imposing such a commitment. In fact, Applicants project that the Transaction will *lower* greenhouse gas emissions overall. *See* Wilson V.S., Part II.A. Linking the CP and KCS networks and upgrading them through added sidings will make both portions of the network more efficient, which in addition to benefiting shippers, will also benefit the environment given that trains are more environmentally efficient when they move than when they idle, stop or switch. *Id.* at ¶ 17. This improved network will also result in the diversion of almost 64,000

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569 *Can. Nat'l. Rwy. Co. – Control – EJ&E W. Co.*, Finance Docket No. 35087 (Decision No. 16 served Dec. 24, 2008) at 38.

570 Sierra Club's Comments, at 1.

571 Canadian National Ry. – Control – EJ&E West Co., Finance Docket No. 35087, at App. A, n.2-3 (Notice of Intent to Prepare an Environmental Impact Statement, STB served Dec. 21, 2007) ("[T]he Board's power to impose conditions is not limitless: there must be a sufficient nexus between the condition imposed and the transaction before the agency, and the condition imposed must be reasonable . . . . The Board . . . has not imposed mitigation to remedy preexisting conditions.").

572 Sierra Club's Comments, at 1.

long-haul truck shipments to rail transport, which is four times more fuel efficient and results in a 75% drop in greenhouse gas emissions. *Id.* at ¶¶ 21-22. The result of all of this will be to eliminate more than 389,000 tons of greenhouse gas emissions annually by the third year after the Transaction is approved. *Id.* at ¶ 15.

Additionally, CP intends to apply its robust climate commitments across the CPKC system.[573] CP "already outperforms industry averages for locomotive fuel efficiency—over 11% better than the North American Class I freight average." Wilson V.S., at ¶ 8 (App. Vol. 1 at 306). Its fuel efficiency has improved by more than 40% since 1990, and it is committed to continue improving fuel efficiency, including expanding use of fuel trip optimizer technology. *Id.* at ¶¶ 8-9. CP expects to align with a "well-below 2°C pathway" by 2030 in line with the recommendations of the Intergovernmental Panel on Climate Change, and to remain a leader in the industry in pushing further decarbonization after 2030.[574]

XI. OTHER ISSUES

In this section we respond to a variety of miscellaneous comments, some styled as raising competitive issues or service issues, but none legitimately related to impacts of the Transaction.

A. Concerns About CP's Tariff Provisions Applicable to Hazardous Shipments Are Not Competitive Issues or Transaction-Related and Should Be Rejected

Several commenters express concerns relating to the tariff provisions CPKC might choose to adopt governing the transportation of a subset of extraordinarily hazardous

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573 *See id.* at ¶¶ 10-12; *see also* Canadian Pacific, CP's Commitment to Fight Climate Change, CP Sustainably Driven (2020), available at https://sustainability.cpr.ca/downloads/CP_Rail_2020_Climate_Statement.pdf (Vol. 3, Exh. 87).

574 *See also* Canadian Pacific, CP's Climate Strategy, CP Sustainably Driven (2021), available at https://sustainability.cpr.ca/downloads/CP_Rail_Climate_Strategy.pdf (Vol. 3, Exh. 88).

commodities classified as "toxic" or "poison" inhalation hazards and referred to as "TIH/PIH" commodities.[575] The concerns relate specifically to two aspects of CP's existing tariffs: Item 53, pertaining to insurance requirements, and Item 54, pertaining to the allocation between CP and the shipper of potential liability to third parties arising from a release of TIH/PIH commodities being transported by CP when CP is not at fault.[576]

Fundamentally, the requests of these commenters arise from their dissatisfaction with these two aspects of CP's existing TIH/PIH tariff provisions, which were in place long before this Transaction was contemplated. Some of these commenters are looking to avoid having CP's terms *ever applied* to the KCS network, via an inappropriate and permanent freeze of KCS's existing terms. Others go farther, asking the Board to impose conditions that would roll back CP's pre-existing tariff terms to match KCS's existing terms. No such conditions are justified, for reasons we explain below.

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[575] Comments of Bayer CropScience LP ("Bayer-2") (filed Feb. 28, 2022) at 10; Comments of Occidental Chemical Corporation and Oxy Vinyls, LP ("OxyChem Comments") (filed Feb. 28, 2022) at 2 (joining the Joint Associations' and The Chlorine Institute's request for conditions regarding CP's TIH/PIH tariff provisions); ACC-6/TFI-5/NITl-3 at 24-25; CI-3 at 4; Letter from the U.S. Department of Agriculture to the Surface Transportation Board ("USDA Letter") (dated Apr. 22, 2022) at 2. In its Amended Comments, the National Association of Wheat Growers (the "Wheat Growers") joined these commenters. *See* Amended Comments of National Association of Wheat Growers (filed June 9, 2022) ("Wheat Growers' Amended Comments") at 1-2. The Wheat Growers' Amended Comments did not "address the new information in the amended Application and use the modeled traffic density data in the resubmitted workpapers," as required by the Board, *see* Decision No. 18 (served May 27, 2022) at 2, and instead, addressed the topic of TIH/PIH tariffs for the first time. While Applicants believe the Wheat Growers' Amended Comments were improperly submitted, its Amended Comments fail to articulate any competition concerns. Further, as we discuss below, Bayer has subsequently withdrawn its comments in light of CP's agreement to provide advance notice of certain post-Transaction tariff changes affecting TIH/PIH shipments on the pre-Transaction KCS network. *See* Joint Notice of Settlement Agreement by CP and Bayer ("CP-51/Bayer-3") (filed May 25, 2022).

[576] Canadian Pacific, Hazardous Commodities Tariff 8 at 7, *available at* https://www.cpr.ca/en/customer-resources-site/Documents/tariff-8-hazardous-commodities-apr-07-2022.pdf [cpr.ca].

Applicants understand that certain shippers and receivers of TIH/PIH commodities – like Bayer – may reasonably be concerned about the potential that they would want to adjust their shipping patterns in the event CP's terms become applicable to shipments on the pre-Transaction KCS system and would value advance notice of any such change before it becomes effective. As set forth in CP's settlement with Bayer, CP committed to providing Bayer with three-years' notice before revising the indemnity provisions applicable to TIH/PIH shipments on KCS's pre-Transaction U.S. network to conform with the provisions of CP's tariff, in exchange for the commitment of Bayer and its suppliers to use the safest-available rolling stock for shipments of these commodities. Bayer withdrew its comments on the strength of this undertaking. *See* CP-51/Bayer-3. As Mr. Brooks explains, CP is prepared to negotiate comparable arrangements with any shipper that may wish to use KCS's pre-Transaction network to ship these commodities. Brooks R.V.S. at ¶ 74. Especially in light of this reasonable accommodation, the Board should reject the conditions requested by these commenters.

Even without Applicants' accommodation, however, there is no merit to the requested conditions relating to CPKC's future TIH/PIH tariffs, for the following reasons.

To the extent the TIH/PIH commenters take issue with CP's existing tariff terms and seek conditions designed to roll them back as to movements on the pre-Transaction CP network,[577] there is no doubt that any such condition would be unjustified. The tariff terms applicable to shipments on the pre-Transaction CP network will be unaffected by the Transaction. Although CP regards its terms as entirely reasonable (as Mr. Brooks explains in his Reply Verified

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[577] Bayer's now-withdrawn request had sought such a condition expressly. *See* Bayer-2 at 10. The Chlorine Institute's request is ambiguous as to the scope of the prohibition of applying CP's terms. *See* CI-3 at 4. USDA likewise suggests that the Board "investigate CP's tariff language itself." USDA Letter at 2.

Statement at ¶ 70), shippers are fully aware that they may challenge the reasonableness of those terms before the Board if they wish, and some have done so.[578] The Transaction will not affect the availability of regulatory oversight for these terms. Board precedent prohibits using this merger proceeding as a vehicle for regulating commercial activity unaffected by the Transaction.[579] Doing so would deny CPKC the right to establish reasonable terms for shipments on its network and defend those terms in appropriate regulatory fora.

All of the TIH/PIH commenters seek a condition precluding CP from applying its terms to shipments on the pre-Transaction KCS network. That request is similarly inappropriate, for the following reasons.

First, the conditions would not truly address any impact of the Transaction. The Transaction is not responsible for the possibility that KCS's tariff terms might change. In the pre-Transaction world, KCS has complete freedom – subject to the Board's regulatory backstop – to set whatever TIH/PIH tariff terms it wishes, and to change those terms in response to evolving conditions and judgments about the risks posed by those shipments. Nothing would prevent KCS from choosing to adopt terms that mirror those in CP's public tariffs.

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[578] As Bayer's now-withdrawn comments note, Agrium (whose successor, Nutrien, is a member of TFI), challenged CP's TIH/PIH tariff provisions on non-competition grounds before the Board in 2015 in Docket No. NOR 42145, arguing that CP's Tariff 8, Item 54, unreasonably shifts defense and liability responsibilities for train accidents to Agrium even in accidents caused by third-parties. Bayer-2 at 9, n.5; *see also* Complaint, *Agrium Inc. and Agrium U.S. Inc.* v. *Canadian Pacific Railway Company*, Docket No. NOR 42145 (May 15, 2015) at 1-2. The Agrium challenge led to a confidential settlement. Brooks R.V.S. at ¶ 69. Item 54 was also challenged on non-competition grounds in Canada and it was upheld by the Federal Court of Appeal. Brooks R.V.S. at ¶ 68.

[579] *See UP/SP*, 1 S.T.B. at 418 (making clear that "[a] condition must address an effect of the transaction" and that the agency "will not impose conditions 'to ameliorate longstanding problems which were not created by the merger,' nor will we impose conditions that 'are in no way related either directly or indirectly to the involved merger.").

Some of the TIH/PIH commenters imply that a change in terms applicable to the pre-Transaction KCS network would flow from an impact of the Transaction on competition.[580] But this is just wrong. As Mr. Naatz explains, KCS's current terms are the product of KCS's own assessment of the risks, and have nothing at all to do with competition with CP. Naatz R.V.S. at ¶ 114. Indeed, the very notion that KCS's terms have anything to do with competition from CP is belied by these commenters' own commentary: in their eyes, CP's terms are distinctly inferior, and thus not a source of competitive pressure for KCS to maintain more favorable terms, much less one that would be affected by the Transaction.[581] These commenters do not like the fact that CP managers might apply a different set of judgments about the appropriate level of risk to bear in connection with TIH/PIH shipments, pure and simple. That is not a competitive issue, as Dr. Majure explains. Majure R.V.S. at ¶ 179. Nor is it an effect of the Transaction that different business people's judgments about these matters may differ.[582]

An email among certain of the TIH/PIH commenters that was produced in discovery shows that they are well aware that their request for conditions has no real nexus to the Transaction. In a November 22, 2021 email from the ACC to OxyChem (one of ACC's members), the ACC representative observed that {{[redacted]

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580 *See* OxyChem Comments at 2; ACC-6/TFI-5/NITL-3 at 24; Wheat Growers' Amended Comments at 2.

581 The discussion of "competition" in Bayer's now-withdrawn comments underscores why there is no competitive issue here. Bayer's suppliers have already chosen not to use CP to ship TIH/PIH commodities and in the future they might choose not to ship to Bayer's facility in Kansas City via the pre-Transaction KCS portions of the CPKC system. That is not a reduction in competition, but a choice that those shippers might make to use other railroads for shipments for which they have already decided CP is not a viable option. Bayer-2 at 3-5, 9.

582 The different approaches that KCS and CP each respectively take towards TIH/PIH shipments reflect each railroad's own experiences and judgments of the risks posed by TIH/PIH shipments. Indeed, as explained in the Naatz R.V.S., KCS's TIH/PIH tariff terms reflect its assessment of the risks from TIH/PIH shipments as they relate to KCS's business. *See* Naatz R.V.S. at ¶ 114.

[redacted]}}[583]

Second, even if the Board attributed the possibility of a change in the tariff terms applicable to the pre-Transaction KCS system to the Transaction, the conditions sought by these commenters would be an egregious overreach. They would in substance freeze KCS's tariff terms permanently in their pre-Transaction state. The USDA says this expressly, asking that the Board "require KCS to *retain its tariff language*" for "traffic originating on, terminating on, or traversing the KCS network." USDA Letter at 2 (emphasis added). Such a freeze would impermissibly give these commenters rights they do not possess today, and in the process prevent CPKC from adapting to changes in conditions bearing on the risk profile of TIH/PIH shipments on the CPKC network. *See* Brooks R.V.S. at ¶ 71; Naatz R.V.S. at ¶ 115.

Third, the appropriate mechanism for shippers and receivers to voice their concerns about the future CPKC tariff terms applicable to shipments of TIH/PIH commodities on the pre-Transaction KCS network would be the opportunity to challenge the reasonableness of those terms before the Board or to negotiate these provisions with CPKC. The Transaction will have no impact on the availability of Board regulatory processes to oversee the reasonableness of whatever tariff terms CPKC might choose to adopt. By contrast, the conditions these commenters seek would inappropriately supplant those processes with a per se rule of invalidity applicable uniquely to CPKC and no other railroad. The law affords railroads the right to set

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583 *See* JA-HC-000001 at -05-06 (emphasis added) {{[redacted]}} (Vol. 3, Exh. 90).

reasonable tariff terms subject to review through a reasonable practices challenge at the STB. *See* 49 U.S.C. § 11324(c). KCS is therefore free today to change the terms of its tariffs so long as they are reasonable. CPKC would also be free to set its own tariff terms, subject to reasonable practices evaluation if such a case is filed.

A rigid prescription of CPKC's future tariff terms under the guise of a merger condition would not be consistent with the Board's merger precedents. And it would also be inconsistent with the Board's other regulatory precedents. Under no circumstances would the Board prescribe a set of tariff terms that KCS or CP must maintain without regard to the circumstances in a particular case. When it has evaluated proposed tariffs governing TIH/PIH shipments, the Board has emphasized that "it is prudent to tread carefully in this area, avoiding broad pronouncements and relying instead on narrow adjudications of specific tariffs."[584] The Board should reject the proposed conditions and remind these commenters of the appropriate legal avenues for voicing their concerns about CP's tariff terms.[585]

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[584] *Union Pacific R.R.–Petition for Declaratory Order*, Finance Docket No. 35504 (Decision served Apr. 30, 2013). In this proceeding the Board denied a petition for declaratory order sought by UP regarding the reasonableness of its tariff provisions relating to indemnification, but at the same time declined to rule that UP's tariff was unreasonable, as many shippers had requested. *Id.* at 6 n.12.

[585] Although not germane to the question whether any condition is warranted, the TIH/PIH commenters' concerns about CP's Items 53 and 54 applying to the pre-Transaction KCS portions of the CPKC network are overblown. Item 53, which requires that a shipper maintain $100 million of liability insurance, is not onerous for shippers of TIH/PIH materials, because the extreme hazards associated with these materials already requires them to maintain high insurance limits. Brooks R.V.S. at ¶ 70. Item 54, which requires that shippers indemnify and defend CP except to the extent that liabilities arise from the negligence or willful misconduct of CP, merely calls for a reasonable allocation of responsibility for liability outside of the railroad's control to the party responsible for the shipment without which there would no liability exposure. That provision is comparable to the terms established by other major railroads. Brooks R.V.S. at ¶ 67. And CP's liability terms merely differ from KCS's terms in that KCS does not explicitly require shippers to share in whatever liability might be imposed on KCS in the event of a release for which the railroad is not responsible. Naatz R.V.S at ¶ 114. KCS does not hold shippers harmless for liability that may arise from their shipments. Naatz R.V.S at ¶ 114.

B. Concerns of Certain Wheat Growers' Associations About Potential Competition from Canadian Grain Suppliers Reflect More Competition, Not Less

Three associations representing certain segments of the wheat industry in the United States (the "Wheat Growers Associations")[586] ask the Board to impose conditions on the Transaction to address vague concerns about the ability of U.S. wheat growers to compete with Canadian wheat growers currently served by CP, and the regulatory benefits that Canadian wheat growers allegedly enjoy due to pre-existing Canadian regulatory policy.[587] The Wheat Growers Associations' concerns are neither supported by evidence nor related to the Transaction. Neither CPKC nor Canadian regulatory policy will disadvantage wheat shipments from U.S. origins to Mexico and other KCS-served destinations relative to Canadian origins. Even if Canadian wheat growers did have some sort of competitive advantage over U.S. growers, that advantage would have nothing to do with the Transaction.

As a starting point, the supposed "concerns" of the Wheat Growers Associations in fact support unconditioned approval of the Transaction, because they proceed from the premise that the Transaction will provide *better, more competitive transportation options*. NDWC acknowledges this directly: "North Dakota wheat shippers and producers that are directly served by CP elevators certainly should benefit from some further destination single-haul rates and capabilities, that are being touted by the Applicants."[588] Likewise, "a more competitive CP with

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[586] As used in this Reply, "Wheat Growers Associations" refers to US Wheat Associates ("USWA") and the North Dakota Wheat Commission ("NDWC"). The National Association of Wheat Growers ("NAWG") initially filed Comments making substantially the same arguments as the other Wheat Growers Associations, *see* NAWG Comments at 2, but subsequently decided (wisely) to abandon those arguments, perhaps realizing that the Wheat Growers Associations' concerns are without merit.

[587] *See* NDWC Request for Conditions (filed Feb. 28, 2022) at 5; USWA Comments and Request for Conditions (filed Feb. 28, 2022) at 3-4; NAWG Comments (filed Feb. 28, 2022) at 2.

[588] NDWC Comments at 5.

a longer reach should offer *more competition to the BNSF* which is the more dominant railroad operating in North Dakota."[589] The other Wheat Growers Associations are concerned that the Transaction will make other shippers more "rail-advantaged," or give them a more "direct line into Mexico," which are just other ways of saying that the Transaction will yield transportation benefits.[590] Yet the same advantages will also extend to U.S. wheat growers along with other agricultural shippers. Dozens of agricultural shippers support the Transaction precisely because of these sorts of benefits.[591]

Second, and equally fundamentally, the concern of the Wheat Growers Associations that some of their members might have to face stiffer competition as a result of improved rail transportation options is not a valid objection to a rail merger. It has long been the case that Canadian wheat competes with U.S. wheat, particularly for destinations in Mexico, and the Transaction will not change that fact. And CP (along with CN) have long served both U.S. and Canadian origins. This already-extent competition was highlighted by BNSF witness William W. Wilson: "The northern origins [of the United States] supply Hard Red Spring (HRS) wheat which ultimately competes with similar wheat grown and shipped from Canadian origins."[592] In prior merger cases the Board has underscored that the public's interest in competition is best served by expanding access to competitive transportation options, not by protecting the

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589 *Id.* at 5.

590 USWA Comments at 4; NAWG Comments at 2.

591 *See, e.g.*, Reply Verified Statement of NEW Cooperative, Inc. ("This combination provides us the possibility to build a greenfield grain elevator to ship corn and soybeans in Northern Iowa, to capitalize on new, efficient single-line routes on CP-KC from Iowa to grain destinations on the KCS, including Mexico…We believe this investment will bring further benefits to our members and the supply chain as a whole, but is only viable in light of opportunities created by the CP-KCS combination"); Richardson International Limited Comment ("Richardson has reviewed the CP-KC Transaction and believes it opens new markets to our company. More specifically, we expect to be able to access new markets for our grain handling facilities located in North Dakota to ship grain to the Gulf area as well as Mexico.")

592 BNSF Comments, Verified Statement of William W. Wilson ("Wilson V.S.") at 8.

advantages that one group or another may have had in the past. In *CN/IC*, for example, the Board explained that greater competition from Canadian growers would be a public benefit rather than a public harm: "Even if North Dakota's competitive positions vis-a-vis Canadian producers on CN is harmed because these latter shippers will gain single-line service to the Gulf, that harm results from greater, not less, competition." *CN/IC* (Decision No. 37 served May 29, 1999) at 123.

Third, the factual premises of the Wheat Growers Associations' concerns are simply incorrect. Neither CPKC nor Canadian regulation will advantage Canadian origins over U.S. origins. For example, NDWC claims that "Canadian producers pay less to move wheat similar distances . . . by as much as 30% for similar moves." *See* NDWC Comments at 5. But the facts contradict this misperception. CP's rates for wheat shipped from Canadian origins are higher than rates from U.S. origins, proving that it does not favor Canadian origins over U.S. origins. *See* Brooks R.V.S. at ¶ 84. For destination markets in Mexico, CP's public tariffs show that Canadian shippers pay *substantially more* for rail transportation than U.S. wheat growers, not less. Table 7 illustrates this point by comparing CP's published rates for movement from U.S. and Canadian origins, both on a Rule 11 basis to the Kansas City gateway and a through rate basis to destinations in Tlalnepantla, Mexico.

TABLE 7[593]
CP WHEAT RATES TO MEXICAN DESTINATIONS FROM U.S. AND CANADIAN ORIGINS
EFFECTIVE AUGUST 1, 2022

	Rule 11 over Kansas City		Tlalnepantla, EM	
	25s/Split Train	All-in w/fuel	110s	All-in w/fuel
Hazel MN	$4,751	$5,455	$7,489	$9,622
Makwa MB	$5,162	$5,987	$7,723	$9,976

[593] *See* Brooks R.V.S. at 32, Table 7; Brooks' Workpapers: CP Tariff 4444, Item 14105; CP Tariff 4444, Item 16007; Tariff 4444, Item 17500; Tariff 4444, Item 17505, Tariff 4445, Item 14117.

Difference in CP Revenue for U.S. Origins	($411)	($532)	($234)	($354)
Bowbells ND	$5,970	$6,844	$7,716	$10,018
Weyburn SK	$5,999	$6,942	$8,027	$10,399
Difference in CP Revenue for U.S. Origins	($29)	($98)	($311)	($381)

The Wheat Growers Associations' are also mistaken about the advantages conferred by Canadian regulatory policy. The relevant policies have *no effect at all* on transportation rates charged by CP or anyone else in or through the United States. The Canadian maximum revenue entitlement ("MRE") policy, which is "designed to make sure railways are compensated fairly for the volume of grain they transport in a crop year [ ] and the distance they carry it," applies only to grain shipped from the Western Canadian Prairies to the Canadian export ports of Vancouver, Thunder Bay, and the Thunder Bay leg of the route to Montréal. It does not apply to wheat shipped by rail to destinations in the United States or Mexico.[594] As is evident from CP's public tariffs, shipments to U.S. and Mexico destinations fall outside the MRE.[595]

Because there is no Transaction-related harm, granting the Wheat Growers Associations' requests for conditions[596] would inappropriately burden the Transaction and affirmatively

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[594] *See* Canadian Transportation Agency, The Maximum Revenue Entitlement: A Guide ("MRE Guide"), available at https://otc-cta.gc.ca/eng/publication/maximum-revenue-entitlement-a-guide?msclkid=ec143571c10f11ec8f99bf0aaf7bc6a4 ("The MRE applies anytime CN or CP moves western grain in certain cars by rail in Canada's Western Division.").

[595] MRE Guide ("Any part of a movement [that] is outside of Canada's Western Division" is "not covered by MRE.").

[596] USWA and NDWC request that the Board "impose [] three forms of statutory competitive access as conditions on this transaction for use by any shipper on the new CP/KCS system that is subject to market dominance or receives inadequate service," where the three competitive access remedies available to shippers and carriers are: "the prescription of through routes, terminal trackage rights, and reciprocal switching." *See* USWA Comment at 13; NDWC Comment at 16.

interfere with the new, more competitive transportation environment it will enable. Efforts to impede more competitive cross-border transportation options is inconsistent with Board precedent, contrary to the spirit of the United States-Mexico-Canada Agreement (USMCA), and harmful to the public interest.

C. Conditions Are Not Needed to Protect Evergy's Service Levels

Evergy Metro, Inc. ("Evergy") expresses no competitive concerns about the Transaction, but instead is worried about potential service issues affecting its coal-fired La Cygne Generating Station in Amsterdam, MO, about 60 miles south of Kansas City.[597] Evergy characterizes the Transaction as posing a "systemic threat…for bulk commodity shippers reliant on the KCS lines from Kansas City south" and seeks conditions relating to oversight and reporting.[598]

Applicants have addressed in Sections I and V above the appropriateness of the Board imposing conditions (a) requiring Applicants to honor their representations in this proceeding and (b) establishing a five-year period of oversight, coupled with reporting obligations relating to Applicants' post-Transaction service levels. Such conditions would fully address any legitimate concerns Evergy has about the Transaction, and no further conditions are warranted.[599]

Evergy's concerns about service levels on the KCS line south of Kansas City are wrong on the facts. First, Evergy mistakenly asserts that CPKC will increase traffic south of Kansas

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[597] Opening Comments of Evergy Metro, Inc. ("Evergy Comments") (filed Feb. 28, 2022) at 4.

[598] Evergy Comments at 14, 17-18.

[599] Applicants note, however, that Evergy's request (Evergy Comments at 17) that Applicants honor their "representations … regarding the preservations of gateways" would not apply to Evergy's traffic, since CP cannot serve the origins of Powder River Basin coal that Evergy ships via the Kansas City gateway and the Transaction will thus not create the opportunity for a longer haul for this traffic on the CPKC network. CPKC's incentive to continue participating in this important traffic via Kansas City will be unaffected by the Transaction. *See* Section I and Brooks R.V.S. at ¶¶ 12, 13.

City without adding any "new sidings."[600] That is not accurate. KCS's trains deliver unit trains of coal to Evergy's La Cygne Generating Station at Amsterdam, MO, from interchange at Kansas City and then return the empty trains in the reverse direction. Applicants will in fact be adding capacity on this segment. As shown in the Application, and as illustrated in more detail the Elphick/Orr R.V.S, Applicants will be adding new double track near Kansas City as well as extending the siding at Blue Valley, MO.[601] As explained in the Elphick/Orr R.V.S., with these additions, there will be ample capacity on this segment to maintain Evergy's pre-Transaction cycle times. Elphick/Orr R.V.S. at ¶ 75.[602]

Second, Evergy acknowledges that KCS provides transportation services to Evergy under a transportation contract.[603] That contract {{ [redacted] }}. Naatz R.V.S. at ¶ 119. This contractual commitment would continue to bind CPKC for the duration of the contract. These protections, taken together with the service and oversight commitments Applicants have made generally, eliminate any justification for further conditions benefiting Evergy.

600 *See* Evergy Comments at 7, 9, 18.

601 *See* Amended Operating Plan (Exhibit 13) at ¶ 296.

602 Evergy's concerns about KCS's pre-Transaction service issues during 2021 (*see* Evergy Comments at 10-11) obviously do not stem from the Transaction.

603 *See* Evergy Comments at 4.

D. Texas International Terminals' Concerns Are Not Transaction-Related

Texas International Terminals Ltd. ("TxIT") seeks a condition requiring CPKC to "effectuate (as necessary) and maintain the access rights that KCS was granted in UP-MKT to Galveston" and to "actively and cooperatively work with rail shippers and TxIT to reasonably market and enable such rights to be actively utilized."[604] The haulage rights to which TxIT refers were granted to KCS more than 30 years ago but never exercised by KCS. This request is utterly unconnected to the Transaction and should be summarily denied.

TxIT operates an export terminal in Galveston, TX, to which KCS was granted haulage rights over UP in connection with UP's 1988 merger with Missouri-Kansas-Texas Railroad.[605] The rights were designed to provide destinations for grain originated using other rights granted in *UP/MKT*, the so-called "North End" rights, which gave KCS access to grain-origination points in the Omaha/Council Bluffs area.[606] Although KCS's use of the "North End" rights proved very successful (with KCS originating large volumes of grain in the Omaha/Council Bluffs area), as TxIT points out KCS "has not effectuated or sought to aggressively market those rights with respect to rail service to TxIT to date."[607] This is because KCS found those rights to be commercially disadvantageous as compared to other ways for KCS to get grain to destination markets, including other Gulf ports served directly by KCS (such as Port Arthur and New

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604 *See* Comments and Request for Conditions of Texas International Terminals Ltd. ("TxIT Comments") (filed Feb. 28, 2022) at 8.

605 *See UP/MKT.*

606 KCS inherited MKT's North End haulage right for grain traffic originating in Omaha/Council Bluffs, and also obtained haulage rights on UP between Beaumont and Galveston KCS to deliver North End grain to Galveston. *UP/MKT*, 4 I.C.C.2d at 452-458.

607 *See* TxIT Comments at 4.

Orleans). Naatz R.V.S. at ¶ 117. KCS has not turned away any traffic. Instead, grain traffic to TxIT's Galveston facility moves by rail via UP and BNSF. *Id*.[608]

The Transaction will not affect the existence of KCS's haulage rights.[609] Nor is the Transaction to blame for KCS's long-preexisting decision not to exercise those rights. Given the history, TxIT's suggestion that the Transaction will create a new incentive for KCS to favor other Gulf ports (ones it already services directly) is obviously without merit.[610] In these circumstances, TxIT's desire to impose on CPKC a new, affirmative obligation to "actively" market service to that terminal is unwarranted. There simply is no Transaction-related harm to address.

TxIT also echoes multiple other parties in requesting that the Board require Applicants to adhere to their pledge to maintain open gateways and interchanges and to impose conditions allowing for enforcement of those commitments.[611] These requests are addressed in depth in other sections of Applicants' Reply. *See*, *e.g.*, Sections I and VIII.B. TxIT's Comments add nothing that would warrant any relief beyond the commitments that Applicants have already made to address these issues. Indeed, some of the specific conditions TxIT seeks would be particularly inappropriate, and affirmatively anticompetitive. TxIT's insistence on "non-

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608 *See also Texas Railway Exchange LLC – Construction & Operation Exemption – Galveston County, TX*, Finance Docket No. 36186 (STB served Jan. 17, 2020) (TxIT is served by UP and BNSF).

609 Although TxIT's proposed condition is plainly inappropriate, Applicants have no plans to extinguish whatever rights CPKC would have to access Galveston via UP haulage.

610 *See* TxIT Comments at 5.

611 *Id.* at 9. Specifically, TxIT says "this would include requiring: (1) the preservation and maintenance of all existing CP gateways on traffic to TxIT in interchange with UP and BNSF; (2) the provision of competitive rates to those gateways for interline service that maintain existing, non-discriminatory competitive routing and service offerings that an independent CP and KCS are able to currently provide; and (3) quarterly reports to the Board providing information on rail traffic being diverted to CP/KCS from competing routes, including to/from Gulf Coast ports. The Board should also retain jurisdiction post-Transaction to provide adequate oversight and a method for parties to raise potential issues to ensure compliance with these conditions."

discriminatory competitive routing and service offerings," for example, would stifle CPKC's ability to compete more effectively in the transportation marketplace using its new single-line services. *See* Section VIII.B, above. Nor is there any justification for the kind of detailed reporting TxIT requests concerning competitively-sensitive details about the new traffic opportunities that CPKC attracts as a result of the Transaction. Such reporting would likewise undermine CPKC's ability to provide stronger competition against the larger Class 1 railroads. Brooks R.V.S. at ¶ 38.

E. LyondellBasell's Proposed Reciprocal Switching Conditions Should Be Rejected

LyondellBasell ("LYB") seeks conditions requiring that KCS provide UP and BNSF with new reciprocal switching access to three LYB-owned plants served by KCS: two in the Lake Charles, LA area and one in Corpus Christi, TX.[612] The relief LYB seeks is unwarranted, overreaching, and designed to address pre-existing conditions that are unrelated to the Transaction.

LYB's requests are not predicated on any purported competitive concerns about the Transaction, nor could they be. The Transaction will not have any effect whatsoever on the number of rail carriers with access to these KCS-served facilities. Instead, LYB is seeking to use the Transaction as a means to expand rail-carrier access relative to pre-Transaction conditions, which is reason enough to deny LYB's requested conditions.

LYB's own Comments explain that the UP or BNSF access it desires does not exist today. For both of LYB's Lake Charles area facilities, LYB makes no secret of the fact that –

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612 *See* LyondellBasell Opening Comments and Requests for Conditions (LYB-3) (filed Feb. 28, 2022).

wholly apart from the Transaction – BNSF has actively been attempting to gain access to these facilities but that "KCS has resisted BNSF access."[613]

- At the Sasol plant in Westlake, LA (near Lake Charles), LYB acknowledges that prior to the Transaction, KCS has declined to grant those rights.[614]
- At LYB's plant on the Rosebluff Lead in Lake Charles, LA, LYB acknowledges that BNSF's rights are subject to separate litigation before the Board, with the compensation owed to KCS for BNSF's access to LYB's facility currently pending before the Board.[615]
- At LYB's facility at Corpus Christi – which in any event "does not actively ship by rail today" – LYB acknowledges that UP has never had access to that facility.[616]

Accordingly, LYB's requests for forced competitive access arise out of its frustration with the status quo, not out of any competitive impact of the Transaction, and they are not appropriately addressed in this proceeding. The appropriate venue for LYB's requests for BNSF and UP reciprocal switching access is either (a) a petition for reciprocal switch access under the Board's existing competitive access rules, which LYB has not brought; (b) an effort to expand

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613 LYB-3 at 6, 10-13.

614 LYB-3 at 8.

615 LYB-3 at 9. The Board granted BNSF terminal trackage rights over the Rosebluff Lead in *BNSF Ry. – Terminal Trackage Rights – Kansas City Southern Ry.*, Finance Docket No. 32760 (Sub-No. 46) (Decision No. 3, served July 5, 2016), but it has not yet determined how much BNSF must pay KCS for that access. *BNSF Ry. – Terminal Trackage Rights – Kansas City Southern Ry.*, Finance Docket No. 32760 (Sub-No. 46) (Decision No. 8 decided Feb. 20, 2020); *BNSF Ry. – Terminal Trackage Rights – Kansas City Southern Ry.*, Finance Docket No. 32760 (Sub-No. 46) (Decision No. 10 decided Apr. 12, 2022).

616 LYB-3 at 10.

such access through Ex Parte No. 711 (where, not surprisingly, LYB has been an active participant),[617] or (c) an effort to enforce conditions imposed *on UP* in the *UP/SP* proceeding, where LYB likewise has actively been seeking BNSF access.[618] None of this has any place in this proceeding.

Lacking any competition-related justification for its proposed conditions, LYB attempts to bootstrap new competitive access by arguing that the Transaction will cause "traffic levels [to] increase substantially along the Gulf Coast . . . without commensurate investment."[619] As discussed in Section V above, there is no basis for concern about post-Transaction service levels along the lines used by KCS to access the LYB plants, but even if there were LYB's conditions would still be inappropriate and overreaching.

First, there is no basis for service-related concern on the lines serving LYB's plants in the Lake Charles area (and the Corpus Christi facility is not active in any event). The Transaction will not materially affect traffic levels on KCS's line serving Lake Charles.[620] To the extent that LYB is concerned about lines between Houston and Beaumont used by other future CPKC traffic, CPKC traffic will remain a small minority of the traffic on these UP-owned lines.[621]

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617 Ex Parte No. 711, Comments of LyondellBasell (filed Feb. 14, 2022) (Vol. 3, Exh. 91).

618 *See Union Pacific Corp. – Control – Southern Pacific Rail Corp.*, Finance Docket No. 32760 (Sub-No. 46) (Decision No. 10, served Apr. 13, 2022).

619 LYB-3 at 3.

620 Elphick/Orr R.V.S. at 70.

621 *See* Elphick/Orr R.V.S. at 70. LYB misconstrues the Transaction's effect on these lines by focusing solely on CPKC traffic rather than the UP and BNSF traffic that also uses those lines. *See* LYB-3 at 5 nn.7, 8. As Messrs Elphick and Orr show, when UP and BNSF traffic is considered, the relevance of the incremental Transaction-related traffic is greatly reduced. *Id.*

Those lines between Houston and Beaumont are directionally operated and have ample capacity for future traffic volumes, as discussed extensively in Section V above.[622]

Second, if LYB's traffic nonetheless is affected by Transaction-related service issues, the proper mechanism for addressing those matters would be the service assurance processes and Board oversight that Applicants discuss in Section V above and the Reply Verified Statement of John Brooks.

By contrast, the competitive access conditions sought by LYB are both untethered to the service concerns LYB espouses and overreaching in their scope. They are untethered for at least two reasons: (a) the two Lake Charles area facilities are already served by a second railroad (UP), already providing the service outlet LYB claims it lacks; (b) granting BNSF (or UP at Corpus Christi) new access would not overcome any putative service issues that might emerge on the lines in question, because BNSF or UP would both need to use those same lines along with KCS (*see* Simmons R.V.S. at ¶ 92);[623] and (c) and the reciprocal switching access LYB seeks at all three locations would address pre-existing competitive conditions; giving LYB a windfall out of all proportion to any potential transitory service issues that might arise.

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[622] In addition, contrary to LYB's assertion about investments in capacity, as discussed in Section IV above, KCS has recently made or is in the process of participating in, extensive investments in rail capacity on the UP- and KCS-owned lines over which it operates between Beaumont and Robstown, TX. *See also* Elphick/Orr R.V.S. at ¶ 43.

[623] For example, LYB's assertion (at 10) that UP routing traffic to/from Corpus Christi would involve "minimal travel on the Tex Mex line" is incorrect – that traffic would traverse the same UP lines between Robstown and Placedo and probably between Houston and Beaumont that LYB complains would be congested. Likewise, BNSF traffic to/from Lake Charles must traverse the same UP-BNSF joint line between Houston and New Orleans and the Neches River Bridge. Simmons R.V.S. at ¶ 92.

F. The Late-Submitted Concerns of Certain FMC Commissioners About Diversions to Canadian Ports Are Meritless

Finally, Applicants respond to the Comments filed recently (and out of time) by three individual commissioners of the Federal Maritime Commission. As those individuals make clear, their comments "do not constitute an official position of the Federal Maritime Commission." These commenters are expressing concerns that have no relationship to the Transaction being proposed.

First, the CP/KCS Transaction will not have any effect on intermodal traffic volumes moving between the Port of Vancouver, the Port of St. John (or any other Canadian port) and the United States. CP's network already serves the Upper Midwest and offers highly-efficient intermodal service between Vancouver and Chicago, and independent of the Transaction CP is developing improved intermodal service between the Port of St. John and Chicago. The Transaction does not have anything to do with this service. In fact, limitations on the capacity at the Port of Vancouver itself also limit the potential for growth in this traffic.[624] The concern of these commissioners that the Transaction is "explicitly aimed at continuing to build on policies to use Canadian ports and Canadian railroads to carry U.S.-destined cargo" is thus founded on a misunderstanding.

Second, the Canadian government's policies respecting ports likewise have nothing to do with – and are obviously unaffected by – this Transaction. The concerns raised by these individuals ultimately reflect a complaint about Canadian port policy and the existence of an international transportation marketplace that has allowed ports in Canada to compete for transcontinental intermodal traffic (like CN's very successful investment in Prince Rupert). To

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624 *See* Wahba/Naatz R.V.S. at ¶ 28.

the extent they believe Canadian or U.S. port policies render Canadian ports more efficient than U.S. ports in certain respects, as these commissioners seem to believe, the commissioners should take the matter up with the relevant maritime policy makers (over which we would presume they have some influence), but it is not a matter relevant to the public interest effects of this Transaction.

Third, even if it were the case that the Transaction did improve the transportation options available to receivers of freight in the U.S. Midwest that is shipped to North America via Pacific or Atlantic steamship routes, and then moved inland via rail, that effect would be procompetitive and plainly benefit the U.S. economy and U.S. consumers who would have more economical access to imported goods. Under the Board's public interest test, the parochial concerns of U.S. longshoreman would not be entitled to weight any more than the railroad competitors of new CPKC single-line routes.

Finally, the suggestion that U.S. intermodal ports might somehow be materially threatened by improvement in the transportation routes from Canadian ports to the United States is belied by hard data. Figure 34 below compares the intermodal volumes handled by U.S. Pacific ports in comparison with the volumes handled by Canadian ports. Even if one imagined (counterfactually) that Canadian ports could attract *25 greater volumes*, and do so entirely by shifting those volumes away from U.S. ports, that would still not put a dent in U.S. Pacific port container volumes.[625]

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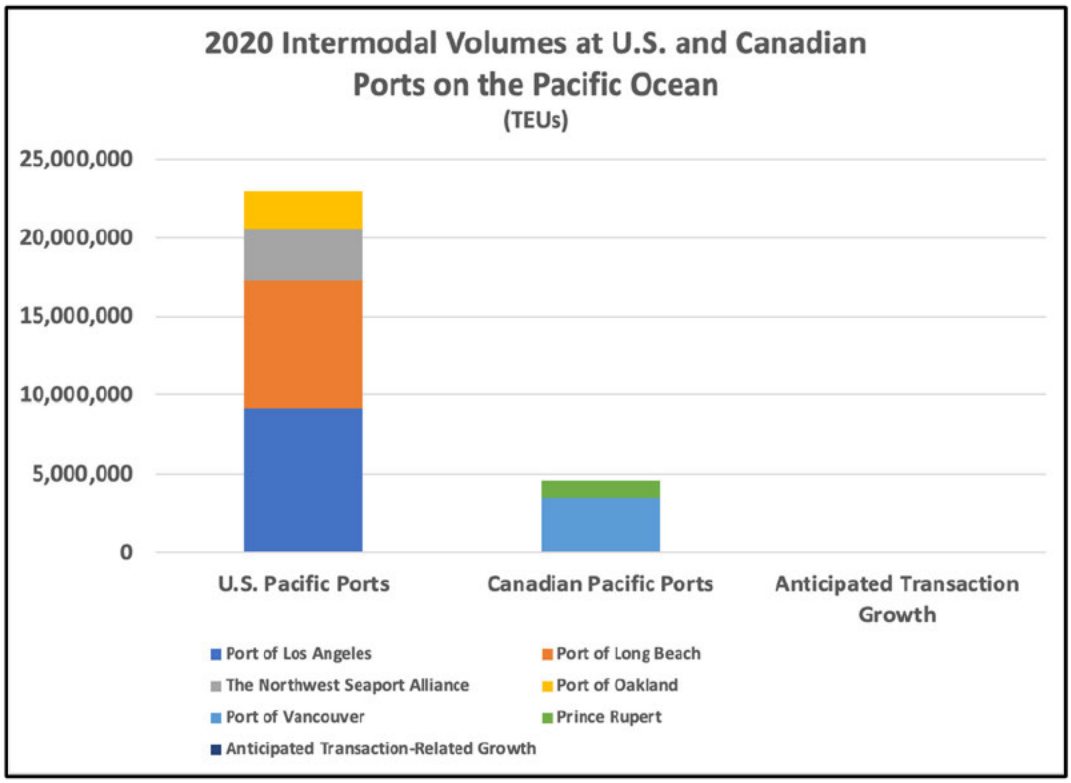
[625] Applicants anticipated new Vancouver-U.S. intermodal volumes of approximately 5,600 TEUs would (even if diverted entirely from U.S. ports) amount to only to one-hundredths of one percent (i.e., 0.02%) of U.S. West Coast container volumes, and are invisible on Figure 34. *See* Wahba/Naatz R.V.S. at 19.

FIGURE 34
COMPARISON OF U.S. AND CANADIAN PORT INTERMODAL VOLUMES



XII. THE BOARD SHOULD APPROVE THIS APPLICATION AND RESIST ALL CALLS TO HANDICAP CPKC'S POTENTIAL NEW COMPETITION WITH BURDENSOME CONDITIONS

As Applicants reply witnesses explain again and again, there is only one threat to competition and the public interest in play in this merger proceeding, and that is the calls by Class 1 railroads and others for extensive conditions that would burden CPKCs new competitive initiatives and be destructive of the Transaction's public interest benefits. All of the requests have this core feature:

- CN's demand to dismember the KCS network;
- UP and BNSF's demand to be given a veto over CPKC's competition until CPKC has paid for everything they might desire in Texas;
- UP's and BNSF's demand for regulated revenue divisions that would subsidize their own efforts to resist CPKC's new single-lien service offerings;

- Calls by shipper organizations to impose uniquely on CPKC an asymmetrical set of "competitive access" regulatory strictures that would be applicable to no other railroad;
- Calls by self-interested communities to stop all of CPKC's trains dozens of miles west of Chicago;
- And on and on they go.

None of these conditions is justified, as we have demonstrated at length. But all of them would in fact be a dagger aimed at the heart of the Transaction's benefits, hampering CPKC's ability and flexibility to provide the very benefits that the Transaction promises. As put by Mr. Creel: "The many hundreds of shippers who have supported the Transaction recognize it for what it is – a once in a lifetime opportunity to make competition stronger without the need for new regulation. CPKC will be a catalyst for a more competitive rail industry, with more capacity to serve shipper needs, and a commitment to bring a customer-first mindset to the marketplace."

As Applicants' economic expert, drawing from his years of experience analyzing mergers across countless industries while at the DOJ Antitrust Division warns:

> "[A] a particularly end-to-end railroad merger, the CP-KCS combination presents opportunities to enhance competition with improved options to shippers and enhanced competition through new single-line service. The Comments reflect these shippers' perception that past railroad mergers have generally been associated with a trend of reduced competition and worse options for shippers, but a CP-KCS combination is the kind of merger that goes against the trend. It is, indeed, a chance to mitigate that history and enhance the competition for affected shippers. To the extent that past railroad mergers may have reduced competition and harmed shippers, *the solution is not to burden the CPKC with unwarranted conditions that would limit CPKC's ability to enhance competition. Doing so would run counter to the interest of these shippers and undermine the Board's objective of fostering rail competition*."

Majure R.V.S. at ¶¶ 185-186 (emphasis added).

Because the Transaction is demonstrably in the public interest, and will cause no public interest applicants request that the Board grant unconditioned approval and reject the Responsive Applications of CN and NS.

Dated: July 12, 2022

Respectfully submitted

/s/ /s/

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APPENDICIES

APPENDIX A

PRIOR CLASS 1 RAILROAD MERGERS OF THE PAST 40 YEARS WERE CONSISTENTLY APPROVED BASED ON THE BENEFITS OF NEW SINGLE-LINE SERVICES AND A LACK OF COMPETITIVE CONCERN ABOUT "GATEWAY FORECLOSURE"

FIGURE 1
THE MERGERS THAT BUILD BNSF, CSX, NS AND UP

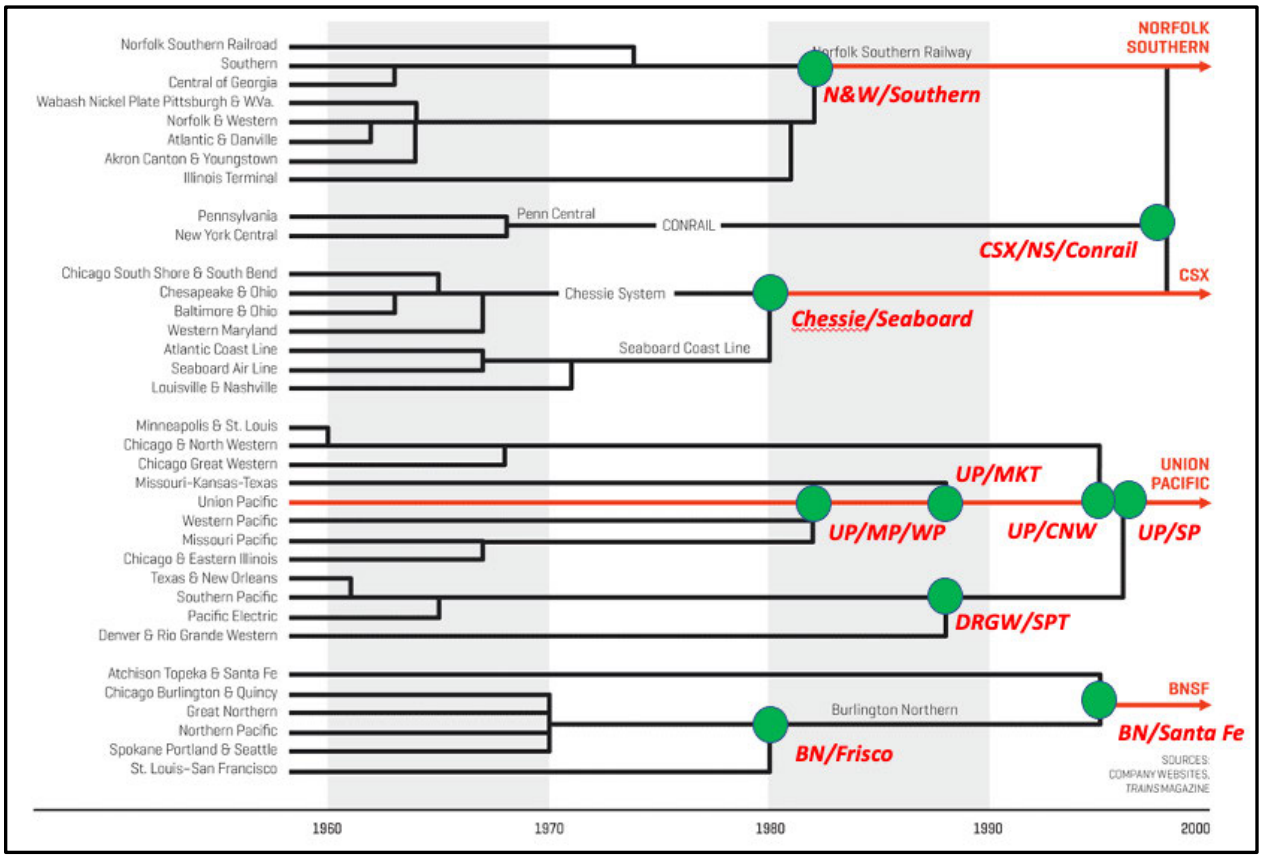
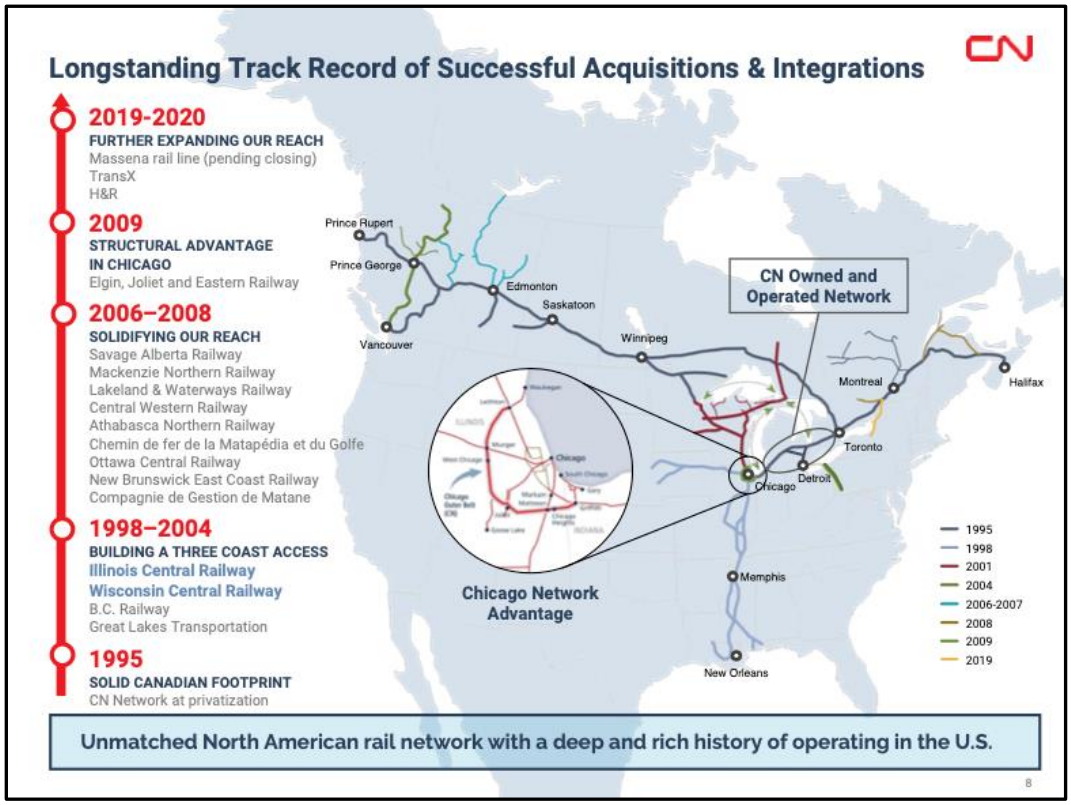


FIGURE 2[1]
THE ACQUISITIONS THAT BUILT CN



SELECTED EXCERPTS FROM ICC AND BOARD MERGER DECISIONS 1980-1999

1980

BN/FRISCO

Decision Approving Transaction: *Burlington Northern, Inc. – Control & Merger – St. Louis-San Francisco Ry.*, 360 I.C.C. 788 (1980)

- "Applicants believe that the merged company would offer substantial service improvements to both its on-line customers and to many of the customers of its connecting railroads. The merged company would provide single-line service from such major southeastern traffic generating points at Birmingham, Memphis, and Mobile to the northwestern points of Portland, Seattle, and Vancouver (British Columbia); and from the Chicago gateway to Tulsa, Oklahoma City, Dallas-Fort Worth, Houston, and Galveston. Consolidations of traffic flows would

[1] Source: CN Investor Presentation, "*Superior Proposal to Combine With Kansas City Southern*" (Apr. 2021), Slide 8 (Exhibit __ hereto), *available at* https://www.cn.ca/en/investors/events/-/media/Files/Investors/Presentations/CN-Makes-Superior-Proposal-to-Combine-With-KCS.pdf.

enable the movement of trains over longer distances with no need for interchange and with minimal en route switching." (360 I.C.C. at 812).

- "Applicants acknowledge that they will exert their best efforts toward obtaining longer hauls over the merged single-line routes where possible. Nonetheless, they expect to maintain existing gateways and joint routes with connecting carriers, and anticipate that traffic will continue to move via such gateways and routes where service considerations dictate. For example, applicants believe that certain traffic moving in connection with UP at Kansas City between the Pacific Northwest and Memphis and beyond will continue to be so routed because this route will be shorter and involve less transit time than the proposed BN-Frisco single-line route via Minot, ND. However, applicants will not guarantee premerger traffic levels." (360 I.C.C. at 812).
- *"DOJ conclusion*.—Based upon its analysis, DOJ concluded that if single-line service is implemented, the public could benefit from reduced transit times, improved freight car supply, and increased service reliability without a reduction of the number of carriers in relevant corridors." (360 I.C.C. at 919).
- "We have weighed the benefits of this merger to applicants and shippers versus the injury to other railroads and found the public interest considerations favoring the applications." (360 I.C.C. at 935).
- *"Adequacy of transportation*.—Approval of this merger, as conditioned, will have a beneficial effect on the adequacy of transportation to the public. Not only will the services of the merged company be significantly improved, but other railroads will be able to continue providing essential services. The merged company will be able to provide new single-line service, reduced transit times, more efficient and frequent service, and improved car utilization." (360 I.C.C. at 935).
- "Single-line service will be available between the gulf coast and the Midwest and Northwest. This new service will be available between Seattle, Portland, and Vancouver, on the one hand, and Birmingham, Memphis, and Mobile on the other. Another direct route is between Minneapolis-St. Paul, Duluth-Superior, and Chicago, on the one hand, and, on the other, Tulsa, Oklahoma City, Dallas-Fort Worth, and Houston. Pre-blocked trains will be able to move over long distances without interchange and with minimal switching. The elimination or reduction of switching or interchange at Kansas City and St. Louis will also save time and resources in carrying freight." (360 I.C.C. at 935).
- "Shippers support this merger because reduced transit time, ease of tracing shipments, control of loss and damage, possible expansion into new markets, and improved car utilization and availability will result from the new single-line service that will be available after the merger. When shippers who spend billions of dollars annually for transportation services state that a service created by a merger will benefit them, we must weigh such evidence heavily in our decisionmaking process. (360 I.C.C. at 935-36).
- "Railroads compete with each other for the longest haul and maximum revenue on traffic. At the same time they must cooperate when and where traffic is

interchanged. Because of this 'Balkanization' of the railroad industry, BN and Frisco independently have not taken steps to develop single-line service or innovative rates. Since railroads compete for any traffic that can be handled by more than one railroad, railroad management should not be expected to sacrifice potential revenue on which that railroad's facilities and investors could rely. Without a merger this single-line service could not be provided without bringing into question management's duty to investors and the public." (360 I.C.C. at 936).

- "A direct result of single-line service will be faster transit times (*e.g.*, transit time between Minneapolis and Memphis will be reduced by 49 percent, from 94 hours to 49 hours) due to reduced intermediate switching. With reduced switching, handling of shipments and incidental loss and damage also will be reduced." (360 I.C.C. at 936).
- "One of the major benefits from this merger will be a reduction in the number of currently interlined shipments. Interchanging traffic adds to the total cost of handling traffic, including operational cost (car-switching) and clerical cost (recordkeeping). Interchanging freight also adds significantly to delivery time, since the time a railcar spends in a yard or terminal is most of its time in transit and an inefficient use of cars. Superior service should not be penalized because weak carriers cannot meet the competition." (360 I.C.C. at 940).
- "Another benefit to shippers would be the ability to control and trace shipments through one railroad where the shipments are being handled in single-line service. Shippers are attracted to a sole source of carrier responsibility for loss and damage, along with single carrier responsibility for expediting shipments when necessary." (360 I.C.C. at 940).
- "The merger presents the opportunity for innovative ratesetting. Standing alone, a bridge carrier like Frisco has neither the financial ability nor sufficiently long hauls to take these actions on a scale equivalent to that of the merged company. However, in conjunction with BN, Frisco will create a new system with financial strength, long hauls, a great proportion of origin and destination traffic, and access to numerous gateways. A company of this size can initiate imaginative or aggressive pricing." (360 I.C.C. at 940).
- "The increased competition will result from the combination of BN and Frisco routes and existing traffic flows into a system which greatly increases the territorial penetration of both carriers. The traffic flows for BN and Frisco are complementary: each a natural extension of the other. It is not surprising that the protestants are those carriers (including those having reached stipulated agreements with applicants) which have routes paralleling routes of one or both applicants. These carriers in most instances have provided end-to-end interline service in connection with one applicant in competition with the other applicant. For example, ICG has provided interline service to and from Birmingham in connection with BN via the Centralia gateway in competition with Frisco and its connections (including BN). After merger, ICG's Centralia-Birmingham service will clearly face increased competition from single-line BN-Frisco routes to and

from several geographic markets formerly served by BN but not by Frisco. ICG will compete by connecting elsewhere with others." (360 I.C.C. at 943-44).

- **"**We conclude that applicants after merger will have the *potential* to become much stronger competitively for traffic handled by other modes. It clearly is up to the unified management to take advantage of the potential. We consistently have encouraged the rail industry to be both more cooperative (*e.g.*, handling long-haul TOFC) and competitive (*e.g.*, providing comparable service) intermodally, and approval of the proposed transaction provides a major tool to achieve these goals, to the benefit of the merged company, its shippers, and other carriers both rail and nonrail." (360 I.C.C. at 944).
- "Several railroads potentially impacted competitively by the proposed merger have entered into stipulated agreements with applicants. Details of these agreements are set forth in appendix K. Although these carriers have anticipated traffic diversion as a result of the proposed merger, they believe that they have adequately protected themselves from any increase in competition beyond that which normally can be expected in the marketplace." (360 I.C.C. at 944).
- "The railroads which have remained as active protestants in these proceedings (Soo Line, Rock Island, Milwaukee Road, ICG, and Katy) fear the increased competition resulting from the proposed merger and have pressed strongly for protection from the impacts of the new competitive strength of BN and Frisco." (360 I.C.C. at 944).
- "We will not protect impacted carriers simply because they find themselves in a situation where they must actively compete for traffic more strenuously. As stated in our policy statement, we look only to preservation of essential rail service when imposing protective conditions, not to the protection of corporate entities. We have found that no corporate entity will be so adversely affected by the merger that it will be unable to provide essential services. Affected carriers must compete more vigorously and develop new interline rates and services to meet the new competitive abilities of a merged BN-Frisco." (360 I.C.C. at 944).

CHESSIE/SEABOARD (TO FORM CSX)

Decision Approving Transaction: ***CSX Corporation – Control – Chessie System, Inc., & Seaboard Coast Line Industries, Inc.,*** **363 I.C.C. 521 (1980)**

- "CSX's largely end-to-end consolidation would create the first major railroad system extending from the northeast industrial center and many of the industrial centers of the Great Lakes region to the Southeast. The affiliation will create first-time single-system service over many major interregional corridors, such as Jacksonville-Philadelphia, Atlanta-Philadelphia, Detroit- Jacksonville, Pittsburgh-Birmingham, Toledo-Atlanta, Detroit-Savannah, and Jacksonville-Baltimore." (363 I.C.C. at 553).
- "The new single-system service will benefit the shipping public. Although single-system service will not provide all the advantages associated with single-line service (traffic must still be interchanged among the affiliated carriers),

single-system service does offer opportunities for significant improvements over present joint-line operations. Opportunities will exist for more efficient routing of traffic, simplified car tracing, improved customer information, greater car supply, improved car utilization, and improved service by virtue of systemwide run-through trains, systemwide blocking, and terminal consolidations." (363 I.C.C. at 529).

- "The consolidation of interchange partners should provide faster, more efficient service to a wider geographic area, to the public benefit. This would be to the carriers' collective self-interest if the system's profitability is increased by measures taken to cooperate, across-the-board, at all points of interchange. The trade-offs a carrier may make in one area presumably would be reciprocated by the partner in another. The CSX proposal is an example of how consolidations can enable carriers to work together with a common purpose to provide better service to more shippers." (363 I.C.C. at 552-53).
- "It is generally thought that single-line service has many advantages over joint-line service for both shippers and carriers. Interchange operations can be eliminated, reducing both operating and overhead costs and transit time; transaction costs are reduced; and incentives to provide less than efficient service (arising from per diem charges for railcars, rate divisions, or production externalities) are reduced. Thus, speed, reliability, and handling are enhanced. For these reasons, shippers tend to prefer single-line service over joint-line service." (363 I.C.C. at 553).

1982

N&W/SOUTHERN (TO FORM NORFOLK SOUTHERN)

Decision Approving Transaction: ***Norfolk Southern Corp. – Control – Norfolk & Western Ry. & Southern Ry.*****, 366 I.C.C. 173 (1982)**

- "We are granting the primary application and the directly related applications because we find the transaction to be consistent with the public interest. The consolidation will enable NS to control two railroad systems which generally meet end-to-end. The resulting operations will provide single-system rail service connecting the Southeast with the Midwest and Northeast." (366 I.C.C. at 176).
- "The new single-system service will benefit the shipping public in that it offers opportunities for significantly improved routings, more efficient operations (including run-through and interroad trains), improved car utilization and terminal consolidations. The new system will also be in a position to provide greater competition to the existing CSX Corporation (CSX) system and to provide greater intermodal competition." (366 I.C.C. at 176).
- *"Service improvement and marketing opportunities*.—One of the primary benefits of the proposed consolidation is the creation of a single railroad system positioned to meet the growing demand for interregional rail transportation service between points in the Northeast and Midwest and points in the Southeast. Production and

consumption patterns and the flow of commodities between markets in the eastern United States have changed significantly in recent decades, but the rail system has not been adequately structured to react to these changes. While the Northeast and Midwest continue to be important suppliers of industrial and consumer goods, the Southeast has emerged as a significant economic force and, as a region, is now the largest domestic supplier of such commodities as textiles, furniture, pulpboard, and paperboard. The economic growth of the Southeast has generated increased demand in the region for a number of commodities, including industrial machinery, coal, and grain products. The Southeast has also developed as an important market for consumer goods, such as automobiles, produced in the Northeast or Midwest.

"The economic interdependence of the Northeast, Midwest, and Southeast regions has created a need for improved interregional rail transportation. Until our recent approval of the CSX consolidation, north-south rail service in the East depended primarily upon interline movements. In 1979, 54 percent of Southern's total tonnage and 56 percent of NW's total tonnage was interlined.

"Shippers, however, prefer single-system service. Single-system service offers the opportunity to improve speed and reliability of service and equipment utilization and distribution. It also focuses responsibility for an entire movement on a single carrier, improving shippers' ability to control and trace individual shipments and to expedite shipments when necessary. Additionally, single-system responsibility facilitates prompt settlement of loss and damage claims.

"The NS consolidation will create a single system serving numerous points in the Midwest and Northeast, including Chicago, Cleveland, Detroit and Buffalo, and numerous points in the Southeast, including Atlanta, Birmingham, Chattanooga, and Jacksonville. The new system also will connect NW grain origins in the Midwest with grain consumers on Southern; NW coal origins with Southeastern utilities; and South Atlantic and Gulf ports with points in the Midwest and Northeast. The improved rail service which single-system operation between these points offers is clearly a public benefit of the consolidation."
(366 I.C.C. at 194-95).

- "In addition to the inherent benefit of single-system service, the NS consolidation will limit the adverse impact of the 'gateway- watershed' problem on service to shippers located near the common borders of the component Southern and NW systems. This 'gateway-watershed' problem is explained as follows. Given the loss of responsibility and control associated with interline traffic and assuming current divisions are not easily adjusted, railroads can lack sufficient incentive to undertake marketing initiatives for traffic moving beyond their lines. The most severe constraint on traffic flow is encountered where an origin or destination point of one rail carrier is located relatively close to its interchange point with another railroad. Since the carrier serving the site near the gateway receives only the short haul of what may be a movement of considerable distance, its share of a competitive rate may be insufficient to warrant its participation even though the

total revenue associated with the movement may be remunerative. Factors apart from revenues – such as varying traffic balances on the two systems, so that a given movement balances the traffic flows of one carrier but increases an imbalance for another – can also prevent otherwise competitive movements from taking place."

"The geographic juxtaposition of NW and Southern presents a good example of the watershed problem between rail systems. NW is basically an east-west railroad while Southern is oriented primarily on a north-south axis. Consequently, NW has historically been concerned with maximizing its east-west long haul and Southern its north-south long haul. There are few incentives for carriers with such diverse traffic patterns to coordinate operations in contiguous areas. The management of each railroad has generally found it more profitable to use its resources in carrying traffic over its long haul than by participating in short-haul, joint-line movements. The examples set forth in appendix F clearly illustrate the impact of the gateway- watershed problem upon present NW and Southern operations and the difficulty of solving this problem using means other than consolidation. *See CSX, supra*, at page 555." (366 I.C.C. at 195-96).

UP/MP/WP

Decision Approving Transaction: ***Union Pacific Corp., Pacific Rail System, Inc. & Union Pacific R.R. – Control – Missouri Pacific Corp. & Missouri Pacific R.R.,*** **366 I.C.C. 462 (1982).**

- "The significant service improvements resulting from the proposed consolidations are derived from the ability to provide efficient single system rail service between regions and markets which either have no such service at present or which have no competitive alternatives to the service that already exists. The consolidated system will provide new single system service between the Pacific Northwest and the Gulf, in direct competition with BN; between northern California, the Midwest and Gulf, between southern California and the Midwest and the Gulf, and between the Rockies and Plains and the Midwest and the Gulf. Interlining will be reduced in the transcontinental markets, which the consolidated system will reach via the St. Louis, Memphis and New Orleans gateways.

  "Shippers prefer single line or single system service because it improves reliability and transit times, and equipment availability. Norfolk Southern. Shippers can more efficiently use their resources by dealing with and relying on one carrier instead of several on questions of schedules, special service requirements, car tracing, and loss and damage claims. Shippers benefit from improved equipment availability which results when unified rail management implements a plan for the efficient use of its equipment, resulting in more reliable service. Shippers also benefit from improved transit times and resultant reduced equipment costs made possible when single rail systems are able to minimize interchange delays by increasing the use of preblocking and run-through trains.

"The proposed operating changes implementing single system service are discussed in the following section. As an example of the benefits expected due to the new service, applicants propose to save a day or more in transit time between Omaha/Council Bluffs and the South Central States by avoiding reclassification in Kansas City.

"The proposed consolidation will open new markets to shippers located on one of the applicants' lines by providing efficient single system access to the Pacific Northwest, northern and southern California, the Rockies and Plains States, the Midwest, South and the Gulf Ports, Mexican border crossing points, and the St. Louis and Memphis gateways to the east. In 1979, over 70 percent of both UP and MP's traffic was interlined, and those shippers after consolidation will be positioned to take advantage of efficient single system service to many new markets." (366 I.C.C. at 489-90).

1988

UP/MKT

Decision Approving Transaction: ***Union Pacific Corp., Union Pacific R.R. & Missouri Pacific R.R. – Control – Missouri-Kansas-Texas R.R.,*** **et al., 4 I.C.C.2d 409 (1988)**

- "Applicants seek to provide shippers with new single-system service be- tween points served by UP and MKT. For example, the merger would promote single-line movement of export grain from MKT points to UP- served Mexican gateways, UP-served points on the West Coast and in the Southwest, and UP-served ports." (4 I.C.C.2d at 430).
- "A significant, though less tangible, benefit also will be realized by providing single system service to shippers served by the consolidating carriers." (4 I.C.C.2d at 417).
- "[C]ompetition will increase through pitting a single-line route against a joint-line one. The OKT-SP routing will continue if it is efficient." (4 I.C.C.2d at 460).
- "Applicants estimate that the merged system would divert over $18.2 million in traffic from other carriers. … [S]ome of this diversion is tied to the 'qualitative' public benefit of new or improved single-line service sought by shippers … It is not possible from the record to extract from these diversion estimates a figure representing public benefits. Applicants themselves make no attempt to do so, and their figure of $60.9 million represents significant public benefits regardless of any public benefits resulting from diversion. Private benefits from traffic diversion are generally not of concern to us unless diversion from another carrier would threaten that carrier's ability to provide essential services. … Because more accurate diversion figures are not needed to conclude either that sufficient public benefits exist or that diversion would harm essential services, resolution of this discrepancy is unnecessary." (4 I.C.C.2d at 429 n.15).

DRGW/SPT

Decision Approving Transaction: ***Rio Grande Industries, Inc., SPTC Holding, Inc., & The Denver & Rio Grande Western R.R. – Control – Southern Pacific Transportation Co.,*** **4 I.C.C.2d 834 (1988)**

- "The public benefits of a DRGW/SPT merger are improved, more efficient single-line service for shippers in both the Central and the Southern Corridors, a strengthened competitive alternative to the UP/MP system in the Central Corridor, and the ability to alleviate congestion and over-capacity in the Southern Corridor. … Because this is substantially an end-to-end merger, adverse competitive effects are few, if any." (4 I.C.C.2d at 837).
- "The public benefits of this consolidation are attributable to service improvements, cost reductions resulting from operating efficiencies, enhanced competition, and a stronger financial position for the consolidated system. Many of these benefits stem from the operating plan. They are discussed in detail below. Other benefits-those derived from enhanced competition and a stronger financial position-are more difficult to separate and quantify, but are nevertheless real. A combined DRGW/SPT, able to provide single- line service, as compared to the present joint haulage agreement, will allow the consolidated system to compete more effectively with the single line UP/MP system over the Central Corridor. This will enure to the benefit of shippers." (4 I.C.C.2d at 876).
- "In this, as in other cases, it is evident that shippers prefer single-line, or single-system, service because it improves reliability and transit times, and equipment availability. Shippers can more efficiently use their resources by dealing with and relying on one carrier instead of two or more on questions of schedules, special service requirements, car tracing, and loss and damage claims. Shippers benefit from improved equipment availability which results when unified rail management implements a plan for the efficient use of its equipment, resulting in more reliable service. Shippers also benefit from improved transit times and resultant reduced equipment costs made possible when single rail systems are able to minimize interchange delays by increasing the use of preblocking and run-through trains. The record in this case demonstrates strong support for the DRGW/SPT combination and the anticipated single-line service benefits from the consolidated operations." (4 I.C.C.2d at 878).
- *"The Proposed DRGW/SPT Consolidation: A New Single-Line Route In the Central Corridor.* The fundamental change to be effected by the pro- posed DRGW/SPT consolidation will be the establishment of a new single-line SPT/DRGW Central Corridor route, extending from southern Oregon and northern California, on the west, through the present inter- change at Ogden, across DRGW's present route to Kansas City, and thence to St. Louis over SPT's (SSW's) Kansas City-St. Louis line." (4 I.C.C.2d at 894).
- "The Primary Applicants have built a large part of their case upon the claimed advantages of this new single-line route. While these claimed advantages cannot be quantified, they are unquestionably real. We agree with the Primary

Applicants that a single-line route generally has a natural superiority over a multi-line route, in terms of: (1) equipment use; (2) quality of service; and (3) marketing. Each of these is discussed below." (4 I.C.C.2d at 894).

- "Shippers will benefit because improved efficiency and shorter transit times will allow them to reduce their inventories and thereby lower their operating costs and increase their efficiency. Shippers will also benefit because their products will be able to reach their markets with more consistency and reliability, thereby providing a basis for improving future business prospects. The consolidated system and its shippers will benefit from improved transportation economics (i.e., lower costs), because single-line operation is more efficient than multi-line operation. The benefits to shippers and the participating railroads also affect the public generally, through increased economic activity, greater efficiency, and increased prosperity; and the increased economic strength of the consolidated company means that it will be better able to provide competition for other rail carriers, thus preserving and enhancing for the public the benefits of competition." (4 I.C.C.2d at 896).
- "Although we could condition the proposed DRGW/SPT consolidation to protect UP/MP against the loss of traffic moving consolidation to protect UP/MP against the loss of traffic moving over the Ogden inter- change, in the absence of any showing of a loss of essential services, we would not condition the proposed consolidation to protect UP/MP against the loss of single-line traffic attracted to the consolidated system by the new DRGW/SPT single-line routing across the Central Corridor. ***Such a condition would protect only the competitor, not competition. In fact, it would reduce the beneficial effects of the new, stronger competition.***" (4 I.C.C.2d at 918) (emphasis added).
- "The approval of the RGI application will enable the consolidated carrier to produce substantial public benefits. DRGW/SPT as a single entity will produce efficiencies that are not being realized by the two carriers today under their separate operations. There are also no discernible harms to competition or essential services. The effect on adequacy of transportation to the public has been analyzed, as well as the impact of including, or failing to include, other carriers. By creating a new single-line transcontinental route across the Central Corridor, a DRGW/SPT consolidation will have a positive and pro-competitive impact in the Central Corridor." (4 I.C.C.2d at 971).

1995

UP/CNW

Decision Approving Transaction: ***Union Pacific Corp., Union Pacific R.R. & Missouri Pacific R.R. – Control – Chicago & North Western Transportation Co. & Chicago & North Western Ry.,*** **Finance Docket No. 32133, 1995 WL 141757 (ICC Decision No. 25, decided Feb. 21, 1995).**

- "The primary applicants contend that, today, UP and CNW are end-to-end connections that cooperate closely in competing against the BN, Santa Fe, and SP

systems, all of which offer single-line service in both the West Coast–Chicago and Chicago–South Central markets, as well as against long-haul trucking.18 UP and CNW, the primary applicants add, also cooperate closely in competing against BN in moving coal from Wyoming's PRB. The fundamental purpose of the UP/CNW common control application, the primary applicants claim, is to permit UP and CNW to work even more closely together to compete against their major single-line rivals. The closer alignment of UP and CNW, they contend, holds the promise of significant public benefits in the form of efficiency savings and service improvements, which will be achieved through agreed-upon marketing and operating coordinations well short of full integration of UP and CNW. Additional significant public benefits, the primary applicants indicate, would depend upon full integration, which (they concede) may never occur." (1995 WL 141757 at 6).

- "Approval of the UP/CNW application, the primary applicants assert, would allow UP and CNW to achieve a number of additional marketing and operating coordinations that have not been attempted heretofore. The primary applicants maintain that, although these coordinations would not enable the two railroads to offer a full-fledged single-line service, they would enable the two railroads to offer something approaching a single-line service equivalent. These coordinations include: improvements such as closer cooperation in train and yard operations, dispatching, data systems, crew management, and locomotive management in the UP/CNW run-through train service through Fremont; further investment in such things as terminals, locomotives, and track capacity in connection with the UP/CNW PRB operations; consolidation of the information systems now operated by the two railroads, by installing UP's Transportation Control System (TCS) on CNW; simplification of the customer service function (by servicing important portions of UP/CNW joint-line business from a single point), thus offering shippers one-stop shopping; closer coordination of key personnel of the two railroads in an effort to promote joint UP/CNW traffic; optimization of use of the four intermodal terminals that the two railroads now operate in the Chicago area (CNW's Global I and Global II facilities and UP's Canal Street and Yard Center facilities); institution of a joint UP/CNW intermodal service between the Twin Cities, on the one hand, and the West Coast and the South Central region, on the other hand (for significant portions of these markets, no single-line service now exists); and elimination of some or all of the various restrictions (such as commodity limitations) that now hinder the full development of UP's haulage arrangement over CNW's east-west main line." (1995 WL 141757 at 9).
- "Existing UP/CNW east-west interline services, such as UP/CNW run-through train service via Fremont, will be upgraded and made more competitive as a result of common control. Closer coordination between UP and CNW will lead to further improvements in service quality, speed, and frequency. UP's present haulage rights over CNW's east-west mainline, by way of example, are subject to various commodity and geographic restrictions, including the exclusion of most coal traffic and traffic to and from CNW points outside of Chicago. With common control, some or all of these restrictions are likely to be eliminated, thereby

enhancing the ability of UP and CNW to offer a close equivalent to single-line service for more movements via Fremont (or via Omaha/Council Bluffs). As a result, shippers in long-haul corridors such as the Chicago–West Coast and Twin Cities–North Platte markets are likely to experience better service and lower rates. Finally, common control is likely to stimulate continued joint investment to improve UP/CNW service in transporting Powder River Basin coal. UP and CNW will be positioned to improve terminals, acquire new locomotives, and add track capacity as they intensify their head-to head competition with BN for this traffic." (1995 WL 141757 at 61).

- "First, common control will allow UP and CNW to achieve better coordination of train and yard operations. The primary applicants have identified several specific operations which will be improved. These include eliminating the current interchange of east-west trains, including blocked car segments, at Council Bluffs/Fremont; coordination of yards at Kansas City, St. Louis and Omaha; making greater use of UP's advanced computer-based dispatching system by adding CNW to the system; and using the shortest, most efficient routings of both carriers"

  "Second, common control will permit UP and CNW to manage their freight car fleets jointly. Several coordinating activities have been identified which are designed to improve equipment utilization. These include: sharing of UP's TCS; greater yard coordinations; and more run-through trains. The greatest efficiency gains, however, can be realized by taking advantage of differences in seasonal demand patterns between the two railroads. Each of these activities has the practical effect of increasing effective car supply through improved utilization. In combination, they will permit UP and CNW to realize large cost savings through reduced investment in equipment. Overall, UP and CNW expect to save 3,115 freight cars, 25 through-freight locomotives, and three road switcher and yard locomotives. Shippers will also benefit because improved utilization will reduce car shortages."

  "Third, common control will permit effective coordination of the four Chicago-area UP and CNW intermodal terminals. Coordination of these yards will result in substantial savings by reducing highway cross haulage (trailering intermodal units from one yard to another so that they can be placed on the correct train)."

  "Fourth, common control will enable the combined system to provide shippers with additional information and improved services. Current UP/CNW joint-line service is disadvantaged with respect to transit time and locational information. UP's TCS will facilitate such coordination. Although CNW has its own information system, control will permit the two carriers to merge their information systems and make uniform use of TCS. In addition, operating as a near-single-line carrier, UP and CNW will be positioned to provide price quotes more expeditiously than they can as separate entities which must first concur. Although the two carriers currently have several pre-existing haulage arrangements, there are numerous exceptions; common control would permit

unified marketing and pricing decisions on all movements. This will permit highly efficient, near-single line service wherever it is feasible." (1995 WL 141757 at 62).

- Common control of UP and CNW notwithstanding, CC & P, if it is more efficient than CNW, will not be excluded from the long-haul coal market. A commonly controlled UP/CNW, acting in its own best interests, will use the most efficient routing available. If CC & P is indeed more efficient than CNW, that will be the routing that is chosen. Vertical (end-to-end) integration of UP and CNW will not, in and of itself, result in the inefficient foreclosure of an interline carrier like CC & P, because a bottleneck carrier (CNW, if it has exclusive access to a particular utility) cannot increase its market power through such foreclosure. (1995 WL 141757 at 80).
- "We acknowledge that common control may well result in some changes in revenue divisions and/or traffic flows. Relative to independent connections such as CC & P, a commonly controlled UP/CNW will gain bargaining power due to efficiency gains. If common control alters the relative efficiencies of CNW and CC & P (by making CNW more efficient, and thereby making CC & P relatively less efficient), it is indeed possible that CC & P may be excluded from the market or may have to accept a revised joint revenue division. This, however, would not be an anticompetitive outcome of common control; rather, it would simply be a natural consequence of the efficiencies that common control may allow." (1995 WL 141757 at 80).
- "We agree that common control is likely to have a negative impact on CC & P. Common control will make UP/CNW joint-line service more efficient, which naturally means that common control will make UP/CC & P joint-line service relatively less efficient. Common control can therefore be expected to result in diversions of traffic from CC & P to CNW, assuming, of course, that other factors are held constant. The crucial issue, however, is not whether common control will have a negative impact on CC & P. The crucial issue, rather, is whether the negative impact will be so severe as to endanger such essential services as CC & P now provides. As we now show, common control of UP and CNW will not have an adverse impact on essential services." (1995 WL 141757 at 84).

1995

BN/SANTA FE

Decision Approving Transaction: ***Burlington Northern Inc. & Burlington Northern R.R. – Control & Merger – Santa Fe Pacific Corp. & The Atchison, Topeka & Santa Fe Ry.,*** **1995 WL 528184 (ICC Decision No. 38, decided Aug. 16, 1995).**

- "[A]pplicants seek to create an expanded rail system with broader geographic coverage than either of the applicant carriers' existing systems, with new single-line service between points on the BN system and points on the Santa Fe system. … These new routes would include the following: (a) between points in central and southern California (including California ports) served by Santa Fe and points

in the Midwest and Southeast served by BN; (b) between Seattle and other points in the Pacific Northwest served by BN and points in the Southwest served by Santa Fe; (c) between points in the Southwest served by Santa Fe and points in the Southeast served by BN; (d) between points in the Northern Tier states served by BN and points in the Southwest served by Santa Fe; and (e) between points in Western Canada served by BN and points in the Southwest served by Santa Fe." (10 I.C.C.2d at 670 n.15).

- "Single-line service is important to shipper logistics strategies. Interchange between railroads can be costly. A single-line railroad route is becoming more important for carriers wanting to compete for service-sensitive freight. As a result of the new single-line service capability of the combined BN/Santa Fe, shippers will likely see decreases in working capital requirements as base inventories shrink due to improved transit times, and as safety stocks of inventory are reduced because the combined system can eliminate the uncertainty of interchange." (10 I.C.C.2d at 741).
- "We agree with applicants that where, as here, two railroad networks are integrated, the possibilities for longer hauls increase. While the utilities' witnesses note that in the past the proportion of interlined BN/Santa Fe movements has been low, we expect that the merger will bring about a significant number of new single-line BN/Santa Fe movements." (10 I.C.C.2d at 742).
- "We have also dealt with end-to-end aspects of rail mergers in a series of cases involving our imposition of rate and routing conditions that were intended to require railroads to maintain open gateways post-merger with unaffiliated interline partners. In *Traffic Protective Conditions*, 366 I.C.C. 112 (1982), *aff'd in relevant part, Detroit, Toledo & Ironton R. Co. v. U.S.*, 725 F.2d 47 (6th Cir.1984), we rejected the notion that new single-line movements created through merger would lead the merged carrier to "vertically foreclose" competition over efficient routes by refusing to cooperate with unaffiliated carriers. In *Seaboard Air Line Railroad Company – Merger – Atlantic Coast Line Railroad Company (Petition to Remove Traffic Protective Conditions)*, Finance Docket No. 21215 (Sub-No. 5) (ICC served Mar. 27, 1995) (*CSX/FEC*), we recently reaffirmed that "merged railroads – regardless of whether they maintain bottleneck facilities or market dominance – have the incentive to encourage full use of the most efficient routing, even when it entails a joint-line alternative to a single system route." *CSX/FEC*, slip op. at 5." (10 I.C.C.2d at 748-49).
- "We do not think that the one lump theory requires the series of perfect conditions that the utilities claim must be present for the theory accurately to represent the coal transportation markets at issue here. Our focus here is properly on substantial harm to competition. Our experience has been that where a single rail carrier controls a destination segment, and no transportation alternatives are available, the shipper will be captive and the single rail carrier will be able to capture the preponderance of the economic profits. Conversely, when certain factors are present that limit a carrier's ability to take full advantage of a bottleneck, those factors will remain in place as effective safeguards after the

merger. We have consistently adhered to these principles in assessing harm in merger cases and in making market dominance determinations in rate cases. The fact that a bottleneck carrier might not have sufficient information to execute a perfect price squeeze or to extract the last penny of economic profits does not mean that substantial benefits to shippers will be lost when the bottleneck carrier merges with a connecting carrier." (10 I.C.C.2d at 751).

1996

UP/SP

Decision Approving Transaction: ***Union Pacific Corp., Union Pacific R.R. & Missouri Pacific R.R. – Control & Merger – Southern Pacific Rail Corp., Southern Pacific Transportation Co., St. Louis Southwestern Ry., SPSCL Corp., & The Denver & Rio Grande Western R.R.,*** **1 S.T.B. 233 (1996).**

- "As a result of this merger, every shipper served by UP, but not by SP, will gain single-line service to all SP points, and vice versa. More than 350,000 cars, trailers, and containers, carrying 26 million tons of freight, will gain single-line service each year. The BNSF agreement will add single-line service for another 120,000 cars a year. See Appendix D at 2 (Expanded Single-Line Service)." (1 S.T.B. at 381).
- "Moreover, the expanded coverage that common control promises will have numerous beneficial impacts on many markets – international, intermodal, food products, forest products, autos, chemicals, grain, coal, metal and minerals. See Appendix D at 3 (Expanded Market Coverage)." (1 S.T.B. at 381).
- "*Pacific Northwest-Texas.* BNSF now has the only direct route between the Pacific Northwest and Texas. The merged carrier will link the UP and SP route networks in Texas with SP's route from Ft. Worth to Denver and UP's routes from Denver to Utah, Idaho, Montana, Oregon and Washington. This will make UP/SP a real competitor for this traffic and provide entirely new single-line services to shippers in the Intermountain West." (1 S.T.B. at 564).
- *"Canada/Pacific Northwest-California/Mexico.* Western Canada will receive much-improved rail links with the United States and Mexico. Substantial parts of the Pacific Northwest, including Seattle/Tacoma and the Vancouver/Alberta Canadian gateways, have never been connected to California by a direct single-line rail route. The merger and BNSF agreement will create both a UP/SP through route and a BNSF through route in the I-5 Corridor, offering new rail options to shippers and a competitive alternative to water and truck transportation.

  "UP/SP will offer new single-line service between many UP points in the Northwest and many UP and SP points throughout California, Arizona, New Mexico, and West Texas (including the Mexican gateways of Calexico, Nogales, and El Paso). Eastbound traffic will also gain a shorter route, via Colorado and the Texas Panhandle, to Dallas, Houston and New Orleans. BNSF will have new single-line routes from the Vancouver and Sumas gateways to California, the

Southwest, and the San Diego and El Paso gateways to Mexico.

"Competition will also be stronger for traffic moving in interchange with CN via Duluth/Superior and CP via the Twin Cities because all SP points will now be accessible on a single-line basis from those interchanges." (1 S.T.B. at 564-65).

- "*International Markets.* The UP/SP merger transaction will foster the goal of North American economic integration embodied in the NAFTA agreement by greatly strengthening competition for traffic to and from both Canada and Mexico. The proportional rate arrangement will allow UP/SP to compete via Portland for traffic to and from BNSF's Western Canada gateways, including lumber originating on BC Rail and Alberta grain and chemicals originating on CN. There will be stronger rail competition at every UP and SP gateway to Mexico as a result of the merger and the BNSF agreement, and the Tex Mex trackage rights we have imposed. Overall, BNSF's much-expanded access to Mexico, as well as within Texas and at New Orleans, will bring greater balance to the competition for Mexican rail traffic, which at present is largely handled by SP to and from points to the west and UP to and from points to the north and east."

  "The more efficient Mexican routings for both UP/SP and BNSF will help improve the rail share of traffic to and from Mexico. Today, trucks dominate this traffic. Even at Laredo, the most efficient Mexican rail gateway, trucks handle approximately 86% of the cross-border traffic. Upgrading the Southern Corridor lines, instituting new Laredo-California intermodal service, and greatly improving the efficiency of operations in the Laredo-Memphis-St. Louis-Chicago corridor will give rail a much better ability to capture a larger share of this market." (1 S.T.B. at 565-66).

Final Oversight Decision: *UP/SP (General Oversight*), 5 S.T.B. 1159 (2001).

- "*Competition Has Been Strengthened*." The evidence submitted by UP demonstrates that the merger has resulted in strengthened competition for 2-to-1 shippers, 3-to-2 shippers, shippers of key commodities affected by the merger, and shippers in every rail corridor and region affected by the merger. The evidence submitted by UP further demonstrates: that the public benefits that the UP/SP applicants predicted have been achieved; that rail competition has been enhanced; that UP rates (adjusted for inflation) have either declined or remained unchanged in every relevant market; and that BNSF, Tex Mex, and Utah Railway Company (URC) have competed and are continuing to compete effectively against UP. And, as UP notes, no one has presented any evidence of competitive harm or any evidence that our conditions have been less than fully effective." (5 S.T.B. at 3-4).
- "UP's evidence demonstrates that the merger, with the conditions we imposed, has strengthened competition in the three major West Coast-Midwest/Northeast corridors (the corridors that run between the Pacific Northwest, Northern California, and Southern California, on the one hand, and, on the other hand, the Midwest gateways of Chicago, Kansas City, and St. Louis and the regions served via those gateways); in the Houston-Memphis-St. Louis corridor; and in the

Houston-New Orleans corridor. UP's evidence further demonstrates that the merger, with the conditions we imposed, has strengthened competition for international traffic to and from Canada and Mexico. And, as UP notes with respect to Mexico, our condition that UP afford The Texas Mexican Railway Company (Tex Mex) trackage rights between Robstown and Beaumont, TX, has resulted in the creation of a third competitive rail route to and from Eastern Mexico." (5 S.T.B. at 4 n.10).

1998

CSX/NS/CONRAIL

Decision Approving Transaction: ***CSX Corp. & CSX Transportation, Inc., Norfolk Southern Corp. & Norfolk Southern Ry. – Control & Operating Leases/Agreements – Conrail Inc. & Consolidated Rail Corp.*** **("*CSX/NS/Conrail*"), 3 S.T.B. 196 (1998)**

- "With very minor exceptions, the combination of NS and Conrail and of CSX and Conrail lines will be end-to-end and not parallel. It has been our experience that end-to-end restructurings of this kind rarely result in a diminution of competition. We have adopted a presumption, known as the one-lump theory, that vertical combinations will not result in competitive harm. We have also established a test for parties to show that the theory does not apply in a particular circumstance. Although several parties have attempted to argue that we should not apply the one-lump theory to rail mergers, repeating arguments that have been raised and rejected in previous merger proceedings, no party has rebutted the application of the theory here. Our use of the one-lump theory has been judicially approved, and we will not go back over that ploughed ground here. *See Western Resources, Inc. v. STB*, 109 F.3d 782 (D.C. Cir. 1997)" (3 S.T.B. at 248).
- "The division of Conrail's lines, roughly half to each carrier, permits both CSX and NS to offer new and efficient single-line service in competition with motor carriers and with each other to thousands of shippers that received only joint-line service before. The transaction should lead to improved service and reduced transit times for thousands of shippers throughout the Eastern United States. This will permit these two carriers to divert a significant amount of traffic from the nation's highways." (3 S.T.B. at 248).
- "[W]e have acknowledged that, as a general matter, single-line service is superior to joint-line service." (3 S.T.B. at 258).
- "Kalt has correctly explained that Kahn/Dunbar are wrong in their assertions that the one-lump theory predicts: (1) that there be equal profits to the bottleneck carrier regardless of whether a movement is single-line or joint-line; (2) that there can be no profit earned by the origin carrier in a joint line movement with a destination monopolist; and (3) that origin competition has no effect on the size of the economic profit or the rail rate, relative to other routes." (3 S.T.B. at 268 n.106).

- "Finally, Kahn/Dunbar are simply wrong in asserting that the general applicability of the one-lump theory to mergers requires a set of explicit and rather implausible assumptions, and thus "the circumstances in which the pure one-lump theory is likely to hold represent an 'extreme example."' They appear unaware that this very argument has been considered and rejected by the ICC, with the ICC's reasoning specifically affirmed by the court. We conclude that the Crowley and Kahn/Dunbar testimony falls far short of providing a basis for altering our basic economic analysis of the vertical aspects of railroad mergers." (3 S.T.B. at 269).
- "As [Martin Marietta Materials (MMM)] points out, applicants' witnesses have acknowledged that going from single-line service to joint-line service is less efficient and tends to be more costly. MMM-3 at 8-10 and 19-21 (citing to Snow Dep. Tr. at 169-170, and Gaskins Dep. Tr. at 15-16). Applicants explain that '[c]harging a single-line rate for a joint-line service, where obvious extra handling (to effect the interchange) is involved, is clearly apt to be uneconomic for the participating railroads'. CSX/NS-190 at 26." (3 S.T.B. at 311).
- "In addition, the expansion of the NS and CSX systems will enable them to provide more competitive single-line service over more direct routes, to render improved service, and to use equipment more efficiently.

  "These features of the transaction will improve operating efficiency, reduce transit times and terminal delays, and provide logistics savings associated with single-line service that will make these companies more competitive with trucking and should, within 4 years of the transaction, shift over $400 million worth of traffic each year from highways to rail lines." (3 S.T.B. at 333).
- "Unquantified Public Benefits . . . The transaction will also increase competition between railroads and other modes due to the expansion of single-line service throughout the new NS and CSX systems. CSX's traffic studies project annual truck-to-rail diversions that will eliminate 438,000 truck trips per year, and NS has predicted that its expanded operations will remove an additional 589,000 truck trips. Together, applicants estimate that they will divert sufficient truck traffic to remove a million line-haul truck trips per year from our nation's highways." (3 S.T.B. at 336).

Final Oversight Decision: *CSX/NS/Conrail General Oversight,* Finance Docket No. 33388 (Sub-No. 91) (Decision No. 17, served Oct. 20, 2004).

- "The evidence submitted in this fifth annual oversight round, like that submitted in the first four rounds of annual oversight, demonstrates that the conditions imposed are working as intended and that the transaction has not resulted in competitive or market power problems." (*CSX/NS/Conrail*, Dec. No. 17 at 10).
- "CSX states that the Conrail Transaction enabled CSX to increase the efficiency of its railroad operations. CSX explains that the new single-line service made possible by the elimination of interchanges between CSX and Conrail has resulted in reduced costs and reduced transit times, and the development of more direct routes has resulted in increased commercial opportunities for many shippers. CSX

also explains that the expansion of its network and the development of more direct routes have made CSX competitive with trucks in the intermodal, TRANSFLO, waste products, produce, and many other markets. And, CSX adds, gateway optimization projects made possible by the Conrail Transaction have enabled CSX to improve its car handlings, by reducing handlings between CSX and its western connections." (*CSX/NS/Conrail*, Dec. No. 17 at 24).

- "The Conrail Transaction, NS explains: greatly expanded the single-line reach of NS and CSX in the Eastern United States; brought new two-carrier service to the SAAs and the Monongahela coal fields; and resulted in two competitively balanced rail systems serving the Eastern United States. NS and CSX, NS reports, are now engaged in strong and vigorous competition not only with each other, but also with other modes of transportation, particularly trucks, a factor that, though important even at the outset, has become much more important due to increasing highway congestion. And, NS adds, the Conrail Transaction has led to improvements at NS in safety, service, and competition (NS cites: the Safety Integration Plans prepared by NS and CSX; the "best ever" service metrics on NS; and the vigorous new rail-to- rail competition that now exists throughout the former Conrail territory). NS advises that the expanded reach of the NS system and the new rail-to-rail competition brought about by the Conrail Transaction has allowed NS to achieve a variety of noteworthy results in addition to the overall improvement in its service metrics." (*CSX/NS/Conrail*, Dec. No. 17 at 25-26).

1999

CN/IC

Decision Approving Transaction: ***Canadian National Ry., Grand Trunk Corp., & Grand Trunk Western R.R. – Control – Illinois Central Corp., Illinois Central R.R., Chicago, Central & Pacific R.R., & Cedar River R.R.*** **("*CN/IC*"), 4 S.T.B. 122 (1999)**

- "This transaction will create a highly efficient rail transportation system spanning the central part of the United States from the Canadian border to the Gulf of Mexico. CN operates a 14,150-mile system throughout Canada, connecting with its 1,150-mile system in the United States, which operates mainly in Minnesota, Wisconsin, Michigan, and Northern Illinois and Indiana. IC operates a profitable 3,370-mile system between Chicago and the Gulf of Mexico." (4 S.T.B. at 142).
- "Qualitative public benefits include enhanced opportunities for single-line service preferred by shippers and more vigorous competition that may result from a transaction." (4 S.T.B. at 140).
- "The chief benefit of the merger is that it will make possible a new, single-line service alternative for many shippers. Applicants will thus be positioned to provide stronger competition to UP, BNSF, CSX, and NS in certain markets. In particular, the merger should significantly intensify competition for the north-south traffic that has achieved greater significance due to NAFTA. As detailed below, the transaction should also generate quantifiable public benefits of more than $100 million a year. These are made possible mainly through integration of

support functions, and more efficient use of equipment and crews." (4 S.T.B. at 142).

- "Quantifiable and Unquantifiable Public Benefits. The record indicates that this transaction should result in many qualitative benefits to the shipping public, including more single-line service, new and improved routes, more gateway choices, more reliable service, and reduced terminal delay." (4 S.T.B. at 167).
- "This transaction is entirely end-to-end, with no overlapping routes. The number of independent railroads currently serving particular shippers is not reduced at any location." (4 S.T.B. at 142).
- "It will not diminish competition among rail carriers either in the affected region or in the national rail system. Indeed, the transaction should enhance competition, especially for north-south traffic." (4 S.T.B. at 143).
- "The transaction will make possible significantly improved single-line service for many shippers, and will result in merger synergies that should allow the carriers to provide service at lower cost. A substantial portion of these savings should be passed along to shippers in terms of reduced rates or improved service. Finally, the ability of these carriers to provide quality service will not be impaired, and should be enhanced." (4 S.T.B. at 144).

Final Oversight Decision: *CN/IC, General Oversight,* Finance Docket No. 33556 (Sub-No. 4) (Decision No. 3, served Nov. 7, 2001) ("*CN/IC General Oversight*")

- "CN's progress report submitted in the second oversight year demonstrates that the CN/IC transaction has been successful to date and that the carrier has added new transportation services and improved transit times throughout its system." (*CN/IC General Oversight*, Dec. No. 3 at 3).
- "CN states that rail shippers are benefitted by its improved routing through Chicago, advanced traffic management systems, and seamless single-line service. CN states that it is a significant carrier of petroleum, chemicals, metals, minerals, forest products, automobiles, and grain, and that its intermodal business is expanding through faster transit times and the introduction of new services such as RoadRailer. According to CN, it has continued to focus on providing top quality service and avoiding any service disruptions." (*CN/IC General Oversight*, Dec. No. 3 at 5).

APPENDIX B

LOOKING BACK AT THEIR OWN MERGERS, OTHER CLASS 1 RAILROADS HAVE TOUTED THEIR SINGLE-LINE BENEFITS AND PROCOMPETITIVE EFFECTS

BNSF

Burlington Northern Inc. & Burlington Northern R.R. – Control and Merger -- Santa Fe Pacific Corporation & the Atchison, Topeka & Santa Fe Ry., ICC Finance Docket No. 32549, Applicants' Brief (BN/SF-48) (filed June 29, 1995) at 1.

- "Because this is predominantly an end-to-end combination, situations in which there might be a potential reduction in competition have been limited from the outset."

Public Views on Major Rail Consolidations, STB Ex Parte No. 582, Statement of Robert D. Krebs, Burlington Northern Santa Fe Railway Company, Before the Surface Transportation Board on March 7, 2000 at 12 (emphasis added).

- "***Our customers have benefited tremendously from the expanded network and increased options for single line service that resulted from the BNSF merger***, as demonstrated by the growth in intermodal units across selected major routes between 1995 and 1999 – up 40% between Chicago and the Pacific Northwest, up 54% between Chicago and Texas, and up 170% between Minnesota and California, Arizona, and New Mexico."

Major Rail Consolidation Procedures, STB Ex Parte No. 582 (Sub-No. 1), Comments of the Burlington Northern and Santa Fe Railroad (filed May 16, 2000) at 27.

- "The 'one-lump' theory has been extensively litigated before the Board. The theory is based on sound economics, and there is no reason for reconsidering or revising it at this time."

Major Rail Consolidation Procedures, STB Ex Parte No. 582 (Sub-No. 1), Reply Comments of the Burlington Northern and Santa Fe Railway Co. (filed June 5, 2000) at 34.

- "BNSF, along with other carriers, believes that meaningful service improvements can occur when railroads achieve greater concentration of traffic operating on run-through trains, through fewer – not more – interchanges."

Major Rail Consolidation Procedures, STB Ex Parte No. 582 (Sub-No. 1) Comments of the Burlington Northern and Santa Fe Railway Co., Verified Statement of Jose A. Gomez-Ibanez and Joseph P. Kalt (filed Nov. 17, 2000), at 11-12, 15.

- "The Board's merger policy should continue to favor mergers because mergers can still produce public benefits. . . They can encourage new investment, as evidenced by the investments triggered by recent mergers in the industry, and enable enhanced services to be offered to shippers. . . By expanding the scope of networks, mergers can help railroads meet a greater range of shippers transportation needs, thereby attracting new business and improving their overall competitive position in the national transportation market."

Major Rail Consolidation Procedures, STB Ex Parte No. 582 (Sub-No. 1), Comments of the Burlington Northern and Santa Fe Railway (filed Nov. 17, 2000).

- "…[S] ingle-line service can offer shippers more reliable service, while enabling railroads to craft new services that can attract traffic from competitors and other transportation modes. An expanded, integrated rail network can provide shippers with access to new markets. A merged railroad also can benefit from the different commodity and product expertise of the pre-merger railroad. If a merged railroad become a better competitor and shippers gain access to new markets and services, there will be beneficial effects for the railroad, shippers and the Nation." *Id.* at 25.
- "Single-line service enhances efficiency by eliminating costs and uncertainty associated with making and managing interline movements. In addition, expansion of single-line service typically represents a dramatic improvement in quality of service a railroad offers its shippers. As railroads expand their offerings of single-line service, they can increase the speed of their service, make more service more reliable, reduce damage and loss, and reduce capital requirements by making more efficient use of rail (and shipper) facilities. In the past, the Board has recognized that single-line service is a major source of public (and shipper) benefits." *Id.* at 10.
- "Single-line service is important to shipper logistics strategies. Interchange between railroads can be costly. As a result of the new single-line service capability of the combined BN-Santa Fe, shippers will likely see decreases in working capital requirements as base inventories shrink due to improved transit times, and as safety stocks of inventory are reduced because the combined system can eliminate the uncertainty of interchange. The transaction costs shippers incur in initial rate negotiations, in arranging equipment supply, tracking shipments, and in billing and payment procedures, will likely be reduced." *Id.* at 11 (citations omitted).
- "The Board's view that extension of single-line service is an important source of benefit is confirmed by experience. Evidence reviewed below indicates that railroads have been notably successful in attracting substantial volumes of traffic to expanded single-line service options following merger." *Id.* at 11.
- **"**Most recent railroad mergers involve railroads whose route networks connect end-to-end rather than running parallel to one another. Economic analysis indicates that end-to-end mergers are unlikely to cause competitive harm. Unlike parallel mergers, end-to-end mergers do not involve significant network overlaps, so that few or no shippers face a potential reduction in the number of railroads that serve them. Moreover, end-to-end mergers are the equivalent to vertically integrating the various routes served by railroads, and the overall impact of integrating and rationalizing the ownership of the rail network is pro-competitive through reduced costs and improved overall service. Indeed, the ability to reduce costs by making the most of economies of scale and scope and offering improved single-line service has motivated recent mergers." *Id.* at 15.

Competition in the Railroad Industry, STB Ex Parte No. 705, BNSF Reply Comments, Verified Statement of John P. Lanigan (filed May 27, 2011).

- "The BN/ATSF merger contributed substantially to BNSF's competitive capacity and significantly improved BNSF's ability to compete in the marketplace for transportation

services. Shippers have benefitted from the enhanced service BNSF has been able to provide, as well as the enormous investment BNSF has made improving our system." *Id.* at 2.

- "The claim of some shippers that competition was reduced as a result of certain end-to-end mergers ignores the vast diversity of market conditions and competitive options in different transportation markets. Those shippers also ignore the benefits produced by those mergers that have allowed railroads to compete more effectively for business. … ***[R]ailroads combining end-to-end, like BN and ATSF, do have the opportunity to create more efficient networks and compete more effectively for ling-haul service. And that is exactly what transpired as a result of the BN/ATSF merger. BNSF was able to improve its service and grow the combined railroads' business in every major traffic category***." *Id.* at 8 (emphasis added).

CANADIAN NATIONAL

Canadian National Ry. et al. – Control – Illinois Central Corp. et al., Finance Docket No. 33556, Application (CN/IC-6) (filed July 15, 1998) at 10.

- "Given the end-to-end nature of the Transaction, the integration of the CN and IC rail systems would cause no reduction in competition."

Canadian National Ry. et al. – Control – Illinois Central Corp. et al., Finance Docket No. 33556, Application (CN/IC-6), Verified Statement of Paul M. Tellier and John D. McPherson (filed July 15, 1998) at 1.

- "CN/IC, the end-to-end combination of two highly complementary railroads, will strengthen the U.S. and North American transportation system. It will be strategically important for shippers. It will promote the growth of north-south trade. It will help assure that our railroads can respond to market challenges through growth and increased financial strength. Yet it portends no anti-competitive effects, abandonments, service reductions or interruptions, capacity constraints, or significantly adverse labor, safety or environmental effects."

Canadian National Ry. et al. – Control – Wisconsin Central Transportation Corp. et al., STB Finance Docket No. 34000, Application, Verified Statement of Paul Tellier, Finance Docket No. 34000 (filed Apr. 9. 2001) at 3.

- "CN has shown in the recent past that it can increase efficiency and offer new and improved services through an effective merger with another railroads. The CN/IC Transaction was implemented with real gains in efficiency and, we are proud to say, without any significant service quality problems."

CSXT

Major Rail Consolidation Procedures, STB Ex Parte No. 582 (Sub-No. 1), Comments of CSX Corporation and CSX Transportation, Inc., (filed November 17, 2000) at 8.

- "Efficiencies, such as those achieved from extended hauls, from the elimination of interchanges and from reduced costs and other service improvements, along with elimination of remaining inefficient redundancy, should be included among the procompetitive impacts of a proposed merger."

NORFOLK SOUTHERN

Major Rail Consolidation Procedures, STB Ex Parte No. 582 (Sub-No. 1), Comments of Norfolk Southern (filed May 16, 2000) at 33-34.

- "NS insists that the 'one lump' theory is correct and should be continued. NS contends: that when a shipper is exclusively served by one railroad, the shipper will not suffer a reduction in competition for its traffic if the serving railroad merges with one of several connecting railroads; that, therefore, there is no merger-related justification for granting another railroad trackage rights access to that shipper; and that, in any event (i.e., even if there were a merger-related loss of competitive options), the grant of trackage rights access would go far beyond simply restoring pre-merger competitive options."

UNION PACIFIC

Union Pacific Corp. et al. – Control & Merger -- Southern Pacific Rail Corp. et al., STB Finance Docket No. 32760, Application Vol. 1 (filed Nov. 30, 1995) at 17.

- "The UP/SP merger, together with the settlement agreement with BN/Santa Fe, will greatly intensify rail competition in the West. The merger will yield shorter routes, expanded single-line service, greater capacity, better equipment supply, faster and more reliable service, and lower costs – all of which will enhance the competitiveness of the merged system."

Union Pacific Corp. et al. – Control & Merger – Southern Pacific Rail Corp. et al., STB Finance Docket No. 32760, Verified Statement of Richard B. Peterson (filed Nov. 30, 1995) at 74.

- "For access to end markets and supply sources, shippers on shortlines depend on fast, efficient, single-line service by the Class I railroad or railroads with which those shortlines connect."

Major Rail Consolidation Procedures, Ex Parte No. 582 (Sub-No. 1), Union Pacific's Comments and Initial Proposals, (filed May 16, 2000) at 11.

- "UP does not share the view of many shippers that end-to-end mergers generally have anticompetitive vertical effects, and the Board must retain the basic economic and legal principles that guided its *Bottleneck* decisions."

Competition in the Railroad Industry, Ex Parte No. 705, Comments of Union Pacific Railroad Company (filed Apr. 12, 2011).

- "Thousands of shippers enthusiastically supported [post-Staggers Act rail] mergers, recognizing that they would enhance competition by creating more single-line service, shorter routes, shorter transit times, lower costs, and many other efficiencies. … [I]n every merger involving Union Pacific since 1980, the ICC or Board emphasized the benefits of single-line service and expected us to achieve them. … For three decades, Union Pacific has invested its capital to achieve the single-line benefits that the ICC and this Board (and a wide range of shippers) sought." *Id.* at 8-9.
- "[A] basic premise of each of the agency's consolidation decisions was that single-line service was superior to the service provided by separate carriers using interchange and would benefit shippers if expanded. UP undertook the series of consolidations that created the current UP system and invested tens of billions of dollars to improve, reconfigure, and upgrade its system to deliver the benefits of single-line service. … [T]he result of this continuing effort to expand single-line service has been to dramatically improve service to customers." *Id.*
- "Union Pacific's merger with Southern Pacific created new rail-to-rail competition in the Seattle-Los Angeles 'I-5 Corridor' through a settlement that gave BNSF Railway a single-line route that it could use to compete with the new Union Pacific." *Id.* at n.4.

Competition in the Railroad Industry, Ex Parte No. 705, UP Reply Comments (filed May 30, 2013) at 8-9.

- "[A] basic premise of each of the agency's consolidation decisions was that single-line service was superior to the service provided by separate carriers using interchange and would benefit shippers if expanded. UP undertook the series of consolidations that created the current UP system and invested tens of billions of dollars to improve, reconfigure, and upgrade its system to deliver the benefits of single-line service. … [T]he result of this continuing effort to expand single-line service has been to dramatically improve service to customers."

ALL AMERICAN CLASS 1 RAILROADS

Petition for Rulemaking to Adopt Revised Competitive Switching Rules, STB EP No. 711 Opening Comment of Association of American Railroads, Verified Statement of William Rennicke (filed Mar. 1, 2013) (joined by BNSF, CSX, KCS, Norfolk Southern, UP).

- "Simplification of operations: The reduction in the number of Class I railroads, combined with the reduction of inefficient/unnecessary routes and efforts to close redundant and little-used interchange locations, reduced the amount of traffic interchanged between railroad operators. This is illustrated in Exhibit III-3, which shows a steady decline in the average number of interchange events per railcar through the late 1990's and the maintenance of these historically low interchange event levels thereafter. 10 Between 1972 and 2011, the average number of interchange events per railcar declined from 0.86 to 0.28. This reduction greatly simplified railroad operations, making them more reliable." *Id.* at 12

- "Improved reliability: Single-line service grew as merged railroads closed less efficient parallel routes and interchange locations. These changes not only permitted the railroads to concentrate traffic on efficient high-density routes, it also allowed them to reduce the number of times a car is handled. This reduction was achieved in two ways: First, each avoided interchange event eliminated at least one car handling. Second, concentrating traffic on fewer, high-density routes permitted railroads to build more blocks that bypass intermediate classification yards. Each intermediate switch that can be avoided through bypass blocks eliminates one car handling. Eliminating car handlings is critical, because each time a car is handled at an interchange location or in an intermediate classification yard there is the possibility of a delay that would cause the car to misconnect, delaying its planned arrival time. In some cases, the arrival time is contractually guaranteed to the shipper but, even when it is not, the reliability of the car's arrival is the factor of greatest concern to shippers. Even when a railroad's reliability at each car handling event is very high – more than 90 percent – introducing additional events materially degrades the railroad's probability of meeting the service plan and delivering a car on time." *Id.* at 16.
- "There are many advantages to using single-line routes, including greater system efficiency, improved use of equipment, and faster turnaround times: 'A single-line route can make more efficient use of equipment. By improving the use of both system-owned equipment and foreign cars, a single-line system can have a more efficient fleet exhibiting faster turnaround time and improved loading ratios. These efficiencies are achieved by the elimination of interchanges, a common equipment placement program, more accurate and responsive monitoring of the fleet, and the pre-blocking of cars, as well as a quicker response to equipment supply problems that may develop.'" *Id. at* 21-22 (citing *Grande Industries, Inc. – Control – Southern Pacific Trans. Co.*, 4 I.C.C. 2d 834, 895 (I.C.C. Served Aug. 25, 1988)).

APPENDIX C

SELECTED QUOTES FROM SHIPPERS SUPPORTING TRANSACTION

Aeropres Corporation

- "One of our major challenges lies in trying to obtain raw materials from the various producers across the United States and delivering products to our customer base in the United States, Canada, and Mexico. Many times, we are unable to participate in certain markets due to challenges in moving our core products via rail at a rate that is competitive." (Letter Dated March 29, 2021, in CP-27/KCS-15, Application Volume 3 at 161).

Ag Processing

- "We ship our products on the CP throughout the U.S. and Canada, however, we are quite limited to Mexico. The prospect for our soy CP crushing facilities to move on a single line haul into Mexico with this merger should enhance our market access. Currently we have to move on 2-3 railroads to reach the same markets." (Letter Filed March 30, 2021 in CP-4/KCS-4, Applicants' Initial Submission of Statements Supporting Proposed Transaction at 76 (also included in Application Volume 3 at 162)).

Appro Development

- "As we have mentioned in our March 24th, 2021 letter, the end-to-end CP-KCS transaction will improve service options, with new single-line hauls and broader access to markets across North America. Our experience shows us that single-line rail service options are far superior to public and private fleets." (Letter Dated April 19, 2021, Appro Development Submission of Statement Supporting Proposed Transaction, at 1)

Bentonite Performance Minerals (BPM)

- "CPKC's new single-line haul offerings will expand market reach and offer new competitive transportation options for our shipments of bentonite and barite from Wyoming to Texas/ Mexico and from Louisiana into Canada." (Letter Dated April 1, 2021 in CP-27/KCS-15, Application Volume 3 at 248).

Berkshire Home Solutions

- "A CP-KCS merger would increase access to new markets by connecting the U.S., Mexico, and Canada through a single-line route. This would help increase competition and possibly drive down transportation costs - savings that could be passed onto consumers and homeowners." (Letter Dated June 28, 2021 in CP-27/KCS-15, Application Volume 3 at 250).

BioUrja

- "Rail service is vital to our terminal's survival, and more efficient access to additional markets will likely make our facility more competitive. For example, CPKC's new single-line haul offerings will expand market reach and offer new competitive transportation options for our shipments of propane from New Town, ND to Mexico." (Letter Dated March 30, 2021 in CP-27/KCS-15, Application Volume 3 at 256).

Bison Transport

- "Bison is a North American transportation company that specializes in full truckload, intermodal, logistics & less-than-truckload. Bison moves goods between Canada, the USA, and Mexico and believes that the CP-KCS merger will create efficiencies for our transportation network. Because of that, we are writing to express our support for the merger." [Filed with this Reply].

Bulkmatic de Mexico

- "Bulkmatic de Mexico is transloading commodities that rely on the first and second CP's lines of business after lntermodal. Bulkmatic de Mexico will expect to grow when such carloads shift to the single-line haul CPKC into Mexico." (Letter Filed March 30, 2021 in Applicants' Initial Submission of Statements Supporting Proposed Transaction at 76 (also included in Application Volume 3 at 280)).

Canpotex Ltd.

- "CPKC's new single-line haul offerings will expand market reach and offer new competitive transportation options for our shipments of potash from mines in Saskatchewan to international customers in Brazil, Mexico, and other countries in Central and South America. The proposed CPKC network would allow us to have additional port optionality in the Gulf and potential competitive rail direct options into the Mexican market." (Letter Dated March 30, 2021 in CP-4/KCS-4, Applicants' Initial Submission of Statements Supporting Proposed Transaction at 128 (also in Application Volume 3 at 298)).

Central Missouri AgriService, LLC.

- "We support of [sic] the Canadian Pacific (CP-Kansas City Southern (KCS) Transaction and urge the Board to approve it without granting the CN responsive application." [Filed with this Reply].

Ceres

- "In addition, a single line haul provides the carrier with control of logistics from origin to destination, which would enable the carrier to provide shippers with more consistent monitoring, timing of arrival and pricing. Ceres is particularly enthusiastic about the role the new CP/KCS single-line routes will play in expanding access to U.S. ports and

Mexico. Today, farmers in the upper Midwest lack efficient access to the U.S." (Letter Dated March 29, 2021 in CP-27/KCS-15, Application Volume 3 at 323-24).

- "Gulf and Mexico, which forces them to lower the price of their products in order to compete globally. In recent years this has proven costly as cheaper logistics from other countries have made it difficult for U.S. farmers and their products to be price-competitive into the world market. A CP/KCS railroad, with its north to south connections, would open new markets for U.S. and Canadian farmers." (*Id.* at 324).

CHS Inc.

- "The increased efficiencies and market access created by the CP-KCS merger would be an impetus for rail-using companies, such as CHS, to make the most of those benefits by considering making new investments in supply chain infrastructure to be served by CPKC." [Filed with this Reply].

CIG Logistics

- "CPKC's new single-line haul offerings will expand market reach and offer new competitive transportation options for our customers' shipments of products" (Letter Dated March 25, 2021 in CIG Logistics Submission of Statement Supporting Proposed Transaction, at 2)
- "We are particularly enthusiastic about the role new CPKC single-line routes will play in expanding access to growing markets across the United States, Mexico and Canada under the USMCA trade agreement. It is important that there be a true USMCA railroad option." (*Id.* at 2).

CF Industries

- "We know from experience (both our own and our competitors) that single-line rail service options are usually more competitively priced and have faster transit times than a route utilizing two railroads." (Letter Dated April 6, 2021, CP-27/KCS-15, Application Volume 3 at 326).

Forest River Bean Co.

- "The economy in the US Upper Midwest depends on agriculture production, and 80% of agricultural products leaving the region moves by railroad. Being a CP Served shipper we have to use multiple railroads to our biggest markets in the southern United States, Ports, and Mexico. A CN acquisition of the KCS would not give us one-line shipments for all our agricultural products in the Midwest. When we must compete against BNSF shippers we are in a huge disadvantage." (Letter Dated April 23, 2021, Forest River Bean Co. Submission of Statement Supporting Proposed Transaction, at 1).

Fullerton Farmers Elevator

- "The economy in the US Upper Plains depends on grain production, and 80% of the grain leaving the region moves by railroad. At present, our CP-served grain handling facility in

this area is limited by its destination access. This puts our CP-served elevator at a disadvantage because it lacks the same market access to destinations that BNSF-served competing facilities have on a single line haul. For example, BNSF-served facilities have access to markets in Texas and the Gulf region but our CP-served facility is simply not competitive in shipping to these markets as it must interline with other railroads to reach these destinations, which increases costs and reduces efficiency. A CP-KCS combination would place us on a more even playing field and greatly expand access to growing markets across the United States, Mexico, Canada, and even internationally." (Letter Dated April 29, 2021, Fullerton Farmers Elevator Submission of Statement Supporting Proposed Transaction, at 1).

Greenlight Traffic and Distribution Inc.

- "Utilizing the service of a single rail line will open a whole new prospective and bring business opportunities that we can now orrer our current and new customers." (Letter Dated March 24, 2021 in CP-27/KCS-15, Application Volume 3 at 505).
- "For example: An existing customer of Greenlight Trattic and Distribution Inc. requested a shipment be moved from Halifax, NS to Mexico City, MX. It was a huge challenge to move this freight. After many hurdles, we were able to accomplish the task. It would be a huge advantage to have a carrier like CPKCS that is integrated and who could have accomplished this as a single move." (*Id.* at 505).

Hapag-Lloyd, LLC

- "We believe this strengthening of Lazaro Cardenas and thus of the global supply chain is a very likely outcome of the CP-KCS Transaction. For this reason, and the reasons expressed in our earlier letter, we support the CP-KCS Transaction." [Filed with this Reply].

Hardisty Energy Terminal GP Ltd.

- "The efficiencies created by the transaction, including improved cycle times and more reliable service, will enhance the DRUbit by Rail Network value proposition for our joint customers, which will allow us to commercialize the increased volumes needed to justify further capacity investment. Put simply, we believe that our goal of additive Dilbit to DRUbit shipment transition is substantially more likely to increase in a world with CPKC than in one without." [Filed with this Reply].

JEI, Inc.

- "Currently our customers ship some via truck into Mexico, now with this merger the rates should be a little better where our customer will choose rail over trucking." (Letter Dated March 28, 2021 in CP-27/KCS-15, Application Volume 3 at 570).

J.W. Scott Farm

- "Only one Class I railroad in ND has single-line access to grain markets in Texas and Gulf of Mexico, the BNSF. The other Class I, the Canadian Pacific, does not, and this

inhibits competition in our local market. Despite the current imbalance, the CP-KC merger has the possibility of bringing more competition into our local marketplaces, to the benefit of ND farmers such as myself." (Letter Dated April 30, 2021, J.W. Scott Farm Submission of Statement Supporting Proposed Transaction, at 1).

Kruger

- "Historically, CP has provided us with good service, but its market reach is limited today, as its lines only go as far south as Kansas City. CP must interline with other railroads to reach destinations beyond Kansas City that we ship to (or that could expand the markets we serve effectively). And we know from experience (both our own, and that of our competitors who have single-line rail options at their origins) that single-line rail service options are far superior." (Letter Filed March 30, 2021, in CP-27/KCS-15, Application Volume 3 at 616).
- "At the same time, the entirely complementary nature of CP's and KCS' networks - connecting only at Kansas City and not overlapping anywhere - means that the transaction will not have any adverse effects on competition. It will only make these carriers a better alternative relative to the other options that already exist, since CPKC will continue to interchange with all of their other existing interline partners." (*Id.* at 616).

Midwest Bulk Transload

- "CPKC's new service offerings will improve transit times and reliability, which will reduce our equipment costs and improve our efficiency by ship containers of feed to Mexico whereby this service has never been offered in the past." (Letter Dated March 29, 2021 in CP-27/KCS-15, Application Volume 3 at 686).

NEW Cooperative Inc.

- "[W]e support the CP-KCS combination. We believe that the combined CPKC network will provide substantial benefits to our 8,000 member owners. We believe that those benefits will enable us to make an investment that we otherwise could not. I write today to advise the STB of a potential investment that is contingent on the approval of the CP-KCS combination. This combination provides us the possibility to build a greenfield grain elevator to ship corn and soybeans in Northern Iowa, to capitalize on new, efficient single line routes on CP-KC from Iowa to grain destinations on the KCS, including Mexico. We estimate that this project will cost $30,000,000." [Filed with this Reply].

Ray-Carroll County Grain Growers, Inc.

- "We are pleased to support the CP-KC transaction and believe that it opens up more possibilities for us. In fact, we anticipate making new investments in this corridor in the

foreseeable future. If this transaction is approved it will open new business opportunities for us." [Filed with this Reply].

Richardson International Ltd.

- "Richardson has reviewed the CP-KC Transaction and believes it opens new markets to our company. More specifically, we expect to be able to access new markets for our grain handling facilities located in North Dakota to ship grain to the Gul area as well as Mexico." [Filed with this Reply].

Rocanda

- "CP has provided us with good service, but its market reach is limited today, as its lines only go as far south as Kansas City. CP must interline with other railroads to reach destinations beyond Kansas City that we ship to (or that could expand the markets we serve effectively). Rocanda has manufacturing facilities in Texas, Wyoming, and Alberta, and has suppliers based across Canada, USA, and Mexico. We know from experience (both our own, and that of our competitors who have single-line rail options at their origins) that single-line rail service options are far superior. The greater access that we have to single-line rail options, the more likely it is that we can expand operations and work more seamlessly with our suppliers." (Letter Filed March 30, 2021, in CP-27/KCS-15, Application Volume 3 at 841).
- "In addition, we have had very negative experiences with rail lines where lots of switches occur between different rail companies. Lines that went from UP to BNSF to CP have been notorious for us in causing delays, and even lost cars. We have never experienced any of these issues on singleline routes, and intend to stick with single-lane routes whenever possible. A combined CPKC will assist in this goal." (*Id.* 3 at 841).

Simpson Seeds

- "Currently, the Mexican Market imports approximately 40-60,000 MT of lentils annually over the rail. As it stands, while CP does provide us with good service, their market reach has been limited as any service farther south than Kansas City must connect with other railroads. With this merger, we expect CP's rates to be more competitive into Mexico due to the elimination of interchange fees." (Letter Dated April 15, 2021 in CP-27/KCS-15, Application Volume 3 at 871).
- "For Simpson Seeds to access CNs' lower rates, we have to load product in trucks, ship it into North Dakota or Montana, and trans-load it onto the BNSF, resulting in more low prices paid to our farmers. Additionally, the environmental impact of running trucks three trucks on 14 hours round trip to load a single hopper car is not sustainable." (*Id.* at 871).
- "CP's ability to directly access the Mexican market would have an immediate positive impact on both our facilities and the farmers we represent. Our exports to Mexico has dropped from 12,000 he current rates. Based on today's price for lentils, the drop in exports represents millions in lost revenue by us and the farmers we represent." (*Id.* at 872).

SPARX Logistics

- "The CP-KCS Transaction promises to substantially increase the value of routings through the port Lazaro Cardenas by extending efficient, single-line intermodal service to Chicago, New York, Toronto, and other important destinations." [Filed with this Reply].

Sun Transportation Systems

- "Sun Transportation Systems ships freight of all kind (FAK) via intermodal containers between Toronto, Montreal, Calgary, Vancouver, Chicago, Los Angeles and Mexico. We currently interchange between CP, BNSF and KCS for freight to travel between Canada and Mexico. A single rail service would remove our cost of interchanging over the road between 3 different railroads. Service would be improved because containers would not need to be moved from railcar to chassis and back to railcar. A single rail service would provide much more superior rail service." (Letter Dated March 24, 2021 in CP-27/KCS-15, Application Volume 3 at 913).

Ternium Mexico S.A. de C.V.

- "[W]e expect that the CPKC Transaction will boost the existing rail network and provide new routing and interchange options for rail users, generating competition with other large rail and truck carriers." [Filed with this Reply].

TIMIRON LLC

- "Our business requires single line service and the resulting more affordable freight rates to access southern markets and Mexico." (Letter Dated April 21, 2021, TIMIRON LLC Submission of Statement Supporting Proposed Transaction, at 1).

USD Group LLC

- "We understand that CPKC will support new investment in capacity (longer sidings, etc.) on the CP-KCS North-South route connecting Canada with the Gulf Coast, enabling improved cycle times and reliability and the ability to move more product on the same number of trains, which impacts cost, efficiency, and capacity." [Filed with this Reply].

WTC Group Inc.

- "CP has provided us with excellent service, but its market reach is limited today, as its lines only go as far south as Kansas City. CP must interline with other railroads to reach destinations beyond Kansas City that we receive from or ship to. Right now, the only way we can execute those shipments is to interchange with BNSF, UP or CSX and beyond." (Letter Dated March 29, 2021in CP-27/KCS-15, Application Volume 3 at 1079).

CP-53/KCS-39

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36500

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

APPLICANTS' RESPONSE TO COMMENTS AND REQUESTS FOR CONDITIONS, OPPOSITION TO RESPONSIVE APPLICATIONS, AND REBUTTAL IN SUPPORT OF THE APPLICATION

VOLUME 2 OF 3

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July 12, 2022

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36500

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

EXHIBIT A

REPLY VERIFIED STATEMENT OF KEITH CREEL

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36500

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

REPLY VERIFIED STATEMENT OF KEITH CREEL

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I. THE COMMENTS AND RESPONSIVE APPLICATIONS SHOW WHY CPKC IS IN THE PUBLIC'S INTEREST

1. I have read with interest the comments and responsive applications submitted regarding our "old rules" merger application, and was struck by how much they confirm and reinforce the ways in which the proposed CP/KCS Transaction would be strongly in the interest of the public and the strength of the U.S. rail network.

2. First and foremost, I was gratified that shippers see the potential for CPKC to deliver better transportation solutions and stronger competition. A handful of individual shippers have voiced specific concerns, which our reply comments address fully. And many shipper associations have used this proceeding – forgetting perhaps that this proceeding is under the old rules – as another occasion to advance their quest for industry-wide regulatory change.

3. But for an industry characterized by shippers alienated and embittered by railroad performance, the lack of any meaningful shipper opposition, to me, speaks volumes. The many hundreds of shippers who have supported the Transaction recognize it for what it is – a once in a lifetime opportunity to make competition stronger *without the need for new regulation*. CPKC will be a catalyst for a more competitive rail industry, with more capacity to serve shipper needs, and a commitment to bring a customer-first mindset to the marketplace.

4. Second, and equally compelling, is the response of the Class 1 railroads. It is as if they have never seen a railroad merger proceeding in which they could not advance their own competitive position at the expense of others. I discuss each of their positions in more detail below, but my key takeaway is this: their desire to impose roadblocks and seek concessions would seem a pretty strong indication that they feel threatened by stronger competition from CPKC. From the beginning, I have been eager to listen to concerns expressed by interested parties, and to address those concerns with reasonable measures that preserve the fundamentals

of the Transaction. But I will not countenance efforts to gut the Transaction by dismembering KCS, granting much-larger railroads rate protections that transfer dollars from CP and KCS directly into the pockets of UP or BNSF, or compelling a grant of contractual rights that these railroads did not negotiate or pay for. Any such conditions would work against the competitiveness of CPKC and harm the public interest, and I ask the Board not to grant them.

5. The bottom line, about which I have spoken often and at length, is that the CP/KCS Transaction will unlock investments in the CP and KCS North-South route network that would otherwise never be possible, strengthening the U.S. rail network from the perspective of its capacity to accommodate future transportation needs, as well as from the perspective of the competitive options available to future rail customers. All of this will provide public interest benefits that could not be achieved in any other way.

6. These benefits could not come at a more important time in the evolution of the North American economy. A combined and strengthened CPKC network will help companies across North America pursue more efficient "nearshoring" options, building a more robust supply chain and lessening their dependence on far-away sources of supply and demand that have contributed to instability we have seen in the recovery from the COVID pandemic. The flurry of other global developments – from energy shocks to the war in Ukraine – show the value of a more capable rail network better able to respond to unpredictable economic shocks. I am confident that CPKC will make an important contribution to a more integrated, de-risked supply chain connecting the United States, Mexico, and Canada, and there is no better time than now to unlock that potential.

II. APPLICANTS REMAIN COMMITTED TO RESOLVING REASONABLE CONCERNS ABOUT THE IMPACT OF THE TRANSACTION

7. CPKC will unambiguously strengthen competition and yield a U.S. rail network more capable of meeting America's transportation needs. This should be an easy case under the Board's public interest standard.

8. Because the fundamentals of the Transaction line up so nicely with the public interest, we have not been bashful about making commitments that provide comfort and assurance to interested stakeholders that we will deliver what we have promised. We do not make commitments to overcome problems that the Transaction will create, but to make clear that we will not be causing any public interest harms.

9. From the outset, I have personally committed that CPKC will be a good neighbor to the communities where we operate, and we have followed through on that promise as I discuss below.

10. From the outset, I have personally committed that CPKC will not eliminate any existing competitive options that shippers might prefer to new CPKC offerings. This means that we will be keeping affected gateways open on commercially reasonable terms, as Mr. Brooks explains in more detail. It does not, however, mean that we will be "protecting" UP, BNSF, or any other Class 1 railroad from having to compete like they never have been required to before to stay relevant in the lanes that CPKC will serve.

11. From the outset, I have voiced CP's commitment to supporting passenger rail service on the lines where we operate. We are Amtrak's consistent "A Student," and I am proud of Amtrak's support for the CP/KCS Transaction. I would be delighted if Metra (the Chicago-area commuter agency) saw things the same way. The Transaction will not get in the way of our intention to be a good partner to Metra on the lines we share.

12. Our reply comments outline a wide array of other reasonable undertakings we have made to interested stakeholders – to rail customers interested in our tariffs governing certain hazardous commodities, to smaller railroads interested in preserving interchange options, and to communities interested in help with measures to address increased freight train volumes. We have been reasonable with all comers, and we look forward to continuing the dialogue with others.

III. CP HAS SUPPORTED, AND WILL CONTINUE TO, SUPPORT METRA

13. CP prides itself on good relationships with passenger rail. Our agreement with Amtrak, which was filed at the Board in February, is indicative. It is built on the trust we have earned as Amtrak's number one host railroad.

14. CP has a long relationship with Metra, and we are disappointed that Metra's Comments reveal that we need to work harder to build a relationship of trust with that commuter agency. I am determined to do so.

15. Our relationship with Metra is founded on binding contractual rights and obligations – flowing from Metra to us and from us to Metra. Those contracts ensure that we have the freedom to operate freight trains – and to grow along with the competitive potential of our network. They also give Metra assurances that their trains will not be interfered with during peak windows and that CP's dispatching will support Metra's operations throughout the day. Those rights and obligations will not be affected by the Transaction. We believe we have honored our obligations to Metra. In particular, as Mr. Walker explains in more detail, we have always tried to discharge our responsibility for dispatching the lines we share with Metra in a responsible manner that gives Metra commuter trains the priority they deserve.

16. The impact of the Transaction is limited and will not harm Metra or its ridership base. The bottom line is that while we will increase the number of freight trains on just one portion of one of the two lines Metra shares with CP, the Transaction will not hurt Metra's operations, as Mr. Walker and Mr. Elphick explain in detail. I have personally communicated with Metra's President James Derwinsky, and CP personnel have communicated extensively with their counterparts at Metra. Because we are so sure that our Transaction will not interfere with Metra's passenger service, we are willing to provide concrete commitments that protect Metra's operations over and above what our contracts require, including:

- Not forcing CPKC freight trains operating between Kansas City and St. Paul. MN over the lines we share with Metra (except in emergency detour situations);
- Not objecting to Metra's resumption of its full pre-COVID schedules on Metra's MD-W and MD-N lines;
- Committing to work collaboratively with Metra on improved real-time communications about dispatching decisions that might have an impact on Metra's scheduled trains;
- Supporting collaborative assessments of proposed Metra operational changes outside peak windows (when Metra needs our consent to add trains); and
- Committing to an escalation process aimed at avoiding or resolving disputes when Metra perceives that we have created performance issues for their passenger operations.

17. Metra's analysis of the Transaction, unfortunately, is not grounded in reality, and the conditions it requests would fundamentally alter core provisions of the contracts between CP and Metra and threaten our ability to use Metra's MD-W line for competitive freight service. Most importantly, responsibility for dispatching needs to stay where the contracts place it – with CP. The lines we share with Metra are just a small slice of the network over which CP's freight trains operate, and balkanized dispatching would ensure that overall operational coordination was made worse, not better – to the disadvantage of CP's freight customers as well as Metra's

passengers. I have personally redoubled CP's commitment to do right by Metra when we dispatch their trains, but shifting dispatching away from CP would be overreaching and counterproductive.

IV. THE BOARD SHOULD REJECT CLASS 1'S EFFORTS TO IMPROVE THEIR PRE-TRANSACTION POSITION AT THE EXPENSE OF CPKC AND THE PUBLIC

18. Metra's comments appear to flow out of a sincere misunderstanding of the effects of the Transaction. The comments (and responsive applications) of the Class 1 railroads, on the other hand, appear to be based on very good understanding of the new competition they will face if the Transaction is approved. Applicants have been open to reasonable accommodation of the concerns the Class 1s have articulated, but each of them appears determined to extract its own pound of flesh from CPKC, or try to handicap CPKC's future competitiveness. None of these conditions should be seriously considered, much less granted.

A. CN's Proposed "Inconsistent' Purchase of CPKC's Springfield/East St. Louis Line

19. I understand why CN might be unhappy that CP prevailed in our effort to acquire KCS. CN's effort to force a "divestiture" of KCS's Kansas City-Springfield/St. Louis line strikes me as a "sour grapes" response aimed at undermining CPKC's future while simultaneously achieving a partial acquisition of KCS that CN could not accomplish in the marketplace. It would dismember KCS in a way that would not serve the public interest.

20. I understand that KCS witnesses are addressing whether the KCS-Springfield-Chicago route was ever a real alternative for rail shippers. During my time in CN's operating department, I never thought of CN's connection with KCS at Springfield as creating a through route for any traffic, much less one that was competitive with the UP and BNSF single-line routes between these cities, or with NS's single-line route between Kansas City and Detroit.

21. What I know is that the premise of CN's Responsive Application – that CPKC will downgrade this line, or stop investing in it – is just not true. We value the shippers on this line, as well as the access the line provides to the St. Louis gateway, where we hope to grow our traffic with CSX and other interline partners. In fact, the Transaction will not only preserve the single-line services that on-line shippers have today (to KCS destinations in Mexico, for example), but will create new opportunities for better single-line services connecting those shippers and receivers with CP's network north of Kansas City.

22. CN makes a big deal about the huge potential for investments in the line to support new intermodal services that would take trucks off the highways. I love the idea of converting truck traffic to rail traffic, and CPKC will enable significant progress in that regard. But I am skeptical that CN's forced sale proposal is really based on developing traffic opportunities that CPKC could not exploit. I suspect that CN is instead looking to hurt CPKC and poach some of the traffic opportunities that CPKC would otherwise pursue in the Kansas City-Chicago lane. Were CN successful, it would surely make it more difficult for CPKC to develop the traffic density necessary to support the planned investments in new capacity and the new, more-competitive intermodal and other options that CPKC plans.

23. However, if I am wrong, and a CPKC-Springfield-CN corridor would uniquely unlock the kind of potential that CN describes, I do not see a reason why the CP/KCS Transaction would get in the way of the potential to invest in this route. If CPKC-CN cooperation were necessary to unlock a billion dollars of new business, we would be there with enthusiasm. Indeed, I have spoken directly with CN's new CEO to express a willingness to consider investing along with CN in building out this corridor were it ever a reality that doing so could shift more trucks from our Nation's highways onto the rail network. A divestiture to CN

(or anyone else) is not necessary to ensure that the potential of this route – however speculative – is fully realized.

B. UP and BNSF's Coordinated Effort to Re-Write KCS Contract Rights and Have a Veto on CPKC Competition

24. The demands of UP and BNSF are also extreme. CPKC will not prevent shippers from choosing KCSM-UP or KCSM-KCS-BNSF routes via the Laredo gateway. John Brooks explains in detail how our own incentives – backed up by our commitments – will ensure that this is true. UP and BNSF go much further, however, demanding conditions that would give them rate protections that do not exist today and that would affirmatively handicap CPKC's new, stronger competition against UP and BNSF. If every aggressive single-line rate offer CPKC made to attract traffic to its new single-line routes required that we also give away revenues to UP or BNSF, that would be a strong disincentive to compete as hard as we intend to. I know shippers would not want that, and the Board should not want that outcome either.

25. Potentially even more problematic is UP's and BNSF's coordinated demand to re-write KCS's trackage rights over UP lines in Texas to give UP or BNSF the right to veto any new, competitive CPKC traffic unless and until they both are satisfied that CPKC has not only agreed to add new capacity but has installed and paid for that capacity. In a word, this is "ridiculous." We believe these lines have sufficient capacity – if operated efficiently – to support all of the trains CPKC hopes to add as we implement the Transaction over time. If capacity turns out to be required, CPKC will be supportive and pay its fair share. I understand that the trackage rights agreements giving KCS rights over these lines require that UP add sufficient infrastructure to support *all of the traffic* of *all of the carriers* that use the lines. And each of them is required to pay its appropriate share of the cost of that capacity.

26. We have no qualms about committing to abide by this process. But there is absolutely no justification for a condition that would give UP and BNSF the right to veto CPKC's new competition until CPKC paid for whatever UP and BNSF might insist upon. That kind of one-sided, blank-check condition would put the foxes in charge of the henhouse.

27. The premise of UP's and BNSF's proposal is that CPKC will force through Houston more traffic than the infrastructure will support. We think the infrastructure will be sufficient to accommodate the additional trains that we hope CPKC will attract. But the notion that we will attract traffic even if we lack the ability to support good and reliable service is not realistic. CPKC will have every incentive to ensure that we can provide reliable service through Houston, and if we cannot then we will not succeed in winning the traffic that we hope to attract,

C. NS's Proposed Re-Writing of Meridian Speedway Contracts

28. The Transaction will not harm NS. If anything, it will create new opportunities for traffic growth over the Meridian Speedway lines in which KCS and NS are joint investors. And contrary to NS's concerns, CPKC's anticipated operations will not degrade the service levels for intermodal traffic moving between Shreveport and Meridian. CPKC would shoot itself in the foot if we did anything to drive this traffic back onto the highways.

29. Given the lack of harm to NS, it should not come as a surprise that I reject NS's demands to extract financial concessions as the price of its support for the CP/KCS Transaction. NS's proposed "springing trackage rights" between Dallas and Shreveport are yet another example of overreach by the Class 1s. NS did not negotiate rights between Shreveport and Dallas, much less a "major service failure" provision that would convey such rights. If NS felt it needed trackage rights and emergency provisions covering KCS's line between Shreveport and Dallas, it should have negotiated those rights in 2006 when it entered into the MSLLC venture.

Had NS done so, of course, it would have had to pay for the rights it desires, rather than seeking them for free though a misuse of the Board's merger review process.

D. CSX's Position in this Proceeding Lacks Merit

30. The Transaction will not hurt CSX at all. In fact, CPKC is looking to cooperate more closely with CSX to reap the full potential of a CPKC network. CSX stands to benefit from CPKC's improved capabilities of a combined network and our interest in growing traffic to/from the East via gateways served by CSX, particularly East St. Louis and (to the extent consistent with our contractual obligations) Meridian, MS. In this context, CSX's requests for conditions aimed at protecting itself or improving its contractual position in New Orleans are unwarranted. And CSX's apparent desire to undo – or fundamentally rewrite – the terms of the Meridian Speedway joint venture between KCS and NS (as to which CP will merely step into the shoes of KCS) is unrelated to the CP/KCS Transaction and should be rejected.

V. WE ARE COMMITTED TO BEING A GOOD NEIGHBOR TO THE COMMUNITIES WE SERVE

31. As I said at the outset of this proceeding, CP is committed to being a good neighbor to the communities we serve. We have followed through on that promise, communicating openly with those communities and engaging in good faith negotiations to address the potential impacts of increased rail traffic.

32. That engagement has been productive, at least where the communities have been interested in addressing the issues in good faith. CP has entered into agreements addressing environmental concerns with several communities, and we remain actively engaged with other communities between Laredo and Chicago where the Transaction is anticipated to increase freight traffic above applicable environmental thresholds.

33. Unfortunately, not all of the communities on this route are interested in constructive solutions. Some would rather derail the Transaction entirely or force CPKC to send

its freight through other communities instead of their own. Applicants understand that their Transaction must serve the public interest, and it does. The communities that would seek to hold the Transaction hostage with demands for "over $9 billion" in new investments – or a reroute of traffic on to highways or over longer rail routes through other communities – do not have the public's interest at heart. They want improvements to the U.S. rail network anywhere other than their own back yard, and their tactics should not be rewarded. CPKC will continue to be a good neighbor to the citizens of those communities, as a responsible operator in their backyards. But the politicians that seek to block the Transaction should not be allowed to stand in the way of the public's interest in an improved, more competitive freight rail network.

VI. WE ARE WORKING DILIGENTLY TO NEGOTIATE IMPLEMENTING AGREEMENTS WITH AFFECTED LABOR ORGANIZATIONS

34. The employees of CP and KCS will be indispensable to the success of the Transaction and the future of CPKC. Since last fall CP and KCS have been working closely with the labor organizations representing the employees whose jobs may be affected by the Transaction, with the aim of negotiating agreements that bring together these two valued workforces. Throughout this process we have worked hard to build trust – particularly for the KCS employees who will be new to the CP family. Our goal is to build a strong foundation for CPKC's future by fostering a safe and productive workforce.

35. I am happy to report that we have made great progress already. We are actively engaged with all of the labor organizations representing the potentially affected employees of CP's Soo Line and DM&E affiliates and KCS's KCSR affiliate, with the aim of having such agreements in place so that CP and KCS can integrate their networks under common control.

36. As an indication of our progress to date, the Brotherhood of Locomotive Engineers and Trainmen ("BLET"), representing DM&E train and engine employees, has

ratified by a wide margin a new collective bargaining agreement that will assist in accommodating the consolidation with KCS. Similarly CP (through DM&E) and KCSR have been in discussions with SMART-TD, the labor organization representing KCSR conductors who may be affected by changes in operations in the "Consolidated Territory" should the STB approve CP's application to control KCS. These discussions have resulted in a new collective bargaining agreement, subject to ratification, for KCSR conductors represented by SMART-TD in the Consolidated Territory. We are optimistic this new agreement will be approved; it will further assist in satisfying all requirements of the *New York Dock* conditions to the extent they may apply the contemplated operational changes.

VII. CP AND KCS WILL COME TOGETHER AS TWO WELL OPERATED AND WELL-FUNCTIONING RAILROADS, AND WE ARE EAGER TO MOVE SWIFTLY TO ACHIEVE THE PUBLIC INTEREST BENEFITS THAT THE TRANSACTION OFFERS

37. It is impossible to ignore the challenges that have confronted the North American rail industry over the past several years, ranging from the traffic collapse early in the COVID pandemic, the dramatic changes in labor markets during and coming out of that pandemic, and the strong rebound in freight traffic volumes. The challenges and disruptions those events have brought to railroading have been much noted by the shipper community and the Board.

38. I am gratified that throughout this challenging period, both CP and KCS have fared extraordinarily well. We have done a good job retaining the human talent that is necessary to run our railroads efficiently, and we have kept pace with burgeoning demand by putting in place the resources needed to handle our customers' shipments efficiently.

39. As a result of our solid operational performance, coupled with the hard work that we have been engaged in to plan for post-control integration (which other witnesses describe in their statements), CP and KCS will come into the Transaction in terrific shape to move quickly to begin unlocking the benefits that the Transaction promises. We will move aggressively to

compete harder against our Class 1 rivals, and we redouble our efforts to bring our customers – and new customers – transportation services that better meet their needs.

40. I have already addressed some of the scare tactics of larger Class 1s that suggest that CPKC's competitive success will bring rail traffic increases to some parts of the CPKC network that will overtax available capacity. As Mr. Elphick explains in detail, these assertions are false. CP's success implementing PSR was achieved with a constant eye towards planning and up-front investment that ensures that we do not force operational change – whether longer trains, more traffic, or anything else – onto infrastructure that is not capable of handling it. Some of the stumbles of the other Class 1s show that they may not have taken these lessons to heart in their rush to implement PSR. I can assure the Board that CPKC will be laser focused on the reliable operations and supporting investments upon which our future growth and competitive success will depend. We will not allow our growth to overtake the capabilities of our network.

41. From the day in 2020 when I read about the interest of private equity investors in acquiring KCS – with such gravely uncertain consequences for CP and the U.S. rail network – to now, has been a long and tortuous road. I am proud that the whole CP team has persevered, with our eyes firmly fixed on the transformative potential of this Transaction for both CP and the industry. Now so close to the finish line, I can speak for the entire team in saying that we are eager to put our planning to work and start delivering on the promise of CPKC. I urge the Board to let us do exactly that as quickly as possible so that the public need not wait any longer than necessary to receive those benefits.

VERIFICATION

I, Keith Creel, declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this statement.

Executed on this 12 day of July, 2022.

Keith Creel

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36500

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

EXHIBIT B

REPLY VERIFIED STATEMENT OF PATRICK J. OTTENSMEYER

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36500

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

REPLY VERIFIED STATEMENT OF PATRICK J. OTTENSMEYER

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II. CPKC WILL BE A NEW, VIGOROUS COMPETITIVE FORCE AGAINST THE OTHER CLASS 1'S 12

1. My name is Patrick J. Ottensmeyer. I am President and Chief Executive Officer of Kansas City Southern. My statement included in the merger application (Application Volume 1, pages 187-210) contains a brief synopsis of my background.

2. The purpose of this statement is to briefly address the condition requests put forward to the Surface Transportation Board (STB or Board) in this proceeding by our various major competitors and why those are merely attempts by those carriers to advantage themselves and to hobble the competition that they know that the new CPKC will bring. I will also recap why this merger is strongly pro-competitive. While I will only touch briefly on each of these topics, statements by other KCS personnel submitted along with this one, including those by Oscar Del Cueto, Mike Naatz, John Orr and Steve Simmons, provide greater detail, and I endorse those statements as well.

I. Our Competitors Seek Conditions on This Transaction to Advantage Themselves and to Dampen the Competition That the Combined CPKC Will Bring

3. The Class I competitors of Canadian Pacific Railway Company (CP) and The Kansas City Southern Railway Company (KCSR) each seek some form of change to this merger proposal, either in the form of a responsive application or in terms of proposed conditions. These proposals are all merely opportunistic attempts by CP's and KCS's competitors to gain something for their private benefit while dampening competition that will benefit the public.

A. Canadian National Railway Company (CN)

4. CN's responsive application is physically the most far-reaching proposal by our competitors. The basic pieces of CN's application are a forced sale of KCSR's line between Cockrell, IL[1] and Kansas City, MO, including branches at Jacksonville, IL and Mexico, MO;

[1] Cockrell is southwest of Springfield, and is several miles over track of UP and NS from Springfield.

acquisition of KCSR's line from Roodhouse to Godfrey, IL, and KCSR's one-half ownership of the paired track between Godfrey and East St. Louis, IL (plus attendant yards); acquisition of KCSR's subsidiary Gateway Eastern Railway Company (GWER) and its ownership of several important tracks in the East St. Louis area; one-half interest in KCSR's International Freight Gateway yard about 20 miles south of Kansas City; an interest in the Kansas City Terminal Railway equal to those currently held by KCSR and CP; and access over various connections between these tracks.

5. CN's argument for the proposed massive forced sale is that the Kansas City-to-Cockrell line is a competing route to CP's current route from Kansas City to Chicago, and that CP should not control both of those routes. History contradicts this competing route theory.

6. As historical background, Illinois Central Gulf Railroad Company (ICG; now Illinois Central Railroad Company -- ICRR -- the CN-proposed purchaser) once owned the Cockrell-Roodhouse-Kansas City line and most of the Roodhouse-East St. Louis line[2] that CN's application seeks to acquire. In April 1987, ICG sold those lines and some others to Chicago, Missouri & Western Railway Company (CM&W).

7. Less than a year later, CM&W was in bankruptcy, and in late 1989/early 1990, CMW Acquisition Corp., later renamed Gateway Western Railway Company (GWWR), acquired the Cockrell-to-Kansas City and Roodhouse-to-Godfrey lines, along with a one-half interest in the Godfrey-to-East St. Louis line. Anecdotally, I have heard that GWWR had both

[2] The portion of the paired track owned by Gateway Eastern Railway Company (GWER) between Wann and WR Tower was owned by Conrail when ICG sold the surrounding track to CM&W. GWER subsequently acquired from Conrail the Wann-WR Tower track, along with track connecting to Conrail's (now CSX's) Rose Lake Yard in 1994 and, after protracted legal battles, built the Jug Handle track to connect the paired track to Rose Lake Yard.

operational challenges due to track conditions and financial challenges due to lack of business until it solidified its relationship with, and later was acquired by and merged into, KCSR.

8. This historical background is to say that if the Kansas City-to-Cockrell route was so competitive with CP's Kansas City-to-Chicago route as CN now claims, I doubt that ICG would have sold the line to CM&W in the first place.

9. CN's attitude over the years in response to KCSR's efforts to develop business with CN over Cockrell, also belies CN's current claim of the competitiveness of Kansas City-to-Cockrell as an alternate Chicago routing. As laid out in greater detail in Mike Naatz's individual Reply Verified Statement (RVS) in this filing, CN has consistently lacked interest in cooperating to move traffic over Cockrell. Indeed, Mike's statement includes 2019 e-mails from a CN representative proposing to close the Cockrell interchange. Again, this history does not indicate that CN sees Cockrell-to-Kansas City as part of a realistic alternative route between Kansas City and Chicago.

10. The Cockrell-to-Kansas City line would, however, be a much more lucrative opportunity now for ICRR than the line was for CM&W when ICG sold it to them years ago, but this is only because of considerable investments in the line under KCS ownership. Due to substantial work and investment by both KCSR and its customers, particularly in the past ten to fifteen years, KCSR's customers -- especially grain customers -- have grown their businesses on the Cockrell-Kansas City line tremendously. Indeed, Bartlett Grain Company, L.P. (Bartlett), KCSR's largest customer, built an entirely new elevator on KCSR at Jacksonville, IL about 10 years ago, and has been shipping huge volumes from Jacksonville to Bartlett's customers ever since. Bartlett has filed its statement in this proceeding, supporting the CP-KCS merger and strongly opposing CN's responsive application.

11. Bartlett is not alone in having prospered from working with KCSR to develop business on the Cockrell-Kansas City line. KCSR and its customers such as River Valley MFA, Ray-Carroll Grain, Central Missouri Agriservice, MFA, Ray-Carroll County Grain Growers, ADM Soybean Processing, Heart of Missouri MFA and Poet Biorefining all have benefitted from working together to grow ag business on the Cockrell-Kansas City line. There's no doubt that the Cockrell-Kansas City line is a much better opportunity now than the one that ICG sold to the ill-fated CM&W.

12. CN's application would reduce competition in the St. Louis area by eliminating KCSR direct access there while giving CN a second route to East St. Louis. CN already accesses the East St. Louis area from the south, through Belleville, and connects to KCSR. While CN proposes to provide CPKC haulage to East St. Louis if CN's responsive application is granted, I am skeptical that CN would eagerly provide CPKC quality haulage that would compete with CN's own service. This less robust service resulting from CN's responsive application would reduce competition in the East St. Louis/St. Louis market. Essentially, CN's responsive application would do to the East St. Louis/St. Louis market what CN is complaining that the CP-KCS merger would do to the Chicago-Kansas City market -- put two different routes between the same points in the hands of the same company, but in the case of a CN divestiture that loss would be real rather than imagined.

13. The history of the Cockrell-Kansas City line belies CN's now-claimed belief in the line as an alternate Kansas City-Chicago route. CN has never worked seriously with KCSR in the past to develop such a potential, so why would that supposed potential be apparent to CN only now? CN might say the potential is apparent because if CN's responsive application were granted, Chicago to Kansas City via Cockrell would be a single carrier route. But if that's the

case, what does that say about CN's offer of haulage for CPKC, a service that would involve two carriers? Clearly CN's application calls into question CN's own assertion that KCSR could maintain access to KCSR's major customers on the line that was adequate for KCSR and its customers to compete.

14. The KCS "single line" option from the Cockrell-Kansas City line to destinations in Mexico has been critical to opening Mexican markets to midwestern U.S. corn producers. That market would be jeopardized by CN's proposed forced sale, subjecting current KCS shippers to pricing of CN favoring its long-haul markets or pricing from UP and BNSF from Kansas City favoring those carriers' longer haul West Coast options. Losing quality single-line access to Mexican markets would be highly disruptive to the customers on the Cockrell-Kansas City line who depend on that market, which is why those customers, such as Bartlett, oppose CN's application.

15. The Board should deny CN's responsive application.

B. CSX Transportation, Inc. (CSX)

16. CSX's pleading contains several asks. Some, such as keeping gateways open on commercially reasonable terms, have already been dealt with in Applicants' commitments in this proceeding.

17. Another -- the request to "require CPKC to provide shippers with sufficient information about CPKC's pricing and service plans for movements to and from points in Mexico served directly or indirectly by KCSM to, from, or through the U.S." – is convoluted, unclear, and therefore difficult to respond to. Obviously it will be in CPKC's interest to make its rates and services known to potential shippers. But to the extent that CSX is asking the Board to place requirements on KCSM -- a Mexican railroad that is regulated by Mexican authorities under Mexican law – I would respectfully suggest that the Board seriously consider the Ottensmeyer R.V.S. at 6

Applicants' legal presentation about the statutory and prudential limits about reaching into another country to regulate a company there.

18. With respect to CSX's request that the Board protect CSX's ability to interchange traffic in East St. Louis destined for the Kansas City market, I would suggest that the best way for the Board to do that would be to deny CN's responsive application so CPKC retains direct access to East St. Louis.

19. Further, I would say that CSX misinterprets the Applicants' filings as indicating a downgrade in the Kansas City-East St. Louis line. Given the many valuable customers on that line as I discussed above, downgrading service is not what is anticipated. CSX's projection of CPKC downgrading service on the line that serves KCS's single largest cross-border grain origin is a completely baseless claim.

20. CSX's request that the Board lock CPKC into paying interchange costs for shipments moving both to and from CSX in New Orleans should be denied. This request is completely unrelated to any effect of the CP-KCS merger.

21. In late 2020/early 2021, the New Orleans Public Belt, CSX and KCSR renegotiated agreements covering handling of the CSX-KCSR interchange in New Orleans. The agreement between CSX and KCSR arising from those negotiations allows either party to terminate the agreement on 30-days' notice. Information available to me indicates that the parties knowingly agreed to that provision.

22. CSX offers no reason for the Board to accept CSX's bait and switch on this issue; that is, the bait and switch of CSX knowingly agreeing in 2021 to the mutual right to terminate, and then in 2022 asking the Board to cut that part out of the agreement. The agreement was the product of tough negotiation and each party entered the agreement based on the total effect of all

of its parts. CSX should not now be allowed a unilateral right to jettison one of those parts while keeping the rest.

23. My high-level understanding of the Board's decisions in the past few years about which interchanging party controls the terms of interchange is that the party receiving interchange has a greater degree of control about how interchange occurs than the party delivering the interchange. CSX's ask on this issue seems to go against those Board decisions by giving CSX a veto to any change in the interchange in either direction. The Board should deny that ask.

24. The Board should also deny CSX's asks to abrogate the MSLLC agreements or to require CPKC to interchange with CSX at Meridian, MS. First, CSX's requests seem to be much too late. The Board exempted the MSLLC transaction from the Board's application procedures in 2006. If CSX objected to the transaction, it should have made its case then and in the docket containing the full information supporting the Board's exemption decision. Now that investments have been made in reliance on the Board's exemption, it would be unjust to try to unwind the transaction somehow. CSX may have a right to try to get the STB to reconsider its 2006 exemption, but it seems that request belongs in the exemption proceeding, not here.

25. CSX's request that CPKC be required to interchange with CSX at Meridian is perplexing. CSX does not serve Meridian; indeed, it probably does not have track within 100 miles of Meridian. That makes direct interchange impossible. {{[redacted]

Ottensmeyer R.V.S. at 8

[redacted] }} Accordingly, interchange with CSX can occur, just not in the fashion CSX asks.

C. Norfolk Southern Railway Company (NS)

26. NS's ask is that the Board grant NS contingent trackage rights on KCSR's track between the end of MSLLC's ownership and KCSR's intermodal yard at Wylie, Texas. NS argues that because it has a year-long option to acquire the Wylie Intermodal Terminal beginning on the 18th anniversary of the closing under the MSLLC agreements, the Board should grant NS contingent trackage rights over about 200 miles of KCSR track like NS has over MSLLC's track.

27. For several reasons, the Board should reject NS's request. First, the MSLLC agreements are voluminous and, as stated in Steve Simmons' RVS at paragraph 69 in this filing, were negotiated over a several-month period. Given all of that, the parties' failure to provide NS contingent trackage rights on KCSR track while providing such rights on MSLLC track very likely was a considered and deliberate decision.

28. As NS says in its filing, it acquired contingent trackage rights on MSLLC to protect the investment NS made to increase the capacity of that line. By contrast, NS did not invest in, and is not offering to invest in, KCSR's Wylie-Shreveport track. This is particularly important because if a "Major Service Standard Failure"[3] occurred, triggering NS's proposed trackage rights, NS's operating its own trains, in addition to CPKC's, between Wylie and Shreveport would worsen congestion between Wylie and Shreveport, perpetuating the service

[3] As defined in Appendix B to the Norfolk Southern Railway Company – Meridian Speedway LLC Joint Use Agreement.

failure. NS should not be able to "have its cake and eat it, too" – not investing in capacity, but gaining additional rights it did not negotiate.

29. There are other problems as well with NS's proposal. As explained in Steve Simmons' accompanying RVS at paragraphs 62 - 63, NS proposes trackage rights for a wider array of intermodal traffic than KCS and NS agreed to in the Dallas Terminal Marketing Agreement and the Western Haulage Agreement.

30. Also, again as explained by Steve Simmons' RVS, at paragraphs 64 - 68, NS's proposed trackage rights fee would transfer {{[redacted]}} from CPKC to NS. Again, this contradicts the carefully-constructed, NS-authored Dallas Terminal Marketing Agreement, which says that the haulage KCSR is required to provide NS {{[redacted]}}.

31. In short, NS is requesting that it be given trackage rights equivalent to those it paid for as part of its rights on MSLLC, but without paying for them. The rights requested would contradict the provisions of the Dallas Terminal Marketing Agreement. NS's request should be denied.

D. BNSF Railway Company (BNSF)Union Pacific Railroad Company (UP)

32. Finally, much of what has been said above applies to the asks by BNSF and UP. As with CSX's asks, the Board should not attempt to reach across the border to regulate a railroad in Mexico. Mexican shippers or receivers are on one end or the other of each cross-border shipment, and the Mexican government has an interest in protecting them and, as Oscar Del Cueto explains, has the regulatory tools to do so. BNSF's request for contingent trackage right is, like NS's, unrelated to any effect of this Transaction, and is unnecessary.

Ottensmeyer R.V.S. at 10

33. UP's and BNSF's requests that CPKC be required to fund agreed upon capacity improvements on the Robstown-Beaumont trackage rights lines as a prerequisite to competing for additional traffic over that route is an obvious attempt to stifle competition from CPKC. First, as discussed in John Orr's accompanying individual RVS at paragraphs 16 - 26, UP particularly has substantially changed its Houston operating practices in recent months, especially around Englewood Yard. Those changes went forward while work at Englewood Yard was in process. UP did not delay its own traffic changes until its infrastructure was completed. There is no reason that CPKC should do so.

34. Second, as shown by the combined testimony of Ray Elphick and John Orr (*see* Elphick-Orr RVS at 19-25), adequate infrastructure capacity exists on the trackage rights lines, but even if it did not, the trackage rights agreements themselves provide how infrastructure additions are to be funded if additional infrastructure is needed. This situation is not like the UP-SP merger where initially there were no trackage agreements like those accompanying Steve Simmons' RVS (Simmons' Exhibits 2 – 4) to set standards for how to pay for infrastructure needs. The fact that BNSF and UP agreed between themselves that UP would fund certain merger-related capital projects – such as connections between UP and SP's largely parallel lines -- was part of UP's undertaking to BNSF, through the BNSF settlement, and to the Board that UP would pay for the infrastructure improvements that UP said that it needed. That arrangement is not, as BNSF suggests, a necessary part of every merger. While CPKC will pay for capital projects that Applicants' filings show, the trackage rights agreements provide the means to fill any need that may arise on those lines in the future.

Ottensmeyer R.V.S. at 11

35. The mileage prorate proposal is similarly meritless. Mike Naatz's RVS does an excellent job of explaining why. Moreover, the proposal's attempt to get a U.S. federal agency to control rail rates in Mexico appears clearly improper.

II. CPKC Will Be a New, Vigorous Competitive Force Against the Other Class 1's

36. Finally, I would be remiss if I did not reiterate my strong belief that this transaction is good for competition and good for shippers. Shippers often talk to the Board about how more competition is needed. And over 450 shippers have submitted their support for this transaction, evidencing their belief in the invigorated competitive options that CPKC will be able to provide. I also agree with Keith Creel that the lack of substantial shipper opposition in the current context of industry service issues speaks volumes.

37. The merger of CP and KCS will support improved service and investment opportunities that would not be possible without bringing the two companies together. Capital investments between two separate companies are often harder to justify due to separate operating and investment priorities and different operating visions of separate companies. Bringing KCS and CP together as one company with one vision and unified priorities will eliminate these differences and create opportunities for greater coordinated actions to improve the fluidity and function of the combined CP-KCS network. This will create a stronger platform for improving customer service.

38. To say that CPKC will compete is not to say that CPKC will improperly refuse to work with other carriers, as UP, BNSF, and others allege. There will still be many large and important markets which will not be directly served by the CPKC, including the southeastern, Mid-Atlantic, and U.S. West Coast markets. CPKC, while stronger together, will still be the smallest Class 1 and will still need to work with other carriers to serve customers' complete array of needs. But the combined CPKC will be able to serve a larger portion of those needs and to

serve them better, putting pressure on our Class 1 competitors to be better themselves. CPKC will work with other carriers, including to and from Mexico, if for no other reason than that it will be in KCSM's interest to do so, to generate more traffic and more revenue for the combined company.

39. I also reject BNSF's assertion that KCS has discriminated against BNSF unfairly since acquiring control of Tex Mex. So far as I can tell, that assertion is mostly based on an increase in the KCS/Tex Mex division for grain shipments moving from BNSF over our line from Robstown to Laredo. My belief is that Tex Mex's pre-change-of-control rate division was abysmally low and needed to be raised, as addressed in Mike Naatz's individual RVS. As context, at about this same time, Tex Mex had obtained a $50 million federal loan to make essential track repairs that, Tex Mex, under its prior ownership could not afford to make. That very low rate division on BNSF grain traffic was one of the reasons for that situation, and in retrospect clearly needed to be changed. Seeking an adequate return to keep the track together is not unreasonable or discriminatory. BNSF's foreclosure argument is ill-founded, and ridiculous in the context of BNSF's access to multiple Mexico gateways, including its trackage rights to Brownsville that it doesn't exercise.

40. I strongly believe that CPKC will be a competitive force that will serve shippers and the public interest. I urge the Board to approve the Transaction without the conditions and inconsistent applications that future CPKC's competitors hope to use to protect themselves, not the public interest.

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VERIFICATION

I, Patrick J. Ottensmeyer, declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

Executed this 12 day of July, 2022.

DocuSigned by:
Patrick Ottensmeyer
ACF48868608649E...

Patrick J. Ottensmeyer
President and Chief Executive Officer
The Kansas City Southern Railway Company

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36500

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

EXHIBIT C

REPLY VERIFIED STATEMENT OF JOHN BROOKS

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36500

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

REPLY VERIFIED STATEMENT OF JOHN BROOKS

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1. I am John Brooks, Canadian Pacific's Executive Vice President and Chief Marketing Officer "(CMO"). I submitted a Verified Statement in support of the Application filed last October, and I am submitting this Reply Verified Statement to respond to certain comments and requests for conditions filed by other Class 1 railroads and certain other interested parties, as well as the request by CN for a forced divestiture of KCS's line between Kansas City and Springfield, IL and East St. Louis, IL.

2. My statement focuses on seven topics:

- I first address certain critiques put forward by a few Class 1 railroads regarding Applicants' estimates of the traffic gains anticipated from the Transaction, including complaints that we did not give our competitors a specific-enough roadmap of how CPKC plans to attract traffic away from them to new CPKC single-line routes;
- I explain why requests for "gateway protection" beyond what Applicants have already committed to is unnecessary and would undermine the pro-competitive benefits of the Transaction;
- I explain the steps Applicants are committing to take to ensure that the Transaction does not degrade the quality of service CP and KCS customers receive, and why the additional conditions relating to post-Transaction service that some have sought are not necessary and would undermine the competitive benefits of the Transaction;
- I explain the many ways in which a forced divestiture of KCS's Springfield/East St. Louis Line would undermine important benefits of the Transaction and even undercut the existing rail options that shippers on this line have today;
- I explain why requests for conditions relating to CP's TIH tariff terms relating to "toxic-by-inhalation hazard" commodities have no proper place in this proceeding;
- I explain why U.S. wheat growers need not be concerned that CPKC will favor wheat originated in Canada; and
- Finally, I explain why Norfolk Southern need not be concerned about CPKC's interest in growing traffic over the Meridian Speedway between Shreveport and Meridian, where NS interchanges traffic with KCS.

I. CPKC WILL OFFER COMPELLING VALUE TO SHIPPERS

3. Other Applicant witnesses are addressing in more detail the critiques offered by certain Class 1 railroads of the traffic growth Applicants anticipate from the Transaction. Many of those critiques come from the railroads that will have to face the new competition that CPKC will bring to the North American transportation marketplace. Those critiques primarily come in two flavors: (1) CPKC routes will not be attractive in comparison with the interline routes involving other Class 1 railroads, such that CPKC would have to resort to "foreclosure" strategies to win traffic to CPKC interline routes, and (2) Applicants have not provided detailed, opportunity-by-opportunity rate and service plans showing exactly what terms they will offer shippers to attract traffic away from other railroad (and truck) options. Neither critique is valid.

4. First, as I and other Applicant witnesses have already explained, CPKC will not have any incentive to foreclose existing interline options, and doing so would in fact be counterproductive to CPKC's growth strategy. (I address Applicants' formal commitments to preserve those options in the next section.). Instead, Applicants anticipate attracting traffic from existing transportation options because, relative to the status quo, the new CPKC services we will be offering will be considerably better than what most shippers have seen from CP and KCS in the past. The fact that some interline routes might be somewhat shorter, or under ideal conditions somewhat faster, will not impede CPKC's success in persuading shippers of the value to them of new, reliable CPKC single-line routes.

5. As other witnesses recount in more detail, every month that passes brings further confirmation of the enthusiasm that shippers have about future CPKC options. Both railroads are in constant contact with their customers, and we hear this excitement on a daily basis. We also know that dozens of shippers are considering making substantial investments of their own on the foundation of the new transportation options CPKC will bring: investments in grain

origin elevators and processing facilities in the Upper Midwest and destination terminals in the Gulf and Mexico; fertilizer sheds for expanded distribution to key growing regions; export terminals in the Gulf; transload and warehousing facilities from Chicago to Mexico, and many, many more. Shippers are eager for the CP and KCS to be able to come together and achieve the promise of the new CPKC network. Indeed, many of those shippers have already filed in support of CPKC precisely because they see the value the Transaction will unlock.

6. All of this enthusiasm confirms to Applicants that our own assessments of the likely range of new traffic opportunities CPKC will attract are reasonable and can be achieved. We know that CPKC's traffic mix three years after the Transaction is consummated will not look exactly like what we have forecasted, for myriad reasons including changing economic circumstances and the ebb and flow of competition both in the rail industry and in the countless industries CPKC will serve. But we have seen nothing that suggests that CPKC cannot succeed in attracting large volumes of traffic from existing truck and rail transportation alternatives.

7. Second, there is no valid basis for the complaints that Applicants have not been specific enough about the rates and other terms we will offer to prospective customers to entice them to use CPKC services. For starters, in many cases we have not developed the specific terms we would propose to offer to attract this new traffic (and retain existing traffic). Those offers will be driven by the competitive marketplace and the specific circumstances applicable to the customer's transportation needs – including the specifics of their existing options.

8. Even if we had developed a blueprint for the competitive terms we would offer customers to win traffic from trucks and other Class 1 railroads, it obviously would not be appropriate to share it with our competitors. I am aware that Applicants' consultants assumed that certain of the traffic CPKC would attract would come at a reasonable discount relative to

existing interline rate levels. That makes sense from my commercial perspective. But let me be clear: Applicants have set no arbitrary floor on how aggressive they will be in competing to attract traffic from other Class 1s – whether or not the traffic is affected by the Transaction. Competitive marketplaces are dynamic marketplaces, and the rates we offer will be ones that make sense for CPKC and that are designed to meet the needs of our customers and be successful in the competitive marketplace.

9. I am more than happy to put the other Class 1s on notice of what to expect from CPKC, however. CPKC will be an innovative and aggressive new competitor. CPKC will strive to develop reliable services tailored to the needs of our customers, for fair and competitive prices. And CPKC will not be intimidated by the much greater size and scope of the other Class 1s' U.S. networks. The other Class 1s should plan to up their game if they want to retain traffic that could be served by new CPKC single-line routes. We think rail customers will respond favorably to this new competition, benefitting the whole competitive process, not just CPKC.

II. THERE IS NO NEED FOR CONDITIONS TO PROTECT GATEWAYS BEYOND THE COMMITMENTS APPLICANTS HAVE OFFERED

10. A number of commenters, including other Class 1s, have expressed unfounded concerns that Applicants' commitment to keep open existing gateways and thereby preserve existing interline options potentially affected by the Transaction do not provide an adequate assurance that those existing options will be left in place. Other witnesses explain in more detail why CPKC will not have an incentive to undermine the existing options that shippers have demonstrated best meet their needs given the options they have today. I firmly believe that CPKC will not be well served if we attempt to force shippers to switch to single-line CPKC routes, and I know we have no intention of doing so.

11. Applicants in fact have been consistent and clear about our commitment not to shut off or degrade existing interline options that shippers might prefer to new CPKC single-line routes. Some of the comments suggest that dissatisfaction with these commitments may stem in part from confusion about the scope of what we are committing to do. I will try to clear up that confusion. I will also explain why the "mileage-prorate" proposal made by BNSF and UP as a way of "keeping gateways open," and echoed in some of the other comments, would in fact undermine CPKC competition and is calculated by those larger, Class I railroads to protect themselves from having to compete to retain the business they have today.

12. First, however, I'd like to say a few words about gateway concerns expressed by some Class 1 railroads and shipper organizations about interchange traffic that will not be affected at all by the Transaction. In many cases, concerns about gateways have nothing to do with the Transaction at all. For example, CSX expresses concern about the New Orleans gateway, where KCS and CSX interchange some traffic. Likewise, NS expresses concern about the Meridian, MS gateway, where KCS and NS interchange considerable intermodal and other traffic.[1]

13. In cases like these, CP's control of KCS will not change anything about the incentives to continue routing interline traffic via these gateways. Adding the CP network to KCS's network will not create any new single-line route for such traffic, nor create the potential for CPKC to carry the traffic farther by keeping it on CPKC to another gateway. These existing interline routes will be unaffected by the Transaction and thus there is absolutely no reason for any conditions aimed at preserving those options. Any such conditions would only impose new

[1] In addition, considerable volumes of NS intermodal traffic move over the joint KCS/NS Meridian Speedway via Meridian, with KCS moving that traffic in haulage service and exchanging it with NS at Meridian.

regulatory burdens on CPKC, and provide unwarranted protection for our connecting carriers, hobbling the competitive process. For clarity, the commitments Applicants have made to preserve existing gateways apply only to situations where the traffic moving via those gateways *would be affected by the Transaction* – because CPKC would either gain a new single-line route, or the Transaction creates a new potential to carry traffic farther on the CPKC system, bypassing the existing gateway. The joint comments of ACC, TFI and NITL do a good job of describing what it means for interline traffic over an existing gateway to be affected by the Transaction: they proposed "bottleneck" conditions applicable "to any bottleneck movement that originates or terminates (including via reciprocal switch or inter-switching) on Applicants or a connecting Class II or III railroad for which the merger of Applicants creates the opportunity for a longer haul on their combined network than either Applicant would have by itself." *See* ACC-6/TFI-5/NITL-3 at 9.

14. There are many other examples raised in the Comments of parties seeking protection for interline movements that will not be affected by the Transaction, such as Evergy's concerns about the Kansas City gateway, which are misguided because CP cannot serve the origins of Powder River Basin coal that Evergy ships via the Kansas City gateway and the Transaction will thus not create the opportunity for a longer haul for this traffic on the CPKC network.

A. Applicants' Gateway Commitments Provide a Robust Backstop to CPKC's Strong Incentive to Support the Existing Interline Options that Shippers May Prefer

15. The commitments Applicants made in the Application (and expressed publicly on numerous other occasions) at their core are what the Board has repeatedly accepted as the appropriate way to keep gateways open. In short, CPKC will not create new bottlenecks for

purposes of rate-setting, and CPKC will keep existing gateways open on commercially reasonable terms.

16. Some claim to be confused about what this means. It is pretty straightforward. Where the CP/KCS combination would give CPKC a new single-line route, or a longer haul than what either CP or KCS could offer today, Applicants have committed that CPKC will waive any right it would otherwise acquire under the Board's "bottleneck rate" standards to decline to quote an interline rate, and CPKC will not foreclose existing interline options over that gateway by closing the gateway operationally or economically. In other words, we will not *force* "affected traffic" over longer-haul CPKC routes.

17. To provide further clarity, I have set forth as Appendix A to this statement specific language that Applicants are prepared to accept as a condition to the Transaction that would implement our commitment to keep gateways open. This language is drawn from concrete proposals Applicants have made to shipper organizations to codify our commitments.

18. As I stated in my initial Verified Statement, Applicants are prepared to enter into formal agreements with shippers and shipper organizations providing for an efficient dispute resolution mechanism for those situations – which we would hope would never arise – where our customers had a concern that the interline rates and other terms CPKC was offering were not commercially reasonable and instead effectively foreclosed their continued use of an interline option that they preferred. As a practical matter, this situation should not arise, because – again – CPKC would be better off preserving existing interline traffic than forcing shippers onto routes that do not meet their needs. Were CPKC ever to propose interline terms that shippers thought were foreclosing their access to pre-existing options, I expect we would hear from them loud and

clear, and we would sort things out without the need for any formal litigation or dispute resolution process.

19. Together, the gateway preservation commitments we have made – and are willing to have codified into a formal condition on Board approval – are more or less exactly what NITL agreed to with the applicant carriers in the KCS/Tex Mex and CN/WC cases, and what the Board has deemed sufficient to address "foreclosure" concerns in numerous other cases, like CSX/Pan Am, CN/EJE, and CP/DME. I know that CPKC will not have an incentive to shut down options shippers prefer, and I also know that if we nonetheless tried to do that shippers would see it immediately and have no hesitation speaking up and enforcing our commitment.

B. The "Mileage Prorate" Rate-Setting Mechanism Proposed by UP and BNSF Would Be Anticompetitive and Harmful

20. The concern the Class 1s claim to have about Applicants' gateway preservation commitments is entirely self-serving. Incredibly, they want to expand it to every interline rate they have with CP and KCS – not just situations where the Transaction has a potential effect on that traffic. And they want to replace Applicants' flexible commitment to quote reasonable rates that will keep existing interline options available (consistent with standard interline rate-setting processes) with a hard-and-fast regulatory mechanism that would prescribe the maximum revenue division that CPKC could earn on an interline rate based on a "mileage pro-rate" formula keyed to the single-line rates that CPKC quotes to customers. The proposal is dramatically out of step with conditions imposed in their own mergers and with how market-based divisions work in the real world, and it would effectively transfer millions of dollars that CP or KCS earn today into the pockets of these much-larger Class 1 railroads. Far from protecting existing interline options, this demand would give UP and BNSF (and other

connecting carriers) a windfall and create a disincentive for CPKC to offer attractive rates for its new single-line routes. To my mind, that is blatantly anticompetitive.

21. First, as I have already explained, there is no basis for the Class 1s' demand to extend "rate protections" to traffic that will not be affected by the Transaction, like KCSM-UP traffic moving between Mexico and Los Angeles or Denver. The fact that these railroads want such protection should reveal that they are not being transparent about the motivation for their demands for conditions. They want a revenue windfall, not the preservation of competition.

22. Second, the notion that the Board should regulate CPKC's interline divisions based on a rigid "mileage-prorate" formula is flatly contrary to how revenue divisions are established in the real world, and these larger railroads know that. The relationship between an interline carrier's rate and the total revenue on an origin-to-destination move is determined in the marketplace by a wide array of factors, and its revenue share may differ greatly from its share of the miles. Those factors include the relative operating costs associated with the carrier's portion of the move, the costs associated with interchanging the traffic, potential equipment costs, the need for infrastructure investment (or lack thereof), the level of service (over the road and first mile/last mile), the commodity, the volume of traffic, the availability of capacity, and the carrier's role in attracting the traffic in the first place. No mathematical formula, much less one based solely on relative mileage, can capture these factors, and keying the formula for interline rates to rates for single-line movements would make the mismatch problem worse, not better.

23. I am generally familiar with CP's revenue divisions in its interline moves with UP, BNSF, and other partners. CP's existing divisions – in today's pre-Transaction marketplace – are all over the map, and often higher, relative to what would be dictated were we to share revenue on a flat mileage-prorate split. That means that imposing such a split on CP would give

our connecting carrier a windfall – allowing those carriers to maintain the same rate level while pocketing revenue that previously would have been paid to CP. Such a condition would not preserve the pre-Transaction status quo or protect competition.

24. To be sure, there are situations where interline carrier may *agree* to share revenue on a mileage prorate basis. But these are consensual situations that apply in cases where such an arrangement makes sense from the perspective of both carriers, such as where they are seeking to simplify interline pricing for some discrete set of traffic opportunities to compete more effectively against single-line alternatives.

25. Third, any mechanism that would cap CPKC's interline rates based on some percentage of its single-line rate offers would inhibit aggressive competition by CPKC designed to attract shippers to routes they have not previously had available to them. Every time that CPKC proposed to give a discount designed to pass along the efficiencies of its new single-line routes, it would effectively have to pay over to UP, BNSF, or another carrier the mileage-prorate portion of that discount as a subsidy to their continued competition via pre-existing interline routes. This kind of subsidy to UP and BNSF would be highly anticompetitive, and it would effectively be a tax that disincentivizes CPKC from competing as aggressively as it otherwise would. No doubt that is UP's and BNSF's desire – to have the Board impose a pricing regime on CPKC that mutes the competition that CPKC stands ready to provide.

26. The fact is that there is no logical connection between CPKC's single-line rates and the level of CPKC's interline factors. Single-line and interline moves have different characteristics, including different cost structures. If one line has a short haul, for example, it often does not have the ability to spread its cost over a large number of miles, meaning it often requires a higher percentage of the revenue compared with their percentage of the mileage.

C. Open Routing and Reciprocal Switching Conditions Would Handicap CPKC's Ability to Compete

27. Some commenters go even farther than the opportunistic Class 1s and seek to impose on CPKC – and only CPKC – a new regulatory regime requiring that CPKC keep open all interchange points and allow open routing regardless of whether the Transaction will affect those routes, and even grant reciprocal switching access allowing the larger Class 1s to access solely-served CPKC customers.

28. To illustrate, these commenters are demanding that, for CP traffic to destinations that KCS's network could not reach (such as traffic moving between Canada and points in the West on the UP or BNSF networks, or in the Northeast on the CSX or NS networks), CPKC nonetheless must quote Rule 11 rates over every possible interchange. And CPKC would have to do the same for KCS traffic to destinations that CP's network could not reach (such as KCS traffic moving to points in the Southeastern United States on the NS or CSX networks, or in the West on the UP and BNSF networks).

29. These kinds of condition requests are untethered to any effect of the transaction and should be rejected under the pre-2001 Merger Rule standards. More importantly, they would inject new inefficiencies into CPKC's combined network and impede efforts by CPKC to compete more effectively against other Class 1 railroads and other modes. The damage would not be limited to the new competition CPKC hopes to offer using its more efficient and more capable single-line routes, but would extend to traffic flows unaffected by the Transaction.

III. CONDITIONS RELATING TO SERVICE ASSURANCE ARE UNNECESSARY

30. Several commenters have urged the Board to require Applicants to prepare something akin to a "new Merger Rules" service assurance plan or impose conditions establishing a new regulatory regime of monetary penalties for service-related issues that arise

post-Transaction. Such conditions are unnecessary and would be counterproductive. The 100-percent complementary nature of the CP/KCS Transaction is completely unlike that of the prior rail mergers – like *UP/SP* and *CSX/NS/Conrail* – that have led to serious service problems. CP/KCS is much more like *CN/IC*, which did not cause Transaction-related service issues.

31. In any event, Applicants have been and will remain laser-focused on doing the requisite planning and making the requisite investments to ensure that CPKC's service will provide better overall experiences than what shippers experience today, and certainly not worse. The success of our Transaction depends on our implementing it in a way that attracts traffic to the new, more capable CPKC network – and we will not achieve that goal if instead we drive traffic away with poor service.

A. The CP/KCS Service Promise

32. In light of these factors – the purely end-to-end nature of our Transaction and our incentives to provide stellar service to attract traffic to CPKC – there is no legitimate basis for imposing service-related conditions. Nonetheless, given the importance of these issues to shippers and the Board, Applicants are making a robust series of commitments that we fully expect will be made a condition of the Board's approval of the Transaction. Those commitments – which I refer to as the "CP/KCS Service Promise" – are set forth on the following page and I explain a bit more about how we will implement these promises in the paragraphs that follow.

OUR CP/KCS SERVICE PROMISE

Pillar 1 – We Will Plan Thoroughly for Transaction Implementation

- Our goal is for Transaction-related changes to yield service that provides each customer with as good as or better service overall than what our customers received pre-Transaction.
- Our planning for Transaction implementation is already well underway.
- We will not implement Transaction-related changes until we are prepared to do so without causing disruption.

Pillar 2 – We Will Monitor Our Post-Transaction Performance

- We will proactively monitor our own performance so as to identify areas requiring adjustment before problems arise.

Pillar 3 – We Will Transparently Report on Our Post-Transaction Performance

- During an oversight period of up to five years, we will report regularly to the Board and the public on our service levels, with metrics tailored to lines and facilities most affected by Transaction-related traffic growth.
- We will supplement this reporting with proactive engagement with our customers (on a confidential basis) regarding CPKC services that affect their shipments.

Pillar 4 – We Will Proactively Communicate and Consult with Customers About Our Post-Transaction Performance

- We will meet regularly with our customers to discuss progress on Transaction implementation.
- We will add customers served by the KCS network to CP's Customer Advisory Council.
- We will seek regular input from our customers on ways we can improve our service to better meet their needs, or make adjustments to address issues as they arise.

Pillar 5 – We Will Resolve Concerns and Promptly Fix Any Issues that Arise

- CPKC will have a cross-functional team with authority to step in to develop and implement solutions for issues that arise, including via adjustments to our resourcing or operating practices.
- When adjustments do not resolve concerns raised by our customers, we will provide for an escalation process to ensure that customer concerns are heard by decision makers empowered to address them.
- We will participate in independent mediation with our customers when these steps do not resolve Transaction-related concerns.

Brooks R.V.S. at 15

33. Together, the five pillars of Applicants' Service Promise go far above and beyond what is necessary for an end-to-end transaction reviewed under the pre-2001 merger rules.

34. I expect that most of these promises are self-explanatory. Applicants' planning for the implementation of the Transaction continues, and will continue up until and beyond the date when CP is authorized to assume control of KCS.

35. To implement Pillar 2, CPKC will stand up an interdisciplinary "Service Protection Team" with responsibility for daily and proactive monitoring of Transaction implementation steps: traffic changes, key operating metrics, progress on capacity investments, and the impact of operational adjustments such as new train services and blocking patterns, and adjustments to first-mile, last-mile service to accommodate new traffic. That Team will also monitor the interface with other railroads – including Metra – with which CPKC will share trackage or interchange freight. We will supplement these internal steps with feedback from our customers (including through Pillar 5 discussed below) and quarterly or more frequent business reviews that will touch on any service affecting these customers.

36. To implement Pillar 3, we are in the process of assessing the specific metrics, but we would agree to a framework that has two components. First, CPKC will continue to report the metrics required by the Board pursuant to Ex Parte Nos. 724 and 770 during the period of the Board's oversight in this proceeding, regardless of whether the Board terminates those reporting requirements. Second, CPKC will report metrics on specific corridors that have been raised by parties to this proceeding: (a) on the corridor between Laredo, TX and St. Paul, MN and Chicago, IL, and (b) the Meridian Speedway. Third, CPKC will provide metrics that address the following yards: Shreveport, Kansas City, Bensenville (near Chicago), and St. Paul, as well as the Wylie Intermodal Terminal near Dallas.

37. We will also report specifically on performance of traffic over trackage owned by third parties, including (a) Metra, over whose lines CPKC will operate in the Chicago area and (b) UP, over which CPKC will operate to traverse the Houston terminal and elsewhere in Texas. We encourage the Board to use its inherent authority over those operations to require that UP also report detailed information regarding the operating conditions on its lines, since UP's own operations (along with those of BNSF) have always been (and will remain) the most important contributor to potential congestion.

38. The Board should resist calls by some commenters – such as Texas International Terminals – to require reporting of competitively-sensitive information about CPKC's traffic opportunities. Any obligation to report about the competitive wins and losses CPKC experiences – or any other details of what traffic CPKC is taking on in lanes where it competes with larger Class 1 railroads – would uniquely handicap CPKC's ability to compete.

39. To implement Pillar 4, CPKC will work directly with its customers to effectuate our commitment to participate in a two-way dialogue about our service and how we can work together to improve CPKC's ability to meet our customers' needs. We will provide regular (confidential) updates tailored to individual customers, and we are committed to an open line of communication about any and all of our customers' post-Transaction concerns. One vehicle for facilitating this dialogue will be CP's very successful Customer Advisory Council, which we will expand to include multiple KCS shippers so that we can better understand and address service issues relating to this part of the future CPKC network. The Council fosters constructive dialogue across a wide array of issues through one-on-one direct interaction, annual workshops, customer surveys, and customer participation in prototyping and new product testing for the suite of systems that CP has used (and CPKC will further innovate) to facilitate efficient interaction

with our customers. CPKC will also establish a dedicated customer service hotline for Transaction-related service concerns.

40. To implement Pillar 5, CPKC will put in place a SWAT-team-like approach to think ahead about potential service issues and be empowered to take whatever action may be necessary to ensure that problems are averted before they arise. CPKC's Service Protection Team will be led by a dedicated and accountable senior manager who has the delegated authority to call upon corporate resources as required to protect post-Transaction service levels. To ensure alignment and sufficiency of authority, the Team and the dedicated senior manager will report directly to a senior executive lead team which reports directly to the CEO, and encompass all the disciplines necessary to assure that our customers' service is protected: operators, marketing, customer service and resource allocation. The Team's tools will not be mere band-aids and its mandate will not be to play "Whack a Mole," beating down service brushfires as they arise. Instead, the Team will be tasked with thinking ahead with a systemic, network-wide focus on adequate resourcing, planning, and preparation for operational changes needed to address evolving (and growing) traffic patterns and other developments.

41. In addition, to the extent issues or questions do arise that cannot be resolved, we will implement an escalation process that ensures that every unresolved issue gets the prompt attention of the most appropriate CP managers empowered to address the concern. If – despite our best intentions – this mechanism does not lead to the resolution of every potential concern raised by a customer that its service was adversely affected by the Transaction, CPKC will participate in non-binding mediation with an independent dispute-resolution professional with the aim of facilitating a mutually-acceptable resolution of the issue in a fair, timely, and cost-effective manner.

B. Formal Service Penalty Conditions Would be Counterproductive

42. Some shipper groups have proposed a regime of monetary penalties relating to service issues. I think that conditions of this sort would be counterproductive.

43. First of all, for the large portion of CPKC traffic that would move under contract, the bargains we strike with shippers over service guarantees (and every other term) are and should remain the product of negotiation.

44. Secondly, a service guarantee penalty regime would create incentives that would distort our service offerings, potentially interfering with our ability to compete against larger railroads that would not be subject to such a regime. For example, like UPS, Fed Ex and countless other businesses, we offer different tiers of service assurance in exchange for different levels of economic value. One example of this is CP's intermodal service offerings, which allow customers to secure increasingly robust service commitments in exchange for higher transportation rates. This basic structure applies both to contract shipments as well as shipments moving under common carrier tariff: we provide differentiated services for different levels of consideration. Any new regulatory regime that inserted a system of financial penalties into the equation would trample these market-based interactions between CPKC and our customers. We would have to adjust our terms to reflect whatever service guarantee penalty structure was forced upon us, and so doing would make it harder to compete directly against Class 1s that would not have to consider such a regime in their competitive calculus.

45. Third, the specific proposals made by certain shipper organizations would inject unhelpful adversity and rigidity into a set of customer relationships for which an ongoing and transparent dialog would be far more constructive. Providing customers with a set of concrete regulatory entitlements could create disincentives to participate in constructive and collaborative solutions to any issues that might arise.

46. For example, ACC/TFI/NITL's proposal would establish hard-and-fast penalties tied to pre- and post-Transaction transit times that would kick in even if the shipper's overall needs (in terms of car supply, cycle times, and other factors) were being met better than before the Transaction, the shipper had directed greater volumes to CPKC's new, more-competitive offerings, or the perceived "transit time" differential could more effectively be met with service adjustments unrelated to the transit time metric. A condition privileging one aspect of service – like certain shippers' pre-merger transit times – would inhibit CPKC's ability to adapt in ways that provide the best possible service to the most customers. CPKC will work with shippers on an individual basis to design service plans that best meet their needs, not necessarily the ones that always comply with a given artificial metric. It would be unfortunate for a mandatory new penalty to get in the way of more constructive engagement by CPKC with its customers in competition with other Class 1 railroads and trucks.

47. Fourth, ACC/TFI/NITL also requests a condition that would require CPKC to provide shippers with at least 30 days' prior written notice of any planned service changes at shipper facilities. CPKC will of course strive to keep shippers informed in advance of potential service changes that affect their operations. But a rigid advance-notice mandate would be counterproductive, as myriad real-world conditions can require railroads to be nimble in adjusting their operations to optimize fluidity on the network.

IV. A FORCED SALE OF KCS'S SPRINGFIELD LINE WOULD REDUCE THE BENEFITS OF THE TRANSACTION AND HARM ON-LINE SHIPPERS

48. CN's request that the Board mandate a "divestiture" of KCS's Kansas City-Springfield/St. Louis line (which I will refer to as the "Springfield/St. Louis Line") is a dagger aimed into the vital organs of the CP/KCS Transaction. Other witnesses are addressing the lack of foundation supporting CN's request. I am writing to advise the Board of the many significant

respects in which CN's proposal would interfere with the public benefits of the CP/KCS Transaction.

A. KCS's Springfield/St. Louis Line Will be an Important and Integral Part of the CPKC Network

49. CN has clouded the record with a good deal of rhetoric suggesting that CPKC would downgrade KCS's Springfield/St. Louis Line or stop investing to maintain the line. That is a strawman that CN has attempted to create, and it is absolutely and transparently false. The Springfield/St. Louis Line will be an integral part of the CPKC system, not only providing access to on-line shippers, but also connecting those shippers (and the important East St. Louis gateway) with the broader CPKC network and also providing key connections between CPKC's system and shortlines, like the Illinois & Midland Railroad at Springfield.

50. At the important East St. Louis gateway, I foresee increased opportunities to build interchange traffic with CSX, taking advantage of the broader base of traffic that will be able to reach East St. Louis directly from the CPKC network. For example, CPKC is willing to explore the potential to reestablish intermodal service between Kansas City and terminals on the CSX network reached via St. Louis. KCS formerly operated daily service in that lane, but CSX discontinued it in 2017, as part of its reconfiguration of its intermodal network.

51. Applicants' traffic forecasts provide one reflection of the importance of this Line. Contrary to CN's assertions, the Transaction will grow (not shrink) volumes on these lines. Applicants anticipate Transaction-related growth of approximately 4 percent on the line to St. Louis. These gains, while modest, arise from the synergies achieved by the CP/KCS Transaction, more effectively connecting the CP network with the KCS network via new single-line routes. To give just a handful of examples, this line will be instrumental in supporting more competitive routes between CP-served customers and the St. Louis gateway, between CP-served

grain customers and KCS-served receivers in East St. Louis, and between KCS-served shippers of fertilizer and CP-served receivers in the grain-growing regions of the Upper Midwest and Canada.

52. Earlier I mentioned that customers have begun to express an interest in further investments because of this Transaction. Some of these customers are located on the Springfield/St. Louis Line. CPKC is eager to support these growth opportunities, which are one of the major categories of Transaction benefits. We certainly do not want to undermine them in the way that CN's manufactured claim would suggest.

53. In addition, Applicants anticipate continued growth in rail traffic from existing customers on this line independent of the Transaction. Specifically, Applicants anticipate organic growth of approximately 22 percent on the line from Kansas City through to St. Louis, and approximately 24 percent on the line between Roodhouse and Jacksonville, MO.

54. With all of these traffic opportunities, there is no doubt whatsoever that CPKC will continue to invest in this line to support current and future traffic volumes.

B. A Forced Sale to CN Would Interfere with the Transaction's Public Interest Benefits

55. The forced sale of the Springfield/St. Louis Line that CN proposes would interfere with the benefits of the CP/KCS Transaction in multiple ways.

56. First, and most obviously, it would sever the new single-line routes that would otherwise be created between on-line points (and the St. Louis gateway) and the broader CP network north of Kansas City. Numerous shippers would lose the benefits of CPKC's new, more competitive transportation offerings. KCS's largest customer, Bartlett, would lose the benefits of its existing KCS single-line routes as well as the opportunities to expand its business through the connectivity of the CPKC network. Another example is Richardson, which is looking forward to

connecting its origination facilities with its plant in East St. Louis reached via new CPKC single-line service via the Springfield/St. Louis Line. These services will go away were the line divested to CN. Indeed, such a divestiture would actually reduce Richardson's transportation options for shipments from Canadian origins to East St. Louis, since CN already reaches East St. Louis via its own network.

57. Another example of the potential future benefits of keeping the Springfield/St. Louis Line part of the CP network is the possibility – which CP has recently been exploring – of {{ }} Without ownership of the Springfield/St. Louis Line, CPKC could not even consider exploring opportunities like this.

58. CN's proposal that it grant CPKC haulage rights over the lines it would acquire would not overcome the harm done to shippers who will lose new CPKC single-line services. CPKC haulage rights would not be a substitute for CPKC control of the Springfield/St. Louis Line. CN would control all operational design, local and through-train service levels, and investments on the line, depriving CPKC of the ability to design customized service offerings for these shippers. For example, CPKC would have no ability to support the investments needed to support 8,500-foot grain trains that shippers on this Line and elsewhere are eager to invest in.

Brooks R.V.S. at 23

59. Further, haulage rights would inject a new layer of operational complexity at or near Kansas City, requiring that CPKC traffic to/from points on the Line be handed off to and received from CN somewhere in the Kansas City terminal, with unknown amounts of extra cost and inefficiency, and the inevitability of unnecessary interchange dwell time.

60. Second, CN's proposal to force an acquisition of one-half of KCS's International Freight Gateway facility south of Kansas City would undermine and jeopardize new CPKC intermodal and other services. In a new CPKC network, that facility will support expanded CPKC intermodal services between Mexico and the Upper Midwest and Canada. Intermodal traffic between Canada and Kansas City will use the facility (as CP lacks a Kanas City-area intermodal facility today), as will traffic to/from Mexico handled in CPKC's much-expanded north-south intermodal services. For example, traffic from Lazaro Cardenas to the central Midwest – using dedicated train services that KCS could not support on a stand-alone basis – will be offloaded at IFG.

61. In addition, on the integrated CPKC network, IFG will provide a centrally located facility for a host of new manifest traffic opportunities. CPKC anticipates using available land surrounding IFG to support warehousing facilities for shippers of produce from Mexican origins, cross-dock operations to support the transfer of ammonia during seasonal fertilizer shipments, and the foundation for aggressive expansion of CPKC traffic opportunities in response to other market developments. Forcing CN into IFG as a half-owner would extinguish CPKC's ability to rely on this facility to support new competitive initiatives.

C. Severing KCS's Springfield/St. Louis Line from the Rest of the KCS Network Will Reduce Shippers' Existing Transportation Options

62. The divestiture to CN would not only prevent the realization of CP/KCS Transaction benefits – it will affirmatively hurt existing KCS shippers that use KCS single-line

services to reach markets beyond Kansas City. Michael Naatz explains in more detail how the transportation services KCS currently provides to shippers served by this Line would be adversely impacted by an order requiring CPKC to sell the line to CN or another purchaser.

V. CP'S TIH/PIH TARIFF PROVISIONS HAVE NOTHING TO DO WITH THIS TRANSACTION

63. A small group of commenters express concern about certain of CP's existing tariff terms applicable to a subset of hazardous commodities known as toxic-by-inhalation hazard and poison-by-inhalation hazard materials (or "TIH/PIH") shipments. Some of these commenters limit their concerns to the possibility that CPKC would apply certain of CP's tariff terms (relating to insurance requirements and indemnification) to shipments on the former-KCS network. Others appear to want to use this proceeding as a mechanism to roll back CP's existing terms even on the former-CP network. The Board should not impose any conditions in this area.

64. First, *as applied to the CP system*, the CP tariff terms at issue have nothing to do with the Transaction. CP first issued/published those terms in December 2010, and they became effective January 1, 2011, following CP's very bad experience with a derailment in 2002 near Minot, ND, which resulted in a release of anhydrous ammonia, a TIH commodity.[2] As the FRA's accident report summarizes: "Five tank cars carrying anhydrous ammonia catastrophically ruptured, and a vapor plume covered the derailment site and surrounding area. One resident was fatally injured, 11 people sustained serious injuries, and 322 people, including the 2 train crewmembers, sustained minor injuries." Had this event occurred in a more urban area, or under somewhat different circumstances, the release could have killed many more and potentially bankrupted CP.

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[2] The FRA accident report for this event is at https://www.ntsb.gov/investigations/AccidentReports/Reports/RAR0401.pdf

65. The Minot incident stimulated CP's attention to the extraordinary risks posed by shipments of TIH and PIH commodities and the importance of shippers of those commodities being incentivized by tariff terms to share in the responsibility to minimize those risks. CP did not take our tariff revisions lightly; we first explored other ways to mitigate against the potentially ruinous liability exposure that we had learned firsthand could arise from the transportation of TIH even when CP was not negligent.

66. CP's tariff revisions were designed to address these risks by requiring that TIH/PIH shippers maintain a Commercial General Liability Insurance Policy, with the current terms establishing an inclusive limit of not less than $100 million, and indemnify and defend CP against liabilities caused by or arising from certain enumerated situations, except to the extent that liabilities arise from the negligence or willful misconduct of CP. These two requirements, set forth in Items 53 and 54 of CP's Hazardous Materials Tariff 8, respectively, reflect CP's experience with TIH/PIH materials and the risks they present.

67. CP's TIH/PIH tariff Items 53 and 54 were not the product of "competition" with any other railroad, and certainly not KCS. In fact, these provisions were designed to bring CP's exposure to potential uninsured liability associated with TIH/PIH releases under control and more into line with the risk profile established by the railroad tariffs of larger U.S. Class 1s. The tariffs of several other U.S. Class 1s establish $100 million insurance requirements and similar liability allocation principles.

68. CP has on several occasions been called upon to defend the reasonableness of its TIH/PIH tariffs, and nothing about the Transaction will stand in the way of shippers pursuing such future challenges if they believe that CP's TIH/PIH tariffs are unreasonable. A number of Canadian shippers and one shipper association challenged Item 54 (the indemnity provision) at

the Canadian Transportation Agency, but CP successfully defended the reasonableness of that provision. In 2015 the Federal Court of Appeals of Canada unanimously held that "[s]imply put, Item 54 does not contain prohibited limitations of liability."[3]

69. In 2015, a U.S. shipper (Agrium) challenged the same provisions under the Board's regulatory regime, and in 2016 that matter was settled confidentially in a way that was mutually agreeable to CP and the shipper in question. *See Agrium Inc. and Agrium U.S. Inc. v. Canadian Pacific Ry.*, Docket No. NOR 42145, Joint Petition to Dismiss the Complaint without Prejudice and Discontinue this Proceeding (filed May 2, 2016).

70. In CP's view its insurance and indemnity provisions are entirely reasonable. CP's requirement that TIH shippers carry $100 million insurance policies is not an obstacle to any shipper using CP because shippers of these incredibly hazardous commodities maintain such insurance to support their own businesses. Nor is it unreasonable to require that shippers indemnify CP for the potential liabilities arising from their shipments – except where liability arises from negligence or willful misconduct of CP itself. If a catastrophic release ever occurs on CP's network – and CP sincerely hopes it never again will – it would only do so as a result of a shipper choosing to direct the shipment onto CP's network. There should be no reasonable objection to shippers internalizing the full measure of the potential costs associated with those decisions. But fundamentally these issues have no connection to this Transaction and should not be addressed here. Shippers remain free to challenge the reasonableness of these provisions or come to us to discuss whether there may be flexibility in light of their particular circumstances. The Board need not and should not override that process. And it would certainly

[3] *Canadian Pacific Ry. v. Canexus Chemicals Canada, LP, et al.*, 2015 FCA 283 (Federal Court of Appeals of Canada 2015) at 42 (¶ 128).

be inappropriate for the Board to order CP to roll back its tariff terms for shipments on the CP network.

71. *As applied to the KCS system*, the position of these commenters is equally without merit. Other witnesses explain the origin of KCS's tariff terms applicable to TIH/PIH shipments and why it would be inappropriate for the Board to freeze those terms in place just because KCS was participating in the CP/KCS combination.

72. CPKC should have complete freedom to decide what tariff terms best meet the needs of the CPKC system, including whether CP's Items 53 and 54 should apply to shipments on the former-KCS parts of our network. However, CP has considered the concerns expressed by the commenting TIH shippers and receivers and has been prepared to reach agreement to address legitimate concerns about the potential need for shippers and receivers to adjust in the event CP were to apply its terms to shipments on the KCS portion of CPKC.

73. As reflected in the settlement reached between CP and Bayer, filed with the Board on May 25, 2022, CP was willing to commit to give Bayer and the shippers that send TIH commodities to Bayer facilities three years' notice before enforcing the Item 54 indemnity requirements (to the extent those requirements exceed what is required under previously-applicable KCS tariffs), provided that Bayer and its shippers commit to using tank cars that meet the most advanced safety standards. CP believes that this compromise appropriately balances the interests of CPKC in having flexibility to adjust its tariff terms and protect the safety of the network and the communities we serve with the interests of TIH shippers in having a reasonable period of time to adjust their shipping patterns, should they wish to do so in the event KCS's tariff terms are revised to conform to CP's current terms.

74. CP is prepared to negotiate similar arrangements with any of KCS's existing TIH shippers, and especially in light of this willingness Board intervention here would be inappropriate and unwarranted.

VI. THE TRANSACTION WILL NOT HAVE ANY ADVERSE IMPACT ON U.S. WHEAT GROWERS

75. Certain organizations of wheat growers articulate concerns about the competition that U.S. wheat growers may face from Canadian wheat growers. Those concerns are misguided and in any event not at all connected to the Transaction.

76. First, a central thrust of the Transaction will be to give grain growers in parts of the Upper Midwest and Canada served by CP improved transportation options for shipments to destinations reached via KCS's network in the South Central United States and Mexico. U.S. wheat growers are no exception. Wheat grown in the United States will benefit from new single-line transportation options linking their origin elevators with Mexican milling markets via efficient shuttle trains and manifest service. This feature of the Transaction will *enhance competition to the benefit of U.S. and Canadian wheat growers alike*.

77. The commenting wheat associations appear to acknowledge these competitive benefits. For example, the U.S. Wheat Association suggests that Canadian shippers are "rail-advantaged" today. (USWA Comments at 4). They ignore the fact that the Transaction will help "rail-advantage" *more U.S. shippers* of wheat in regions served by CP's U.S. network.

78. Likewise, the National Association of Wheat Growers suggests (at 2) that the Transaction will give Canadian shippers a "direct line into Mexico" that they do not possess today. This organization ignores that the Transaction will do exactly the same for U.S. wheat growers, to the benefit of these shippers and the broader competitive process.

79. If these wheat organizations are concerned that the new transportation options created by the CP/KCS Transaction might diminish certain advantages that some U.S. growers (perhaps those that already have direct routes to the Gulf) enjoy in the pre-Transaction marketplace, then they are complaining about competition itself. Such complaints are not valid public interest concerns.

80. Second, to the extent these organizations are complaining about advantages that Canadian growers might have relative to U.S. growers as a result of the CP/KCS Transaction, they are just wrong.

81. One source of stated concern appears to be that certain Canadian regulations relating to grain shipments by rail in Western Canada favor Canadian growers. But those regulations obviously have nothing to do with the CP/KCS Transaction. Equally important, those regulations do not apply at all to shipments from Canadian origins to U.S. or Mexican destinations. Specifically, the referenced regulations – namely the "Maximum Revenue Entitlement" under Canada's Transportation Act – apply only to rail movements of grain from origins *in Western Canada* to Canadian ports for export (i.e., Vancouver, Prince Rupert, Montréal, and Thunder Bay), and in the case of Montreal the regulations only apply to the portion of the movement within Western Canada (west of Thunder Bay). As a result, any fear that the Canadian regulations would give Canadian wheat growers an advantage relative to U.S. growers for movements via CPKC to the United States or Mexico would be misplaced. Because these regulations do not apply to wheat shipped from Canada to U.S. or Mexican destinations, they could not possibly give Canadian growers a competitive advantage relative to U.S. growers.

82. Another concern appears to be that CPKC might somehow "favor" wheat grown in Canada over wheat grown in the United States. This is not the case. Like CP today, CPKC

will pursue transportation opportunities for wheat grown anywhere in its service territory and do so in response to market forces. The only change from the Transaction will be to make CPKC's transportation options more attractive, and more competitive, for U.S. and Canadian growers alike.

83. CP has a long history of serving wheat growers in both the United States and Canada. In recent years CP has worked hard to compete to move U.S.-grown wheat into additional destination markets across North America.

84. For shipments destined to destinations in the United States and Mexico, CP does not favor Canadian origins. To the contrary, CP sets prices to reflect evolving market conditions, and so will CPKC. CP's published tariffs reflect *higher pricing for* origins in Canada that are farther from the destination than U.S origins. Thus, for example, as shown in Table 1 below, CP has rates for wheat from U.S. and Canadian origins to Mexico. CP's rate from Bowbells, ND, is materially higher than that from Weyburn, Saskatchewan, 42 miles north of Bowbells across the Canadian border on CP's line via the Portal, ND gateway. This relationship holds for rates quoted on a through basis as well as Rule 11 over the Kansas City gateway.

85. Likewise, as also shown in Table 1 below, CP's rate for wheat moving from Hazel, MN, is materially lower than that from Makwa, Manitoba, 163 miles north of Hazel across the Canadian border on CP's line via the Emerson, MB/Noyes, MN gateway. This relationship similarly holds for rates quoted on a through basis as well as Rule 11 over the Kansas City gateway.

TABLE 1[4]
CP WHEAT RATES TO MEXICAN DESTINATIONS FROM U.S. AND CANADIAN ORIGINS AS OF AUGUST 1, 2022

	Rule 11 over Kansas City		Tlalnepantla, EM	
	25s/Split Train	All-in w/fuel	110s	All-in w/fuel
Hazel MN	$4,751	$5,455	$7,489	$9,622
Makwa MB	$5,162	$5,987	$7,723	$9,976
Difference in CP Revenue for U.S. Origins	($411)	($532)	($234)	($354)
Bowbells ND	$5,970	$6,844	$7,716	$10,018
Weyburn SK	$5,999	$6,942	$8,027	$10,399
Difference in CP Revenue for U.S. Origins	($29)	($98)	($311)	($381)

86. Nothing about the Transaction will change CP's (or CPKC's) incentives to move wheat from all origins to the array of destinations that the CPKC network will serve efficiently. It would be particularly irrational for CPKC to disfavor U.S.-sourced wheat for movements to destinations in Mexico. Wheat milling facilities in Mexico grind a variety of wheat types, including durum and hard red spring wheat from the north, hard red winter wheat from South Dakota and Kansas, as well as other wheat classes from other U.S. regions. The notion that CPKC could displace all these types of wheat even if it wanted to (which it does not) defies logic. In fact, Applicants see tremendous opportunity to increase wheat shipments from CP's origins in the United States, particularly in North Dakota.

87. Markets are dynamic and having access to additional destination diversity is important for U.S. wheat shippers, especially with global commodities like wheat. For example,

[4] *See* Brooks' Workpapers: CP Tariff 4444, Item 14105; CP Tariff 4444, Item 16007; Tariff 4444, Item 17500; Tariff 4444, Item 17505, Tariff 4445, Item 14117.

Brooks R.V.S. at 32

this year there is uncertainty about Ukraine's ability to export its winter wheat crop, which has driven up the price of hard red winter wheat in the United States. This in turn has made hard red spring wheat relatively cheaper and thus more economically attractive to Mexican receivers than before. CPKC's more capable single-line rail route connecting U.S. origins directly to Mexican destinations will only improve the market reach of U.S. wheat shippers in circumstances like this. Canadian-sourced wheat will of course continue to play a role in the marketplace just like it does today. But U.S. wheat shippers will unambiguously benefit as compared to the pre-Transaction world.

VII. CPKC WILL CONTINUE TO HAVE STRONG INCENTIVES TO SUPPORT TRAFFIC GROWTH AND SERVICE LEVELS ON THE MERIDIAN SPEEDWAY

88. Norfolk Southern expresses concern about the impact of the Transaction on traffic and service levels on the Meridian Speedway route between Shreveport, LA and Meridian, MS that KCS and NS jointly own. Other witnesses address NS's assertions in more detail. I would like to make very clear two things: First, NS is completely wrong to the extent it is concerned about CPKC's desires and incentives to continue to work closely with NS to grow traffic (intermodal and otherwise) via the excellent Meridian Speedway route. None of the NS haulage traffic or KCS-NS interline traffic on that route will be affected at all by the CP/KCS Transaction because CP's network does not efficiently reach the points served by NS's network via this route.

89. Second, consistent with CPKC's incentives to grow traffic via the Meridian Speedway, CPKC will have strong incentives to ensure that its operations do not degrade service on this route, much less to the extent that would drive intermodal traffic onto the highways. Witness Elphick explains why NS (or its counsel) have misunderstood Applicants' operating

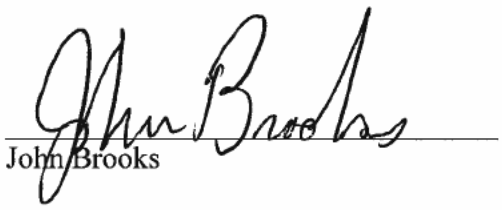
plan, but at a certain level those details are beside the point. We will not operate trains on this line in a way that drives traffic away, period.

90. Finally, let me be clear that CPKC's incentives to grow traffic that moves via the Meridian Speedway will not be limited to traffic interchanged with Norfolk Southern. To the extent permitted under the Meridian Speedway agreements with NS, CPKC will be eager to explore traffic opportunities with all of the railroads connecting to the Speedway at Meridian and elsewhere.

VERIFICATION

I, John Brooks, declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this statement.

Executed on this 11th day of July, 2022.



John Brooks

APPENDIX A
SPECIFIC GATEWAY PRESERVATION CONDITION TERMS

1. Principles

- Conditions expressed here are intended to implement CP's previously stated commitments to keep gateways open on commercially reasonable terms.
- Conditions would be contingent on approval of control and CP exercise of control.
- Conditions would not override any requirement or limitation of Mexican or Canadian regulation.

2. Scope

- CP's commitment not to create new bottlenecks and to keep gateways open on commercially reasonable terms applies to "Affected Gateways/Affected Traffic." In other words, traffic that CP or KCS interchanged with another carrier for which CPKC created a longer haul than was available on the CP or KCS system pre-Transaction.
- The commitment applies only to the specific interchanges over which the traffic (or comparable traffic flows) previously moved, not to all possible gateways.
- This scope delimits all of the obligations set forth in (3)-(4) below and for convenience the traffic to which it applies is referred to as "In-Scope Traffic."

3. No New Bottlenecks

- At the request of a rail customer CPKC shall quote Rule 11 rates to/from affected gateways for In-Scope Traffic.
- If a shipper files a complaint at the STB challenging any such rate as unreasonable, CPKC will waive its right to assert that the challenge cannot be maintained by virtue of the effect of the CP/KCS Transaction to give CPKC a single-line route between the origin and destination of the traffic.

4. Obligation to Keep Gateways Open on Commercially Reasonable Terms/Arbitration of Same.

- CPKC will keep affected gateways open on commercially reasonable terms for In-Scope Traffic.
- To implement this commitment, with respect to In-Scope Traffic to/from an affected gateway, at the qualifying request of a rail customer for CPKC will (a) quote a Rule 11 rate to for In-Scope Traffic, or (b) participate with a connecting

carrier to offer a through rate that combines CP's and the connecting carrier's rate divisions. The economic terms CPKC offers to the customer or, as applicable, the connecting carrier, will be commercially reasonable. A qualifying request shall include customary "rate request" details, including ultimate origin and ultimate destination, commodity, equipment requirements, volumes, service requirements, etc.

- With respect to rates or factors offered under this commitment, CPKC will not take the position that economic terms offered by CPKC are commercially reasonable solely because they would be found reasonable under the STB's rate reasonableness standards.

- To address certainty in the shorter term, CPKC would honor all rates and rate factors in existing agreements through the date of termination of those agreements. CPKC will not be obligated to renew such rates.

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36500

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

EXHIBIT D

REPLY VERIFIED STATEMENT OF NADEEM VELANI AND CHRIS DE BRUYN

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36500

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

REPLY VERIFIED STATEMENT OF NADEEM VELANI AND CHRIS DE BRUYN

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1. I am Nadeem Velani, Chief Financial Officer of Canadian Pacific Railway Limited ("CP"). I joined Canadian Pacific in March 2013 and served as Vice President – Investor Relations before becoming Chief Financial Officer in September 2016. Prior to CP, I spent 15 years at Canadian National ("CN") where I worked in a variety of positions in Strategic and Financial Planning, Investor Relations, Sales and Marketing and the Office of the President and CEO. Through the course of my 20-plus year career in the railroad industry I have developed deep familiarity with and expertise regarding the financial workings and incentives of Class I railroads. I hold a Bachelor of Economics degree from Western University and an MBA in Finance/International Business from McGill. On June 28, 2021, I submitted a Verified Statement in Finance Docket No. 36514 addressing several financial issues posed by Canadian National's proposed use of a voting trust to acquire Kansas City Southern.

2. My name is Chris De Bruyn. I am the Managing Director – Investor Relations and Treasury for Canadian Pacific ("CP"). I have been associated with CP's treasury operations since 2014. I have over ten years of experience in corporate finance. I hold a degree in Business Administration with a concentration in Finance from the State University of New York at Fredonia as well as a Master of Business Administration (MBA) with a specialization in Finance from the University of Calgary Haskayne School of Business. On October 29, 2021, I submitted a Verified Statement in this proceeding in support of the Application.

3. We are submitting this Reply Verified Statement to respond to testimony and argument by other Class 1 railroads, principally Canadian National and Union Pacific, that call into question whether the CP/KCS Transaction will achieve the revenue gains and efficiencies that Applicants anticipate, and in turn suggesting that the future CPKC would face financial pressure to engage in "foreclosure" and other strategies that we view as irrational. These

assertions are false. Other Applicant witnesses are addressing the reasonableness of the revenue and cost forecasts supporting the Application. As we explain in this statement, however, *whether or not CPKC attracts any new traffic,* CPKC will be under no financial strain. Both CP and KCS are financially healthy, and CP has already begun repaying debt with cash flow from ongoing operations. At the same time, both carriers' capital investments in their networks have continued – and will continue – unabated. CPKC will have no difficulty repaying Transaction-related debt while simultaneously increasing its network investment, even if none of the growth we forecast materializes (an outcome we regard as preposterous).

4. We also briefly address specific assertions made by CN witness Mark E. Zmijewski that the analysis that I (Mr. Velani) offered in June 2021 in Finance Docket No. 36514 of CN's proposed use of a Voting Trust has a bearing on the CP/KCS Transaction. As we demonstrate, it does not for several reasons, including that (a) CP acquired KCS shares for significantly less cash – and thus less new debt – than CN's proposal would have required; (b) unlike CN, CP has not put forward public "return-on-invested-capital" targets associated with the transaction, and thus would not be driven to irrational short-term actions designed to boost ROIC metrics; and (c), unlike CP/KCS, concerns about CN's proposed financial terms arose in a context where there appeared to be a material chance that CN would be forced to unwind its proposed trust and divest KCS.

I. CPKC'S FINANCIAL STRENGTH IS NOT DEPENDENT ON CP/KCS TRANSACTION SYNERGIES

A. There Is Strong Financial Market Validation that Applicants' Anticipated Synergies Will Be Realized

5. We begin by noting that the "skepticism" of CPKC's future Class I competitors about the CP/KCS Transaction is not shared by the investor community. The opportunities for CPKC to provide shippers with improved transportation options and thereby attract new traffic to

the North American rail network – and in the process compete better against rival railroads – is validated by the reaction of the financial community to the Transaction.

6. The major credit rating agencies have sustained CP's strong investment grade ratings even with the addition of Transaction debt incurred last year when CP acquired KCS shares and placed them into Trust.

7. When S&P Global Ratings evaluated CP's proposed acquisition of KCS in 2021, it "expect[ed] steady deleveraging over the next several years from earnings growth and free cash flow generation. In addition, the completion of the transaction should *strengthen CP's business risk profile notably from the combined larger transcontinental network, increased customer breadth, and enhanced service capability that add efficiencies.*"[1] In November when CP issued the debt to fund the cash consideration portion of the transaction, S&P noted that the "increased debt issued for the proposed KCS acquisition will lead to pro forma credit measures that are weak for the rating, but [they] expect steady improvement beyond this year."[2]

8. Moody's reached similar conclusions about the likely success of CPKC. It concluded that CP's credit profile "will benefit from a larger, more diversified business with greater exposure to higher margin merchandise business, increased customer diversity and breadth, the *potential for synergies from network and equipment efficiencies as well as greater revenue expansion*."[3] Although Moody's downgraded CP one notch to Baa2 from Baa1 in light of CP's increased leverage and uncertainties around regulatory approval, Moody's maintained a

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[1] *See* S&P Global Ratings, "*CP Rail's Merger With Kansas City Southern Would Be a Good Fit if Approved*" at 1 (Mar. 22, 2021) (Exhibit 1 hereto) (emphasis added).

[2] *See* S&P Global Ratings, *"Canadian Pacific Railway Ltd."* at 2 (Nov. 17, 2021) (Exhibit 2 hereto).

[3] *See* Moody's Investor's Service, "*Moody's Downgrades CP Rail to Baa2 Stable on KCS Acquisition*" at 1 (Mar. 22, 2021) (Exhibit 3 hereto) (emphasis added).

stable outlook on the Baa2 rating. This revised rating is still well within the investment grade rating band and is a stronger credit rating than CP had as recently as 2014. In November 2021, Moody's explained: "The stable outlook reflects Moody's expectation that CP's existing rail network will continue to operate well … [and] incorporates the expectation that the company will receive shareholder approval for the KCS acquisition in mid-2021, [which occurred] and will make steady progress in reducing its initial elevated leverage as a result of the acquisition toward 3x by 2023."[4]

9. As I (Chris De Bruyn) explained in my Verified Statement supporting the Application,[5] and as CP has consistently stated publicly to investors, CP is dedicated to maintaining investment grade ratings.[6] That expectation is based on Applicants' own analysis of the growth prospects of a combined CPKC network. The views of credit rating agencies and Wall Street analysts validate our internal views that we will meet this goal.

B. CP's Transaction-Related Debt Was Obtained on Very Favorable Terms

10. Events since the filing of the Application further validate CP's expectation that its financial future will be sound. CP completed its acquisition of KCS shares on December 14,

---

4 *See* Moody's Investor's Service, "*Moody's Assigns Baa2 Rating to Canadian Pacific Railway's New Notes*" (Nov. 17, 2021) (Exhibit 4 hereto).

5 De Bruyn V.S. at ¶ 14 ("[W]e expect to retain a strong investment grade credit rating once we acquire KCS, despite the post-acquisition capital structure reflecting the revised transaction terms.").

6 *See* CP Rail's Events, "*Built to Drive Growth Investor Presentation*" (Mar. 2022) ("Committed to a strong, investment grade credit rating and target leverage") at 16 (Exhibit 5 hereto); Future for Freight's News, "*Canadian Pacific and Kansas City Southern Execute Agreement to Combine, Creating First Single-Line Rail Network Linking U.S.-Mexico-Canada*" (Sep. 15, 2021) at 4 (Exhibit 6 hereto) ("The combined company will remain committed to maintaining strong investment grade credit ratings…".); CP Rail's Events, "*Canadian Pacific Railway and Kansas City Southern to Combine*" (Mar. 21, 2021) (Exhibit 7 hereto) at 13 ("Continued commitment to maintain a strong balance sheet and investment grade rating.").

2021 and placed those shares into the Voting Trust established with the Board's approval. To finance the cash portion of the acquisition, CP incurred $8.5 billion (in U.S. dollars[7]) in new debt to finance the cash portion of the acquisition. That Transaction Debt was initially available through a committed loan provided by CP's banks.

11. In November, CP refinanced most of the Transaction Debt by issuing $8.5 billion in new bonds. The market response to this bond offering was extraordinary, and led to fixed interest rate terms that are quite favorable to CP. The extent of demand for bonds being offered is a key determining factor in setting the coupon rate (or interest rate) of the bonds, with greater demand driving lower interest rates. When there is interest in the market to purchase more in bonds than is being offered, that is known as oversubscription. The CP bond offering was extraordinarily successful, with significant oversubscription yielding highly favorable terms and thereby achieving a low cost of funding. The success of this offering validates the view that the CP/KCS transaction will be successful in attracting and supporting North American economic growth, and the belief of investors that CPKC will have no difficulty servicing the debt and returning to CP's target leverage range. It also means, as a practical matter, that CPKC will benefit from reduced borrowing costs and improved cash flow to support investments in its rail network while simultaneously repaying the Transaction debt.

12. The exceptionally strong bond execution in both US and Canada reflects broad-based bond investor support for the transaction:

- There was extraordinary investor participation in CP's marketing of its bond offering, with more than 140 investors attending question and answer calls and more than 200 viewing the pre-recorded presentation on the CP/KCS bond issuance.

[7] All dollar amounts referenced in this statement are U.S. dollars unless otherwise specified.

- The CP/KCS bond offering attracted record levels of demand, making it the third largest M&A Industrials transaction of 2021. In both the U.S. Dollar market and the Canadian Dollar market, the offering was significantly oversubscribed, meaning demand for the bonds was substantially higher than the amount of bonds issued into the markets. Specifically, in the U.S. Dollar bond market, investors were issued $6.7 billion of CP bonds, even though offers to purchase totaled $32 billion in demand from over 1,000 unique orders across five different durations (3yr, 5yr, 10yr, 20yr, and 30yr) to maturity. In the Canadian Dollar market (where investors were issued $2.2 billion CAD in bonds), there was almost $9 billion CAD in demand from more than 90 investors across two bond tranches.

13. The result of this strong demand for CP bonds was CP's lowest-ever U.S. Dollar coupon (5yr, 20yr, 30yr) and lowest ever spread (5yr, 10yr, 20yr) across multiple tranches. Investor oversubscription levels resulted in optimal pricing outcomes. Bonds traded 5-10 bps tighter following pricing, indicative of strong follow-on investor support for the offering. The newly-issued debt lowered the weighted average interest rate ("coupon") of CP's bond portfolio. For U.S. Dollar denominated bonds, CP's weighted average coupon decreased 128 bps from 4.70% to 3.42%. CP's weighted average coupon of CAD denominated bonds decreased 153 bps from 4.45% to 2.92%. A lower coupon means that CP pays less in annual interest per dollar of debt.

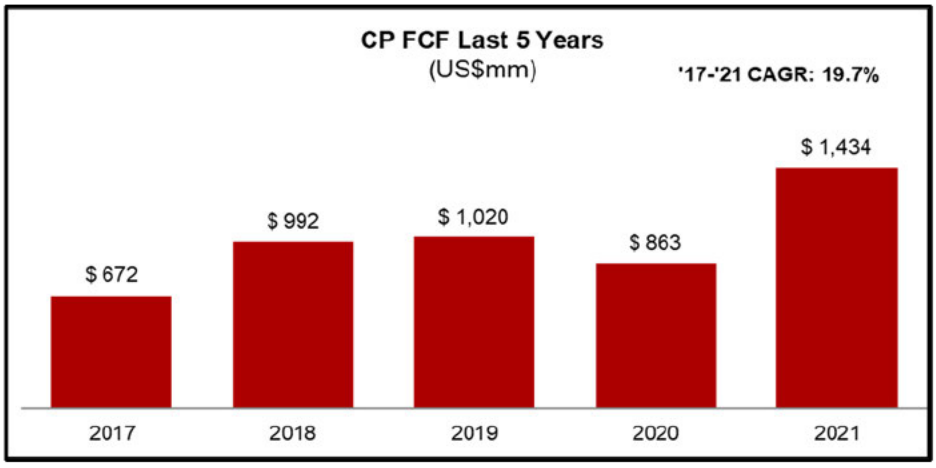
C. CP Has Already Made Progress Paying Down Debt While CP and KCS Have Continued Investing in Their Separate Networks

14. CP (and KCS) are already making strong progress in paying down debt, and we expect that to continue regardless of the extent to which Transaction synergies are realized. Even prior to CP and KCS first announcing their plans to combine in March 2021, CP paused share repurchases in order to support rapid repayment of its Transaction-related debt and thereby achieve its target leverage ratio of 2.5x more rapidly. This pause, coupled with the healthy financial performance of CP and KCS has enabled both railroads to pay down debt while the CP and KCS rail networks have operated independently. CP will continue to use its free cash flow to repay debt, along with any KCS free cash flow that KCS pays to CP in the form of dividends,

to bring its leverage ratio into its target range. In the first quarter of 2022, CP repaid more than $400 million in maturing debt and equipment financing.

15. CP continues to perform well financially. Figure 1 below shows the history of CP's healthy levels of stand-alone free cash flow (net of capital expenditures) since 2017. This cash flow will be available to repay CPKC's debt obligations. Despite a challenging first quarter of 2022, which included harsh winter operating conditions and a brief labor stoppage, CP generated $334 million USD in free cash flow, an increase of 43% year over year.

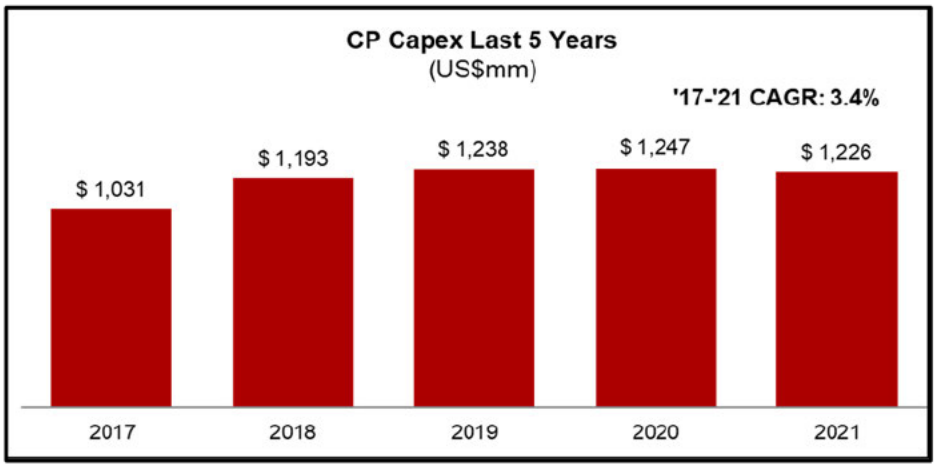
FIGURE 1[8]
CP HISTORICAL FREE CASH FLOW



16. Meanwhile, CP (again, on a stand-alone basis) has achieved substantial free cash flow without short-changing its investment in the rail network to support asset renewal and capacity expansion, as shown in Figure 2 below.

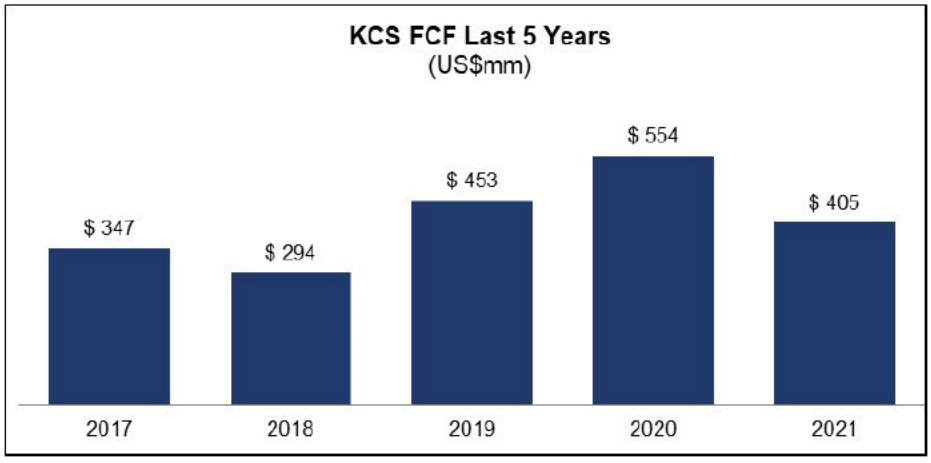
[8] CP 2021 Annual Report at 90, available at https://s21.q4cdn.com/736796105/files/doc_financials/2021/ar/CP_AnnualReport_2021.pdf. Note: Figures converted from CAD to USD using average exchange rate for year-ended as of 31-Dec for each year shown.

FIGURE 2[9]
CP HISTORICAL CAPEX



17. Likewise, KCS has been performing well. As shown in Figure 3 below, KCS generated free cash flow of $405 million in 2021. This cash flow will also be available to CPKC to repay Transaction-related debt.

FIGURE 3[10]
KCS HISTORICAL FCF

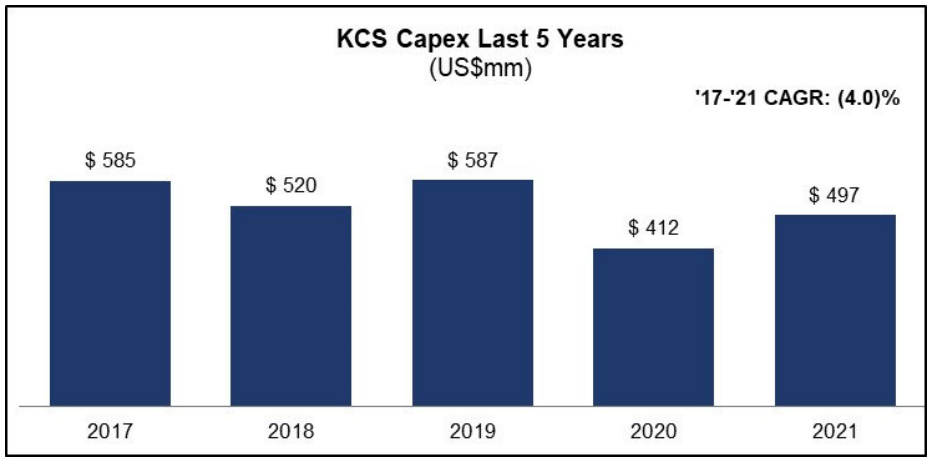


[9] *Id.* at 68. Figures converted from CAD to USD using average exchange rate for year-ended as of 31-Dec for each year shown. Free cash defined as cash provided by operating activities, less cash used in investing activities, adjusted for changes in cash and cash equivalents balances resulting from foreign exchange fluctuations, cash settlement of hedges settled upon issuance of debt and the operating cash flow impacts of acquisition-related costs associated with the KCS.

[10] KCS 2021 Form 10-K at 39, available at https://investors.kcsouthern.com/~/media/Files/K/KC-Southern-IR-V2/annual-reports/kcs-12-31-2021-10k.pdf. Free cash flow defined as cash provided by operating activities less cash used in investing activities.

18. As shown on Figure 4, KCS has achieved this case flow while simultaneously supporting significant investment in its network. KCS spent $497 million on capital expenditures in 2021.

FIGURE 4[11]
KCS HISTORICAL CAPEX



19. This strong cash flow through the end of 2021 enabled KCS to pay a cash dividend to CP following KCS's placement into voting trust, which CP used to pay down debt. Specifically, on January 27, 2022, pursuant to the Voting Trust Agreement, KCS paid a cash dividend of $265.0 million to a wholly-owned subsidiary of CP.[12]

D. CP's De-Leveraging Strategy Is Not Dependent on Transaction Synergies

20. As expected, the addition of Transaction-related debt has temporarily increased CP's leverage ratio – i.e., the relationship between adjusted debt and adjusted EBITDA. Figure 5 below shows the impact on CP's stand-alone leverage ratio in 2021 (at 4.8x),[13] along with CP's

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[11] KCS 2021 Form 10-K at 29.

[12] *Id.* at 91. KCS has separately made an independent judgment not to pay a dividend during the second quarter of 2022.

[13] These new leverage ratios are slightly higher than the initial estimates that CP anticipated when it filed its Application last October, because CP's EBITDA was lower than expected primarily because of a smaller than originally anticipated Canadian grain crop and because of the impacts to CP volumes of the historic flooding that occurred in British Columbia in November of 2021.

current forecast of the trajectory for leverage reduction as CP rapidly repays that debt in 2022-2024, achieving its 2.5x leverage target by 2024.

21. The 4.8x ratio shown in Figure 5 is based on CP stand-alone finances (*i.e.*, without KCS) and does not take into account the contribution of KCS's financial strength. Given that CP is now the beneficial owner of KCS shares (while those shares are held in Trust), a more appropriate perspective would consider CP and KCS on a consolidated basis. That is how third-parties – including CP's lenders, the investors that participated in the debt issuance, and both of the credit rating agencies (Moody's and S&P) – are evaluating CP's leverage. As reported in CP's 10-Q for the period ended March 31, 2021, CP-KCS consolidated leverage ratio is quite a bit lower, at approximately 4.1x.

22. Although the trajectory of leverage reduction shown in Figure 5 presupposes that the combined CPKC will achieve Transaction-related synergies, CPKC's rapid deleveraging is not at all dependent on those synergies, for two principal reasons: (a) CP and KCS will each

[14] De Bruyn V.S. at ¶ 11, Figure 1 (page 5) (2011-2013 EBITDA calculated as adjusted operating income plus depreciation and amortization).

bring to the combination its own strong stand-alone cash flows, as noted above; and (b) the trajectory shown in Figure 5 presumes that CPKC would resume discretionary shareholder returns (*i.e.,* buybacks and dividend increases). Were it necessary to achieve target leverage ratios, however, CPKC could continue to continue the suspension of those returns, thereby accelerating debt repayment.

1. CPKC Would Generate Significant Free Cash Flow Even Absent Transaction Synergies

23. With approval of CP control of KCS, CP and KCS would each bring into the combined CPKC entity strong financial performance, generating cash flow available to support debt repayment and ongoing capital investments without additional borrowing.

24. CP anticipates strong cash generation over the next three years even without the addition of Transaction-related synergies, as shown in Figure 6 below.

[15] *See* Velani De Bruyn Workpaper "CP Unlevered Free Cash Flow." These forecasts of unlevered free cash flow reflect management's updated financial forecasts.

25. CP expects to generate approximately $6.8 billion of unlevered free cash flow between 2022 and 2024, independent of the Transaction,[16] and with the pause in discretionary returns to shareholders all of these funds will be available to repay debt.

26. Further to this, CP management's long-term incentive compensation program was adjusted away from ROIC to focus on rewarding free cash flow generation and returning to target leverage.

27. Likewise, KCS anticipates similarly strong performance on a stand-alone basis, as reflected in Figure 7 below.

FIGURE 7[17]

{{ [redacted] }}

28. Under the base case KCS management forecast, KCS expects to generate approximately $2.6 billion of unlevered free cash flow between 2022 and 2024,[18] and expects to

---

[16] Calculated 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.

[17] *See* Velani De Bruyn Workpaper "KCS Unlevered Free Cash Flow." These forecasts of unlevered free cash flow reflect management's updated financial forecasts.

[18] Calculated as stated in footnote 17 above.

spend approximately $410[19] million on interest payments on KCS standalone debt (assuming KCS maintains its pre-acquisition leverage while in voting trust). This leaves KCS with approximately $2.2 billion in excess cash flow over the 2022-2024 period, after capital expenditures, which in turn flows to CP in the form of dividend payments that can be used to further reduce CP (and CPKC) leverage.

2. If Synergies Underperformed Expectations, CPKC Could Continue to Suspend Discretionary Shareholder Returns

29. As discussed above, CP is already paying down debt with its own free cash flow supplemented by the dividend paid to it by KCS. After the Transaction, were CPKC to realize less growth than forecast, and thus have less free cash flow than anticipated available to use to repay debt, there would be no obstacle to its deciding to continue to suspend discretionary distributions to shareholders in the form of share buybacks and increased dividends.

30. In my (Mr. De Bruyn's) October Verified Statement, I highlighted the role that a continued pause in share buybacks would play in CP's strategy of bringing net leverage in line with historical levels by the end of 2024. That would remain true if cash flow lagged our projections. Although we do not anticipate that happening, if it did, we could and would continue to pause share buybacks to bring our net leverage in line with our target of 2.5x.

3. Regardless of the Magnitude of Transaction-Related Traffic Growth, CPKC Will Promptly Return to Its Target Net Leverage Ratios

31. To illustrate that rapid debt repayment is not dependent on the magnitude of Transaction-related synergies, we present a sensitivity analyses that examine the pace of deleveraging on the assumption (again, which we view as unrealistic) that Transaction synergies

[19] The calculation of KCS stand-alone interest payments based on updated financial forecasts of CP management.

end up being significantly lower than anticipated. These sensitivity analyses *do not reflect* our planned outcomes. Instead, they show that even if our plans are not realized, CPKC will easily achieve its 2.5x target leverage ratio by the end of 2024.

32. We start with a hypothetical scenario under which CPKC would realize only half of the revenue synergies anticipated from its combination with KCS. On that assumption, anticipated levered free cash flow (before debt repayment and discretionary shareholder returns) would be reduced in 2023E and 2024E by an aggregate of $298 million. By re-allocating $934 million from share repurchases in 2024, partially offset by a $6 million increase in shareholder dividends in 2024 (due to fewer shares being repurchased), CP would still achieve its below-2.5x target leverage ratio by the end of 2024.[20] The net result would be the same 2.3x leverage ratio shown in Figure 5 above.

33. As an additional sensitivity, even if CPKC were to achieve literally zero revenue synergies from the Transaction, CPKC would still have the financial flexibility to achieve target 2.5x leverage by 2024. With zero revenue synergies, 2023 and 2024 aggregate free cash flow would be reduced by an anticipated $598 million. In this sensitivity, CP could achieve the target leverage ratio by re-allocating $1,868 million from share repurchases in 2024.[21]

34. As illustrated in Figure 8 below, the result would be a trajectory of leverage reduction similar to that set forth in Figure 5. Net leverage in 2022 is the same for both scenarios, as anticipated revenue synergies do not begin until 2023. In 2023, net leverage is

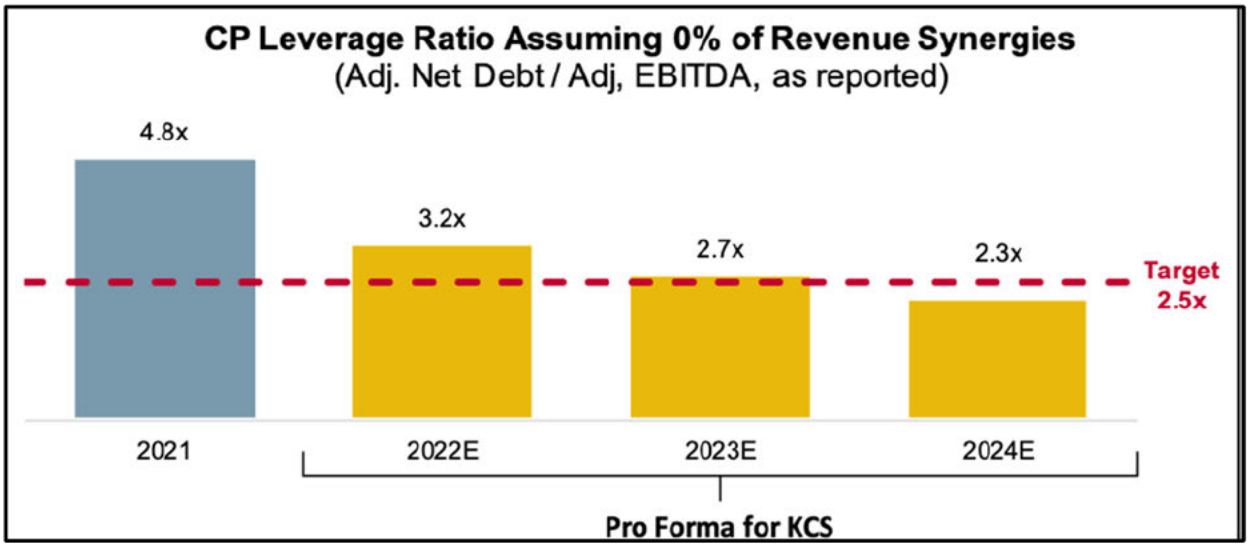
---

[20] The $934 million figure takes account of a {[redacted]}} *See* Velani De Bruyn Workpaper "50% Revenue Synergies."

[21] The $1,868 million figure takes account of a {[redacted]}} *See* Velani De Bruyn Workpaper "0% Revenue Synergies."

higher (2.7x) for the zero revenue synergies scenario (compared to 2.5x for the full revenue synergies scenario) because in the zero revenue synergies scenario, EBITDA is reduced by $273 million, implying that $203 million less debt has been repaid. Both scenarios achieve 2.3x leverage in 2024: the full revenue synergies scenario accomplishes this through the realization of $667 million EBITDA synergies in 2024; the zero revenue synergies scenario accomplishes this by re-allocating $1,868 million from share repurchases and repaying $1,460 million more debt.

FIGURE 8
CP LEVERAGE RATIO ASSUMING ZERO REVENUE SYNERGIES



35. Because CP's leverage objectives and financial strength are not dependent on any particular level of Transaction-related traffic growth, CPKC would have no incentive or need to engage in irrational short-term actions from a market or commercial perspective. For example, irrational strategies to "force" traffic to less efficient routes or artificially boost short term returns (such as by deferring important capital investments) would be both unnecessary and counterproductive to our long-term goals.

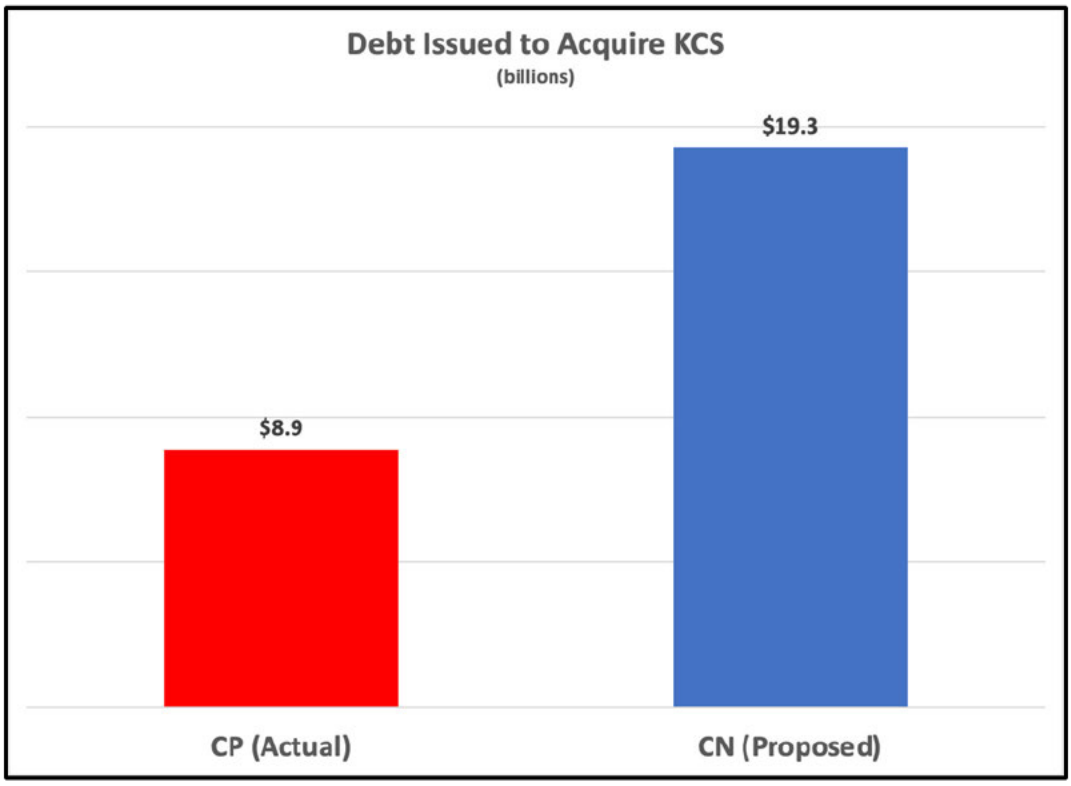
II. THE CP/KCS TRANSACTION HAS FUNDAMENTALLY DIFFERENT FINANCIAL IMPLICATIONS FROM CN'S PROPOSED USE OF A VOTING TRUST TO ACQUIRE KCS

36. Contrary to the assertions of CN's witness Zmijewski, Mr. Velani's 2021 analysis presented in the CN/KCS docket (Finance Docket No. 36514) of the financial risks of CN's proposed use of a voting trust has no application to the CP/KCS Transaction. This is so for several reasons, including that (a) CP acquired KCS shares for significantly less cash – and thus less new debt – than CN's proposal would have required; (b) unlike CN, CP has not publicly stated "return-on-invested-capital" targets associated with the deal, and thus would not be driven to irrational short-term designed to boost ROIC metrics; and (c) concerns about CN's proposed financial terms arose in a context where there appeared to be a material chance that CN would be forced to unwind its proposed trust and divest KCS.

A. CP Issued a Lower Quantum of Absolute Debt with a Higher Stock Mix

37. CP issued $8.5 billion of debt to fund the KCS acquisition in Q4 2021. This compares to CN, which would have issued $19.3 billion in debt (assuming a 1.27 CAD/USD exchange rate), reflecting a 2021 leverage ratio of 5.0x when accounting for CN's proposed debt. Instead, CP utilized far more stock in our transactions. Even when CP increased the price offered for KCS shares, we chose to do so by adding even more stock to the offer mix, not by increasing debt. We have issued a significantly lower quantum of debt than CN would have, and we have also achieved a lower standalone net leverage ratio than CN's failed proposal.

FIGURE 9
CP POST-ACQUISITION GROSS DEBT ISSUANCE
COMPARED TO WHAT CN PLANNED



38. As shown in Figure 9 above, CP issued $8.9 billion of debt to fund the acquisition of KCS shares in December 2021. This compares to CN, which would have issued more than twice as much debt (*$19.3 billion,* assuming a 1.27 CAD/USD exchange rate), reflecting a higher 2021 leverage ratio of 5.0x when accounting for CN's proposed debt.

B. Unlike CN, CP Has Not Locked in on Achieving any Particular ROIC Target for Its Investments

39. As Mr. Velani explained in detail in his Verified Statement in Finance Docket No. 36514 (excerpts of which are Exhibit 8 hereto), CN publicly communicated an ROIC target associated with its proposed KCS acquisition.[22] While we do not dismiss the validity of ROIC as a standalone financial metric for some purposes, it has its limitations. The ROIC target that CN

[22] *See* Velani V.S. at 12-15 & Exhs. A-D (Exhibit 8 hereto).

announced could have created pressure for CN to take harmful actions (such as price increases) in order to achieve CN's stated ROI targets.

40. By contrast, CP never put forward an ROIC target for its own KCS acquisition. CP made the conscious choice not to establish an arbitrary financial target in order to avoid creating any incentives that could distort sound business and operational decision-making during integration and beyond. From a financial perspective, the success of the CP/KCS Transaction has never been focused on deal ROIC, but rather on free cash flow generation and returning to target leverage so that CPKC can compete successfully in the future North American freight marketplace.

C. CN's Proposed Use of a Trust Bore an Inherent Risk of Being Unwound

41. Finally, Mr. Velani's analysis of the financial risks of a CN voting trust took into account that, in the unique context of CN's proposal, there would be an elevated risk that CN would not be able to acquire control of KCS because of the head-to-head competition between CN and KCS and the application of the 2001 merger rules to the Transaction. As a result, CN could have been required to divest KCS, with uncertain financial implications.

VERIFICATION

I, Nadeem Velani, declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this statement.

Executed on this 12 day of July, 2022.

Nadeem Velani

VERIFICATION

I, Chris De Bruyn, declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this statement.

Executed on this 11 day of July, 2022.

Chris De Bruyn

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36500

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

VELANI AND DE BRUYN R.V.S. EXHIBIT 1

S&P GLOBAL RATINGS, "CP RAIL'S MERGER WITH KANSAS CITY SOUTHERN WOULD BE A GOOD FIT IF APPROVED" (MAR. 22, 2021)

S&P Global
Ratings

Credit Research

Bulletin:

CP Rail's Merger With Kansas City Southern Would Be A Good Fit If Approved

March 22, 2021

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TORONTO (S&P Global Ratings) March 22, 2021 S&P Global Ratings today said that its rating and outlook on Canadian freight railroad services provider Canadian Pacific Railway Ltd. (CP; BBB+/Stable/) are currently unaffected by the proposed acquisition of Kansas City Southern (KCS; BBB/Stable/A 2). CP has offered approximately US$29 billion (enterprise value) for KCS, which will include US$8.6 billion in incremental debt, and the remainder in cash on hand and CP common shares. The deal has unanimous support from the boards of both companies, and would combine the two smallest Class 1 railways in North America. CP targets the transaction to close in mid 2022, but this is dependent on regulatory approval that we believe could delay the process.

In our view, the proposed acquisition will materially increase CP's leverage in the short term and could pose a headwind to credit quality. However, we expect steady deleveraging over the next several years from earnings growth and free cash flow generation. In addition, the completion of the transaction should strengthen CP's business risk profile notably from the combined larger transcontinental network, increased customer breadth, and enhanced service capability that add efficiencies. The deal is contingent on regulatory approval, notably from the U.S. Surface Transportation Board (STB), which presents a key source of uncertainty.

We do not ascribe a probability to regulatory approval. The company attempted to merge with Norfolk Southern (unsolicited offer) in late 2015 but faced opposition to certain aspects of the transaction. The previous proposed Class 1 merger (Burlington Northern Santa Fe and Canadian National Railway Co. in 1999) was blocked with a 15 month merger moratorium, after which the STB developed more stringent conditions for approving such mergers. However, the networks of CP and KCS do not overlap; we believe the impact on public interest and competition, and the potential benefits for key constituents (such as shippers) will be key considerations for regulators. The company intends to close the acquisition before regulatory approval, with the acquired KCS shares held in an independent trust (and insulate KCS from control by CP until the STB authorizes control). In the event the STB does not approve the acquisition, we understand the company would be required to divest its KCS shares.

We estimate CP will generate steady growth in earnings and cash flow over the next few years, with discretionary cash flow applied toward meaningful debt reduction. Share repurchases have historically been a significant use of cash flow. The curtailment of the company's buyback program during the review process, in tandem with earnings growth should primarily facilitate material deleveraging. On a standalone basis, we estimate CP's adjusted debt to EBITDA (leverage) in the low 4x area at end 2021 (inclusive of excess cash flow from KCS), but for this ratio to improve to below 4x at end 2022. On a pro forma consolidated basis at end 2023, we

estimate this ratio approaches 2.5x and funds from operations to debt of approximately 30%, before potential synergies (estimated by the company at US$780 million over three years).

We believe the combination of CP and KCS would present opportunities for growth from a single line network across Canada though the U.S. Midwest to Mexico. We would expect meaningful efficiencies beyond cost cutting, supported by an improved competitive position linked to enhanced operating breadth. CP already maintains the lowest operating ratio in the industry, but KCS is close (low 60% area versus the high 50% range at CP) and has adopted the precision scheduled railroading model in place at CP.

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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*.

VELANI AND DE BRUYN R.V.S. EXHIBIT 2

S&P GLOBAL RATINGS, "CANADIAN PACIFIC RAILWAY LTD." (NOV. 17, 2021)

S&P Global
Ratings

RatingsDirect®

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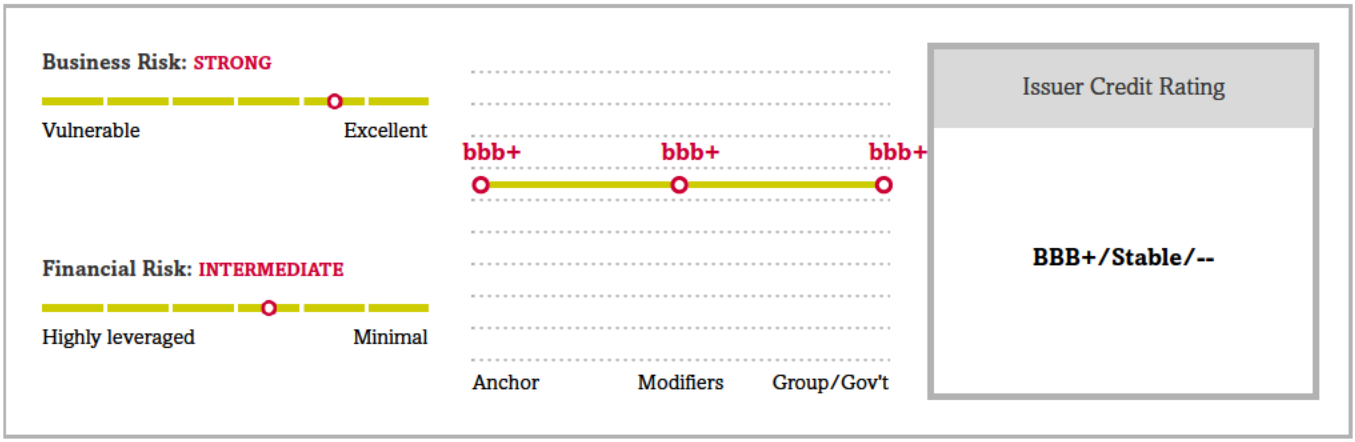
Canadian Pacific Railway Ltd.



Credit Highlights

Overview

Key strengths	Key risks
Strong market position in Canada and the U.S. Northeast and Midwest, with significant barriers to entry.	Materially higher debt from its pending KCS acquisition will increase reliance on free operating cash flow [FOCF] generation to improve prospective credit ratios.
Operating efficiency among the strongest of the North American railroads.	Smaller scale of operations relative to its North American Class 1 railways competitor.
Meaningful financial flexibility from consistently strong free operating cash flow (FOCF).	Exposure to bulk commodities, some of which are more sensitive to unpredictable changes in weather compared with its merchandise business.
Relatively well-diversified rail network by customer, end market, and region, which will be enhanced on completion of its pending Kansas City South (KCS) acquisition.	Freight volumes and margins are exposed to cyclical economic fluctuations.

The increased debt issued for the proposed KCS acquisition will lead to pro forma credit measures that are weak for the rating, but we expect steady improvement beyond this year. Canadian Pacific Railway Ltd. (CP) has issued about US$8.5 billion in debt (about double its total debt from the pre-acquisition level) in addition to equity used to fund its pending acquisition of KCS (BBB/Positive/--) for a total enterprise value of approximately US$31 billion. On a pro forma basis at year-end 2021, S&P Global Ratings estimates CP's credit measures will sharply weaken from current levels, including funds from operations (FFO) to debt in the mid-teens percent area (from about 33% in 2020) and an adjusted debt-to-EBITDA ratio in the low-4.0x area (from 2.3x in 2020). We view these ratios as weak for the current rating, including FFO to debt that breaches our downside threshold for the rating (below 23%).

However, CP is committed to debt reduction and we believe it will return to credit measures that are commensurate for the rating within the next few years. The company has ceased share repurchases since late 2020 and could receive distribution from KCS while in trust, which we believe will provide significant cash available for gross debt reduction. In addition, we believe the outlook for CP's earnings and cash flow is positive, with continued growth expected to contribute to progressively stronger credit ratios. Our forecasts are underpinned by a strong macroeconomic outlook for Canada and the U.S., which should underpin growth in volumes and prices, and we expect CP's capital expenditure (capex) will remain relatively stable. We also believe FFO to debt will improve to 25%-30% by 2023 and remain near

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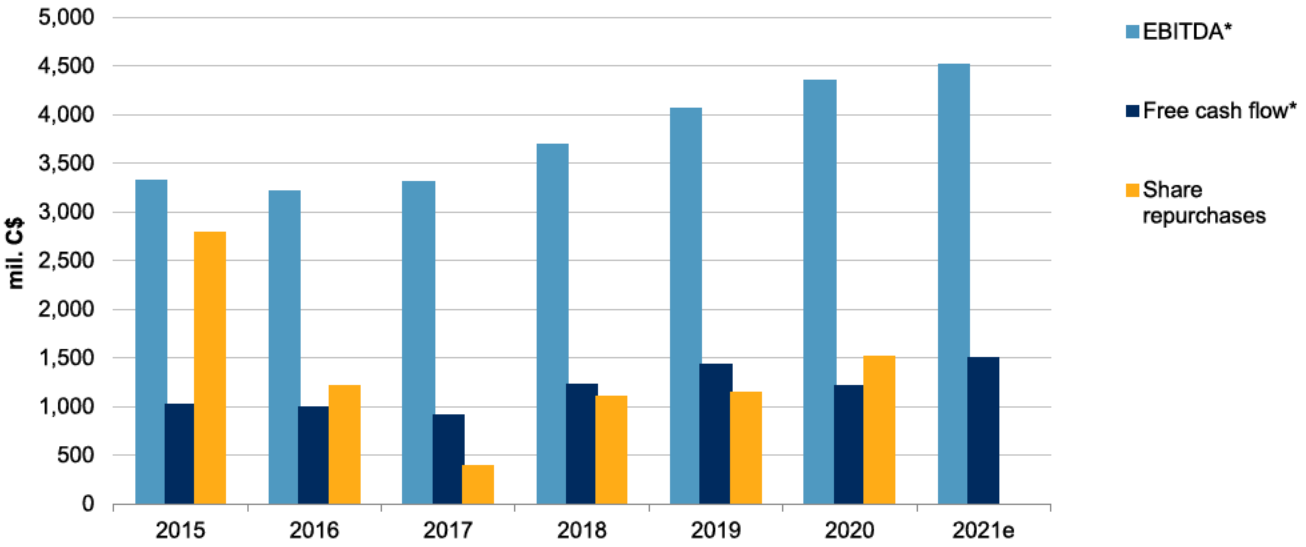
this level on a sustained basis.

Chart 1

Canadian Pacific Railway Ltd.--EBITDA And Cash Flow



*S&P Global Ratings adjusted. e--Estimate. Source: S&P Global Ratings.
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KCS is a good fit for CP and will enhance the company's competitive position and operating efficiencies. The completion of the CP-KCS merger should strengthen CP's business risk profile notably from the combined larger transcontinental network, increased customer breadth, and enhanced service capability that add efficiencies. We believe the combination of CP and KCS would present opportunities for growth from a single-line network across Canada though the U.S. Midwest to Mexico. We would expect meaningful efficiencies beyond cost cutting, supported by an improved competitive position linked to enhanced operating breadth. CP already maintains one of the lowest operating ratios in the industry, but KCS is close (in the low-60% area versus the high-50% area at CP) and has adopted the precision scheduled railroading model in place at CP. We have also not included in our forecasts potentially material synergies from the acquisition. That said, we believe it will take several years for CP to fully realize many of the positive merits of the transaction. In addition, the transaction will not affect our view of CP's business risk profile as strong, which is consistent with that of the company's larger peers.

Closing of the KCS acquisition is contingent on regulatory approval, which is uncertain. The KCS acquisition is predicated on regulatory approval, namely from the U.S. Surface Transportation Board (STB). CP received approval for its voting trust structure, whereby KCS shares owned by CP will be held in trust and KCS will operate independently until close of the deal. We currently assume the deal will close in early 2023, but this is a key source of uncertainty particularly due to the lack of recent precedent transactions.

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Outlook: Stable

The stable outlook reflects S&P Global Ratings' expectation that CP's adjusted FFO to debt will steadily improve to about 25%-30% by 2023 from low pro forma levels this year. We expect growth in earnings and solid FOCF generation that is used toward debt repayment will facilitate the improvement. Our estimates incorporate financial results from KCS in 2023, which also contribute to stronger prospective credit measures.

Downside scenario

We could downgrade CP within the next two years if we expect adjusted FFO to debt will remain below 23% on a sustained basis. In our view, this could occur if earnings are significantly weaker than we expect, potentially due to lower-than-expected volumes and prices related to weaker macroeconomic conditions or protracted operating disruptions that reduce the expected pace of deleveraging. In the event the company is not successful in acquiring KCS, and this results in sustainably higher debt levels, this could also lead to a downgrade.

Upside scenario

Although unlikely over the next two years, we could upgrade CP if stronger-than-expected earnings growth contributes to adjusted FFO to debt above 35% and adjusted FOCF to debt above 15% on a sustained basis. In this scenario, the company would generate much stronger-than-expected earnings and cash flow and adhere to financial policies that are more conservative than our current expectations.

Our Base-Case Scenario

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Assumptions

- Real GDP in Canada and the U.S. to increase 5.0%-6.0% in 2021, about 3.5%-4.0% in 2022, and about 2.0%-2.5% in 2023
- Canadian Consumer Price Index to increase about 3.0% this year, about 2.0%-2.5% in 2022, and about 2.0% in 2023
- An exchange rate of US$1.00 to about C$1.30
- Revenue ton miles (RTM) to increase in the low-single-digit area over the next few years
- Steady price increases above rail inflation, which is consistent with past price hikes and incorporates our view of favorable demand conditions (and temporary supply constraints)
- Average price per barrel of West Texas Intermediate crude oil of about US$55-US$60 in 2022 and US$50-US$55 in 2023
- Annual capex of C$1.5 billion-C$1.6 billion in 2021 and 2022
- No share repurchases over the next two years
- We consolidate KCS debt (about US$9.5 billion) in our 2021 pro forma ratios but KCS' earnings from 2023, when it is expected to close

Key Metrics

Canadian Pacific Railway Ltd.--Key Metrics

	--Fiscal year ended Dec. 31--			
	2020a	**2021f**	**2022e**	**2023e***
(Mil. C$)				
Revenue	7,710	8,000-8,200	8,500-8,700	13,800-14,000
EBITDA	4,353	4,500-4,600	4,700-4,900	7,600-7,800
EBIT margin (%)	43	41-43	42-44	43-45
FFO to debt (%)	32.9	15-18	17-20	25-30
Debt to EBITDA (x)	2.3	Above 4.0	3.5-3.8	2.5-2.8
FOCF to debt (%)	11.9	6-8	9-11	About 15

All figures adjusted by S&P Global Ratings. *Earnings from Kansas City South is consolidated. FFO--Funds from operations. FOCF--Free operating cash flow. a--Actual. e--Estimate. f--Forecast.

Our view of rail industry fundamentals in Canada and the U.S. over the next few years remains positive despite the emergence of volume and supply chain disruptions. We expect CP will generate steady growth in earnings and cash flow in 2021 and 2022, with material improvement in 2023 mainly related to the inclusion of KCS operating results. We assume steady volume and pricing growth will primarily contribute to the improvement through 2022. CP slightly tempered its volume growth guidance for this year, which incorporates lower Canadian grain volumes (thanks to a drought in Western Canada) and supply chain disruptions. However, we view this as temporary, and expect other parts of its business will mitigate the impact, led by more economically sensitive merchandise shipments. B.C. mudslides have led to operational disruptions, but they are temporary and the impact on CP's operating performance will be

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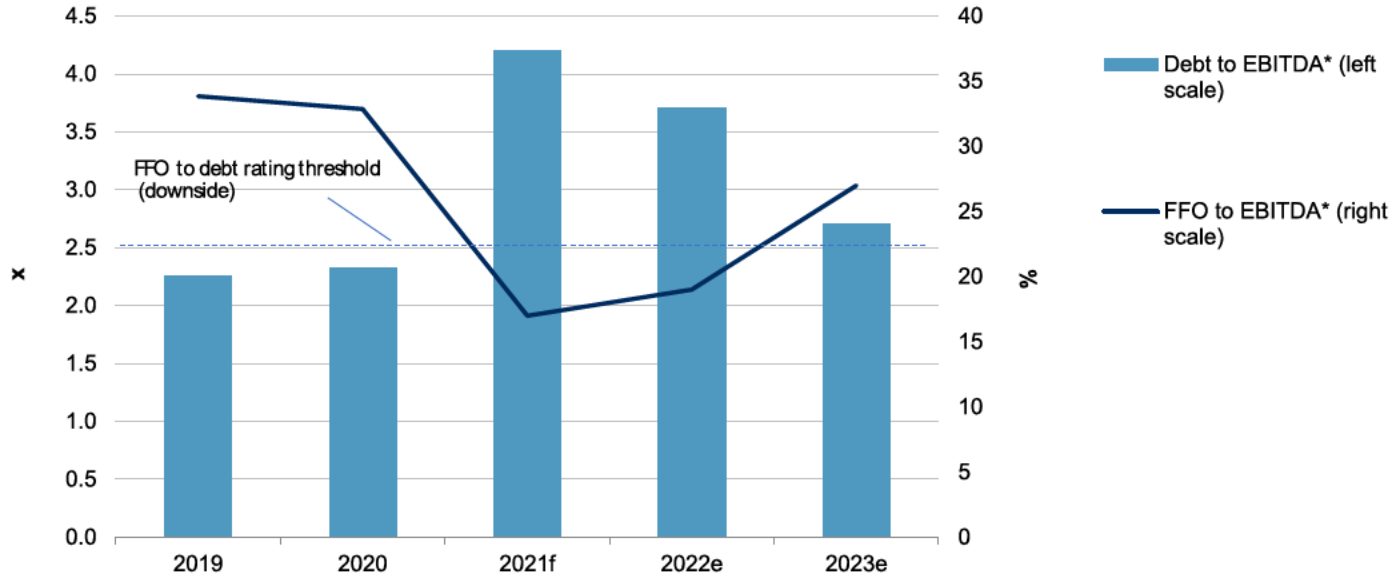
largely immaterial. Ongoing favorable demand should also continue to facilitate further price increases (about 25% of CP's business will re-price in fourth-quarter 2021) and, along with ongoing fuel surcharges, provide good visibility for stronger financial results next year.

Our pro forma credit measures in 2021 and 2022 include KCS debt but exclude its financial results until 2023 (though closing could potentially occur as early as late 2022). However, we assume CP will receive distribution from KCS, which are available for debt reduction. We assume CP will use its excess cash generation (after dividends to its shareholders) toward debt repayment. In tandem with stronger earnings and cash flow over the next few years, along with the inclusion of KCS in 2023, we believe CP's prospective leverage and coverage ratios will steadily improve to levels commensurate with the rating.

Chart 2

Canadian Pacific Railway Ltd.--Cash Flow/Leverage



*S&P Global Ratings adjusted. FFO--Funds from operations. f--Forecast. e--Estimate. Source: S&P Global Ratings.

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Company Description

CP is a Canadian Class I railway that primarily serves Canada and parts of the U.S. It operates a network of about 13,000 route miles serving the principal business centers of Canada, from Montreal to Vancouver, as well as the U.S. Midwest and Northeast. In 2020, the company generated close to C$7.7 billion of revenue, making it the second-largest railroad in Canada (about half the size of Canadian National Railway Ltd. [CN]) and the sixth largest in North America.

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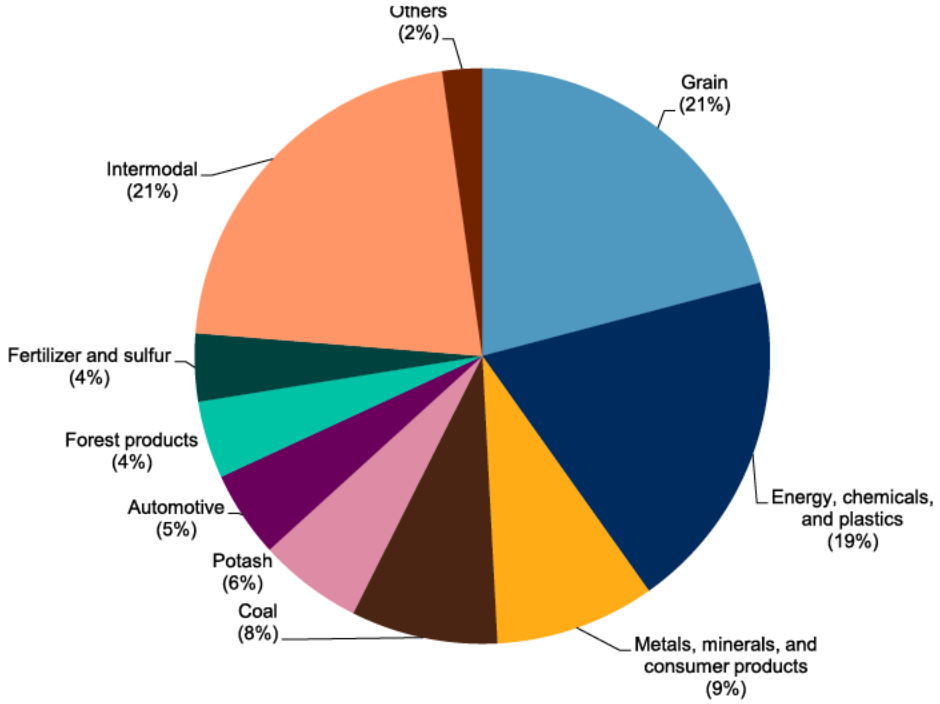
Chart 3

Canadian Pacific Railway Co. Ltd.--Percentage Of Revenue By Commodity Group
Nine months ended Sept. 30, 2021



Source: Company data.
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Business Risk: Strong

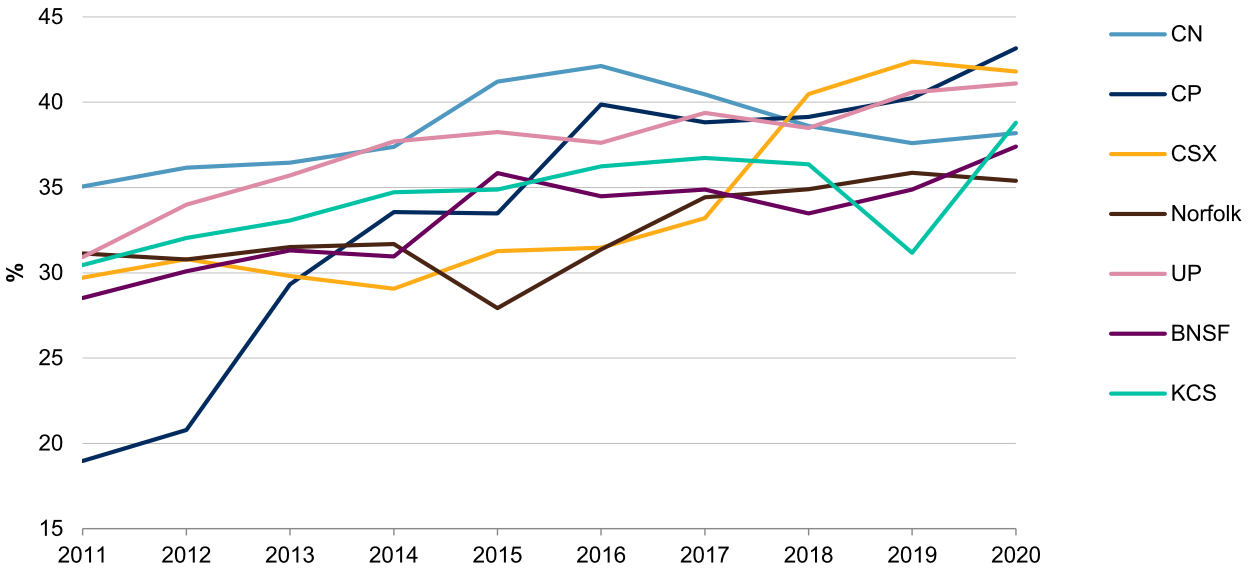
CP is one of two Class 1 railroads in Canada (the other being CN) with a favorable market position in Canada, as well as the U.S. Northeast and Midwest. We believe the company will continue to benefit from limited competition from alternate modes of long-haul commercial freight transport within the North American railroad industry. In our view, the significant barriers to entry to its business and moderate degree of cyclicality have contributed to steady increases in freight pricing in excess of rail inflation (including fuel costs). Trucking is a competitive alternative on short-haul routes and for time-sensitive freight, and barges and vessels offer competition on the Great Lakes-St. Lawrence Seaway. However, rail remains an attractive and cost-effective choice for bulk and long-distance commodity traffic, in our opinion.

We expect CP's operating efficiency will remain among the strongest of the North American railroads, underpinned by our forecast adjusted EBIT margins in the low-40% area, which we consider above average for Class 1 railroads. The company's profitability has steadily improved in the past several years, and CP now has the lowest operating ratio in the industry. In our view, CP should continue to generate strong profitability due in large part to its relatively well-diversified shipments and revenue by geography, customer, and product. This typically allows the company to

offset periods of weaker demand in certain sectors with strong performance in others. Moreover, fuel surcharge mechanisms are included in most of the company's freight contracts--as is common in the rail industry, albeit there can sometimes be a lag before rates reset. We believe these mechanisms should mitigate CP's cost exposure to volatile fuel prices, further supporting our view of the company's earnings stability.

Chart 4

S&P Global Ratings' Adjusted EBIT Margins



CN--Canadian National Railway Co. CP-Canadian Pacific Railway Ltd. CSX--CSX Corp. Norfolk--Norfolk Southern Railway. UP--Union Pacific Railway Co. BNSF--Burlington Santa Fe LLC. KCS--Kansas City South.

Sources: Company data; S&P Global Ratings' estimates.

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Peer comparison

We believe CP is less diversified than CN and some of its U.S. railroad peers due to the company's significant exposure to bulk commodities. Bulk commodities represented about 40% of CP's freight revenue compared with about 20% for CN. These include coal, grain, potash, and fertilizer products, which we believe generally exhibit greater volatility in freight volumes mainly due to higher relative exposure to unpredictable weather fluctuations and prevailing supply/demand fundamentals. CP's scale of operations is also smaller than that of CN and most of its U.S. competitors (other than KCS) on several measures. Mainly for these reasons, we view CP's business risk profile at the lower end of our strong business risk assessment. However, the disparity on several measures is moderate, particularly when considering the integration of KCS.

From a financial risk perspective, we believe CP compares favorably to most of the other Class 1 railroads. Our higher rating on CN reflects our comparatively stronger business risk profile assessment on the company (mainly owing to

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CN's greater operating breadth) in tandem with historically stronger credit measures.

Table 1

Canadian Pacific Railway Ltd.--Peer Comparison

Industry Sector: Railroads

	Canadian Pacific Railway Ltd.	Canadian National Railway Co.	CSX Corp.	Norfolk Southern Corp.	Union Pacific Corp.	Burlington Northern Santa Fe LLC	Kansas City Southern
Ratings as of Nov. 17, 2021	BBB+/Stable/--	A/Negative/A-1	BBB+/Stable/A-2	BBB+/Stable/A-2	A-/Stable/A-2	AA-/Stable/--	BBB/Positive/A-2
	--Fiscal year ended Dec. 31, 2020--						
(Mixed currency)	**Mil C$**		**Mil. US$**				
Revenue	7,710.0	13,819.0	10,583.0	9,789.0	19,533.0	20,869.0	2,632.6
EBITDA	4,353.0	7,059.0	5,864.0	4,678.0	10,398.0	10,667.0	1,430.2
Funds from operations (FFO)	3,317.0	6,140.1	4,423.8	3,759.0	8,070.4	8,264.9	1,093.7
Interest expense	499.0	568.9	780.3	656.0	1,204.6	1,116.1	154.0
Cash interest paid	454.0	565.9	776.3	608.0	1,113.6	1,124.1	154.2
Cash flow from operations	2,858.0	6,293.1	4,318.8	3,715.0	8,757.4	8,271.9	1,098.6
Capital expenditure	1,655.0	2,863.0	1,626.0	1,480.0	2,927.0	3,037.0	490.1
Free operating cash flow (FOCF)	1,203.0	3,430.1	2,692.8	2,235.0	5,830.4	5,234.9	608.5
Discretionary cash flow (DCF)	(773.0)	1,346.1	1,028.8	(164.0)	(500.6)	388.4	(432.7)
Cash and short-term investments	147.0	569.0	3,131.0	1,115.0	1,859.0	1,986.0	188.2
Debt	10,091.0	13,140.9	14,352.9	12,375.0	27,131.3	22,661.0	3,677.3
Equity	7,319.0	19,651.0	13,110.0	14,791.0	16,958.0	44,254.0	4,383.6
Adjusted ratios							
EBITDA margin (%)	56.5	51.1	55.4	47.8	53.2	51.1	54.3
Return on capital (%)	19.8	16.1	16.2	12.6	18.1	11.6	12.7
EBITDA interest coverage (x)	8.7	12.4	7.5	7.1	8.6	9.6	9.3
FFO cash interest coverage (x)	8.3	11.8	6.7	7.2	8.2	8.4	8.1
Debt/EBITDA (x)	2.3	1.9	2.4	2.6	2.6	2.1	2.6
FFO/debt (%)	32.9	46.7	30.8	30.4	29.7	36.5	29.7

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Table 1

Canadian Pacific Railway Ltd.--Peer Comparison (cont.)

Industry Sector: Railroads

	Canadian Pacific Railway Ltd.	Canadian National Railway Co.	CSX Corp.	Norfolk Southern Corp.	Union Pacific Corp.	Burlington Northern Santa Fe LLC	Kansas City Southern
Cash flow from operations/debt (%)	28.3	47.9	30.1	30.0	32.3	36.5	29.9
FOCF/debt (%)	11.9	26.1	18.8	18.1	21.5	23.1	16.5
DCF/debt (%)	(7.7)	10.2	7.2	(1.3)	(1.8)	1.7	(11.8)

Financial Risk: Intermediate

We expect CP's credit metrics to weaken in 2021, but to improve to levels commensurate with the rating by 2023. Materially higher debt associated with the company's pending acquisition of KCS is responsible for this weakening, including the US$9.5 billion in new debt funding and the consolidation of KCS debt. We estimate CP's pro forma 2021 adjusted FFO-to-debt ratio will be below 20% and adjusted debt-to-EBITDA ratio will be just over 4x, which are weak for our financial risk assessment and rating on the company. However, we assume steady growth in earnings and cash flow over the next two years, as well as solid discretionary cash flow used to reduce net debt over this period. With the consolidation of KCS' earnings and cash flow, which we assume in 2023, we expect CP's credit measures will improve to an extent that aligns with the rating. This includes FFO to debt in the 25%-30% area and adjusted debt to EBITDA of about 2.5x-2.8x in 2023.

Under our assumptions, CP should generate C$1.4 billion-C$1.7 billion of annual FOCF over the next couple of years after C$1.5 billion-C$1.6 billion of capex (equal to about 13%-17% of revenue). The company intends to continue to pay dividends to shareholders, and we expect this to increase in the next couple of years. We assume the remaining excess cash flow will be used toward debt reduction, with no share repurchases expected until 2023 at the earliest (and depending on the pace of deleveraging).

Financial summary

Table 2

Canadian Pacific Railway Ltd.--Financial Summary

Industry Sector: Railroads

	--Fiscal year ended Dec. 31--				
	2020	2019	2018	2017	2016
(Mil. C$)					
Revenue	7,710.0	7,792.0	7,316.0	6,554.0	6,232.0
EBITDA	4,353.0	4,055.0	3,693.5	3,300.0	3,205.0
Funds from operations (FFO)	3,317.0	3,092.8	2,890.3	2,362.0	2,343.4
Interest expense	499.0	486.2	508.2	514.0	524.6
Cash interest paid	454.0	456.2	485.2	513.0	539.6
Cash flow from operations	2,858.0	3,049.8	2,750.3	2,228.0	2,139.4

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Table 2

Canadian Pacific Railway Ltd.--Financial Summary (cont.)

Industry Sector: Railroads

	--Fiscal year ended Dec. 31--				
	2020	**2019**	**2018**	**2017**	**2016**
Capital expenditure	1,655.0	1,630.0	1,531.0	1,324.0	1,157.0
Free operating cash flow (FOCF)	1,203.0	1,419.8	1,219.3	904.0	982.4
Discretionary cash flow (DCF)	(773.0)	(126.2)	(231.7)	213.0	(482.6)
Cash and short-term investments	147.0	133.0	61.0	338.0	164.0
Gross available cash	147.0	133.0	61.0	338.0	164.0
Debt	10,091.0	9,137.6	9,161.9	8,243.8	8,976.5
Equity	7,319.0	7,069.0	6,636.0	6,437.0	4,626.0
Adjusted ratios					
EBITDA margin (%)	56.5	52.0	50.5	50.4	51.4
Return on capital (%)	19.8	19.6	18.8	18.0	18.2
EBITDA interest coverage (x)	8.7	8.3	7.3	6.4	6.1
FFO cash interest coverage (x)	8.3	7.8	7.0	5.6	5.3
Debt/EBITDA (x)	2.3	2.3	2.5	2.5	2.8
FFO/debt (%)	32.9	33.8	31.5	28.7	26.1
Cash flow from operations/debt (%)	28.3	33.4	30.0	27.0	23.8
FOCF/debt (%)	11.9	15.5	13.3	11.0	10.9
DCF/debt (%)	(7.7)	(1.4)	(2.5)	2.6	(5.4)

Reconciliation

Table 3

Canadian Pacific Railway Ltd.--Reconciliation Of Reported Amounts With S&P Global Ratings' Adjusted Amounts

	--Fiscal year ended Dec. 31, 2020--						
Canadian Pacific Railway Ltd. reported amounts (mil. C$)							
	Debt	**EBITDA**	**Operating income**	**Interest expense**	**S&P Global Ratings' adjusted EBITDA**	**Cash flow from operations**	**Capital expenditure**
Reported amounts	9,628.0	4,090.0	3,311.0	462.0	4,353.0	2,802.0	1,671.0
S&P Global Ratings' adjustments							
Cash taxes paid	--	--	--	--	(582.0)	--	--
Cash interest paid	--	--	--	--	(427.0)	--	--
Reported lease liabilities	454.0	--	--	--	--	--	--
Operating leases	--	83.0	11.0	11.0	(11.0)	72.0	--
Accessible cash and liquid investments	(147.0)	--	--	--	--	--	--
Capitalized interest	--	--	--	16.0	(16.0)	(16.0)	(16.0)
Share-based compensation expense	--	170.0	--	--	--	--	--
Asset-retirement obligations	63.2	10.0	10.0	10.0	--	--	--

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Table 3

Canadian Pacific Railway Ltd.--Reconciliation Of Reported Amounts With S&P Global Ratings' Adjusted Amounts (cont.)								
Nonoperating income (expense)	--	--	(4.0)	--	--	--	--	
Debt: Workers compensation/self insurance	92.8	--	--	--	--	--	--	
Total adjustments	463.0	263.0	17.0	37.0	(1,036.0)	56.0	(16.0)	
S&P Global Ratings' adjusted amounts								
	Debt	**EBITDA**	**EBIT**	**Interest expense**	**Funds from operations**	**Cash flow from operations**	**Capital expenditure**	
Adjusted amounts	10,091.0	4,353.0	3,328.0	499.0	3,317.0	2,858.0	1,655.0	

Liquidity: Strong

Our liquidity assessment incorporates our view that CP's sources of liquidity will exceed uses by more than 1.5x over the next 12 months. Our liquidity assessment is a standalone assessment of CP and excludes and proceeds or uses related to the CP-KCS merger. We also expect that the company will maintain sufficient liquidity to exceed its funding needs even in a stress scenario whereby our forecast EBITDA declines by 30%. Furthermore, we believe CP has the capacity to withstand a high-impact, low-probability event with limited need for refinancing; well-established and solid banking relationships; generally high standing in credit markets with great access to capital markets; and generally very prudent financial risk management.

We have a short-term rating of 'A-2' on Canadian Pacific Railway Co. (a subsidiary of CP), which reflects our 'BBB+' long-term issuer credit rating on the company.

Principal Liquidity Sources	Principal Liquidity Uses
• Cash and cash equivalents of C$210 million as of Sept. 30, 2021 • Full availability under CP's revolving credit facilities that include a US$1.0 billion tranche maturing Sept. 27, 2026, and a US$300 million tranche maturing Sept. 27, 2023 • Annual FFO of more than C$3.0 billion	• Annual capex of C$1.5 billion-C$1.6 billion • Annual dividend payments of about US$500 million in 2021 and US$750 million-US$800 million in 2022 • Seasonal working capital investments that typically peak in the first quarter

Ratings Score Snapshot

Issuer Credit Rating

BBB+/Stable/--

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Business risk: Strong

- **Country risk:** Very low
- **Industry risk:** Low
- **Competitive position:** Strong

Financial risk: Intermediate

- **Cash flow/leverage:** Intermediate

Anchor: bbb+

Modifiers

- **Diversification/portfolio effect:** Neutral (no impact)
- **Capital structure:** Neutral (no impact)
- **Financial policy:** Neutral (no impact)
- **Liquidity:** Strong (no impact)
- **Management and governance:** Satisfactory (no impact)
- **Comparable rating analysis:** Neutral (no impact)

Related Criteria

- General Criteria: Group Rating Methodology, July 1, 2019
- Criteria | Corporates | General: Corporate Methodology: Ratios And Adjustments, April 1, 2019
- Criteria | Corporates | General: Reflecting Subordination Risk In Corporate Issue Ratings, March 28, 2018
- General Criteria: Methodology For Linking Long-Term And Short-Term Ratings, April 7, 2017
- General Criteria: Methodology And Assumptions For Analyzing Letter Of Credit-Supported Debt, Feb. 20, 2015
- Criteria | Corporates | General: Methodology And Assumptions: Liquidity Descriptors For Global Corporate Issuers, Dec. 16, 2014
- General Criteria: Country Risk Assessment Methodology And Assumptions, Nov. 19, 2013
- General Criteria: Methodology: Industry Risk, Nov. 19, 2013
- Criteria | Corporates | General: Corporate Methodology, Nov. 19, 2013
- General Criteria: Methodology: Management And Governance Credit Factors For Corporate Entities, Nov. 13, 2012
- General Criteria: Principles Of Credit Ratings, Feb. 16, 2011

Related Research

Canadian Pacific Railway Co.'s Proposed US$8.5 Billion Senior Unsecured Notes Rated 'BBB+', Nov. 17, 2021

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Business And Financial Risk Matrix

	Financial Risk Profile					
Business Risk Profile	Minimal	Modest	**Intermediate**	Significant	Aggressive	Highly leveraged
Excellent	aaa/aa+	aa	a+/a	a-	bbb	bbb-/bb+
Strong	aa/aa-	a+/a	**a-/bbb+**	bbb	bb+	bb
Satisfactory	a/a-	bbb+	bbb/bbb-	bbb-/bb+	bb	b+
Fair	bbb/bbb-	bbb-	bb+	bb	bb-	b
Weak	bb+	bb+	bb	bb-	b+	b/b-
Vulnerable	bb-	bb-	bb-/b+	b+	b	b-

Ratings Detail (As Of November 17, 2021)*

Canadian Pacific Railway Ltd.	
Issuer Credit Rating	BBB+/Stable/--
Issuer Credit Ratings History	
04-Nov-2014	BBB+/Stable/--
16-Apr-2014	BBB/Positive/--
12-Mar-2014	BBB-/Watch Pos/--
Related Entities	
Canadian Pacific Railway Co.	
Issuer Credit Rating	BBB+/Stable/A-2
Commercial Paper	
Foreign Currency	A-2
Equipment Trust Certificates	BBB+
Senior Unsecured	AA-
Senior Unsecured	BBB+

*Unless otherwise noted, all ratings in this report are global scale ratings. S&P Global Ratings' credit ratings on the global scale are comparable across countries. S&P Global Ratings' credit ratings on a national scale are relative to obligors or obligations within that specific country. Issue and debt ratings could include debt guaranteed by another entity, and rated debt that an entity guarantees.

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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*.

VELANI AND DE BRUYN R.V.S. EXHIBIT 3

MOODY'S INVESTOR'S SERVICE, "MOODY'S DOWNGRADES CP RAIL TO BAA2 STABLE ON KCS ACQUISITION" (MAR. 22, 2021)

MOODY'S
INVESTORS SERVICE

Rating Action: Moody's downgrades CP Rail to Baa2 Stable on KCS acquisition

22 Mar 2021

Toronto, March 22, 2021 -- Moody's Investors Serv ce, ("Moody's") downgraded Canad an Pac f c Ra way Company's ("CP") sen or unsecured rat ngs to Baa2 from Baa1 fo ow ng the announcement that ts parent, Canad an Pac f c Ra way L m ted, has agreed to acqu re Kansas C ty Southern ("KCS") for approx mate y $29 b on, the fund ng of wh ch nc udes ra s ng approx mate y $8.6 b on n debt. CP's commerc a paper rat ng has been aff rmed at Pr me-2 and ts out ook rema ns stab e.

F nanc ng for the new debt has been comm tted. As part of the merger, CP w a so assume KCS' outstand ng debt of approx mate y $3.8 b on.

"The downgrade ref ects the ncrease n adjusted everage, wh ch w exceed 3X through 2023" sa d Jam e Koutsouk s, Moody's ana yst. "It a so ncorporates the regu atory and ntegrat on r sks of the acqu s t on" she added.

The fo ow ng rat ng act ons were taken:

Aff rmat ons:

..Issuer: Canad an Pac f c Ra way Company

....Sen or Unsecured Commerc a Paper, Aff rmed P-2

Downgrades:

..Issuer: Canad an Pac f c Ra way Company

....Sen or Unsecured She f, Downgraded to (P)Baa2 from (P)Baa1

....Sen or Unsecured Regu ar Bond/Debenture, Downgraded to Baa2 from Baa1

Out ook Act ons:

..Issuer: Canad an Pac f c Ra way Company

....Out ook, Rema ns Stab e

RATINGS RATIONALE

CP's Baa2 cred t rat ng benef ts from 1) ts we -pos t oned ra way network, 2) a preponderance of stab e commod ty hau s, and 3) a track record of a very good operat ng marg n. CP s constra ned by 1) ts sma s ze versus ts North Amer can C ass 1 peers, 2) uncerta nt es assoc ated w th regu atory approva for CP's recent announcement to acqu re KCS (we expect shareho der approva w occur n m d-2021) wh ch w resu t n adjusted everage exceed ng 4x n 2021, 3) ts exposure to econom c cyc ca ty, 4) adverse weather cond t ons and 5) ncreas ng regu atory r sks. Moody's be eves the company has the ab ty and s comm tted to reduc ng ts adjusted f nanc a everage towards the m d-po nt of ts 2x to 2.5x pub c everage target, however the t me to ach eve th s w be protracted.

The acqu s t on of KCS w strengthen CP's ra network, creat ng a b gger cont nenta network and expand ng the reach of s ng e hau s and serv ce capab t es that can be prov ded to customers. In add t on, ts cred t prof e w benef t from a arger, more d vers f ed bus ness w th a greater exposure to h gher marg n merchand se bus ness, ncreased customer d vers ty and breadth and the potent a for synerg es from network and equ pment eff c enc es as we as greater revenue expans on. Offsett ng these benef ts however s the ncrease n adjusted everage wh ch w ncrease from 2.5x at year-end 2020 to 4.5x pro forma for the acqu s t on, and rema n above 3x through 2023. There s a so the econom c r sk to CP shou d they not be granted regu atory approva and be requ red to unw nd ts purchase of KCS at an unknown pr ce.

CP has exce ent qu d ty. Exc ud ng the announced acqu s t on, the company has CAD2.5 b on n expected sources of qu d ty compared to about CAD770 m on of uses over the next 12 months. Sources of qu d ty nc ude cash of CAD147 m on and an undrawn US$1 b on cred t fac ty (matures n September 2024) as of December 31, 2020. As we , we expect CP w generate about CAD1.1 b on of free cash f ow n 2021. The company has C$320 m on of debt due August 2021, and C$450 m on due n January 2022. CP's revo v ng cred t fac ty agreement has a max mum debt to EBITDA covenant and we expect they w ma nta n s gn f cant headroom under th s covenant.

CP has secured US$8.6 b on of comm tted br dge f nanc ng for ts announced acqu s t on of KCS.

The stab e out ook ref ects Moody's expectat on CP ex st ng ra network w cont nue to operate we , such that operat ng marg ns do not decrease be ow 37%. It a so ncorporates the expectat on that the company w rece ve shareho der approva for the KCS acqu s t on n m d-2021 and w make steady progress n reduc ng ts n t a e evated everage as a resu t of the acqu s t on towards 3x by 2023.

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A rat ngs upgrade wou d requ re c ar ty regard ng regu atory approva for CP's acqu s t on of KCS. It wou d a so requ re the company ma nta n adjusted debt/EBITDA be ow 2.75x and free cash f ow/debt of more than 10%.

A rat ngs downgrade cou d occur f Moody's expects the company to susta n ts adjusted debt/ EBITDA above 3.25x and free cash f ow/debt of ess than 5%.

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REGULATORY DISCLOSURES

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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*.

VELANI AND DE BRUYN R.V.S. EXHIBIT 4

MOODY'S INVESTOR'S SERVICE, "MOODY'S ASSIGNS BAA2 RATING TO CANADIAN PACIFIC RAILWAY'S NEW NOTES" (NOV. 17, 2021)

MOODY'S
INVESTORS SERVICE

Rating Action: Moody's assigns Baa2 rating to Canadian Pacific Railway's new notes

17 Nov 2021

Toronto, November 17, 2021 -- Moody's Investors Serv ce ("Moody's") ass gned a Baa2 rat ng to Canad an Pac f c Ra way Company's ("CPR") seven new tranches of sen or unsecured notes for tota proceeds of approx mate y $8.5 b on. The tranches of notes are be ng ssued n Canad an and US do ars and have matur t es that range from 2 to 30 years. Proceeds w be used by CPR to nd rect y f nance the cash port on of the merger whereby Kansas C ty Southern ("KCS") w comb ne w th CPR n a stock and cash transact on. CPR's ex st ng rat ngs are unchanged, nc ud ng the Baa2 sen or unsecured notes rat ng, and the P-2 short-term rat ng. The rat ngs out ook rema ns stab e.

Two tranches of the new notes due n 2031 and 2041 conta n a Spec a Mandatory Redempt on prov s on whereby f CPR determ nes n ts reasonab e judgment that the Surface Transportat on Board ("STB") f na approva for ts proposed merger w th KCS w not be sought, or has not or w not be rece ved pr or to March 25, 2023, then t w be requ red to redeem a of the $2.5 b on n outstand ng under these notes at a mandatory redempt on pr ce of 101.

Ass gnments:

..Issuer: Canad an Pac f c Ra way Company

....Gtd Sen or Unsecured Regu ar Bond/Debenture, Ass gned Baa2

RATINGS RATIONALE

On September 15, 2021, CPR entered nto a merger agreement, under wh ch CPR agreed to acqu re KCS n a stock and cash transact on represent ng an enterpr se va ue of approx mate y $31 b on, wh ch nc udes the assumpt on of $3.8 b on of outstand ng KCS debt.

CPR's Baa2 cred t rat ng benef ts from 1) ts we -pos t oned ra way network, 2) a preponderance of stab e commod ty hau s, and 3) a track record of a very good operat ng marg n. CPR s constra ned by 1) ts sma s ze versus ts North Amer can C ass 1 peers, 2) uncerta nt es assoc ated w th regu atory approva for CP's agreement to acqu re KCS (we expect shareho der approva w occur n ear y December 2021) by the STB, wh ch f not approved cou d requ re CPR to repay debt ra sed assoc ated w th the transact on, 3) adjusted everage of 4.5x pro forma for the KCS acqu s t on n 2021, and expected to be about 4x n 2022 before fa ng be ow 3x n 2024, 4) ts exposure to econom c cyc ca ty and adverse weather cond t ons and 5) cont nued regu atory r sks. Moody's be eves the company has the ab ty and s comm tted to reduc ng ts adjusted f nanc a everage towards the m d-po nt of ts 2x to 2.5x pub c everage target, however the t me to ach eve th s w be protracted.

The acqu s t on of KCS w strengthen CPR's ra network, creat ng a b gger cont nenta network and expand ng the reach of s ng e hau s and serv ce capab t es that can be prov ded to customers. In add t on, ts cred t prof e w benef t from a arger, more d vers f ed bus ness w th a greater exposure to h gher marg n merchand se bus ness, ncreased customer d vers ty and breadth and the potent a for synerg es from network and equ pment eff c enc es as we as greater revenue expans on. Offsett ng these benef ts however s the ncrease n adjusted everage wh ch w ncrease from 2.5x for the twe ve months end ng September 2021 to 4.5x pro forma for the acqu s t on, and rema n above 3x through 2023. There s a so the econom c r sk to CPR shou d they not be granted regu atory approva and be requ red to unw nd ts purchase of KCS at an unknown pr ce.

CPR has exce ent qu d ty. Exc ud ng the announced acqu s t on, the company has CAD2.75 b on n expected sources of qu d ty compared to about CAD450 m on of uses over the next 12 months. Sources of qu d ty nc ude cash of CAD223 m on and $731 (CAD 926) m on ava ab e on ts (unrated) cred t fac t es ($300 m on matures n September 2023, $1 b on matures September 2026) as of September 30, 2021. As we , we expect CPR w generate about CAD1.6 b on of free cash f ow over the next 12 months. The company has CAD450 m on notes due n January 2022. CPR's revo v ng cred t fac ty agreement has a

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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*.

VELANI AND DE BRUYN R.V.S. EXHIBIT 5

CP INVESTOR PRESENTATION, "BUILT TO DRIVE GROWTH INVESTOR PRESENTATION" (MAR. 2022)

BUILT TO DRIVE GROWTH

Investor Presentation, March 2022

TSX/NYSE: CP

FORWARD LOOKING STATEMENTS

The following investor presentation contains certain forward-looking information within the meaning of applicable securi ies laws relating, but not limited, to Canadian Pacific's operations, priorities and plans, anticipated financial and operational performance, including our business prospects, market drivers and outlook, planned capital expenditures, an icipated revenues and the source thereof, programs and strategies (including financing strategies), the anticipated efficiency of the high efficiency product (HEP) train model and associated facilities, including growth in our high-capacity hopper car fleet in 2021 and beyond, shipment capacity, completion and the anticipated impacts on capacity and efficiency of the HEP qualification of CP-served train-loading facilities. This forward-looking information also includes, but is not limited to, statements concerning expectations, beliefs, plans, goals, objectives, assump ions and statements about possible future events, conditions, and results of operations or performance.

Forward-looking information may contain statements with words such as "anticipate", "believe", "expect", "plan", "financial expectations", "key assumptions", "outlook", "guidance", or similar words suggesting future outcomes. To the extent that CP has provided forecasts or targets using Non-GAAP financial measures, CP may not be able to provide a reconcilia ion to a GAAP measure without unreasonable efforts, due to unknown variables and uncertainty related to future results.

Undue reliance should not be placed on forward-looking information as actual results may differ materially from the forward-looking information. Forward-looking informa ion is not a guarantee of future performance.

By its nature, CP's forward-looking information involves numerous assumptions, inherent risks and uncertainties that could cause actual results to differ materially from those expressed or implied by the forward-looking information, including but not limited to the following factors: changes in, or unanticipated outcomes of, business strategies and growth opportuni ies; general North American and global economic, credit and business conditions; risks associated with agricultural production such as weather conditions and insect populations; the availability and price of energy commodities; he effects of competition and pricing pressures; industry capacity; shifts in current and anticipated future market demand; changes in commodity prices; uncertainty surrounding timing and volumes of commodities being shipped via CP; inflation; geopolitical instability; changes in laws, regulations and government policies, including regulation of rates; changes in taxes and tax rates; potential increases in maintenance and operating costs; changes in fuel prices; uncertain ies of investigations, proceedings or other types of claims and litigation; labour disputes; risks and liabilities arising from derailments; transportation of dangerous goods; timing, completion and impacts from capital and maintenance projects by CP and by third parties; currency and interest rate fluctuations; trade restrictions or other changes to international trade arrangements; interruptions in the availability of land and equipment; realization of certain operating and cost efficiencies; climate change; and the market and regulatory responses to climate change; ability to achieve commitments and aspirations relating to reducing greenhouse gas emissions and other climate-related objectives; various events hat could disrupt operations, including severe weather, such as droughts, floods, avalanches and earthquakes, and cybersecurity attacks, as well as security threats and governmental response to them, and technological changes; the pandemic created by the outbreak of he novel strain of coronavirus (and the disease known as COVID-19) and resulting effects on economic conditions, the demand environment for logistics requirements and energy prices, restrictions imposed by public health authorities or governments, fiscal and monetary policy responses by governments and financial ins itutions, and disruptions to global supply chains; the timing and completion of the pending KCS transaction, including receipt of regulatory and shareholder approvals and the satisfaction of other conditions precedent; interloper risk to the pending KCS transaction; the realization of anticipated benefits and synergies of the pending KCS transaction and the timing thereof; the success of integration plans for KCS; the focus of management time and attention on the pending KCS transaction and o her disruptions arising from the transaction; customer, shareholder, regulatory and other stakeholder approvals and support; regulatory and legislative decisions and actions; the adverse impact of any termination or revoca ion by the Mexican government of Kansas City Southern de Mexico, S.A. de C.V.'s Concession; estimated future dividends; financial strength and flexibility; debt and equity market conditions, including the ability to access capital markets on favourable terms or at all; cost of debt and equity capital; potential changes in the CP share price which may negatively impact the value of consideration offered to KCS shareholders; and the ability of management of CP, its subsidiaries and affiliates to execute key priorities, including those in connection wi h the pending KCS transaction.

The foregoing list of factors is not exhaustive. These and other factors are detailed from time to time in reports filed by CP with securities regulators in Canada and he United States. Reference should be made to "Management's Discussion and Analysis of Financial Condition and Results of Operations" in CP's annual and quarterly reports filed on Form 10-K and 10-Q, respectively.

Forward-looking information is based on current expectations, estimates and projections and it is possible that predictions, forecasts, projections, and other forms of forward-looking information will not be achieved by CP. Except as required by law, CP undertakes no obligation to update publicly or otherwise revise any forward-looking information, whether as a result of new information, future events or otherwise.

KEY GAAP AND NON-GAAP MEASURES

NOTE ON NON-GAAP MEASURES

Except where noted, all figures are in millions of Canadian dollars.

Financial information is prepared in accordance with accounting principles generally accepted in the United States of America (U.S. GAAP), unless otherwise noted.

CP presents non-GAAP earnings and liquidity information in this presentation to provide a basis for evaluating underlying earnings and liquidity trends that can be compared with the prior periods results.

It should be noted that CP's non-GAAP measures as described in this presentation, have no standardized meanings and are not defined by U.S. GAAP and, therefore, are unlikely to be comparable to similar measures presented by other companies.

$ in millions of Canadian dollars, except per share data, percentages and ratios	2017	2018	2019	2020	2021
Total revenues	$6,554	$7,316	$7,792	$7,710	$7,995
Operating income	$2,519	$2,831	$3,124	$3,311	$3,206
Adjusted operating income[1]	$2,468	$2,831	$3,124	$3,311	$3,389
Operating ratio	61.6%	61.3%	59.9%	57.1%	59.9%
Adjusted operating ratio[1]	62.4%	61.3%	59.9%	57.1%	57.6%
Net income	$2,405	$1,951	$2,440	$2,444	$2,852
Adjusted income[1]	$1,666	$2,080	$2,290	$2,403	$2,565
Diluted earnings per share[2]	$3.29	$2.72	$3.50	$3.59	$4.18
Adjusted diluted earnings per share[1][2]	$2.28	$2.90	$3.29	$3.53	$3.76
Cash provided by operating activities	$2,182	$2,712	$2,990	$2,802	$3,688
Cash used in investing activities	($1,295)	($1,458)	($1,803)	($2,030)	($13,730)
Cash provided by (used in) financing activities	($700)	($1,542)	($1,111)	($764)	$9,936
Free cash[1]	$874	$1,289	$1,357	$1,157	$1,793

(1) For a full descrip ion and reconciliation of Non-GAAP Measures see CP's 2020 Annual Report on Form 10-K and CP's Q4 2021 Earnings Release on investor.cpr.ca.
(2) As a result of the five-for-one share split of the Company's issued and outstanding Common Shares, which began trading on a post-split basis on May 14, 2021, per share amounts and number of outstanding Common Shares for comparative periods have been retrospectively adjusted.

FOUNDED IN PRECISION, BUILT FOR GROWTH

Our precision railroading model transformed how our entire company operates and allows us to deliver industry-leading service. It's a culture of excellence that we adhere to 24/7, 365. Today, this commitment to precision has us uniquely positioned to leverage our low cost base and best-in-class service to grow with our customers. By remaining disciplined, we will drive long-term sustainable, profitable growth for our customers and shareholders, alike.

WE REBUILT THE ENGINE

STREAMLINED ASSETS

Right-sized resources to optimize our network.

IMPROVED OPERATING PERFORMANCE

Longer, faster trains and less dwell time.

INVESTED IN THE NETWORK

Upgraded to improve performance and increase capacity.

CULTURE OF ACCOUNTABILITY

Railroader attitude:
Do what you said you'll do.

PRECISION RAILROADING

Precision planning and execution to optimize service and control costs.

CONSISTENT, RELIABLE SERVICE

Leveraging our strengths to deliver superior value to our customers.

LOWERED COST BASE

Unprecedented margin improvement.

DEVELOPED THE TEAM

Handpicked team.
Best in the business.

NOW WE'RE DRIVING GROWTH

DIVERSIFIED BOOK OF BUSINESS

Balanced portfolio of industries, regions and markets.

INCREASED CAPACITY

Efficiencies and network investments mean we have the ability to do more.

RIGHT CULTURE & TEAM

Accountable, collaborative, passionate team of railroaders.

VALUE DRIVEN

Disciplined approach to valuing service.
We won't commoditize ourselves.

POWERFUL FOOTPRINT

Strong network with shortest routes to major centers and ability to extend reach.

RESILIENT PERFORMANCE

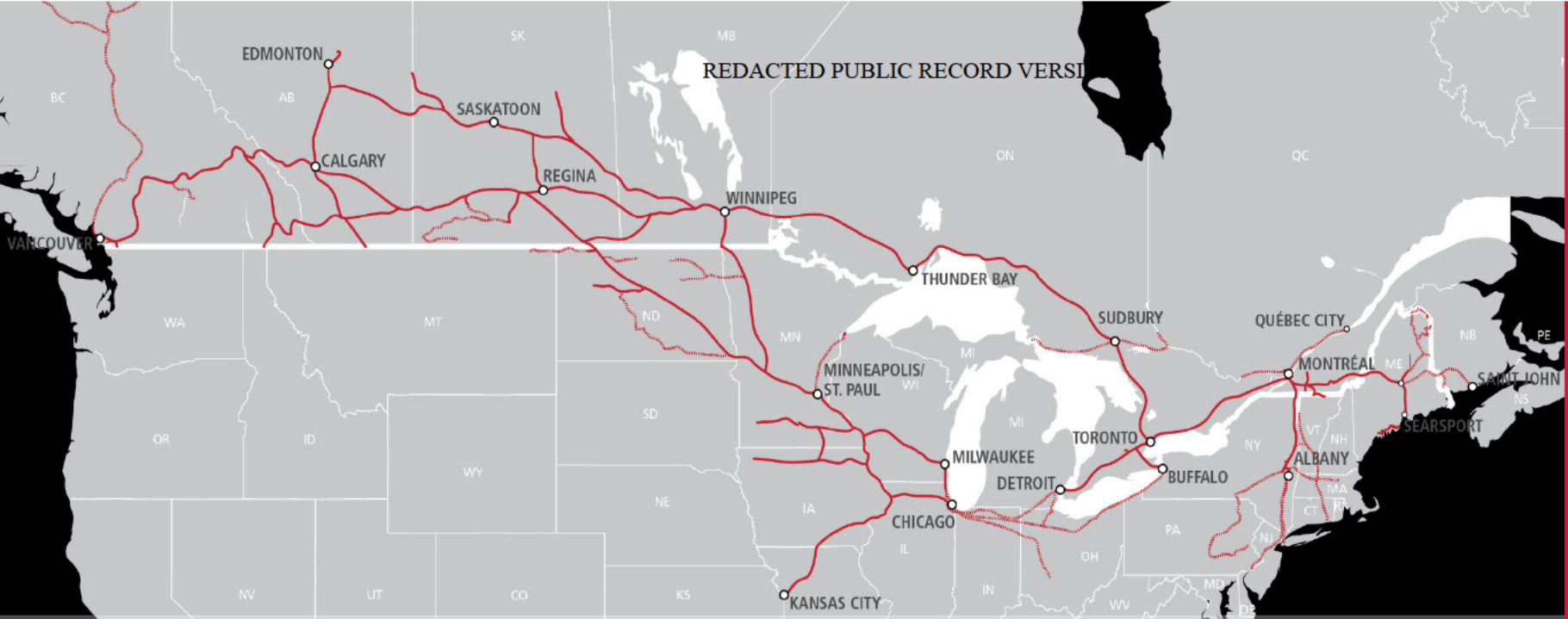
Operating model performs in upturns and downturns.

SERVICE INNOVATION

Supply chain collaboration to enhance our service offering.

DISCIPLINED APPROACH

Pursuing the right customers in the right lanes to grow our business.



REDACTED PUBLIC RECORD VERSI

POWERFUL FOOTPRINT

NETWORK OVERVIEW

- Competitive access to key markets in Canada and the U.S.
- Access to major ports on West and East Coasts.
- Most border crossings in Western Canada; provides routing optionality.
- Connections with Class 1 railroads and short-line partnerships extend the reach of our rail service.
- Shortest routes in key lanes including Vancouver to the U.S. Midwest, Chicago and Detroit, as well as between Eastern Canada and Calgary and Vancouver.
- Access to a network of over 100 transload facilities; extends our service reach to markets not directly served by rail.

OUR NETWORK

13,000 MILES
RAIL NETWORK

853 MILES
AVERAGE LENGTH OF HAUL

100+
TRANSLOAD FACILITIES

SHORTEST ROUTES
IN KEY LANES

DIVERSIFIED
BOOK OF BUSINESS

- Uniquely positioned with best-in-class service and capacity to grow.
- Our diverse book of business creates a powerful base to drive sustainable growth.
- Leveraging our strengths to grow with existing customers and bring on new business.
- Stronger margins allow us to compete for new opportunities.
- Continually innovating with long-term partners to help them win in the marketplace.

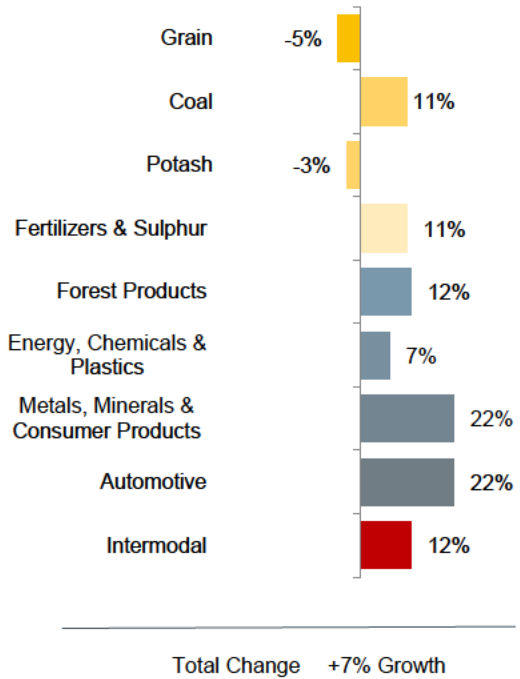
Business Mix
% of 2021 Freight Revenue

Bulk	**40%**
Grain	22%
Coal	8%
Potash	6%
Fertilizers & Sulphur	4%
Merchandise	**38%**
Forest Products	4%
Energy, Chemicals & Plastics	20%
Metals, Minerals & Consumer Products	9%
Automotive	5%
Intermodal	**22%**
Domestic	13%
International	9%

Geographic Distribution
% of 2021 Freight Revenue

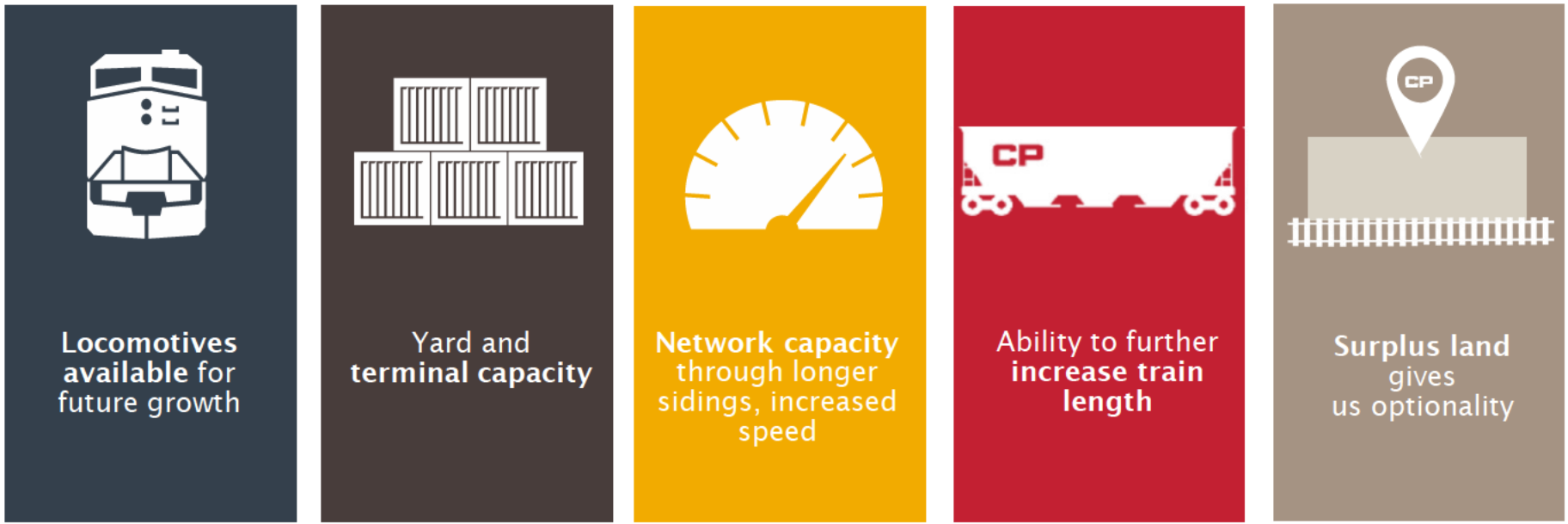
Global	**34%**
Asia	30%
Europe	4%
Cross-Border	**32%**
Canada to U.S.	22%
U.S. to Canada	8%
Mexico	2%
Domestic	**34%**
Intra-Canada	21%
Intra-U.S.	13%

2021 Freight Revenue Variance
FX-adjusted(1)



(1) For a full description and reconcilia ion of Non-GAAP Measures see CP's 2020 Annual Report on Form 10-K and Q4 2021 Earnings release on investor.cpr.ca.

ROOM TO GROW


Locomotives available for future growth
Yard and terminal capacity
Network capacity through longer sidings, increased speed
Ability to further increase train length
Surplus land gives us optionality
CP
CP

ROOM TO GROW

SURPLUS LAND PROVIDES OPTIONALITY & LOW COST CAPACITY

Vancouver

- Unmatched ability to expand footprint in Canada's largest trade gateway
- Existing intermodal facility operating well below capacity
- CP owns >100 acres of vacant land adjacent to existing facility
- Provides optionality: ability to grow existing operations and provide customer solutions

Chicago

Bensenville Yard

- Room to grow within existing footprint
- Q1 2021 agreement signed to add capacity, potential to build state-of-the-art intermodal facility

Schiller Park

- 75 acre site made surplus through consolidation of intermodal operations
- Potential to repurpose for growth opportunities or divest

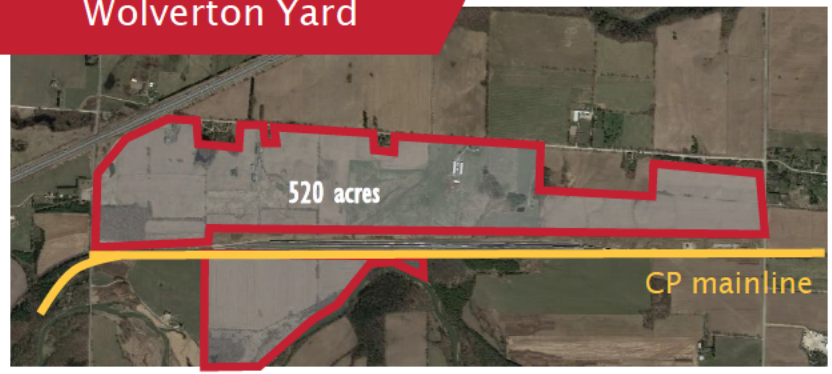
ROOM TO GROW

TORONTO & AREA

Vaughan Intermodal Facility

- 500 acre footprint; 150 acres vacant
- Ability to more than double operations with minimal capital
- Ability to co-locate customers

Wolverton Yard



Agincourt Yard

MORE ROOM TO GROW

Calgary (Dufferin)

Edmonton (Ellerslie)

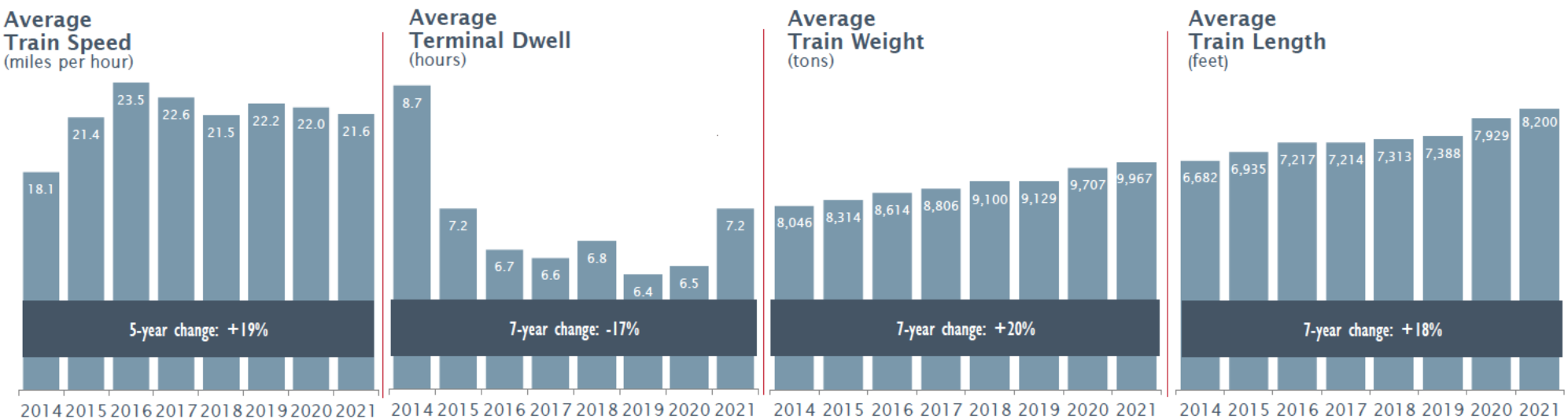
Montréal (St-Luc)

Montréal (Les Cèdres)

PRECISION PERFORMANCE

OPERATIONS

- The cornerstone of our industry leading performance is our precision railroading operating model and disciplined focus on planning and execution.
- Faster train speeds and reduced dwell means better asset utilization and reduced costs for CP and our customers.
- Longer, heavier, faster trains increase network capacity and reduce operating costs.



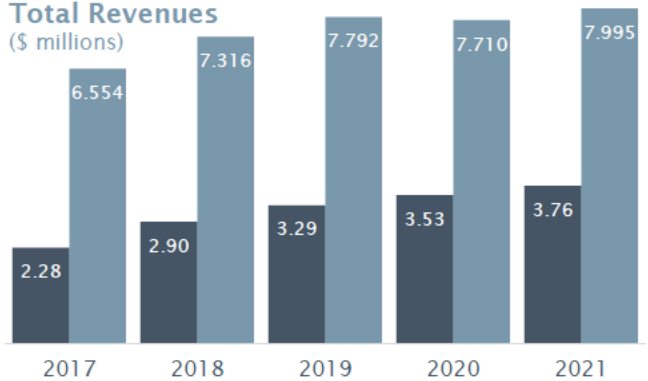
PRECISION PERFORMANCE

FINANCIAL

- Ability to generate earnings growth in various economic environments.
- Our focus: best-in-class service at lowest cost.
- Driving stronger margins and topline revenue growth.
- Opportunity to further improve margins. Targeting ~100 bps per year.
- Strong free cash generation and an opportunistic approach to shareholder returns.

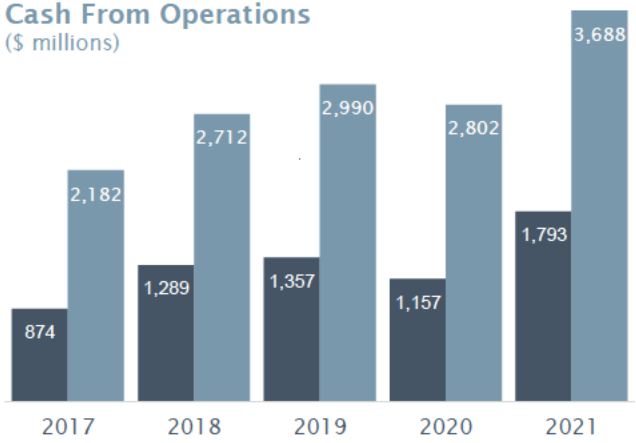
Adjusted Diluted Earnings Per Share[1][2]
($)

Total Revenues
($ millions)

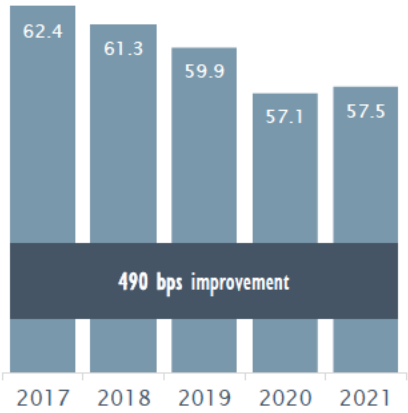


Free Cash[1]
($ millions)

Cash From Operations
($ millions)



Adjusted Operating Ratio[1]
(percentage)



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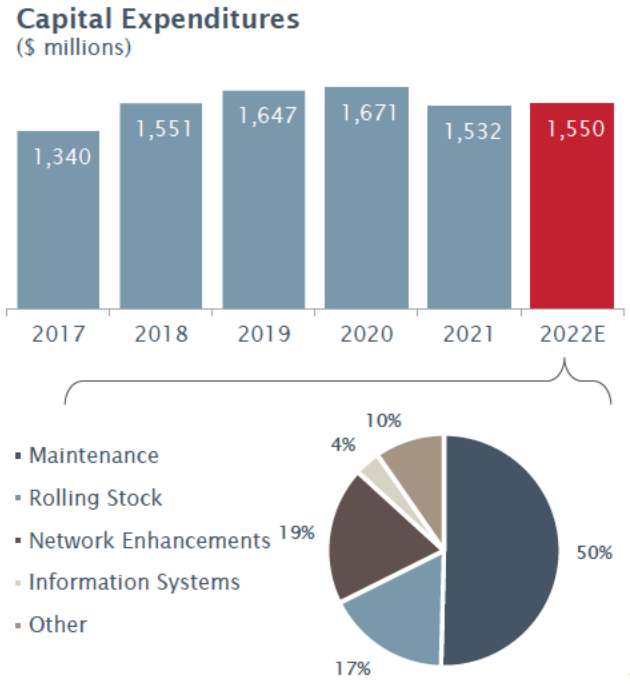
BUILDING FOR THE FUTURE

CAPITAL INVESTMENT

Our capital investments have everything to do with running the business better, including margin improvement, productivity and service reliability – all key ingredients of our precision railroad operating model.

Highlights

- Consistently investing ~$800M per year in maintenance capital.
- Strong pipeline of high return projects.
- Two unique rolling stock investments – locomotive modernization and hopper car acquisitions – are elevating capital spending in the near-term.



SPOTLIGHT

We didn't replace the locomotive, we replaced everything that slowed it down.

Locomotive modernizations upgrade aging units for better fuel efficiency, service reliability and safety – same productivity as a new locomotive but with a lower price tag. In 2021 we spent ~$80M in capital for modernizations.

Investing in the future of the grain supply chain.

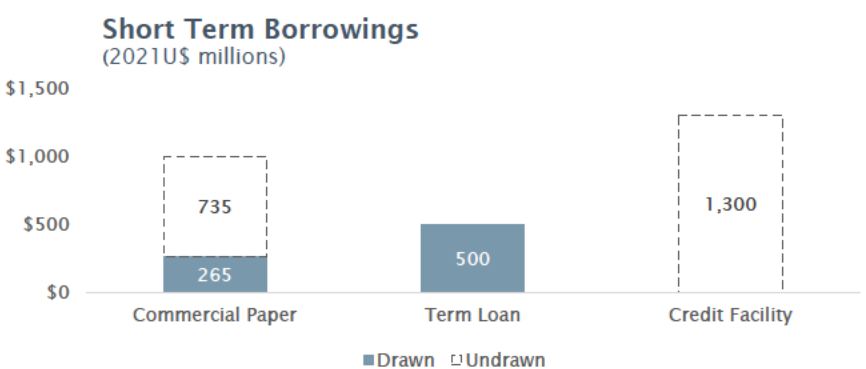
Over the past several years, CP invested a total of $500M to acquire 5,900 new covered hoppers. The new, high capacity cars, combined with our 8,500-foot grain model, will enable CP to move >40% more grain per train.

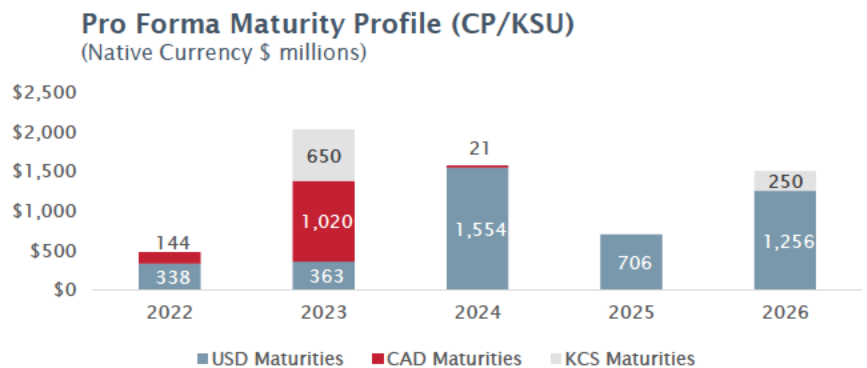
FINANCIAL FLEXIBILITY

LIQUIDITY AND LEVERAGE

Committed to a strong, investment grade credit rating and target leverage

- CP completed issuance of debt to fund cash consideration of KCS transaction in November 2021
  - Debt was issued to optimize ability to de-lever while also locking in attractive long-term financing rates
- Target an Adjusted Net Debt to Adjusted EBITDA[1] [2] ratio of 2.0-2.5x
- Significant liquidity available over de-leveraging period via $1.3B undrawn committed credit facilities, $1.0B commercial paper program, excess cash flows from KCS and pausing of share repurchases





(1) For a full description and reconcilia ion of Non-GAAP Measures see CP's 2019 Annual Report on Form 10-K on investor.cpr.ca.

(2) Although CP has provided a target Non-GAAP measure (Adjusted Net Debt to Adjusted EBITDA), management is unable to reconcile, without unreasonable efforts, the target Adjusted Net Debt to Adjusted EBITDA to the most comparable GAAP measure (Long-term debt to Net Income ratio), due to unknown variables and uncertainty related to future results.

LEVERAGING TECHNOLOGY

INNOVATING FOR THE FUTURE

Utilizing track analytics, dashboard applications and mobile devices to create industry-leading technologies to advance customer service and operating performance.

- **In-house technologies** provide CP with hundreds of applications that track shipments, measure operational performance and provide financial information in real-time
- **Intermodal Demand Management**: through customized algorithms, we are creating capacity by smoothing demand over the week based on customer delivery requirements
- **Mobile Workforce**: using mobile devices to automate inventory reporting and provide required safety documents to train crews
- **CP FastPass**: self-serve kiosks and mobile apps for drivers coming and going from our terminals means shorter driver wait times, faster processing and lower terminal costs
- **Robotic Process Automation**: CP is using "bots" to automate high-volume manual activities to improve accuracy, reduce costs and improve customer service
- **Track Asset Management**: inspection application working off a central repository in conjunction with track inspection vehicles to create a consolidated view of track health

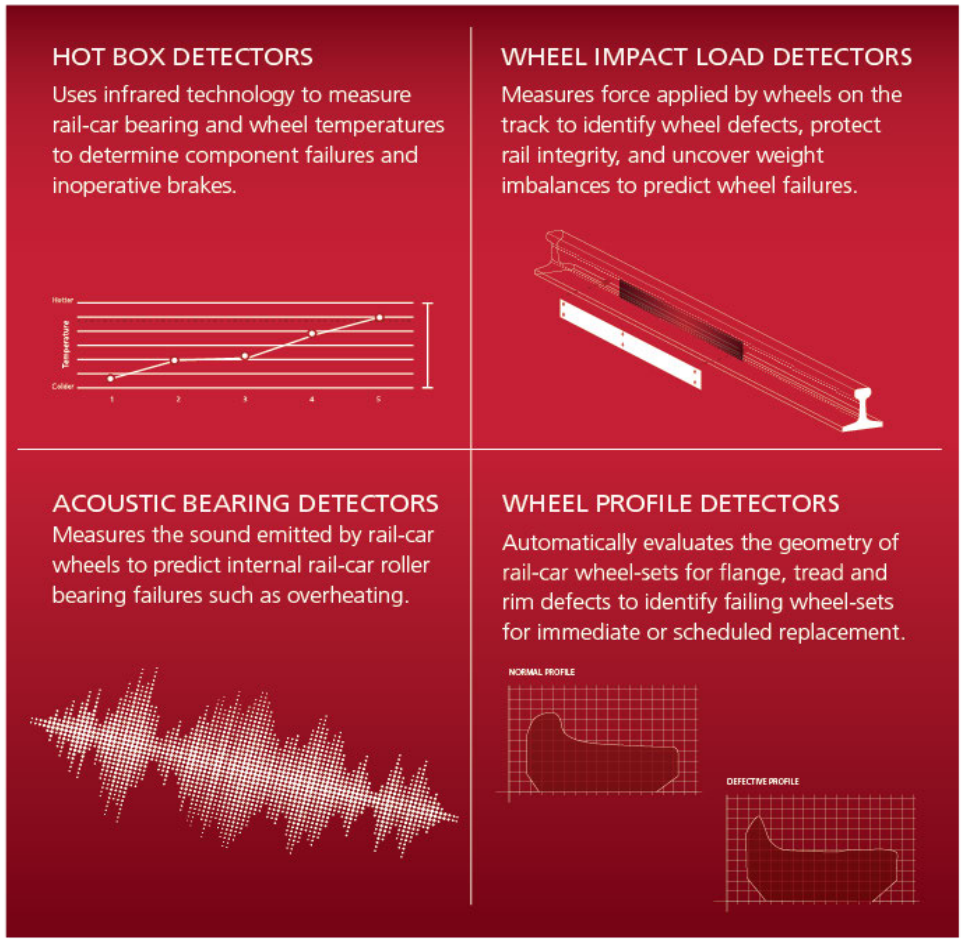
CP FastPass

PREDICTIVE ANALYTICS

ENHANCING SAFETY AND EFFICIENCY

Leveraging Big Data to drive further improvements in safety and efficiency.

- Using patented technology, we accumulate valuable data on wheels, rails, cars, locomotives and trains in real-time, enabling us to anticipate issues and take preventative measures
- Predictive analytics have reduced online failures by 91% -- significantly reducing risk of derailments, rail fatigue and service interruptions
- Our patented algorithm improves safety and provides a competitive advantage: 86% of all equipment setoffs are confirmed defective versus an industry average of 65%



OPERATING RESPONSIBLY

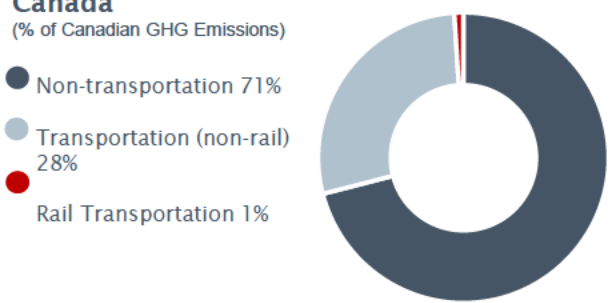
ENVIRONMENTAL SUSTAINABILITY

Transportation by rail is one of the most economical and environmentally responsible methods of moving freight.

- The transportation sector is responsible for 29% of Canada's annual GHG emissions, with the rail industry contributing only 1% to the country's total annual GHG emissions[1].
- Trains are 4 times more fuel efficient than trucks and produce 75% fewer GHG emissions[2].
- The transportation of freight by rail will continue to play an integral role in the low-carbon future for North America.

GHG Emissions by Sector in Canada

(% of Canadian GHG Emissions)



A SINGLE-UNIT TRAIN KEEPS MORE THAN

300

TRUCKS OFF OF PUBLIC ROADS

4x

MORE FUEL-EFFICIENT

75%

LESS GHG EMISSIONS

(1)Environment and Climate Change Canada (2019) National Inventory Report 1990-2017: Greenhouse Gas Sources and Sinks in Canada
(2)Association of American Railroads (2019). Freight Railroads Embrace Sustainability & Environmental Preservation. Whitepaper Fact Sheet.

SUSTAINABILITY LEADERSHIP

DEMONSTRATED RESULTS

- Strong history of ESG disclosures and leading sustainability practices
- Issued our first TCFD Index in 2021
- Published our first Climate Strategy, including emissions reduction targets covering 100% of scope 1 & 2 emissions
- First "Say on Climate" vote at 2022 AGM

80% of CP's TOTAL GHG EMISSIONS are addressed through our Locomotive Target, INCLUDING 96% of our Scope 1 emissions PLUS 53% of our Scope 3 emissions.

Locomotive Target

We will reduce our well-to-wheel GHG emissions intensity (grams per revenue ton-mile[10]) from locomotive operations by **38.3%** by 2030.

3.4% of CP's TOTAL GHG EMISSIONS are captured by this target, INCLUDING **100%** of our Scope 2 and 4% of our Scope 1 emissions.

Non-locomotive Target

We will reduce our absolute Scope 1 and 2 GHG emissions from non-locomotive operations (including emissions associated with our buildings and facilities) by **27.5%** by 2030.

(1) Target reductions from a 2019 base year

BEST 50 CORPORATE CITIZENS 2021

CDP DISCLOSER 2021

Member of Dow Jones Sustainability Indices Powered by the S&P Global CSA

Railway Association of Canada

RIGHT TRACK

FTSE4Good

GLOBAL100 2022 THE WORLD'S MOST SUSTAINABLE CORPORATIONS ©

WORLD FINANCE MOST SUSTAINABLE COMPANY IN THE TRANSPORTATION INDUSTRY 2021 CANADIAN PACIFIC RAILWAY

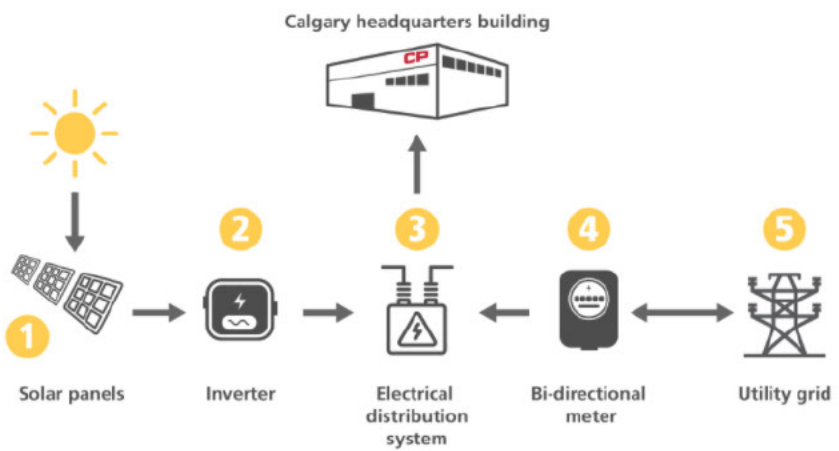
CLEAN200™

SCIENCE BASED TARGETS DRIVING AMBITIOUS CORPORATE CLIMATE ACTION

POWERED BY THE SUN

OPTIMIZING OUR ASSETS

- CP's headquarters is powered by one of the largest private solar farms in Alberta
- Generates up to five megawatts of electricity while avoiding ~2,600 tonnes of carbon emissions annually
- The equivalent of taking ~570 cars off the road
- The project reduces CP's scope 2 GHG emissions



MOVING FORWARD

HYDROGEN LOCOMOTIVE PROJECT

- CP has a long history of implementing programs and technologies designed to improve fuel efficiency and reduce emissions
  - Early adopter and tester of low-emitting locomotive technologies (e.g. biofuels, CNG, battery powered solutions)
  - Over the last decade, CP has improved its locomotive fuel efficiency by more than 20%
- CP's Hydrogen Locomotive Program is on track to deliver North America's first hydrogen-powered line-haul freight locomotive – first unit moved of its own power in Q4 2022
- The program involves retrofitting a line-haul locomotive with hydrogen fuel cells and battery technology to drive the locomotive's electric traction motors
- The ability to retrofit diesel locomotives with a zero-emission technology provides a practical pathway to decarbonizing the freight-rail industry
- This project is all incremental to our GHG emission reduction targets

OPERATING RESPONSIBLY

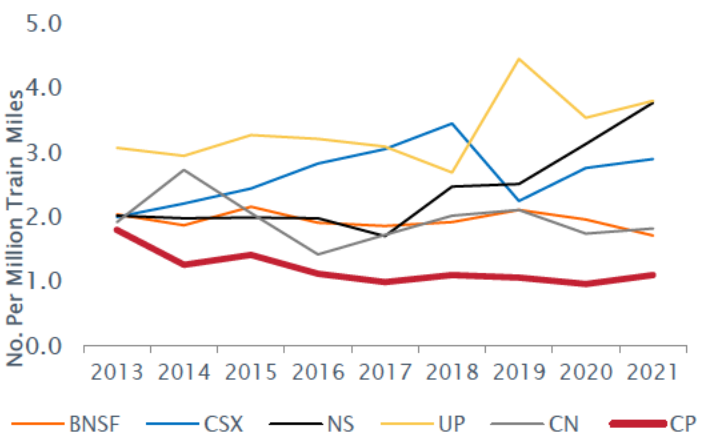
SAFETY

Safety is foundational at CP. We remain steadfast in our commitment to safety, across our entire operation.

- CP has been North America's safest railway for 16 consecutive years. Over the last decade, our train accident frequency has decreased more than 40%.
- Each year CP allocates over 50% of its capital investments toward safety and replacement initiatives to ensure our network remains safe and efficient.
- Management compensation is tied to safety performance: 20% of the short-term incentive program is weighted to safety.

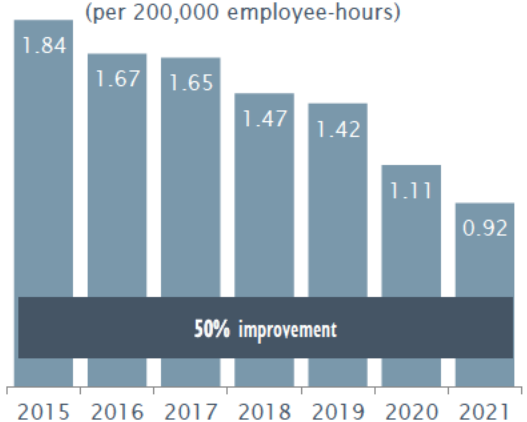
Class 1 Compare: FRA Train Accidents Frequency

(2013 – 2021)



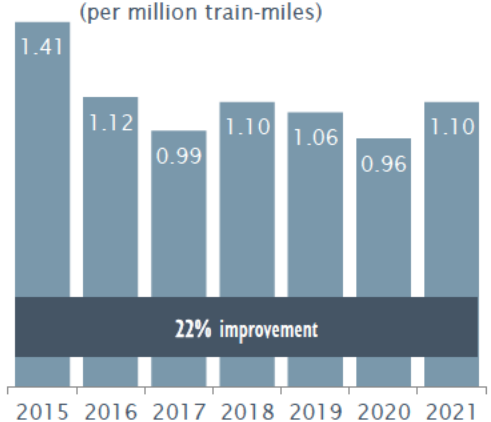
FRA Personal Injury Frequency

(per 200,000 employee-hours)



FRA Train Accident Frequency

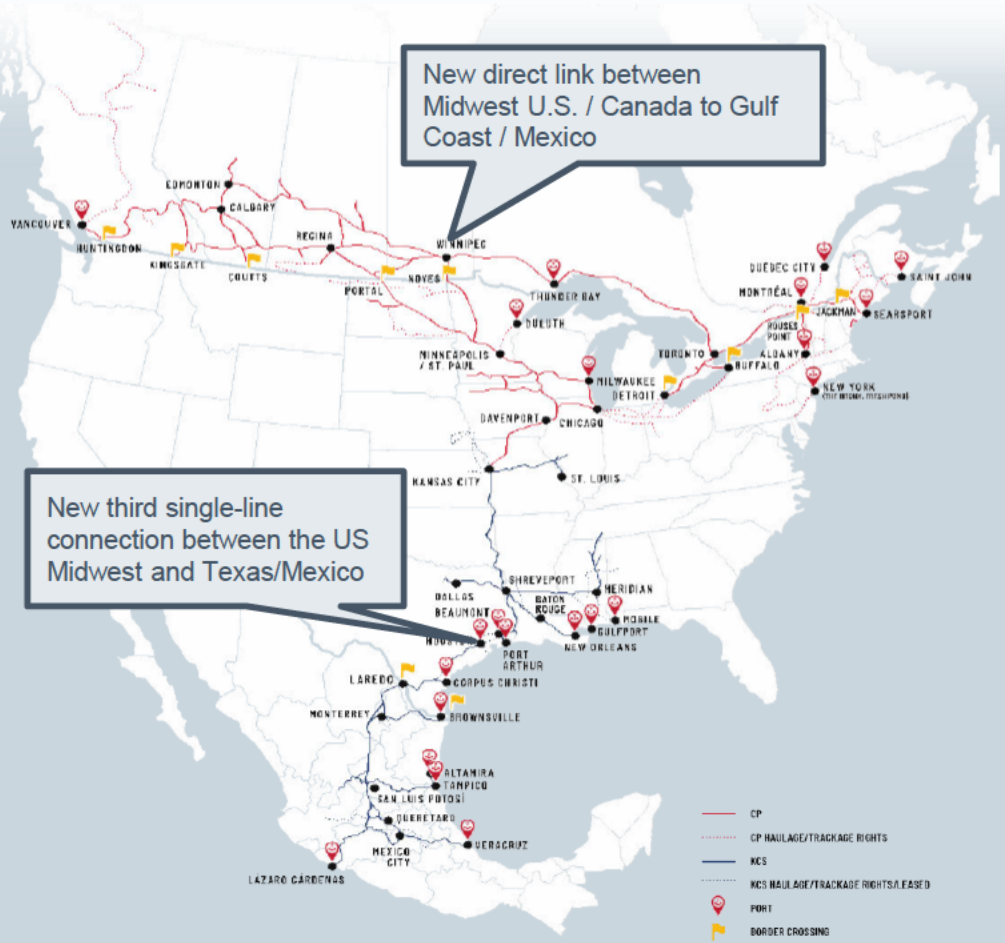
(per million train-miles)



Certain statistical highlights and safety indicators figures have been updated to reflect new information or have been revised to conform with current presentation.

CREATING THE FIRST U.S.-MEXICO-CANADA RAIL NETWORK

REDACTED PUBLIC RECORD VERSION



ENHANCES COMPETITION BY CREATING NEW SINGLE-LINE HAUL ROUTES

UNLOCKS ANNUALIZED EBITDA SYNERGIES OF $1 BILLION

DIVERSIFIES CURRENT BUSINESS AND GEOGRAPHIC MIX WITH THE ADDITION OF NEW ROUTES

DRIVING USMCA GROWTH AND INVESTMENT OPPORTUNITIES

COMBINATION UNLOCKS $1BN IN EBITDA GROWTH OPPORTUNITIES

$820 MILLION
EBITDA GROWTH FROM MARKET OPPORTUNITIES

- Unique combination enables significant growth for our customers throughout North America
- Efficient new single-line routes and dramatically expanded market reach for customers
- Planned capital investments to support growth synergies, such as additional network sidings, siding extensions and investment in Centralized Traffic Control (CTC)

Increased from previous estimate of $600 million based on customer feedback and additional market insight, particularly in the Bulk and Intermodal segments

$180 MILLION
COST AND EFFICIENCY IMPROVEMENTS

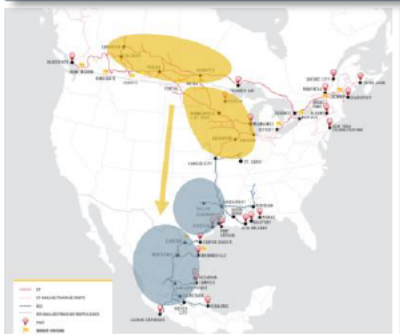
- Driven by a combination of improved fuel efficiency, lower G&A costs, equipment rents as well as facilities, IT spend and licensing
- CPKC to utilize best practices to support increased operating efficiencies

FOLLOWING COMPLETION OF THE TRANSACTION ANTICIPATED IN Q4 2022, CPKC EXPECTS TO GENERATE $1 BILLION IN ANNUALIZED SYNERGIES WITHIN 3 YEARS

Note: Synergy estimates in US$.

ENHANCES COMPETITIVE OPTIONS FOR CUSTOMERS AND ENABLES NORTH AMERICAN GROWTH

BULK



New single-line shipments for grain from Canada and the Upper Midwest to domestic and export markets in Southern US and Mexico

ECP & MERCHANDISE

New single-line competition for shipments of energy, chemicals & plastics and merchandise moving between Canada, the US and Mexico

INTERMODAL

New head-to-head single-line competition for intermodal shipments between Mexico and the Upper Midwest and Canada

AUTOMOTIVE

New head-to-head single-line competition for automotive shipments between Canada, US Midwest and Mexico

CPKC'S NETWORK TO BENEFIT CUSTOMERS ACROSS ALL BUSINESS LINES

CP-KCS DELIVERS SIGNIFICANT BENEFITS TO ALL STAKEHOLDERS

- ✓ COMBINATION OFFERS SIGNIFICANT BENEFITS TO RAIL SHIPPERS AND THE SUPPLY CHAIN
- ✓ KCS SHAREHOLDERS BENEFIT FROM CLEAR PATH TO CLOSING
- ✓ CONSERVATIVE BALANCE SHEET

CREATE THE FIRST U.S.-MEXICO-CANADA RAIL NETWORK –TRULY END-TO-END AND PRO-COMPETITIVE WITH NO OVERLAP

WELL POSITIONED FOR GROWTH, BRINGING TOGETHER TWO RAILROADS WITH HIGHEST 3-YEAR REVENUE CAGR

ANNUALIZED EBITDA SYNERGIES OF $1 BILLION CREATES SIGNIFICANT VALUE FOR ALL STAKEHOLDERS AND DRIVE ACCRETION TO CP'S ADJUSTED DILUTED EPS[1]

CP'S LEADING MANAGEMENT TEAM HAS CONSISTENTLY OUTPERFORMED AND DELIVERED SUPERIOR RESULTS FOR SHAREHOLDERS

1. The combination is expected to generate double-digit accretion to CP's adjusted diluted EPS upon the full realization of synergies following CP's acquisition of control of KCS.

OUR MARKETS

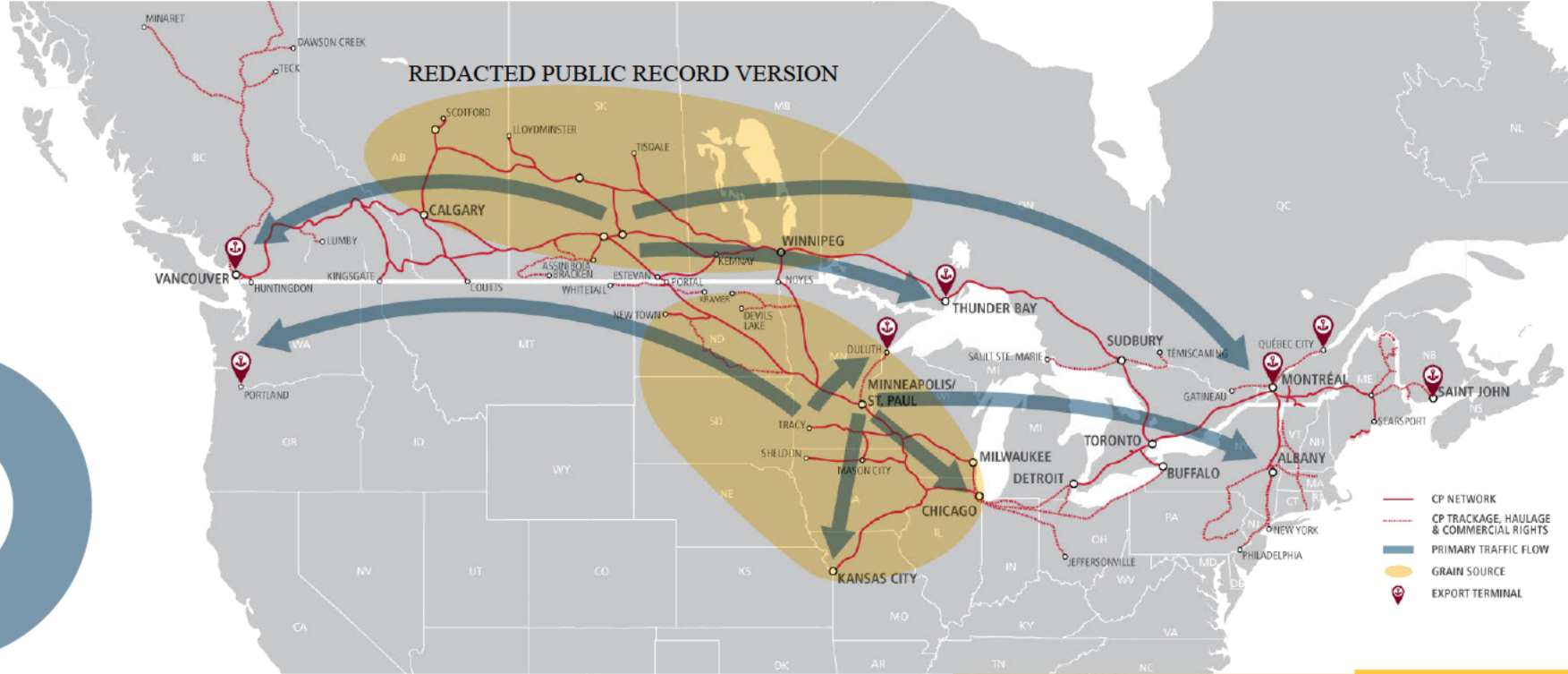
(2021 Figures)

REDACTED PUBLIC RECORD VERSION

BULK GRAIN

- **Canadian Grain 66%**
  Regulated 47%
  Non-regulated 19%
- **U.S. Grain 34%**
  Domestic 20%
  Export 14%

Grain is our largest market segment and we are the best at servicing it. CP is the only Class 1 railway with meaningful grain franchises in both Canada and the U.S. Our network is strategically positioned through the heart of the grain-producing regions of Western Canada and the Northern Plains of the U.S. We provide direct access from high-throughput unit train loading elevators to major export port terminals for shipments overseas.



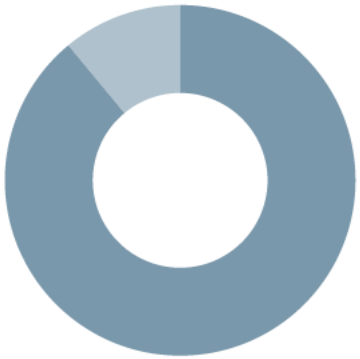
SPOTLIGHT

THE FUTURE OF GRAIN TRANSPORTATION

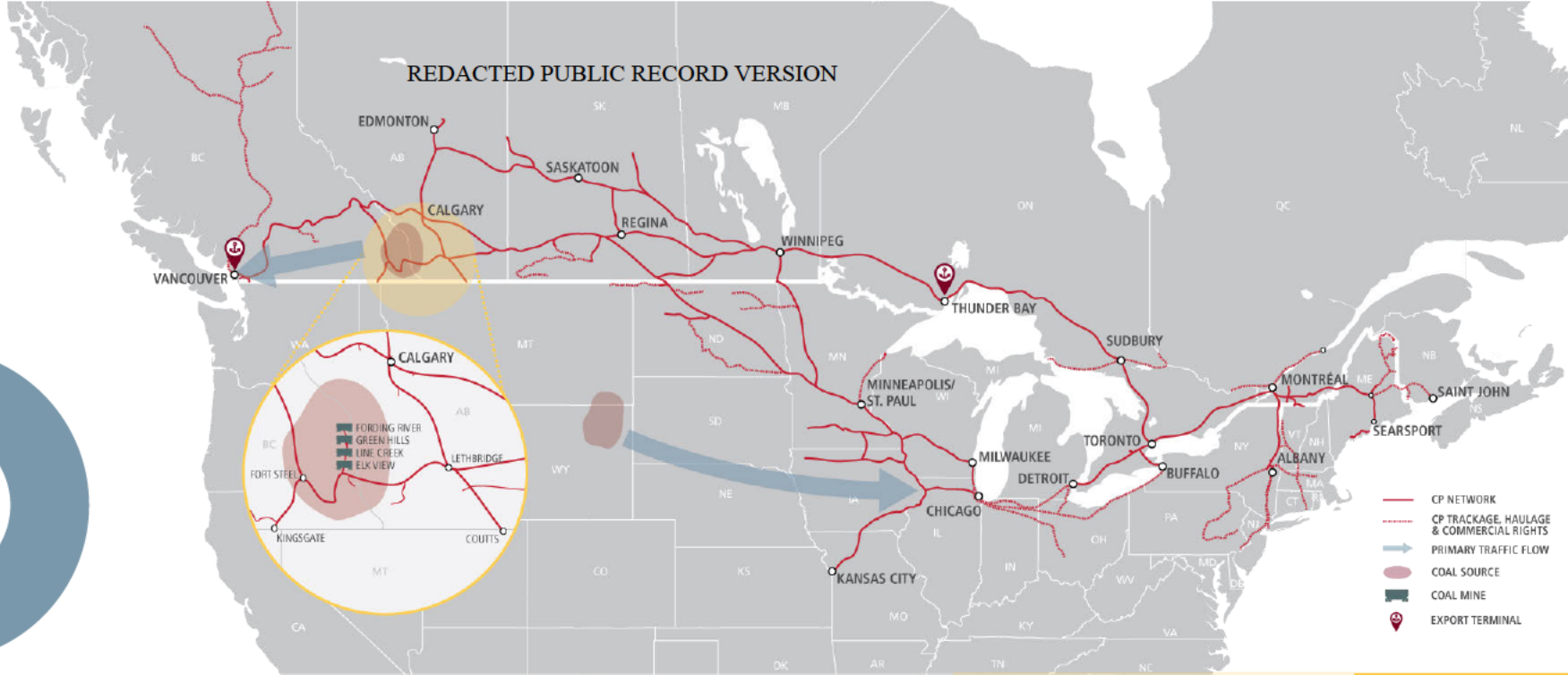
15% of the high-throughput elevators we service are 8,500-foot high efficiency product capable ("HEP"). By the end of 2021, more than 40% of CP-served train-loading facilities were HEP qualified. The 8,500-foot HEP grain train, when combined with our investment in new hopper cars, will enable >40% more grain to be moved per train.

REDACTED PUBLIC RECORD VERSION

BULK COAL



- Canadian Coal 89%
- U.S. Coal 11%



Our Canadian coal business consists primarily of metallurgical coal. Leveraging our shortest routes to Vancouver terminals, more than 97% of our Canadian coal shipments, which originate in Southeast B.C., are exported through the West Coast with the remaining 3% moving through Thunder Bay terminals or Chicago.

For U.S. coal, CP receives coal from connecting railroads that serve thermal coal mines in the Powder River Basin region of Montana and Wyoming. The coal is them delivered to power generating facilities in the Midwest states of Wisconsin and Iowa.

SPOTLIGHT

CONTINUOUS IMPROVEMENT IN THE COAL SUPPLY CHAIN

We have successfully implemented a pull-to-demand model that allows coal trains to run at evenly spaced intervals with a consistent flow to the ports. Our coal fleet cycle time has improved up to 20% since 2012.

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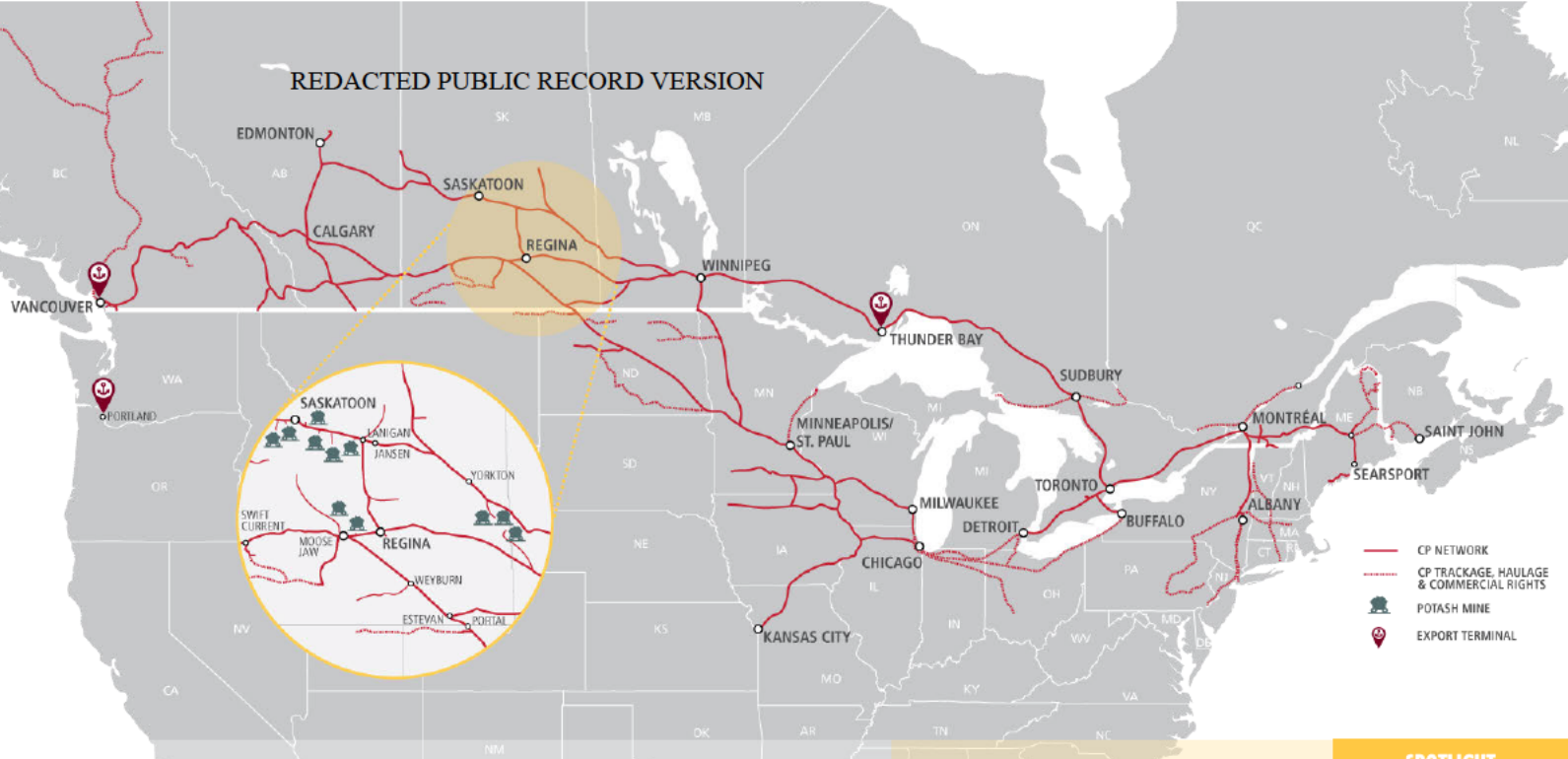
BULK

POTASH & FERTILIZERS

- **Potash 61%**
  Export 40%
  Domestic 21%
- **Fertilizers 33%**
- **Sulphur 7%**



For export potash, our key competitive advantage stems from our shortest route to Vancouver and the U.S. Pacific Northwest, via connections with U.S. carriers. In our domestic market, potash moved primarily to the U.S. Midwest for local application, eventually reaching end markets in the Southeast U.S.

Our strong origin access to fertilizer producers in Western Canada and shortest routes to destinations in the U.S. Midwest support our growth in the fertilizer market.

SPOTLIGHT

THE LEADING CARRIER FOR EXPORT POTASH

CP has origin access to Canada's 11 potash mines and the shortest routes to Vancouver and Portland. We move approximately 70% of potash produced in North America.

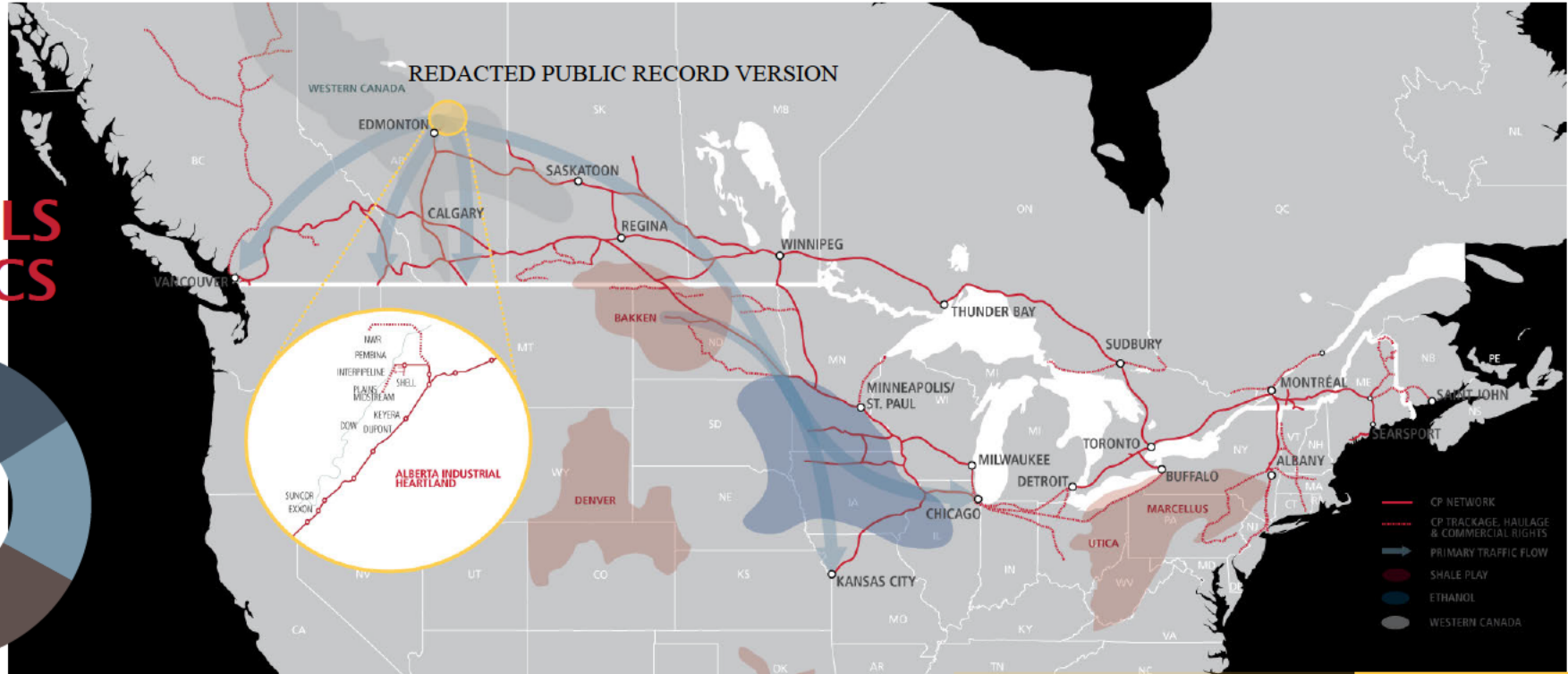
CP is now operating trains with upwards of 200 cars to Vancouver and 185 cars to Portland creating capacity and a more efficient potash supply chain.

REDACTED PUBLIC RECORD VERSION

MERCHANDISE

ENERGY, CHEMICALS & PLASTICS

- Biofuels 16%
- Chemicals 17%
- Crude 18%
- Petroleum Products 39%
- Plastics 10%



Our network is ideally located to serve a wide range of commodities: biofuels originate in the U.S. Midwest; chemicals originate in Eastern Canada, Alberta, the U.S. Midwest and Gulf of Mexico; crude originates primarily in Western Canada; petroleum products originate predominantly in Alberta, Saskatchewan and North Dakota; LPG and plastics originate mostly in Alberta.

SPOTLIGHT

A DEDICATED TRAIN SERVICE

The CP Energy Train, a non-crude train, is a direct service connecting production areas in northern Alberta to Vancouver that runs faster than our competitor allowing customers to rationalize their fleets.

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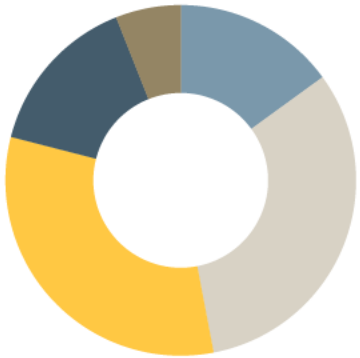
REDACTED PUBLIC RECORD VERSION

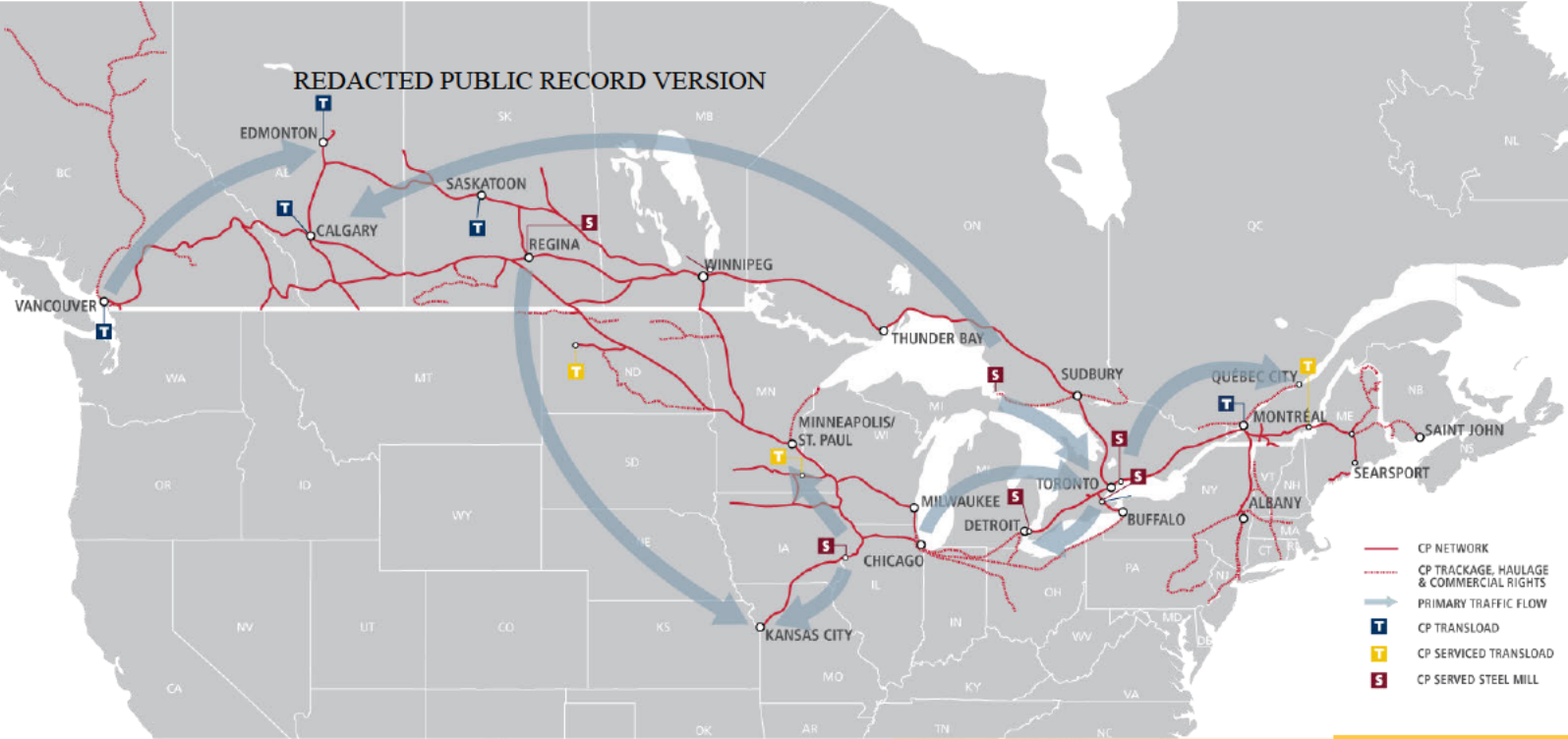
MERCHANDISE

METALS, MINERALS & CONSUMER PRODUCTS



- Frac Sand 15%
- Other Aggregates 32%
- Steel 32%
- Consumer Products 15%
- Mines & Metals 6%

This portfolio includes a diverse mix of input materials such as sand, cement, clay, gravel, salt, steel and non-ferrous metals. These materials typically originate on CP's network and are shipped across North America. CP's network of transload facilities enable CP to serve customers and facilities not located directly on our network.



SPOTLIGHT

TRANSLOADS ENABLING GROWTH

Transcare Logistics, our wholly owned subsidiary, is a transload and distribution company that operates four locations in Canada: Montréal, Toronto, Mississauga and Hamilton. Our Hamilton facility is the largest and fastest rail-to-truck steel transload facility and the first automated rail-based transload operation in Canada.

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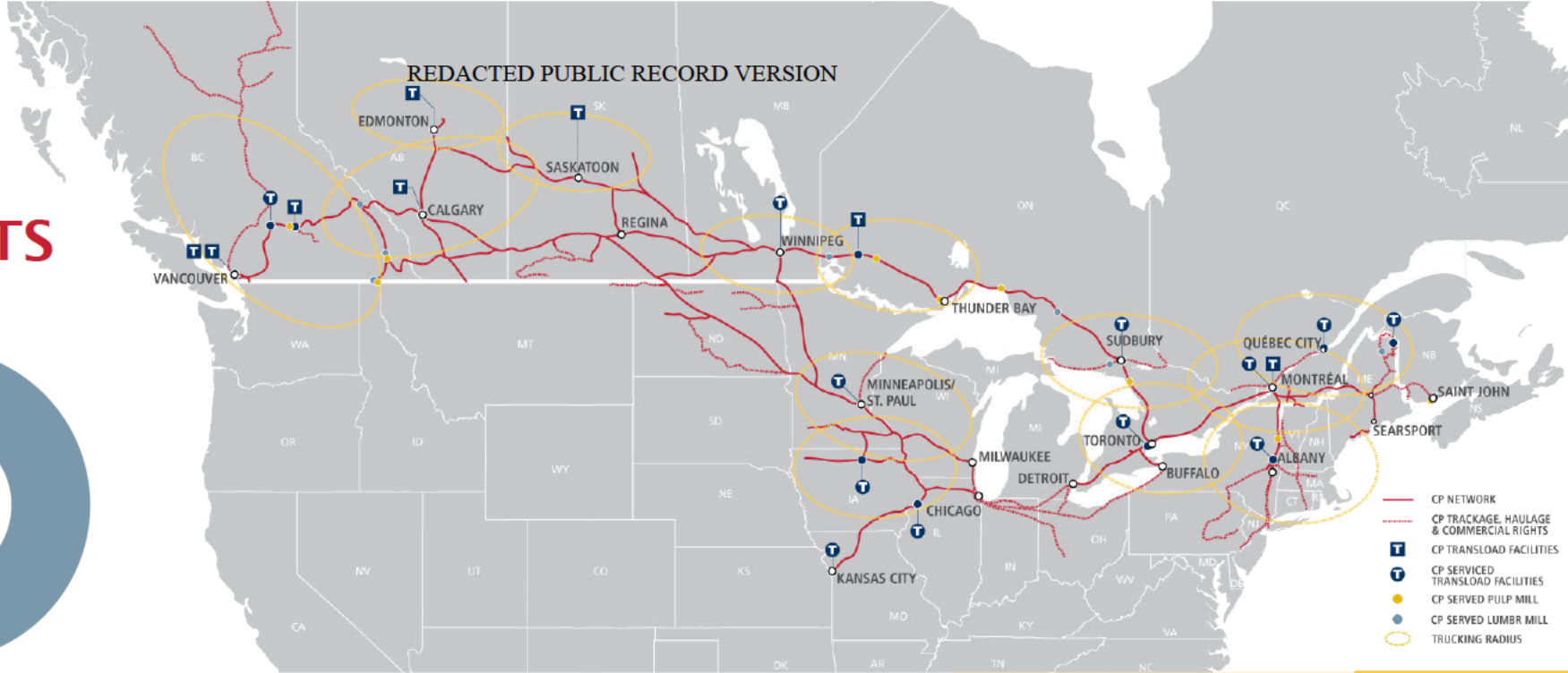
REDACTED PUBLIC RECORD VERSION

MERCHANDISE

FOREST PRODUCTS

- Pulp & Paper 52%
- Lumber & Panel 46%
- Other 2%



Our network is ideally situated to connect raw materials and finished products to market. We have abundant railcar supply and network capacity to capture emerging growth opportunities in forest products.

Our portfolio includes lumber, wood pulp, paper products and panel transported from key producing areas in Western Canada, Ontario and Québec to various destinations in North America and for export overseas.

SPOTLIGHT

E-COMMERCE DRIVING ADDITIONAL GROWTH IN FOREST PRODUCTS

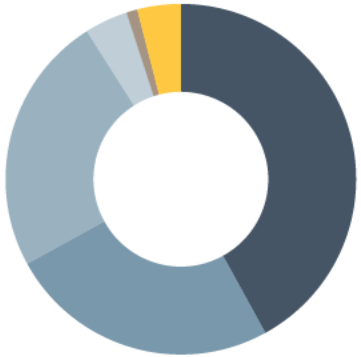
Our transload network extends our reach to non-rail served box and paperboard plants.

As e-commerce continues to gain in traction, CP's transload facilities and intermodal capabilities give us a competitive advantage to grow market share and benefit from increased demand for packaging materials.

REDACTED PUBLIC RECORD VERSION

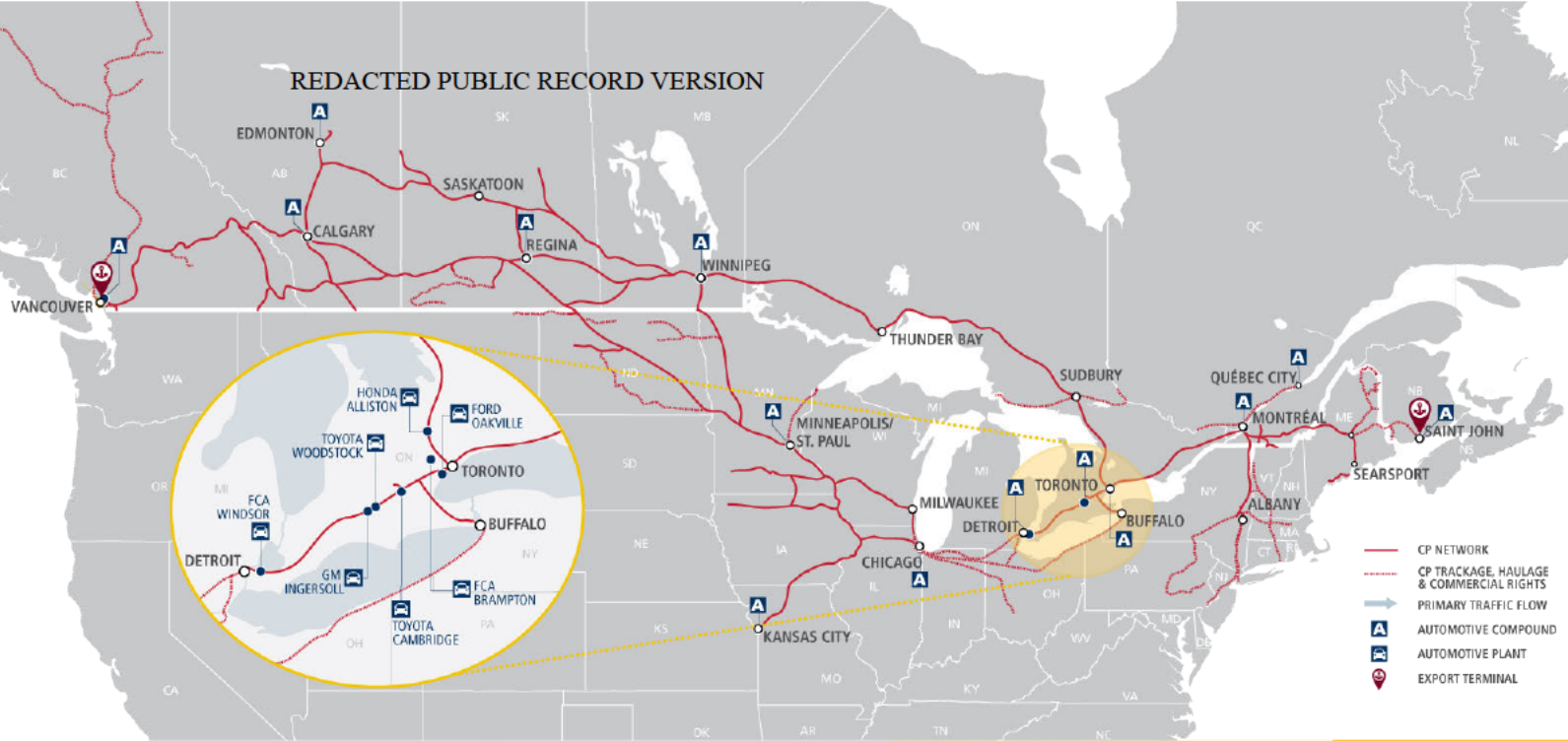
MERCHANDISE

AUTOMOTIVE



- **Finished Vehicles 95%**
  Origin Canada 42%
  Origin U.S. 25%
  Imports 24%
  Origin Mexico 4%
- **Machinery 1%**
- **Parts & Other 4%**

We ship the whole value chain: domestically produced vehicles, imports, automotive parts and machinery. Our diverse portfolio includes Canadian-produced vehicles that ship to the U.S. from Ontario production facilities; U.S.-produced vehicles that ship within the U.S. as well as cross-border into Canadian markets; import vehicles that move through Vancouver to Eastern Canadian markets; and, Mexican-produced vehicles that ship to the U.S. and Canada.



SPOTLIGHT

VANCOUVER AUTO COMPOUND

Vancouver is Canada's primary automotive gateway for Asian imports and one of the largest destination markets. Recognizing the significant opportunity for growth in this market and the ability to offer a unique solution in a deeply congested market, CP opened its Vancouver Auto Compound on 19 acres of CP-owned land.

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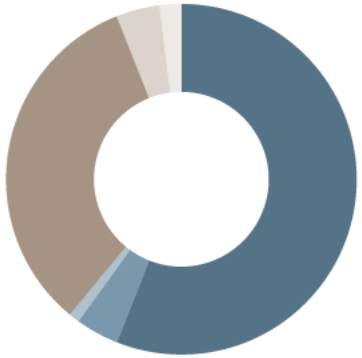
REDACTED PUBLIC RECORD VERSION

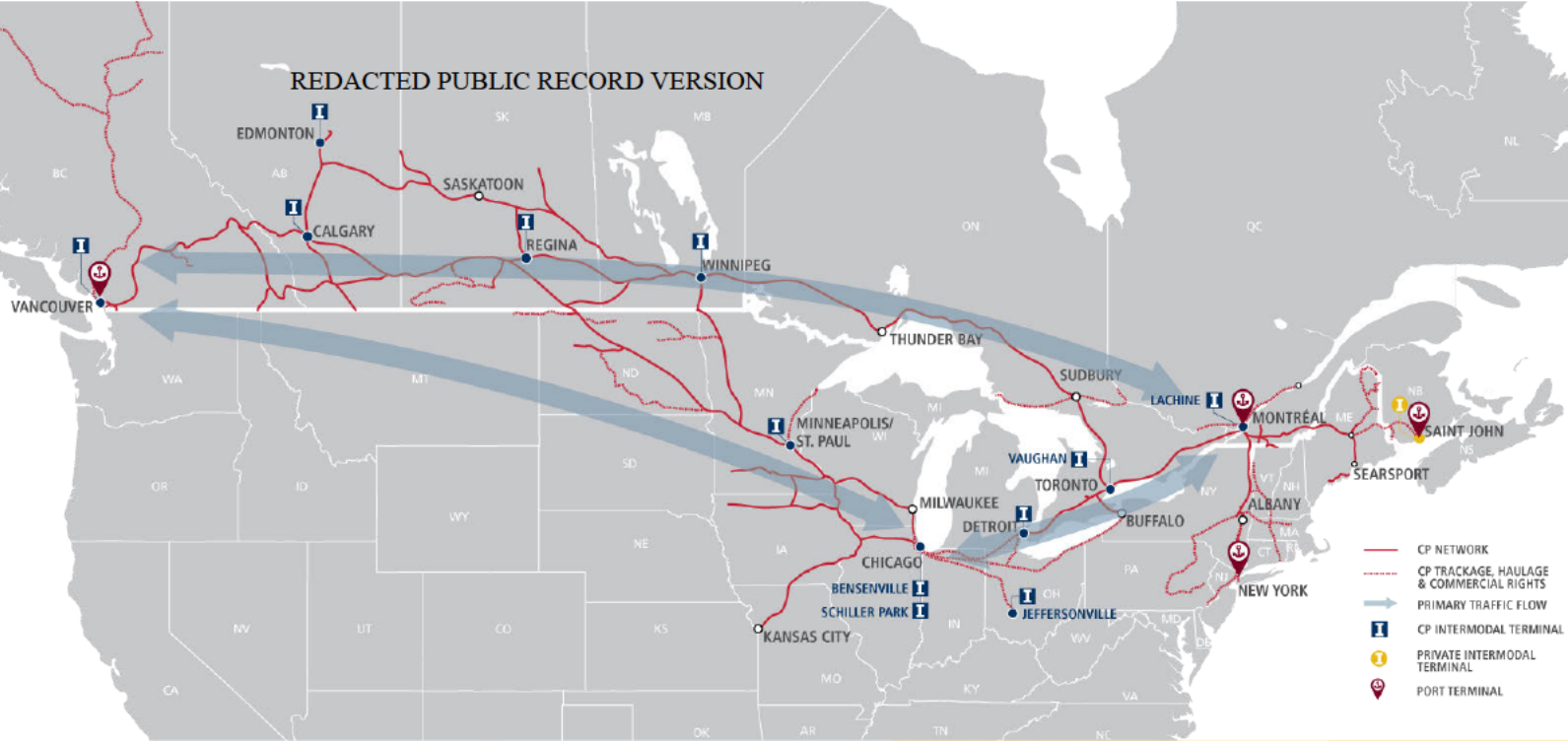
INTERMODAL



- **Domestic Intermodal 58%**
  Canada 53%
  Cross-border 4%
  U.S. 1%
- **International Intermodal 42%**
  Port of Vancouver 33%
  Port of Montréal 7%
  Other 2%

With industry-leading service performance, extended service reach, and an enhanced suite of product offerings, we're growing with existing customers and attracting new business. Our domestic intermodal provides truck-like service for transcontinental and cross-border service. International intermodal moves container volumes between the ports to inland destinations across Canada and the U.S.

CP has been leveraging our shorter route miles to provide transit time advantages to our customers in key lanes. Containerized traffic from the Port of Vancouver is primarily long-haul business destined for business centers across Canada and the U.S. Midwest.



SPOTLIGHT

LEVERAGING OUR EXTENDED EAST COAST REACH

CP's recent acquisition of the Central, Maine & Québec (CMQ) presents additional growth opportunities in intermodal. CP can now offer the shortest route between Atlantic Canada and key North American markets.

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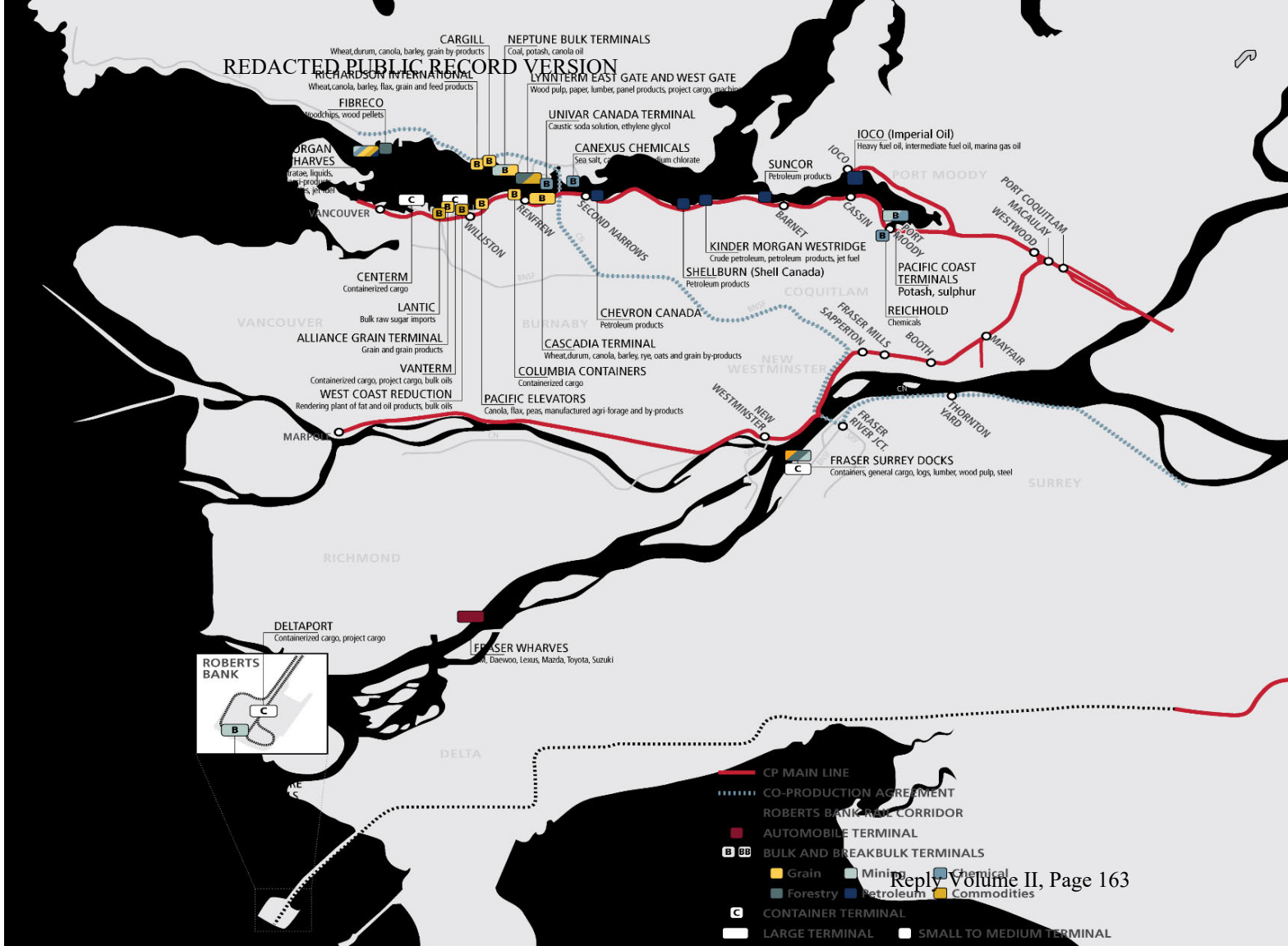
PORT OF VANCOUVER

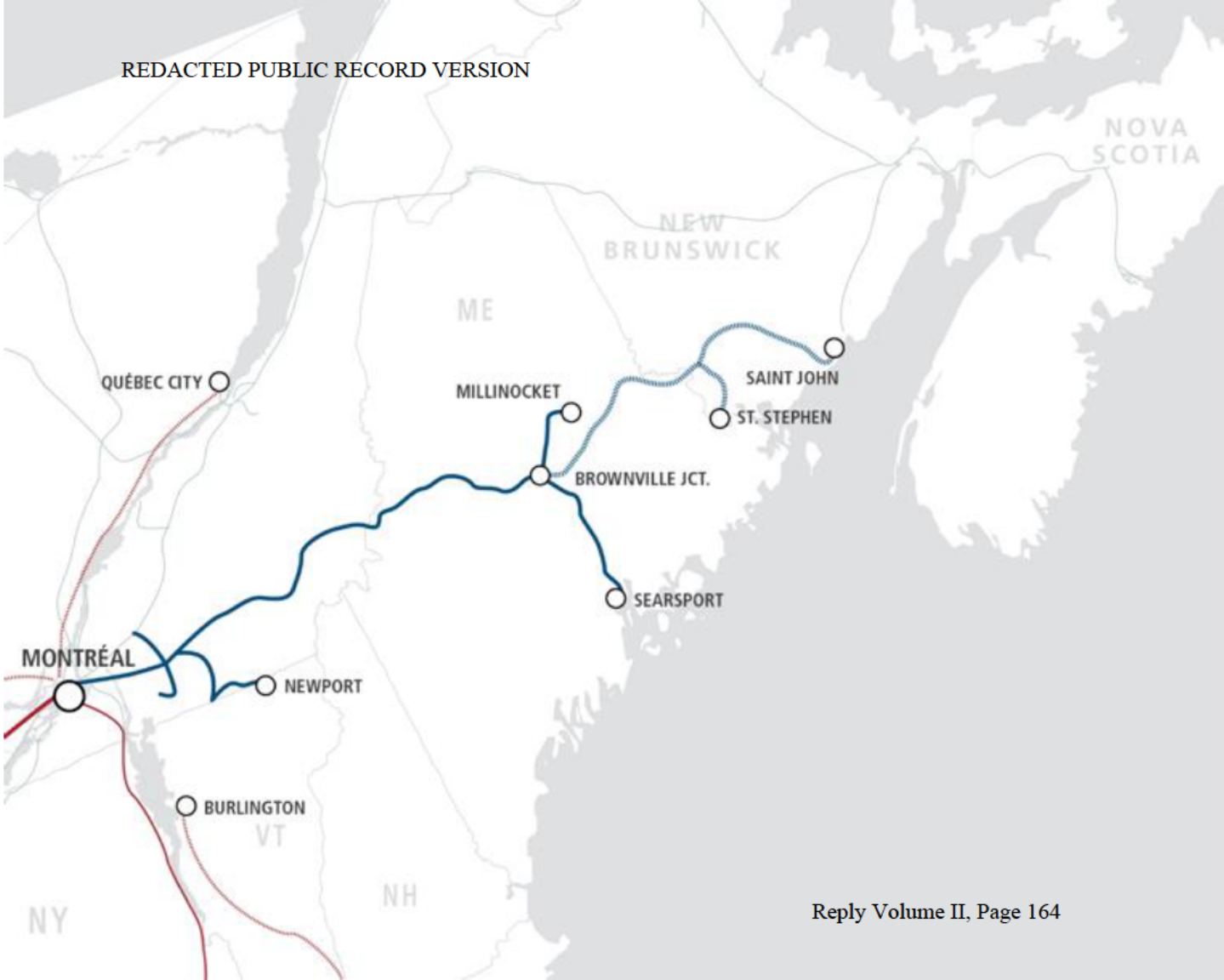
REDACTED PUBLIC RECORD VERSION



CENTRAL MAINE & QUÉBEC RAILWAY (CMQ)

STRATEGIC ACQUISITION

- **Deepwater port access** at Saint John and Searsport – provides CP with coast-to-coast access
- **Shortest routing** from the Maritimes to Montreal, Toronto, Chicago and Western Canada
- Opportunity to more than double revenues in 12-24 months
- **Investing in the CMQ network** to get it to CP safety and operational standards



BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36500

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

VELANI AND DE BRUYN R.V.S. EXHIBIT 6

CP PRESS RELEASE, "CANADIAN PACIFIC AND KANSAS CITY SOUTHERN EXECUTE AGREEMENT TO COMBINE, CREATING FIRST SINGLE-LINE RAIL NETWORK LINKING U.S.-MEXICO-CANADA" (SEPT. 15, 2021)

FOR IMMEDIATE RELEASE

Canadian Pacific and Kansas City Southern Execute Agreement to Combine, Creating First Single-Line Rail Network Linking U.S.-Mexico-Canada

Stock and Cash Transaction Represents an Enterprise Value of Approximately $31 Billion

Expected to Create Annualized Synergies of Approximately $1 Billion within Three Years

Historic Combination Enhances Competition, Creates New Options for Customers, and Supports Economic Growth in North America

Companies to Host Investor Conference Call Thursday at 8 a.m. ET

Calgary and Kansas City, Mo. – Sept. 15, 2021 – Canadian Pacific Railway Limited (TSX: CP, NYSE: CP) ("CP") and Kansas City Southern (NYSE: KSU) ("KCS") today announced they have entered into a merger agreement, under which CP has agreed to acquire KCS in a stock and cash transaction representing an enterprise value of approximately USD$31 billion[1], which includes the assumption of $3.8 billion of outstanding KCS debt. The transaction, which has the unanimous support of both boards of directors, values KCS at $300 per share, representing a 34% premium, based on the CP closing price on Aug. 9, 2021, the date prior to which CP submitted a revised offer to acquire KCS, and KCS' unaffected closing price on March 19, 2021[2].

"Our path to this historic agreement only reinforces our conviction in this once-in-a-lifetime partnership," said CP President and Chief Executive Officer Keith Creel. "We are excited to get to work bringing these two railroads together. By combining, we will unlock the full potential of our networks and our people while providing industry-best service for our customers. This perfect end-to-end combination creates the first U.S.-Mexico-Canada rail network with new single-line offerings that will deliver dramatically expanded market reach for CP and KCS customers, provide new competitive transportation options, and support North American economic growth."

"We are glad to be partnering with CP to create a railroad that is able to compete by providing the best value for the transportation dollar," said KCS President and Chief Executive Officer Patrick J. Ottensmeyer. "The CP-KCS combination will not only benefit customers, labor partners, and shareholders through new, single-line transportation services, attractive synergies and complementary routes, it will also benefit KCS and our

[1] Except where noted, all figures are in U.S. dollars.

[2] Based on KCS closing share price of $224.16 as of March 19, 2021 and CP closing share price of CAD$91.50 (at 1.2565 FX rate) as of Aug. 9, 2021.

employees by enabling us to become part of a growing and truly North American continental enterprise."

While remaining the smallest of six U.S. Class 1 railroads by revenue, the combined company would have a much larger and more competitive network, operating approximately 20,000 miles of rail, employing close to 20,000 people, and generating total revenues of approximately $8.7 billion based on 2020 actual revenues. The CP-KCS combination is expected to create jobs across the joined network. Additionally, the companies expect efficiency and service improvements to achieve meaningful environmental benefits.

Transaction to Expand Options and Efficiencies for Customers

A CP-KCS combination would provide unprecedented reach via new single-line hauls across a combined network, offering:

- New single-line competitive options for domestic intermodal shipments between Mexico, the U.S. Midwest, and Canada, providing a truck competitive product for time-sensitive shipments in the high-value parts, perishables, and expedited markets.
- New single-line hauls linking key automotive manufacturing and distribution centers in Mexico, the U.S. Midwest, and Canada, capitalizing on CP's best-in-class automotive compound network.
- New single-line routes linking energy, chemical, and merchandise shippers to more quickly and efficiently connect origin and destination facilities and reach new markets and global consumers.
- Unmatched access to Atlantic, Gulf, and Pacific ports, linking international intermodal shippers with North America's largest consumer markets providing new optionality, capacity, and resiliency.
- New single-line routes allowing the efficient flow of agricultural products from CP's origin-rich franchise to KCS' destination-rich franchise, generating new optionality for shippers and receivers.
- Extended reach for short line and regional railroads coupled with new optionality for non-rail served customers via our extensive transload network.

Importantly, customers would not experience a reduction in independent railroad choices as a result of the transaction. CP-KCS have committed to keep all existing freight rail gateways open on commercially reasonable terms, while simultaneously competing aggressively to attract traffic via new single-line north-south lanes between Canada, the Upper Midwest and the Gulf Coast, Texas, and Mexico.

A CP-KCS combination would preserve the six-railroad structure of the North American Class 1 rail network: two in the west, two in the east and two in Canada, each with access to the U.S. Gulf Coast. The two companies once combined would remain the smallest of the Class 1 carriers.

Improving Highway Traffic, Environmental Sustainability, and Safety

The new single-line routes made possible by the transaction are expected to shift trucks off crowded U.S. highways, lowering emissions and reducing the need for public investments in road and highway bridge repairs. Rail is four times more fuel efficient than trucking, and one train can keep more than 300 trucks off public roads and produce 75 percent less greenhouse gas emissions. The synergies created by this combination are expected to take tens of thousands of trucks off the highways annually.

CP is committed to sustainability and is currently developing North America's first line-haul hydrogen-powered locomotive. Additionally, the combined company would maintain both CP and KCS' pledges to improve fuel efficiency and lower emissions in-line with the Paris Agreement to support a more sustainable North American supply chain.

Creating Value for KCS and CP Shareholders

Following the closing into a voting trust, common shareholders of KCS will receive 2.884 CP shares and $90 in cash for each KCS common share held. Preferred shareholders will receive $37.50 in cash for each KCS preferred share held. The fixed exchange ratio implies a price for KCS of $300 per share, representing a 34% premium, based on the CP closing price on August 9, 2021 and KCS' unaffected closing price on March 19, 2021[3].

Immediately following the closing into trust, KCS common shareholders are expected to own 28 percent of CP's outstanding common shares, providing the ability to participate in the upside of both companies' growth opportunities. Following final regulatory approval by the U.S. Surface Transportation Board ("STB"), KCS shareholders would also reap the benefits of synergies resulting from the combination.

The combined growth strategies of the two fastest-growing Class 1s will result in new efficiencies for customers and improved on-time performance under their respective Precision Scheduled Railroading programs. The combined company is expected to create annualized synergies of approximately $1 billion over three years.

The combination is expected to be accretive to CP's adjusted diluted EPS[4] in the first full year following CP's acquisition of control of KCS, and is expected to generate double-digit accretion upon the full realization of synergies thereafter.

To fund the stock consideration of the merger, CP will issue 262 million new shares. Consistent with the previously announced transaction, the cash portion will be funded through a combination of cash-on-hand and raising approximately $8.5 billion in debt, for which financing has been committed. As part of the merger, CP will assume approximately $3.8 billion of KCS' outstanding debt. Following the closing into trust, CP expects that its outstanding debt will be approximately $20 billion.

[3] Based on KCS closing share price of $224.16 as of March 19, 2021 and CP closing share price of CAD$91.50 (at 1.2565 FX rate) as of Aug. 9, 2021.

[4] Accretion based on adjusted diluted EPS excluding one-time advisory, financing, and integration costs as well as incremental transaction-related amortization.

Pro forma for the transaction, CP estimates its leverage ratio against 2021E street consensus EBITDA to be approximately 3.9x with the assumption of KCS debt and issuance of new acquisition-related debt. In order to manage this leverage effectively, CP will continue to temporarily suspend its normal course issuer bid program, and expects to produce approximately $7 billion of levered free cash flow (after interest and taxes) over the next three years. CP estimates its long-term leverage target of approximately 2.5x to be achieved within 24 months after closing into trust. The combined company will remain committed to maintaining strong investment grade credit ratings while continuing to return capital for the benefit of shareholders.

Strong Stakeholder Support for CP-KCS

More than 1,000 stakeholders – including railroad labor unions, shippers, and community leaders – have written letters to the STB supporting CP's proposed combination with KCS. These letters emphasize the enhanced competition and unsurpassed levels of service, safety and economic efficiency that the transaction will bring for shippers and communities across the U.S., Mexico, and Canada that a CP-KCS combination offers.

Clear Path to Complete Transaction and Merger

On May 6, 2021, the STB approved the use of a voting trust for a planned CP-KCS merger, and the pertinent circumstances surrounding this new agreement between CP and KCS have not changed relative to those underlying the STB's decision approving a trust. To close into voting trust, the transaction requires approval from shareholders of both companies along with satisfaction of customary closing conditions, including Mexican regulatory approvals. CP would then acquire KCS and place the KCS shares into the voting trust, at which point KCS shareholders would receive 2.884 CP shares and $90 in cash for each KCS common share held. The companies expect the transaction to close and KCS shareholders to receive their consideration in Q1 2022.

CP's ultimate acquisition of control of KCS' U.S. railways is subject to the approval of the STB. In April, the STB decided that it would review the CP-KCS combination under the merger rules in existence prior to 2001 and the waiver granted to KCS in 2001 to exempt it from the 2001 merger rules. In August, the STB reaffirmed that the pre-2001 rules would govern its review of the CP-KCS transaction.

The STB review of CP's proposed control of KCS is expected to be completed in the second half of 2022. Upon obtaining control approval, the two companies will be integrated fully over the ensuing three years, unlocking the benefits of the combination.

Board, Management, and Headquarters

Following STB approval of the CP's control of KCS, Mr. Creel will serve as the Chief Executive Officer of the combined company. The combined entity will be named Canadian Pacific Kansas City ("CPKC").

Calgary will be the global headquarters of CPKC, and Kansas City, Missouri will be the U.S. headquarters. The Mexico headquarters will remain in Mexico City and Monterrey. CP's current U.S. headquarters in Minneapolis-St. Paul will remain an important base of operations.

Four KCS Directors will join CP's expanded Board at the appropriate time, bringing their experience and expertise in overseeing KCS' multinational operations.

Advisors

BMO Capital Markets and Goldman Sachs & Co. LLC are serving as financial advisors to Canadian Pacific. Sullivan & Cromwell LLP, Bennett Jones LLP and the Law Office of David L. Meyer are serving as legal counsel. Creel, García-Cuéllar, Aiza y Enríquez, S.C. are serving as Mexican legal counsel to Canadian Pacific. Evercore is serving as the Canadian Pacific Board's financial advisors and Blake, Cassels & Graydon LLP is serving as the Board's legal counsel.

BofA Securities and Morgan Stanley & Co. LLC are serving as financial advisors to Kansas City Southern. Wachtell, Lipton, Rosen & Katz, Baker & Miller PLLC, Davies Ward Phillips & Vineberg LLP, WilmerHale, and White & Case, S.C. are serving as legal counsel to Kansas City Southern.

Conference Call for Investment Community

CP and KCS will host a joint investor conference call Thursday, Sept. 16, at 8 a.m. ET to discuss this announcement. A live webcast of the call and the replay will be available on the CP website at https://investor.cpr.ca/events and the KCS website at https://investors.kcsouthern.com/events-calendar. Supporting materials will be posted on www.FutureForFreight.com. To listen to the live conference call, dial (877) 830-2586 in the U.S. or (785) 424-1734 internationally, passcode 74335.

A conference call replay will be available for one week following the call and can be accessed by dialing (800) 753-5212 (no passcode needed).

For information on the benefits of a CP-KCS combination, visit FutureForFreight.com.

FORWARD LOOKING STATEMENTS AND INFORMATION

This news release includes certain forward looking statements and forward looking information (collectively, FLI) to provide CP and KCS shareholders and potential investors with information about CP, KCS and their respective subsidiaries and affiliates, including each company's management's respective assessment of CP, KCS and their respective subsidiaries' future plans and operations, which FLI may not be appropriate for other

purposes. FLI is typically identified by words such as "anticipate", "expect", "project", "estimate", "forecast", "plan", "intend", "target", "believe", "likely" and similar words suggesting future outcomes or statements regarding an outlook. All statements other than statements of historical fact may be FLI.

Although we believe that the FLI is reasonable based on the information available today and processes used to prepare it, such statements are not guarantees of future performance and you are cautioned against placing undue reliance on FLI. By its nature, FLI involves a variety of assumptions, which are based upon factors that may be difficult to predict and that may involve known and unknown risks and uncertainties and other factors which may cause actual results, levels of activity and achievements to differ materially from those expressed or implied by these FLI, including, but not limited to, the following: the timing and completion of the transaction, including receipt of regulatory and shareholder approvals and the satisfaction of other conditions precedent; interloper risk; the realization of anticipated benefits and synergies of the transaction and the timing thereof; the success of integration plans; the focus of management time and attention on the transaction and other disruptions arising from the transaction; changes in business strategy and strategic opportunities; estimated future dividends; financial strength and flexibility; debt and equity market conditions, including the ability to access capital markets on favourable terms or at all; cost of debt and equity capital; potential changes in the CP share price which may negatively impact the value of consideration offered to KCS shareholders; the ability of management of CP, its subsidiaries and affiliates to execute key priorities, including those in connection with the transaction; general Canadian, U.S., Mexican and global social, economic, political, credit and business conditions; risks associated with agricultural production such as weather conditions and insect populations; the availability and price of energy commodities; the effects of competition and pricing pressures, including competition from other rail carriers, trucking companies and maritime shippers in Canada, the U.S. and Mexico; North American and global economic growth; industry capacity; shifts in market demand; changes in commodity prices and commodity demand; uncertainty surrounding timing and volumes of commodities being shipped; inflation; geopolitical instability; changes in laws, regulations and government policies, including regulation of rates; changes in taxes and tax rates; potential increases in maintenance and operating costs; changes in fuel prices; disruption in fuel supplies; uncertainties of investigations, proceedings or other types of claims and litigation; compliance with environmental regulations; labour disputes; changes in labour costs and labour difficulties; risks and liabilities arising from derailments; transportation of dangerous goods; timing of completion of capital and maintenance projects; sufficiency of budgeted capital expenditures in carrying out business plans; services and infrastructure; the satisfaction by third parties of their obligations; currency and interest rate fluctuations; exchange rates; effects of changes in market conditions and discount rates on the financial position of pension plans and investments; trade restrictions or other changes to international trade arrangements; the effects of current and future multinational trade agreements on the level of trade among Canada, the U.S. and Mexico; climate change and the market and regulatory responses to climate change; anticipated in-service dates; success of hedging activities; operational performance and reliability; customer, shareholder, regulatory and other stakeholder approvals and support; regulatory

and legislative decisions and actions; the adverse impact of any termination or revocation by the Mexican government of Kansas City Southern de Mexico, S.A. de C.V.'s Concession; public opinion; various events that could disrupt operations, including severe weather, such as droughts, floods, avalanches and earthquakes, and cybersecurity attacks, as well as security threats and governmental response to them, and technological changes; acts of terrorism, war or other acts of violence or crime or risk of such activities; insurance coverage limitations; material adverse changes in economic and industry conditions, including the availability of short and long-term financing; and the pandemic created by the outbreak of COVID-19 and its variants, and resulting effects on economic conditions, the demand environment for logistics requirements and energy prices, restrictions imposed by public health authorities or governments, fiscal and monetary policy responses by governments and financial institutions, and disruptions to global supply chains.

We caution that the foregoing list of factors is not exhaustive and is made as of the date hereof. Additional information about these and other assumptions, risks and uncertainties can be found in reports and filings by CP and KCS with Canadian and U.S. securities regulators, including any proxy statement, prospectus, material change report, management information circular or registration statement to be filed in connection with the transaction. Reference should be made to "Risk Factors" and "Management's Discussion and Analysis of Financial Condition and Results of Operations—Forward Looking Statements" in CP's and KCS's annual and interim reports on Form 10-K and 10-Q. Due to the interdependencies and correlation of these factors, as well as other factors, the impact of any one assumption, risk or uncertainty on FLI cannot be determined with certainty.

Except to the extent required by law, we assume no obligation to publicly update or revise any FLI, whether as a result of new information, future events or otherwise. All FLI in this news release is expressly qualified in its entirety by these cautionary statements.

ABOUT CANADIAN PACIFIC

Canadian Pacific 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. CP-IR

ABOUT KCS

Headquartered in Kansas City, Mo., Kansas City Southern (KCS) (NYSE: KSU) is a transportation holding company that has railroad investments in the U.S., Mexico and Panama. Its primary U.S. holding is The Kansas City Southern Railway Company, serving the central and south central U.S. Its international holdings include Kansas City Southern de Mexico, S.A. de C.V., 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.

ADDITIONAL INFORMATION ABOUT THE TRANSACTION AND WHERE TO FIND IT

CP will file with the U.S. Securities and Exchange Commission (SEC) a registration statement on Form F-4, which will include a proxy statement of KCS that also constitutes a prospectus of CP, and any other documents in connection with the transaction. The definitive proxy statement/prospectus will be sent to the shareholders of KCS. CP will also file a management proxy circular in connection with the transaction with applicable securities regulators in Canada and the management proxy circular will be sent to CP shareholders. INVESTORS, STOCKHOLDERS AND SHAREHOLDERS OF KCS AND CP ARE URGED TO READ THE PROXY STATEMENT/PROSPECTUS AND MANAGEMENT PROXY CIRCULAR, AS APPLICABLE, AND ANY OTHER DOCUMENTS FILED OR TO BE FILED WITH THE SEC OR APPLICABLE SECURITIES REGULATORS IN CANADA IN CONNECTION WITH THE TRANSACTION WHEN THEY BECOME AVAILABLE, AS THEY WILL CONTAIN IMPORTANT INFORMATION ABOUT KCS, CP, THE TRANSACTION AND RELATED MATTERS. The registration statement and proxy statement/prospectus and other documents filed by CP and KCS with the SEC, when filed, will be available free of charge at the SEC's website at www.sec.gov. In addition, investors and shareholders will be able to obtain free copies of the registration statement, proxy statement/prospectus, management proxy circular and other documents which will be filed with the SEC and applicable securities regulators in Canada by CP online at investor.cpr.ca and www.sedar.com, upon written request delivered to CP at 7550 Ogden Dale Road S.E., Calgary, Alberta, T2C 4X9, Attention: Office of the Corporate Secretary, or by calling CP at 1-403-319-7000, and will be able to obtain free copies of the proxy statement/prospectus and other documents filed with the SEC by KCS online 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.

You may also read and copy any reports, statements and other information filed by KCS and CP with the SEC at the SEC public reference room at 100 F Street N.E., Room 1580, Washington, D.C. 20549. Please call the SEC at 1-800-732-0330 or visit the SEC's website for further information on its public reference room. This news release shall not constitute an offer to sell or the solicitation of an offer to buy any securities, nor shall there be any sale of securities in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to appropriate registration or qualification under the securities laws of such jurisdiction. No offering of securities shall be made except by means of a prospectus meeting the requirements of Section 10 of the U.S. Securities Act of 1933, as amended.

NON-GAAP MEASURES

Although this news release includes forward-looking non-GAAP measures (adjusted diluted EPS and earnings before interest, tax, depreciation and amortization (EBITDA)), it is not practicable to reconcile, without unreasonable efforts, these forward-looking measures to the most comparable GAAP measures (diluted EPS and Net income, respectively), due to unknown variables and uncertainty related to future results. Please see Note on forward-looking statements above for further discussion.

PARTICIPANTS IN THE SOLICITATION OF PROXIES

This news release is not a solicitation of proxies in connection with the transaction. However, under SEC rules, CP, KCS, and certain of their respective directors and executive officers may be deemed to be participants in the solicitation of proxies in connection with the transaction. Information about CP's directors and executive officers may be found in its 2021 Management Proxy Circular, dated March 10, 2021, as well as its 2020 Annual Report on Form 10-K filed with the SEC and applicable securities regulators in Canada on February 18, 2021, available on its website at investor.cpr.ca and at www.sedar.com and www.sec.gov. Information about KCS's 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. These documents can be obtained free of charge from the sources indicated above. Additional information regarding the interests of such potential participants in the solicitation of proxies in connection with the transaction will be included in the proxy statement/prospectus and management proxy circular and other relevant materials filed with the SEC and applicable securities regulators in Canada when they become available.

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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*.

VELANI AND DE BRUYN R.V.S. EXHIBIT 7

CP RAIL'S EVENTS, "CANADIAN PACIFIC RAILWAY AND KANSAS CITY SOUTHERN TO COMBINE" (MAR. 21, 2021)

Canadian Pacific Railway and Kansas City Southern to Combine

March 21, 2021

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Additional Information

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Today's Participants

Keith Creel
President and Chief Executive Officer
Canadian Pacific Railway

Patrick J. Ottensmeyer
President and Chief Executive Officer
Kansas City Southern

Nadeem Velani
Executive Vice President and Chief Financial Officer
Canadian Pacific Railway

Michael Upchurch
Executive Vice President and Chief Financial Officer
Kansas City Southern

John Brooks
Executive Vice-President and Chief Marketing Officer
Canadian Pacific Railway

Michael Naatz
Executive Vice President and Chief Marketing Officer
Kansas City Southern

Compelling Strategic Combination

~20,000 miles
Rail Network

~20,000
Employees

$8.7bn
2020A of Combined Revenues

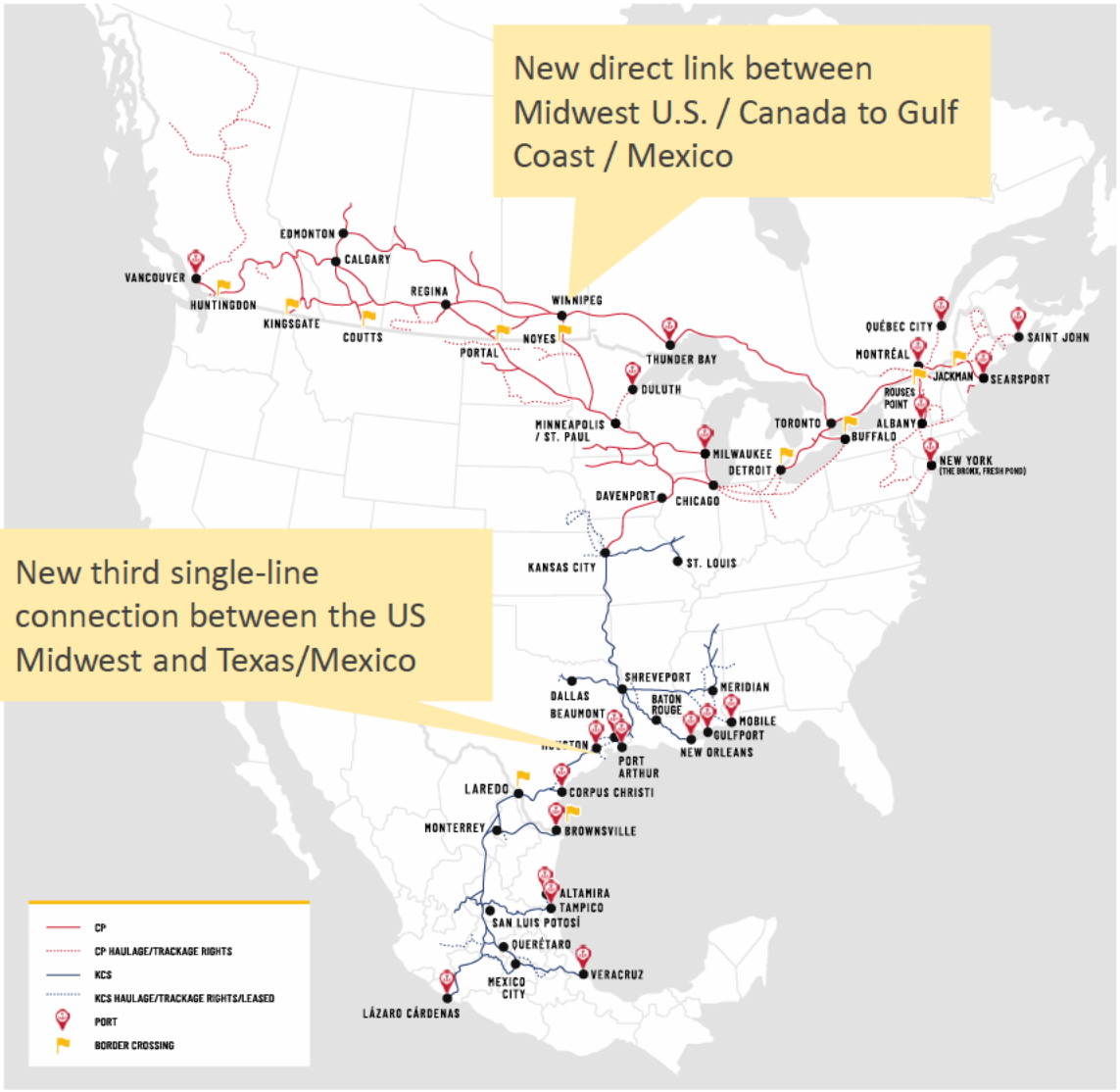
Investment Grade
Balance Sheet

- Creates the First U.S.-Mexico-Canada Rail Network
- Expands Competitive Options for Customers and Supports Strong Growth Going Forward
- Well Positioned for Growth, Bringing Together Two Railroads with Highest 3-Year Revenue CAGR
- Annualized Synergies of $780mm Drives Accretion to CP's Adjusted Diluted EPS[1]
- Shared Dedication to Quality Service, Safety and Efficiency to be Enhanced Across CPKC
- Both Companies Champions of Environmental Sustainability

1.The combination is expected to be accretive to CP's adjusted diluted EPS in the first full year following CP's acquisition of control of KCS, and is expected to generate double-digit accretion upon the full realization of synergies thereafter.

Creating the First U.S.-Mexico-Canada Rail Network

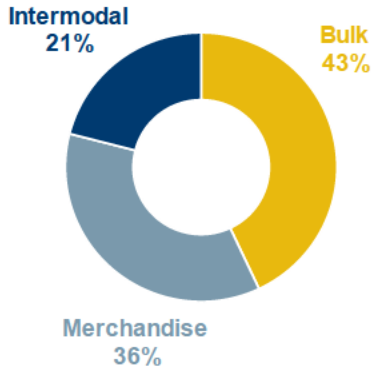
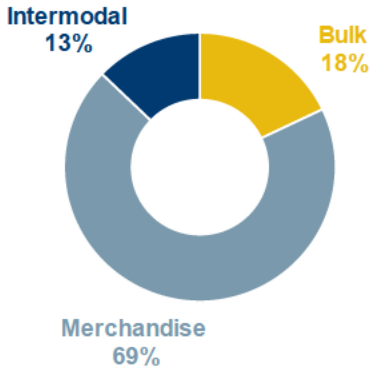
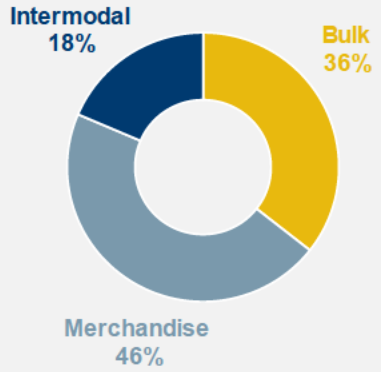
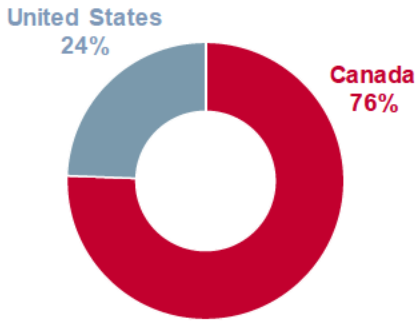
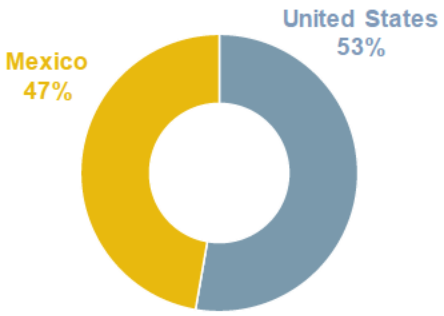
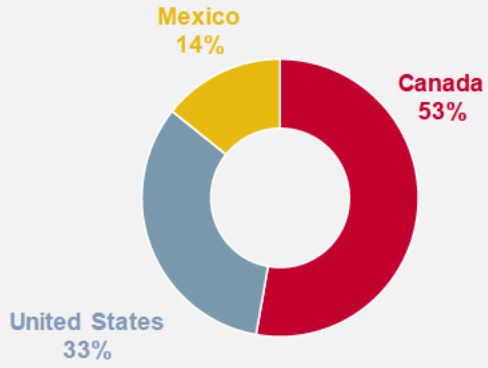
CPKC Network



- ***Enhances competition*** by creating new single-line haul routes
- Connects ***six of the seven*** largest metro regions in North America
- ***Diversifies*** current business and geographic mix with the addition of new routes
- Driving ***USMCA growth and investment opportunities***

Significantly Enhanced Scale with More Diversified Business Mix

Figures Expressed as a Percent of 2020 Freight Revenue

	Canadian Pacific	Kansas City Southern	CPKC[1]
Business Mix			
Geography			

Acquisition further diversifies mix of business and end market exposure, creating a strong base to drive sustainable growth

Source: Public Disclosure. Note: Figures in Canadian dollars converted to USD at a USD/CAD spot exchange rate of 0.80.
[1] Reflects pre-synergy revenues.

Transaction Details

Financial Terms

- Canadian Pacific Railway ("CP") has agreed to acquire Kansas City Southern ("KCS") in a stock and cash transaction representing an enterprise value of $29 billion, which includes the assumption of $3.8 billion of KCS' outstanding debt.
- The transaction, which has the unanimous support of both boards of directors, values KCS at $275 per share, representing a 23% premium[1], based on the CP and KCS closing prices on March 19, 2021 (and $270 per share, representing a 26% premium[2], based on the respective CP and KCS 30-day volume weighted average prices ("VWAP")).
- Following the closing into a voting trust, common shareholders of KCS will receive 0.489 of a CP share and $90 in cash for each KCS common share held. Preferred shareholders will receive $37.50 in cash for each KCS preferred share held.
- To fund the stock consideration of the merger, CP will issue 44.5 million new shares, resulting in CP shareholders owning 75% of CPKC. The cash portion will be funded through a combination of cash-on-hand and raising approximately $8.6 billion in debt, for which financing has been committed.
- The transaction provides KCS shareholders the ability to participate in the upside of CPKC, and KCS shareholders are expected to own 25% of the combined company.

Governance

- The combined business will be named Canadian Pacific Kansas City ("CPKC").
- Calgary, Alberta will be the global headquarters of CPKC.
- Kansas City, Missouri will be designated as the U.S. headquarters.
- Mexico headquarters will remain in Mexico City and Monterrey.
- CP's current U.S. headquarters in Minneapolis-St. Paul will remain an important base of operations.
- Keith Creel to serve as Chief Executive Officer of CPKC.
- Four KCS Directors will join CP's expanded Board at the appropriate time, bringing their experience and expertise in overseeing KCS' multinational operations.
- Shareholders of CP and KCS will vote on the transaction.

1. Based on KCS and CP closing share prices of $224.16 and CAD$474 27 (at 1.2506 FX rate), respectively, as of March 19, 2021.
2. Based on KCS and CP 30-day volume weighted average prices ("VWAPs") of $213.87 and US$368.22, respectively, as of March 19, 2021.

Trust Structure Overview

Trust Mechanics: A Two Step Process

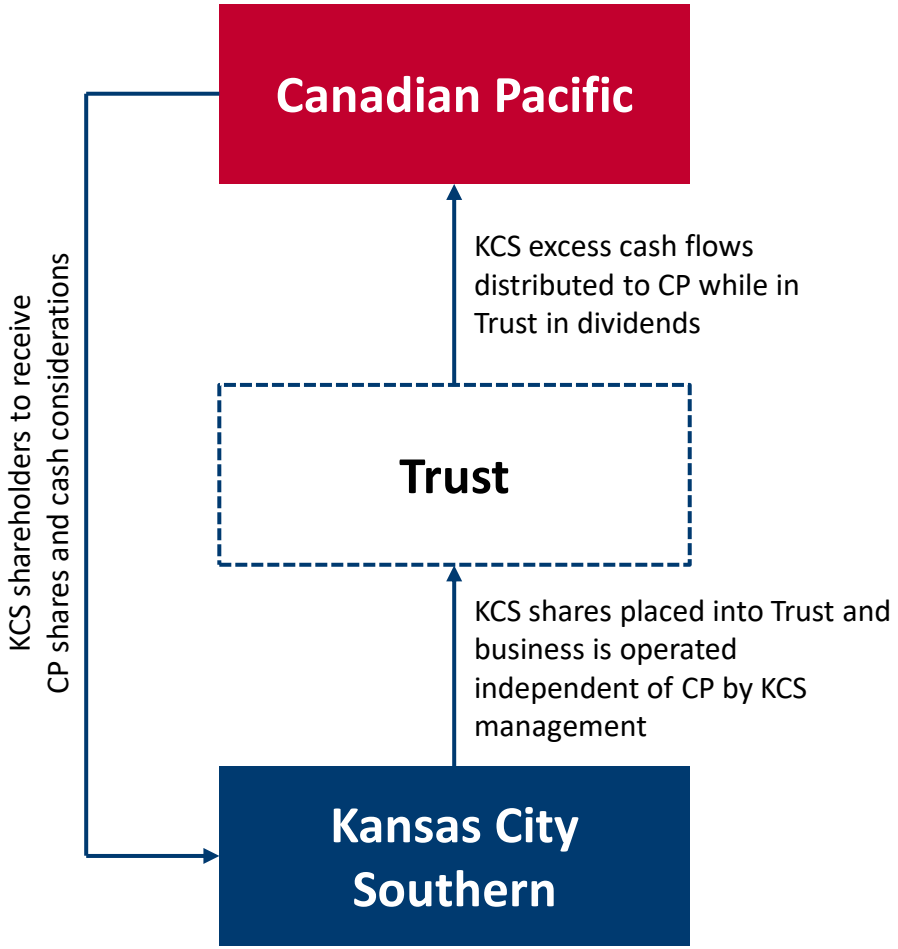
STEP 1

- First, CP will establish a ***"plain vanilla", independent voting trust*** to acquire the shares of KCS
- Upon shareholder approval of the transaction, and satisfaction of customary closing conditions, ***CP will acquire KCS' shares and place them into the voting trust***, which is expected to be completed in the second half of 2021, at which point KCS shareholders will receive their consideration
- CP's placement of KCS shares into the voting trust will ***insulate KCS from control by CP*** until the STB authorizes control
- KCS' ***management and Board of Directors will continue to steward the company*** while it is in trust, pursuing KCS' independent business plan and growth strategies
- CP will ***appoint an independent Trustee***, Dave Starling, to hold the KCS stock

STEP 2:

- ***Obtain control approval from the STB*** and other applicable regulatory authorities. The STB review is expected to be completed by the middle of 2022
- Upon obtaining control approval, ***the two companies will be integrated,*** unlocking the benefits of the merger

Trust Structure

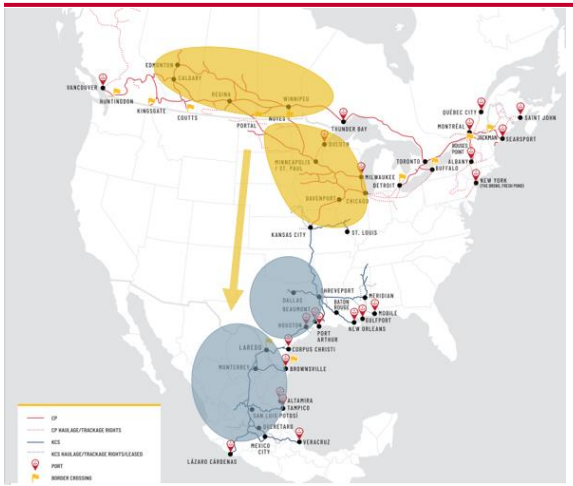


Closing KCS into a Trust prior to STB review of proposed change in control is a standard procedure, with numerous precedents[1]

1. Precedent rail transactions with voting Trust structures since 2015 include the acquisitions and/or mergers of (i) Canadian National and Illinois Central, (ii) UP and Southern Pacific, (iii) CP and Central Maine & Quebec Railway, (iv) Genesee & Wyoming and Brookfield Infrastructure Partners, and (v) Providence & Worcester Railroad and Genesee & Wyoming.

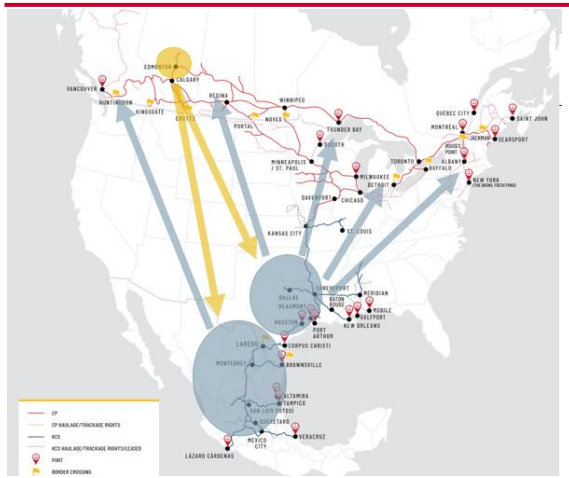
Enhances Competitive Options for Customers and Enables North American Growth

Bulk



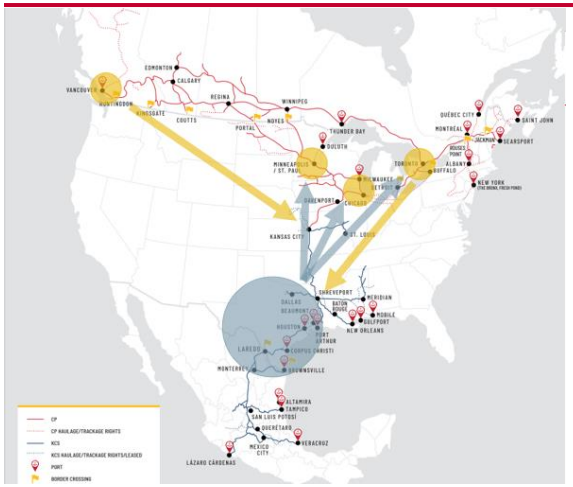
New single-line shipments for grain from Canada and the Upper Midwest to domestic and export markets in Southern US and Mexico

ECP & Merchandise



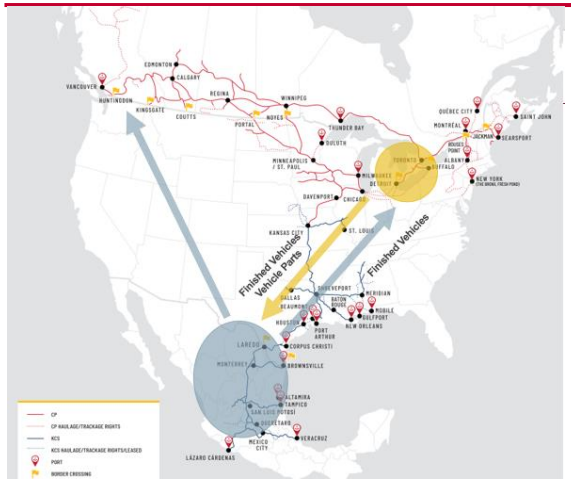
New single-line competition for shipments of energy, chemicals & plastics and merchandise moving between Canada, the US and Mexico

Intermodal



New head-to-head single-line competition for intermodal shipments between Mexico and the Upper Midwest and Canada

Automotive



New head-to-head single-line competition for automotive shipments between Canada, US Midwest and Mexico

CPKC's network to benefit customers across all business lines

Access to Mexico's Industrial Heartland Provides Unprecedented Growth Opportunities

Mexico Highlights

- ***47%*** of KCS 2020 Total Revenues[(1)]
- ***2,650 miles*** of main and branch line
- ***50-year operating concession*** with Mexican Government (expires in 2047; renewable for 50-year term)
- ***Laredo, TX gateway handles 44%*** of US / Mexico Surface Trade[(2)]
- ***GDP from both sides*** of the border constitutes the 3rd largest economy in the world

Mexico Unique Growth Drivers

Franchise Cross-border Growth	Refined Products	Port Access	Near-shoring
13% volume CAGR since 2009, driven by US/Mexico trade	• 2020 growth at 48% • $250M annualized run rate at exit 2020	• Exclusive access to Lazaro Cardenas • Recent direct access to Veracruz	• USMCA & COVID-19 reinforce nearshoring thesis • Lower transportation, overhead & network costs

Sources: Company Filings: **1. KCS 2020 10K** **2.** BTS Data, January 2020

CPKC Unlocks $780 Million EBITDA Growth Opportunities

$600 Million
in EBITDA Growth from Market Opportunities

- Unique combination enables significant growth for our customers throughout North America
- Efficient new single-line routes and dramatically expanded market reach for customers
- Planned capital investments to support growth synergies, such as additional network sidings, siding extensions and investment in CTC

$180 Million
in Cost and Efficiency Improvements

- Driven by a combination of improved fuel efficiency, lower G&A costs, equipment rents as well as facilities, IT spend and licensing
- CPKC to utilize best practices to support increased operating efficiencies

Following regulatory approval anticipated for mid-2022, we anticipate generating $780 million of annualized synergies within three years

Robust Cash Flow Generation Drives Rapid Deleveraging

~2.5x
Long-term leverage target to be achieved within 36 months, following the close into trust

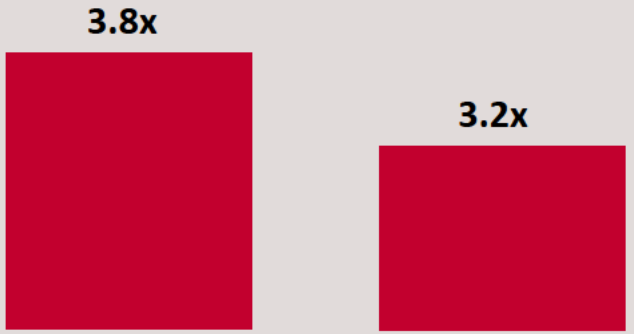
+$2 billion
Free cash flow per year expected to be generated, post synergies

Paused Share Repurchases
To resume once long-term leverage targets achieved

Maintain Dividend Policy
No changes to CP or KCS' current dividend

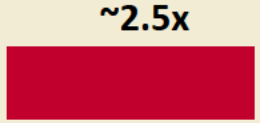
Projected Combined Leverage Ratio

Trust Period



- Close into Trust in mid-2021
- No synergies realized during trust
- De-leveraging not dependent on synergies
- Strong independent FCF generation

Post-Trust Period



- Trust eliminated and KCS is consolidated
- Begin realizing synergies

Continued commitment to maintain a strong balance sheet and investment grade rating

Committed to Environmental Leadership and a Safety-First Culture

Improving Highway Traffic & the Environment

Environmental Sustainability & Rail Transportation

- Rail is one of the most economical and environmentally responsible methods of moving freight
- New single-line routes will shift truck traffic off crowded U.S. highways
- Advances our shared science-based pledges to improve fuel efficiency and lower emissions in support of a more sustainable North American supply chain

Long-Term Commitment to Climate Change Action & Emissions Reduction

- Both CP and KCS have a track record of improvement:
  - Locomotive fuel efficiency by 9% and 11%, respectively, since 2014
  - Locomotive emissions intensity by 3%, from 2017 to 2019
- Developing North America's 1st line-haul hydrogen locomotive

Safety

- History of capital investment that supports safety & capacity
- CP & KCS share compatible cultures rooted in safety first
- Trip plan compliance and safety goals are key drivers of KCS and CP short-term incentives
- CP has been North America's safest railway for 15 consecutive years based on FRA-train accident frequency
- Significant combined investment in initiatives and technology underpins our commitment to safety, across our entire operation
  - Predictive analytics to reduce online failures
  - Real time data on wheels, rails, cars, locomotives and trains enable us to anticipate issues and take preventative measures
  - Investment in operators and equipment to support public safety
  - Potential investment in upgrading 'dark territory' to Centralized Train Control, which would further improve safety

4x
more fuel efficient than trucks

75%
less GHG emissions produced by trains than trucks

34%
improvement in CP FRA Personal Injury Frequency ('16-'20)

300
trucks removed from public roads for each single unit train

Source: Corporate Disclosure

Unique and Compelling Combination

- Creates the First U.S.-Mexico-Canada Rail Network
- Expands Competitive Options for Customers and Supports Strong Growth Going Forward
- Well Positioned for Growth, Bringing Together Two Railroads with Highest 3-Year Revenue CAGR
- Annualized Synergies of $780mm Drives Accretion to CP's Adjusted Diluted EPS[1]
- Shared Dedication to Quality Service, Safety and Efficiency to be Enhanced Across CPKC
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1.The combination is expected to be accretive to CP's adjusted diluted EPS in the first full year following CP's acquisition of control of KCS, and is expected to generate double-digit accretion upon the full realization of synergies thereafter.

Canadian Pacific Railway and Kansas City Southern to Combine

March 21, 2021

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36500

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

VELANI AND DE BRUYN R.V.S. EXHIBIT 8

CN/KCS, FINANCE DOCKET NO. 36514, CP'S REPLY TO CN AND KCS JOINT MOTION FOR APPROVAL OF VOTING TRUST (CP-11), VERIFIED STATEMENT OF NADEEM VELANI (FILED JUNE 28, 2021) (EXCERPTS)

EXHIBIT 2

VERIFIED STATEMENT OF NADEEM VELANI

of CN's consideration would be paid in cash.[3] Whereas equity (stock price) valuations can fluctuate up and down without causing an immediate impact on a business's cash flows and liquidity, debt represents a fixed-value obligation that must ultimately be repaid. Mr. Houle's comment that CN is paying for the "premium" in stock rather than cash (Houle V.S. at 10) is thus misleading. Because CN is paying to acquire KCS at such an extreme valuation, it must borrow and ultimately repay $19 billion in new debt regardless of whether it attributes this debt to the "premium" or something else. Furthermore, issuing $11 billion of equity is not the antidote to an over-priced acquisition. All of that invested capital will come with CN's promise of a rate of return that does not appear to be achievable at this purchase price. That leads to the natural conclusion that either this acquisition is designed to achieve those returns in undisclosed anti-competitive ways, or material cost-cutting and capital spending reductions will be required to deliver an appropriate investment return.

II. UNLIKE THE TERMS OF CP'S PROPOSED ACQUISITION OF KCS, THE SIZE OF CN'S OFFER WAS NOT EXPLAINED BY A NEED TO BEAT A PRIVATE EQUITY BID

12. The extreme premium CN is offering to KCS shareholders is almost double the premium that CP offered KCS shareholders. CN's offer is much more heavily weighted towards cash consideration, which has important implications for the risks resulting from CN's offer. Whereas CP's offer entailed 67 percent CP stock and 33 percent cash (or $9 billion in cash), CN's offer is less than 40 percent CN stock and over 60 percent cash (or over $19 billion in cash).

13. CP's high bid was made in order to be able to succeed against a competing bid that KCS had received from non-rail private equity acquirers. CP took notice of public reports in

[3] Calculated as CN's offer of $200 in cash per KCS share out of $325 total offer.

the fall of 2020 that private equity had approached KCS about an acquisition of the company and began discussions with KCS about a potential CP/KCS combination, and those discussions continued though the fall of 2020 and the early part of 2021, culminating in our merger agreement announced March 21, 2021. CP understood that for the KCS Board of Directors to approve such a combination, the financial terms of CP's bid would have to exceed those offered by the private equity buyers by a margin that overcame the perceived regulatory risks of even CP's pro-competitive rail-rail consolidation. This competitive dynamic led us to make our offer of $275 per share,[4] which KCS's Board accepted.[5] CP's offer represented a 23 percent premium, which was in the middle of the range of control premia for other large acquisitions, as shown in Figure 2 above.

14. By the time CN proposed to acquire KCS, by contrast, CP had already won out over the private equity bid for KCS, and CP and KCS were parties to a binding merger agreement. As a result, CN's bid was designed to exceed CP's bid, not a private equity bid.

III. THE LARGE CASH COMPONENT OF CN'S OFFER REQUIRES IT TO INCUR $19 BILLION OF DEBT, INCREASING ITS DEBT BURDEN BY MORE THAN 180 PERCENT AND SUBSTANTIALLY INCREASING ITS FINANCIAL RISK

A. CN Will Take on a Very High Level of Debt

15. CN's total cash outlay upon the acquisition of KCS's shares (*i.e.*, as soon as the voting trust is formed) would be $19 billion. CN is proposing to spend $11 billion more in cash than CP is offering to acquire KCS. By including $19 billion of cash consideration in its offer

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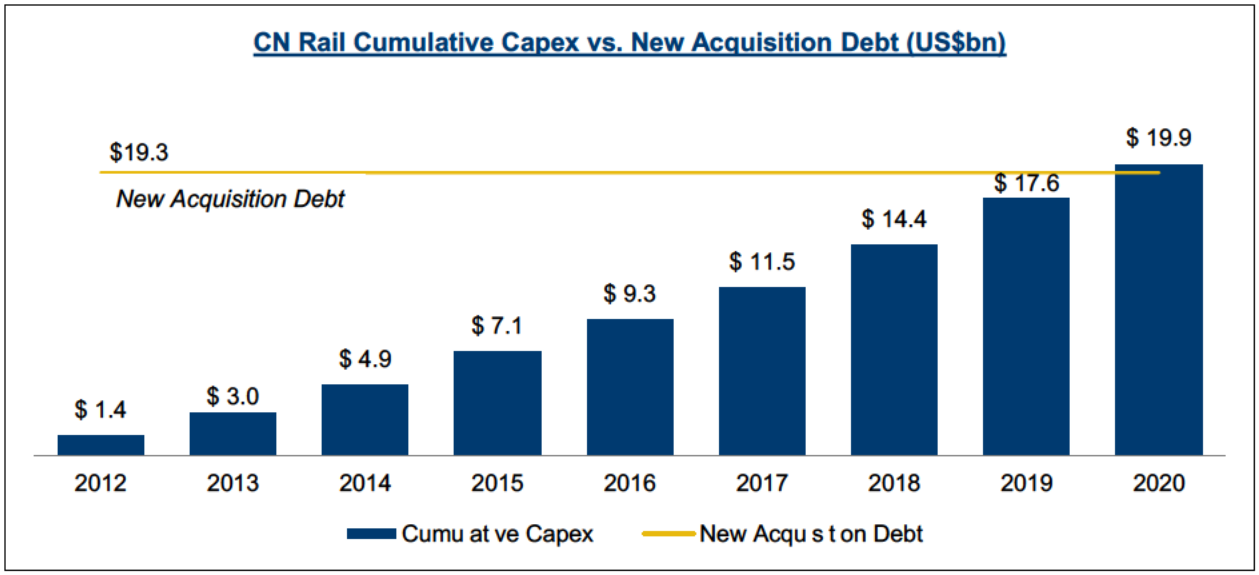
[4] Reflects offer of 0.489x CP shares and $90 in cash for every KCS share as of March 19, 2021 (the last trading day prior to the announcement of the CP / KCS merger).

[5] CN's F-4 Registration Statement, which was filed with the SEC on June 22, 2021, provides a blow-by-blow description of the competition CP was engaged in with "Party A" (which CP understood to be a non-railroad private equity bidder). In the final round of that competition, CP's bid was within 10 percent of the all-cash offer that Party A was offering (at $250 per share), along with a promise of zero regulatory delay or risk. *See* Registration Statement at 43-48 (excerpts are Exhibit 14 to CP's Reply).

for KCS shareholders,[6] CN is significantly increasing its debt burden to fund the proposed acquisition. To put this figure in context, consider that the incremental $19 billion in CN acquisition debt is comparable to the total sum of all of CN's capital expenditures spent on its own rail network over the past nine years. Figure 3 compares CN's level of capital expenditures since 2012 to the new acquisition debt being contemplated.

FIGURE 3[7]



CN's debt for the acquisition of KCS equivalent to all capex spent by CN from 2012 to 2020

16. CN's new acquisition debt would also sharply increase CN's leverage ratio. CN's net debt balance as of the end of 2020 of $9 billion represented approximately 1.7 times CN's 2020 EBITDA of $5.5 billion.[8] For the same period, pro forma for the impact of the proposed

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[6] Includes $700 million break-fee payable to CP for terminating the signed CP/KCS merger agreement.

[7] US Dollars converted to Canadian dollars at a constant exchange rate of 1.22.

Source: Public Filings, CN Investor Presentation

[8] Mr. Houle's verified statement explains that its so-called leverage ratio – *i.e.,* "debt divided by EBITDA (or earnings before interest,, tax, and depreciation) is an appropriate metric to examine, and I

VELANI EXHIBIT A

CANADIAN NATIONAL 2020 ANNUAL REPORT EXCERPTS

Management's Discussion and Analysis

This Management's Discussion and Analysis (MD&A) dated February 1, 2021, relates to the consolidated financial position and results of operations of Canadian National Railway Company, together with its wholly-owned subsidiaries, collectively "CN" or the "Company," and should be read in conjunction with the Company's 2020 Annual Consolidated Financial Statements and Notes thereto. All financial information reflected herein is expressed in Canadian dollars and prepared in accordance with United States generally accepted accounting principles (GAAP), unless otherwise noted.

CN's common shares are listed on the Toronto and New York stock exchanges. Additional information about CN filed with Canadian securities regulatory authorities and the United States Securities and Exchange Commission (SEC), including the Company's 2020 Annual Information Form and Form 40-F, may be found online on SEDAR at www.sedar.com, on the SEC's website at www.sec.gov through EDGAR, and on the Company's website at www.cn.ca in the Investors section. Printed copies of such documents may be obtained by contacting CN's Corporate Secretary's Office.

Business profile

CN is engaged in the rail and related transportation business. CN's network of 19,500 route miles of track spans Canada and the United States of America (U.S.); the only railroad connecting Canada's Eastern and Western coasts with the U.S. South. CN's extensive network and efficient connections to all Class I railroads provide CN customers access to Canada, the U.S. and Mexico. Essential to the economy, to the customers, and to the communities it serves, CN safely transports more than 300 million tons of cargo, serving exporters, importers, retailers, farmers and manufacturers. CN and its affiliates have been contributing to community prosperity and sustainable trade since 1919. CN is committed to programs supporting social responsibility and environmental stewardship.

CN's freight revenues are derived from seven commodity groups representing a diversified and balanced portfolio of goods transported between a wide range of origins and destinations. This product and geographic diversity better positions the Company to face economic fluctuations and enhances its potential for growth opportunities. For the year ended December 31, 2020, CN's largest commodity group accounted for 27% of total revenues. From a geographic standpoint, 16% of revenues relate to U.S. domestic traffic, 31% transborder traffic, 17% Canadian domestic traffic and 36% overseas traffic. The Company is the originating carrier for over 85%, and the originating and terminating carrier for over 65%, of traffic moving along its network, which allows it both to capitalize on service advantages and build on opportunities to efficiently use assets.

Corporate organization

The Company manages its rail operations in Canada and the U.S. as one business segment. Financial information reported at this level, such as revenues, operating income and cash flow from operations, is used by the Company's corporate management in evaluating financial and operational performance and allocating resources across CN's network. The Company's strategic initiatives are developed and managed centrally by corporate management and are communicated to its regional activity centers (the Western Region and Eastern Region), whose role is to manage the day-to-day service requirements of their respective territories, control direct costs incurred locally, and execute the strategy and operating plan established by corporate management.

See *Note 23 – Segmented information* to the Company's 2020 Annual Consolidated Financial Statements for additional information on the Company's corporate organization, as well as selected financial information by geographic area.

ROIC and adjusted ROIC

Management believes ROIC and adjusted ROIC are useful measures of the efficiency in the use of capital funds. The Company calculates ROIC as return divided by average invested capital. Return is defined as net income plus interest expense after-tax, calculated using the Company's effective tax rate. Average invested capital is defined as the sum of total shareholders' equity, long-term debt and current portion of long-term debt less cash and cash equivalents, and restricted cash and cash equivalents, averaged between the beginning and ending balance over a twelve-month period. The Company calculates adjusted ROIC as adjusted return divided by average invested capital. Adjusted return is defined as adjusted net income plus interest expense after-tax, calculated using the Company's effective tax rate, excluding the tax effect of adjustments used to determine adjusted net income. ROIC and adjusted ROIC do not have any standardized meaning prescribed by GAAP and therefore, may not be comparable to similar measures presented by other companies.

The following table provides a reconciliation of net income and adjusted net income to return and adjusted return, respectively, as well as the calculation of average invested capital, which have been used to calculate ROIC and adjusted ROIC:

In millions, except percentage	*As at and for the year ended December 31,*	**2020**	2019	2018
Net income		**$ 3,562**	$ 4,216	$ 4,328
Interest expense		**554**	538	489
Tax on interest expense [1]		**(120)**	(120)	(116)
Return		**$ 3,996**	$ 4,634	$ 4,701
Average total shareholders' equity		**$ 18,846**	$ 17,841	$ 17,149
Average long-term debt		**11,931**	11,626	10,067
Average current portion of long-term debt		**1,420**	1,557	1,632
Less: Average cash, cash equivalents, restricted cash and restricted cash equivalents		**(844)**	(674)	(656)
Average invested capital		**$ 31,353**	$ 30,350	$ 28,192
ROIC		**12.7%**	15.3%	16.7%
Adjusted net income [2]		**$ 3,784**	$ 4,189	$ 4,056
Interest expense		**554**	538	489
Adjusted tax on interest expense [3]		**(137)**	(131)	(120)
Adjusted return		**$ 4,201**	$ 4,596	$ 4,425
Average invested capital		**$ 31,353**	$ 30,350	$ 28,192
Adjusted ROIC		**13.4%**	15.1%	15.7%

(1) The effective tax rate for 2020 used to calculate the tax on interest expense was 21.6% (2019 - 22.3%; 2018 - 23.8%).

(2) See the section of this MD&A entitled Adjusted performance measures for an explanation of this non-GAAP measure.

(3) The adjusted effective tax rate for 2020 used to calculate the adjusted tax on interest expense was 24.8% (2019 - 24.4%; 2018 - 24.5%).

VELANI EXHIBIT B

CN Q2 2020 EARNINGS CALL TRANSCRIPT EXCERPTS (JULY 22, 2020)

Corrected Transcript

21-Jul-2020

Canadian National Railway Co. (CNI)

Q2 2020 Earnings Call

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CORPORATE PARTICIPANTS

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Executive Vice-President, Chief Operating Officer & interim Chief Information and Technology Officer, Canadian National Railway Co.

James B. Cairns
Senior Vice President-Rail Centric Supply Chain, Canadian National Railway Co.

Keith Reardon
Senior Vice-President-Consumer Product Supply Chain, Canadian National Railway Co.

Ghislain Houle
Chief Financial Officer & Executive Vice President, Canadian National Railway Co.

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Analyst, Desjardins Securities, Inc.

Scott H. Group
Analyst, Wolfe Research LLC

Konark Gupta
Analyst, Scotia Capital, Inc.

Brian P. Ossenbeck
Analyst, JPMorgan Securities LLC

Walter Spracklin
Analyst, RBC Capital Markets

Brandon R. Oglenski
Analyst, Barclays Capital, Inc.

David Vernon
Analyst, Sanford C. Bernstein & Co. LLC

Seldon Clarke
Analyst, Deutsche Bank

Jonathan Chappell
Analyst, Evercore Group LLC

Jason Seidl
Analyst, Cowen Inc.

Allison M. Landry
Analyst, Credit Suisse Securities

Thomas Wadewitz
Analyst, UBS Securities LLC

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Brandon R. Oglenski
Analyst, Barclays Capital, Inc.

Q

Hey, good afternoon, everyone. Yes, thank you for taking my questions. Keith, you sounded – I should phrase it, relatively bullish about intermodal prospects we came into, I guess "peak season." Can you talk about some of the opportunities you mentioned in your prepared remarks, I think about your carriers adding back locations and that you are winning some of that incremental business?

Keith Reardon
Senior Vice-President-Consumer Product Supply Chain, Canadian National Railway Co.

A

Sure.

Jean-Jacques Ruest
President, Chief Executive Officer & Director, Canadian National Railway Co.

A

Keith? As I've said earlier, we believe in the strength of the consumer in North America and the market where that shows the most number one is intermodal, you see that a bit in lumber and automotive but where this is something to really exploit whether the product is really tailor made to drive the economy – consumer economy of intermodal. Keith?

Keith Reardon
Senior Vice-President-Consumer Product Supply Chain, Canadian National Railway Co.

A

Sure. You know, it wasn't fun going through the beginning of the second quarter and hearing about blank sailings and also the challenges that our customers were having and the fact that they thought that was kind of going into the third quarter as well. So, it's great that we've seen a lot of the blanks that they had for Q3. They've reinstituted those calls and right now on the West Coast, we have much less noise around the blank sailings than we did during Q2. In fact they're adding 11 extra loaders in Q3 on the West Coast, nine on the West Coast and two on the East Coast. Those types of things and the discussions that we have with our customers and the fact that our boots on the ground folks in Asia are telling us the strength of what's going on with orders from North America, those give us the confidence that I can sit and talk to Rob and ask him and have that discussion about being prepared. As I said, Rupert's probably going to have a record in July. And we see the same thing for August as far as the volume's solid on the West Coast.

Jean-Jacques Ruest
President, Chief Executive Officer & Director, Canadian National Railway Co.

A

Ghislain, maybe you want to add something about TransX and a year after the acquisition.

Ghislain Houle
Chief Financial Officer & Executive Vice President, Canadian National Railway Co.

A

Yeah, sure.

Jean-Jacques Ruest
President, Chief Executive Officer & Director, Canadian National Railway Co.

A

We've been able to accomplish with TransX.

Ghislain Houle
Chief Financial Officer & Executive Vice President, Canadian National Railway Co.

A

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That's another – sure, JJ, that's another piece of business that we're quite bullish. And I'm happy to report that after a year and I think Keith and the team is doing and did an outstanding job integrating TransX with our overall CN family. As you know, Brandon, big projects or investments we typically have internal auditor going in and auditing the business case and auditing the return and reporting directly to the board, so they are not all done yet but close and I'm happy to report that the turn of the investments both in TransX and H&R will deliver higher than our typical ROI threshold that we use at CN of 12%. So this is a good accretive acquisition and we are quite pleased and as I said before, Keith and the team, is doing a hell of a job managing this and frankly, their OR as we speak is now the best-in-class for these types of companies, like if you at J.B. Hunt or some of the others that are best-in-class, TransX is right there with them.

Jean-Jacques Ruest
President, Chief Executive Officer & Director, Canadian National Railway Co.
A

Yeah. The mandate for TransX is to compete with the best of best like J.B. Hunt [ph] in the OR (00:52:01), they are not a trucking firm, they are [ph] intermodal (00:52:05) firm and they're increasing the amount of rail they do since last year.

Thank you, Brandon.

Brandon R. Oglenski
Analyst, Barclays Capital, Inc.
Q

Yeah, thank you, JJ.

Operator: Thank you. The next question is from David Vernon from Bernstein. Please go ahead.

David Vernon
Analyst, Sanford C. Bernstein & Co. LLC
Q

Hey, good afternoon, everybody. Rob, I wanted to focus in on the train length and train weight gains that you had in the second quarter, could you talk to whether some changes in mix or maybe just lower volume in the network allowed you kind of extend that. And then what the outlook should be kind of from here, should we be expecting in this 9,500 feet length range for the rest of the year even through the winter months or should we be expecting this kind of to come off as volume comes back?

Jean-Jacques Ruest
President, Chief Executive Officer & Director, Canadian National Railway Co.
A

Rob?

Rob Reilly
Executive Vice-President, Chief Operating Officer & interim Chief Information and Technology Officer, Canadian National Railway Co.
A

Yeah, winter all bets are off. We will see what winter brings and then we can have that discussion at that point. As far as the changes we've made, we do view those as structural. And mix or no mix, what we've done is really take what has been delivered to us and make the best out of it. So, we are looking at a significant volume drop that we saw this quarter and we took action, part of that was increasing train size and reducing crew starts, and a lot of things come with that when you do that. The bigger trains lead to greater train fuel efficiency, leads to better utilization of your locomotives. We saw the train velocity improved all during this period as well, 5% year-over-year. So, we plan on keeping trains big and looking for more opportunities that are out there. Thanks for the question.

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VELANI EXHIBIT C

CN BAIRD GLOBAL INDUSTRIALS CONFERENCE TRANSCRIPT EXCERPTS (NOV 17, 2020)

Corrected Transcript

12-Nov-2020

Canadian National Railway Co. (CNI)

Baird Global Industrial Conference

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CORPORATE PARTICIPANTS

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Chief Financial Officer & Executive Vice President, Canadian National Railway Co.

James B. Cairns
Senior Vice President-Rail Centric Supply Chain, Canadian National Railway Co.

Keith Reardon
Senior Vice President-Consumer Product Supply Chain, Canadian National Railway Co.

OTHER PARTICIPANTS

Garrett Anthony Holland
Analyst, Robert W. Baird & Co., Inc.

MANAGEMENT DISCUSSION SECTION

Garrett Anthony Holland
Analyst, Robert W. Baird & Co., Inc.

Great. Well, we're live now, so we're going to go ahead and start Day 3 of the Transportation and Logistics Section of this 2020 Baird Industrials Conference. My name is Garrett Holland, Senior Analyst covering Transportation and Logistics at Baird. We are very pleased to have Canadian National Railway participating on our industrials conference this year.

From the company, we have Ghislain Houle, Executive Vice President and Chief Financial Officer; James Cairns, Senior Vice President, Rail Centric Supply Chain; Keith Reardon, Senior Vice President, Consumer Product Supply Chain; as well as Paul Butcher and Lauren Benoit from Investor Relations. Management is going to review some prepared remarks with slides and then I'll return for Q&A.

So now, we'll turn things over to the company for the opening presentation.

Ghislain Houle
Chief Financial Officer & Executive Vice President, Canadian National Railway Co.

Yeah, thanks, Garrett, and thanks for having us and thanks for people listening to us on webcast. We're very pleased to be participating in your conference. I think it's the first year that we participate, certainly probably not the last. And as you said there, Garrett, what we'll do is we'll introduce CN a little bit with my two colleagues here, take a few minutes to do that and we've prepared a very short presentation to help people follow what we're saying and then after that obviously we'll open up for questions.

So if you turn to that small presentation on page 3, as you can see at CN, we do have a very unique three-coast network with a very well-diversified portfolio supported by solid base of customers and partners. We are well-diversified from a commodity standpoint with our biggest segment being intermodal at just over 25% of our book of business year-to-date at the end of Q3. Everything else is smaller.

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Sure. So there are expansions in the East. We are working very closely with PSA to extracting as much capacity out of the existing port there at Halterm and working with Ceres to extract as much value as we can out of that port as well. A recent proof point there is with their new crane and with the two new berths or the – in fact, we have two berths there now. We recently had a 15,000 TEU vessel come into Port of Halifax. I know it was a big deal in New York. It was fanfare and everything. But that vessel actually called on Halifax before it got to New York.

We also are working with our port operators, DP World in Saint John. They have some capacity plans. We've been servicing Saint John forever. It is one of our ports. And you look at what's going on in Quebec City, the plans that we have with Hutchison to create a terminal, over 750,000 TEUs at that, a fully automated terminal, I might add as well. But we're going through a lot of the permitting process right now.

And I would also add that we get to the US or we get to the US Midwest via those Canadian ports. But we also get into Canada via New York, New Jersey and Philly. And when the strike in Port of Montreal occurred, we actually used that gateway as a way to get into Montreal and Toronto as well. So we have the East Coast covered extremely well.

Ghislain Houle
Chief Financial Officer & Executive Vice President, Canadian National Railway Co.

A

And I would say, Garrett, on this one what's very exciting is that as much as our capacity is very precious in Western Canada, a new site on our geographic, we have Global West is 29%. Our Eastern Canadian franchise is actually underutilized. So all of the growth that Keith is talking about, we will actually be able to accommodate and support at very little, if not zero, CapEx. So that's quite exciting for us.

Garrett Anthony Holland
Analyst, Robert W. Baird & Co., Inc.

Q

Well, on that point I guess, what are your expectations and priorities for capital allocation and the implications for capital expenditures going forward?

Ghislain Houle
Chief Financial Officer & Executive Vice President, Canadian National Railway Co.

A

Yeah. So again, our capital allocation has not changed throughout the years. I mean it's been the same. We like to be predictable and boring. So the first use of cash will always be towards the business. And we're looking for projects that will generate return on invested capital in the range of 12% to 15%.

Then the second use of cash is obviously we like to have a strong balance sheet. We saw the value of that going through the pandemic. I mean if you look – during the heart of the pandemic in Q2, we were able to continue to issue commercial paper at rates that are lower than LIBOR. We actually issued a $600 million 30-year bond, believe it or not, at a rate of 2.45%. That was actually the second lowest of any corporate in the US when we issued it. So we like to have a strong balance sheet. And then if we have strategic opportunities with a strong balance sheet then we can lock them in quickly.

Finally, we look at shareholder distribution first and foremost on dividends. I think that when we look at dividend growth, it's not the amount of growth in a given year that matters as much as the consistency of the growth. And as you know, this year we've increased our dividend by 7%. Through the pandemic, our dividend was never questioned. And so we like the consistency and we've increased our dividend since we've privatized by 16%. We're quite proud of that.

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And then, finally, we look at share buyback. We like share buyback because it's a flexible tool. You can raise it. You can speed it up. You can slow it down. As you know, we've slowed it down now with the pandemic. We've stopped buying back shares. And really the share buyback is a tool that we use to get to a targeted leverage level; targeted leverage level meaning when the rating agencies look at this, they look at adjusted debt to adjusted EBITDA.

When you look our target has been in the range of 1.7 to 1.9 times, call it 2 times, and we're already at – we will finish the Q3 at 2.17 times, hence why we continue to not buying back shares but stay tuned for next year we'll see what we do. But that's our capital allocation. We're very comfortable with this, and investors should think that this should continue. We question it on a regular basis internally and with our board. But as I've said, we'd like to be predictable and boring.

Garrett Anthony Holland
Analyst, Robert W. Baird & Co., Inc.

Q

That was helpful. I wanted to touch on domestic intermodal. As that franchise evolves, where do you see the strategic opportunities and how do you see electric driverless cars competing with rails over time? Obviously, investors want to know how can we move more volume from the road to rail.

Keith Reardon
Senior Vice President-Consumer Product Supply Chain, Canadian National Railway Co.

A

Sure. I'll start off on the domestic intermodal and maybe, Ghis, you could weigh in a little bit too on the driverless truck as we kind of look at that.

Ghislain Houle
Chief Financial Officer & Executive Vice President, Canadian National Railway Co.

A

Yeah.

Keith Reardon
Senior Vice President-Consumer Product Supply Chain, Canadian National Railway Co.

A

So on the domestic intermodal, we're focused on several pieces there. One, we want to drive more business to our US network, as Ghislain talked about the eastern network. We can grow in the states without having a whole lot of capital applied. We have a unique model versus most of the other railroads, especially the US roads. We have a retail product. We go door to door. We sell that service to the beneficial cargo owners. We also have a refrigerated product that we run ourselves door to door. So we're looking at those two markets to help us grow.

But we also work with the IMCs and the wholesalers in the states, especially when we're looking at e-commerce. It is a place where we know that there's opportunity to grow. We have multiple sales channels to sell into that. Our Canadian wholesale partners and our US wholesale partners are a key part of that strategy, multiple sales channels going into that e-commerce business. With regard to driverless trucks, I think we're keeping an eye on it, making sure we see what's going on.

Ghislain Houle
Chief Financial Officer & Executive Vice President, Canadian National Railway Co.

A

Absolutely. And I think that when you look at our franchise, Garrett, we're blessed with a long length of haul either on the international, which is close to like 1,900 miles, close to 2,000 miles and on the domestic at 1,700 miles.

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VELANI EXHIBIT D

CN 2021 MANAGEMENT INFORMATION CIRCULAR EXCERPTS (APR. 27, 2021)

ESSENTIAL.

MANAGEMENT INFORMATION CIRCULAR
AND NOTICE OF ANNUAL MEETING OF SHAREHOLDERS

APRIL 27, 2021

REDACTED PUBLIC RECORD VERSION

Notice of Annual Meeting of Shareholders

Our annual meeting of holders of common shares will be conducted solely via a live webcast meeting on **Tuesday, April 27, 2021 at 10:00 a.m.** (Eastern Daylight Time) at **www.virtualshareholdermeeting.com/CNI2021.** At this website, shareholders will be able to attend the meeting live, submit questions and vote their shares while the meeting is being held.

For the purposes of:

1. receiving the consolidated financial statements for the year ended December 31, 2020, and the auditors' reports thereon;
2. electing the directors;
3. appointing the auditors;
4. considering and approving, in an advisory, non-binding capacity, a resolution (the full text of which is set out on page 9 of the accompanying management information circular) accepting the Company's approach to executive compensation as disclosed in the "Statement of Executive Compensation" section of the accompanying management information circular;
5. considering and approving, in an advisory, non-binding capacity, a resolution (the full text of which is set out on page 9 of the accompanying management information circular) accepting the Company's Climate Action Plan as disclosed in the accompanying management information circular;
6. considering two shareholder proposals described in Schedule "D"; and
7. transacting such other business as may properly be brought before the meeting or any adjournment or postponement thereof.

The Board of Directors has fixed March 5, 2021 as the Record Date for the determination of the holders of common shares entitled to receive notice of the meeting and vote at the meeting.

By order of the Board of Directors

Sean Finn

Sean Finn
Executive Vice-President
Corporate Services and Chief Legal Officer and Corporate Secretary

March 9, 2021
Montreal, Quebec

Letter to Shareholders

March 9, 2021

Dear Shareholder:

On behalf of the Board of Directors ("Board" or "Board of Directors") and management of Canadian National Railway Company (the "Company" or "CN"), we cordially invite you to attend the annual meeting of shareholders, which will be held online on April 27, 2021 at 10:00 a.m. (Eastern Daylight Time). This management information circular ("Information Circular") describes the business to be conducted at the meeting and provides information on executive compensation and CN's environmental, social and governance ("ESG") practices. In addition to these items, we will discuss highlights of our 2020 performance and our plans for the future.

CN's front line workers and their colleagues admirably stood up to 2020, despite its unique challenges, by focusing on their mission. We are extremely proud of the essential transportation service they have provided and thank them for what they have accomplished throughout this most difficult year, marked by blockades on our tracks and the pandemic. Our transformational journey started a quarter of a century ago and continued to the point of CN becoming the successful transportation and supply chain leader and trade enabler we are today.

CN's transportation services are essential to keep the economy moving, for its customers to reach their markets, for retailers to get the goods the public rely on every day and for healthcare workers battling the pandemic to get critical supplies. Our key role in the North American supply chain was clearly demonstrated in the difficult circumstances of 2020.

CN has recently undertaken major new environmental, social and governance initiatives that will reinforce its status as a leader in ESG among North American Class I railroads and across the transportation sector. Our longer-term goal is to be at the leading edge of ESG best practices across North America and globally.

These new measures include the creation of the CN Indigenous Advisory Council, an independent body comprised of Indigenous peoples from across the country, with a mandate to advise CN's Board and senior management, and a commitment to a Board of Directors that has at least 50 percent of independent directors coming from diverse groups, including gender parity. They also encompass an annual advisory vote on CN's Climate Action Plan, and a reset of governance policies reducing the age limit and tenure of directors, setting a lower maximum of public boards on which directors can serve, and reducing the size of the Board. CN continues to strive to implement governance policies that reflect best-in-class ESG practices.

We would like to welcome our new Board nominees, Denise Gray and Justin M. Howell, as well as Margaret A. McKenzie who joined the Board in late 2020. These new directors come to us with extensive business, innovation, and strategic planning experience. The Board looks forward to their contribution as CN continues to play an essential role in the North American economy.

We also want to take this opportunity, on behalf of the entire CN family, to thank our distinguished directors who are not standing for re-election at this annual meeting: Don Carty, Maureen Kempston Darkes, Gordon Giffin, Edith Holiday and Denis Losier for their outstanding contribution, lending their wisdom, expertise and careful oversight to CN's success as it has grown and prospered. The Company is deeply indebted to them.

Your participation in the affairs of the Company is important to us. To that effect, we are pleased to embrace the latest technology to provide easy access, improved communication, and cost savings for our shareholders and the Company, all through a webcast Meeting again in 2021. This set up is imperative these days as it eliminates any health risks associated with large gatherings while enabling greater participation by our shareholders from any location around the world and aligning with our sustainability vision and belief. Similar to last year, through our webcast, you will have the opportunity to interact with members of the Board and senior executive officers of the Company.

We encourage you to vote on the internet or complete the enclosed proxy or voting instruction forms and return them in the envelope provided for this purpose, so that your views can be represented. Even if you plan to attend the meeting, you may find it convenient to vote your shares in advance of the meeting over the internet or by completing and returning the enclosed proxy or voting instruction forms, as applicable. Please consult the information on page 5 of the Information Circular to find out how to attend the meeting online and vote your shares.

We are looking forward to your virtual attendance at the Meeting. Please stay safe and healthy.

Robert Pace, D.COMM., C.M.
Chair of the Board

Jean-Jacques Ruest
President and
Chief Executive Officer

What's Inside

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This Information Circular is provided in connection with the solicitation of proxies by management of Canadian National Railway Company for use at the annual meeting of its shareholders or at any adjournment or postponement thereof (the "Meeting"). In this document "you" and "your" refer to the shareholders of CN and "CN", the "Company", "we", "us", or "our" refer to Canadian National Railway Company. The Meeting will be held on Tuesday, April 27, 2021, at 10:00 a.m. (Eastern Daylight Time) for the purposes set forth in the foregoing Notice of Meeting. The information contained herein is given as at February 26, 2021, except as indicated otherwise.

Shareholder Voting Matters and Recommendation

VOTING MATTER **Election of 11 Directors** BOARD VOTE RECOMMENDATION **FOR each nominee** FOR MORE INFORMATION SEE PAGE 10	VOTING MATTER **Appointment of KPMG LLP as Auditors** BOARD VOTE RECOMMENDATION **FOR** FOR MORE INFORMATION SEE PAGE 8	VOTING MATTER **Advisory Resolution on Executive Compensation** BOARD VOTE RECOMMENDATION **FOR** FOR MORE INFORMATION SEE PAGE 44
VOTING MATTER **Advisory Resolution on Climate Action Plan** BOARD VOTE RECOMMENDATION **FOR** FOR MORE INFORMATION SEE PAGE 40	VOTING MATTER **Shareholder Proposals** BOARD VOTE RECOMMENDATION **AGAINST** FOR MORE INFORMATION SEE PAGE 87	

The following formula illustrates how an eligible executive employee's annual base salary (as at December 31, 2020), target payout (expressed as a percentage of base salary), corporate financial, corporate safety and individual performance factors interact in the determination of the actual annual bonus payout:

Annual Bonus Payout Formula

Corporate Financial Performance

ANNUAL BASE SALARY X TARGET PAYOUT X 70% X CORPORATE FINANCIAL PERFORMANCE FACTOR

+

Corporate Safety Performance

ANNUAL BASE SALARY X TARGET PAYOUT X 10% X CORPORATE SAFETY PERFORMANCE FACTOR X CORPORATE FINANCIAL PERFORMANCE FACTOR WHEN BELOW 100%

+

Individual Performance

ANNUAL BASE SALARY X TARGET PAYOUT X 20% X INDIVIDUAL PERFORMANCE FACTOR X CORPORATE FINANCIAL PERFORMANCE FACTOR WHEN BELOW 100%

The average bonus payout for the NEOs, (consisting of the corporate financial performance factor, the corporate safety performance factor, and the individual performance factor) was 22% of target bonus in 2020. The actual payouts are reported in the Summary Compensation Table on page 65, under the column "Non-equity incentive plan compensation—Annual incentive plans".

Considering the commitment and relentless efforts of our management employees during this unprecedented year, the Board authorized an exception to the AIBP terms to not prorate the Corporate Safety and Individual payout level for management employees in 2020, excluding the NEOs who were not covered by the exception. As such, the Corporate Safety and Individual components, which have a combined weight of 30% at target in the AIBP, were paid independently of the Company's Corporate Financial component to all management employees with the exception of the NEOs.

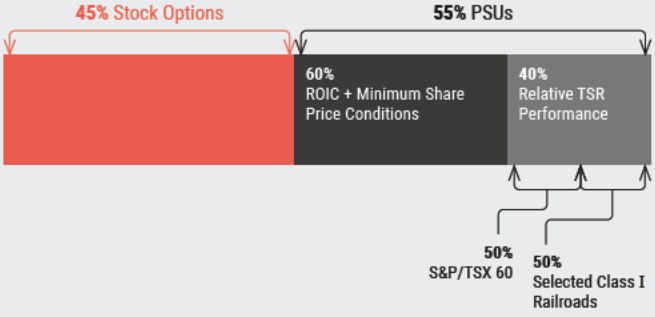
The Board authorized this exception to support greater engagement and retention, and to recognize the outstanding contribution of all management employees in the extraordinary circumstances of the pandemic. Moreover, this decision is aligned with the changes approved by the Board to the AIBP for 2021 and beyond to remove proration on the Corporate Safety and Individual payout levels at the same rate as the Corporate Financial payout level when payout is below 100%, all with a view to support employee engagement on safety and strategic initiatives.

Long-Term Incentives

The Board considers a number of factors to assess the Company's long-term incentive strategy, including the balance between long-term value creation and shareholder wealth protection, executive stock ownership position versus stock option holdings, executive retention risk, as well as the dilution impact of different long-term incentive vehicles. Since 2005, the Board has elected to grant a combination of stock options and PSUs to NEOs, as well as to executives and senior management employees.

LTI values disclosed in the Summary Compensation Table on page 65 are calculated using the Willis Towers Watson expected life binomial methodology. The same valuation methodology is also used for benchmark and grant purposes, ensuring consistency. This valuation methodology provides for precise and comparable compensation information. The Company uses a rolling three-year valuation factor to limit year-over-year fluctuations of the valuation factor for both stock options and PSUs.

PSUs and stock options are weighted 55% and 45% of the long-term incentive award value, respectively, except for the President and CEO position. The long-term award for the President and CEO has a smaller relative weight in stock option value, due to the 20% limitation on the number of stock options that can be awarded to any one individual in a particular year, pursuant to the terms of the Management Long-Term Incentive Plan ("MLTIP") and the stock exchanges rule (please refer to page 71 for a description of the plan).



As part of the review conducted in 2019, the Committee reviewed the compensation programs and the Board approved the following changes to the LTI Plan, effective January 1, 2020, thus impacting LTI awards made in 2020 and after:

- Increase the weighting of the Relative TSR component of the PSUs (increased from 30% to 40%), providing a balanced approach and reinforcing the link to shareholder return;
- Increase the vesting period for stock options from four years to five years to enhance retention; and
- Increase the time period during which stock options may be exercised upon retirement from three to four years following the retirement date to align with the extended vesting period of the stock options through retirement.

The annual grant of PSUs and stock options to NEOs and other eligible employees is reviewed and approved at the meetings of the Committee and the Board, which occur each year in January. In order to determine each NEO's LTI award, the Committee takes into consideration individual performance, retention risk and succession plans, as well as the Company's compensation policy and the value of LTIs granted by the applicable comparator group (please refer to section "Benchmarking Using Comparator Groups" on page 51). The Committee does not consider previous executive grants when setting the individual awards, as the LTI plans are inherently performance-based. The Board may also, at its discretion, approve additional grants of PSUs and stock options to NEOs during the year.

The exercise price of the stock options granted is equal to the closing price of the Company's common shares on the TSX or the NYSE on the grant date.

A minimum active service condition exists for stock options and PSUs to support the retention of key talent approaching retirement. An employee must remain in active service until December 31 of the year of the grant for stock options and until March 31 of the year following the year of grant for PSUs. Should an executive, including NEOs, or other management employees retire prior to the end of the minimum service condition in the award agreement, PSUs and stock options awarded pursuant to that agreement would be forfeited.

Performance Share Units: 2020 Award

The objective of the PSUs is to enhance the Company's ability to attract and retain talented employees and to provide alignment of interests between such employees and the shareholders of the Company.

PSUs vest after three years and the grant date fair value of the PSUs awarded to each NEO in 2020 is included in the Summary Compensation Table on page 65, under the Share-Based Awards column. The vesting of PSUs is subject to the achievement of performance measures defined at the beginning of the cycle and the payout can range from 0% to 200%. At the end of the performance cycle, the number of PSUs will be adjusted based on the achievement of the performance conditions detailed below. PSUs will be settled in CN common shares purchased on the open market.

PSUs awarded in 2020 are subject to the following two performance measures:

1. ROIC PSUs

Sixty percent (60%) of the PSU award value is subject to the achievement of a target related to the Company's average three-year ROIC over the plan period and the payment will be conditional upon meeting a minimum average closing share price during the last three months of 2022. The ROIC for each of the applicable plan years is generally calculated as net income before interest expense, divided by the total of the Company's average net indebtedness and the average shareholders' equity, and may, in certain instances, be adjusted for certain items as determined by the Committee. ROIC measures the Company's efficiency in the use of its capital funds and is viewed as a key measure of long-term value generation to its shareholders. ROIC performance objectives are based on CN's business plan. The 2020 ROIC objective considers the increased capital investments recently deployed increasing capacity and enabling growth, such as track infrastructure expansion and investment in technology to improve safety performance, operational efficiency and customer service. The above combined with the cumulative impact of prior years earnings and the average investment base resulted in a reduction of the expected average ROIC for the three-year period ending on December 31, 2022.

ROIC PSUs granted in 2020 to NEOs and other designated employees are subject to the attainment of the performance measures presented in the table below:

ROIC PSUs performance measure

	OBJECTIVE	PERFORMANCE VESTING FACTOR[1]
PERFORMANCE OBJECTIVE: Average ROIC for the three-year period ending on December 31, 2022	Below 12.5%	0%
	12.5%	50%
	13.5%	100%
	15.0%	125%
	15.5%	150%
	16.0% and above	200%
PAYOUT CONDITION: Minimum average closing share price for the last three months of 2022	C$118.56 on the TSX or U.S.$90.06 on the NYSE	

(1) Interpolation applies between objectives.

2. Relative TSR PSUs

Forty percent (40%) of the PSU award value is subject to CN's Relative TSR measured against two equally-weighted comparator groups: i) selected Class I Railroads, and ii) S&P/TSX 60 companies. Relative TSR performance measures CN's share price appreciation, inclusive of dividends, over the three-year plan period against the companies within each comparator group.

Relative TSR PSUs awarded in 2020 to NEOs and other designated employees are subject to the attainment of the performance measures presented in the table below:

TSR relative to S&P/TSX 60

CNR	PAYOUT[1]
75th Percentile and above	200%
50th Percentile	100%
25th Percentile	50%
Less than the 25th Percentile	0%

(1) Interpolation between points.

TSR relative to Selected Class I railways

CNR	PAYOUT
1st	200%
2nd	150%
3rd	100%
4th	50%
5th	0%

The grant date fair value of the PSUs awarded to each NEO in 2020 is included in the Summary Compensation Table on page 65, under the "Share-Based Awards" column.

Performance Share Units: 2018 Award Payout

The Committee reviewed the vesting of the 2018 PSU award against the performance targets for each measure: ROIC PSUs and Relative TSR PSUs. With respect to the payment of the 2018 awards (that vested at the end of 2020), the Board applied the same principle, as described in the AIBP section above, upon calculating the financial results pertaining to the ROIC performance measure, with an associated impact of less than 1% on the ROIC result.

ROIC PSUs: The Company achieved a three-year average ROIC to December 31, 2020, of 15.15%. In accordance with the plan rules and considering the achievement of the minimum average closing share price condition, a performance vesting factor of 110.8% (compared to 109.6% had the discretionary adjustments not been made) was applied for the ROIC PSUs awarded in 2018.

Relative TSR PSUs: The Company delivered a TSR of 43.68%[1] over the period from January 1, 2018 to December 31, 2020, resulting in an overall performance vesting factor of 99%, reflecting the weighted average performance vesting factor of both measures (0% for Class I Railways and 198% for S&P/TSX 60).

PSUs were settled on February 25, 2021 in CN common shares purchased on the open market to encourage share ownership among participants, subject to compliance with the other conditions of the award agreements.

(1) TSR performance is calculated using CNR 20-day share price average immediately prior to January 1, 2018 (including dividend reinvestment) and CNR 20-day share price average ending on December 31, 2020 (including dividend reinvestment). The same calculation is used for all companies part of both comparator groups.

Performance Objectives and Results – Performance Share Units – 2018 Award

ROIC PSUs – 70% of the grant value:

	OBJECTIVE	PERFORMANCE VESTING FACTOR[1]	RESULTS
PERFORMANCE OBJECTIVE: Average ROIC for the three-year period ended on December 31, 2020	Below 13.5%	0%	15.15%[2] translating into a payout factor of 110.8%
	13.5%	50%	
	14.5%	100%	
	16.0%	125%	
	16.5%	150%	
	17.0% and above	200%	
PAYOUT CONDITION: Minimum average closing share price for the last three months of 2020	C$102.88 on the TSX or U.S.$80.71 on the NYSE		C$140.62 U.S.$108.04

(1) Interpolation applies between objectives.

(2) The calculation of the Average ROIC, as per plan, removes deferred income taxes resulting from various tax enactments and the loss on assets for sale. Similar to the AIBP, all government support related to the pandemic received by CN and items outside management's control were removed from the calculation, the material ones being the benefits related to the U.S. CARES Act, the U.S. and Canadian payroll tax payment postponements, the financial impact from the illegal rail blockades and the direct expenses related to the Company's pandemic response. Consequently, the resulting RO C was 15.15% (compared to 15.08% had the discretionary adjustments not been made, as per plan).

Relative TSR PSUs – 30% of the grant value:

TSR relative to S&P/TSX 60 (15% of the grant value)

CNR	PAYOUT[1]	RESULTS
75th Percentile and above	200%	
50th Percentile	100%	43.68%[2] TSR resulting in the 74.5th percentile and translating into a payout factor of 198%
25th Percentile	50%	
Less than the 25th Percentile	0%	

(1) Interpolation applies between objectives.

(2) TSR performance is calculated using CNR 20-day share price average immediately prior to January 1, 2018 (including dividend reinvestment) and CNR 20-day share price average ending on December 31, 2020 (including dividend reinvestment). The same calculation is used for all companies part of both comparator groups.

TSR relative to selected Class I Railways (15% of the grant value)

CNR	PAYOUT	RESULTS
1st	200%	
2nd	150%	
3rd	100%	43.68%[1] TSR resulting in the 5th place ranking and translating into a payout factor of 0%
4th	50%	
5th	0%	

(1) TSR performance is calculated using CNR 20-day share price average immediately prior to January 1, 2018 (including dividend reinvestment) and CNR 20-day share price average ending on December 31, 2020 (including dividend reinvestment). The same calculation is used for all companies part of both comparator groups.

The value vested during the year for each NEO is included in the table "Incentive Plan Awards—Value Vested or Earned During the Year", and under the "Share-Based Awards—Value Vested During the Year" column on page 70.

Stock Options

Stock options were granted in 2020 to NEOs and other designated employees pursuant to the MLTIP. Please refer to page 71 for details of the MLTIP. The stock options granted in 2020 vest over five years at a rate of 20% at each anniversary date and have a ten-year term. Grants were made in the currency of the recipient's salary.

Stock options are granted with the objective of rewarding NEOs and other designated employees for creating sustainable, long-term shareholder value. If the share price increases between the grant date and the vesting date, stock options will have a realizable value. Gains are realized once the stock options are exercised. The gain will be equivalent to the difference between the share price on the date of exercise and the grant date share price, multiplied by the number of stock options exercised.

The grant date fair value of the stock options awarded to NEOs in 2020 is included in the Summary Compensation Table on page 65, under the "Option-Based Awards" column.

Executive Perquisites

NEOs are eligible to receive perquisites and personal benefits in accordance with the Company's policy and in line with general market practice. These typically include the use of a Company-leased vehicle, parking, financial counselling and tax services, club membership, certain healthcare benefits and life insurance, and an annual executive physical exam. Other executives and senior management employees are also eligible to receive select perquisites; the type and value of the perquisites are generally determined by the grade of the employee's position. All executives must comply with the aircraft utilization policy, which restricts the usage of the corporate aircraft to business-related purposes only, save for exceptional circumstances and provided all incremental costs are fully reimbursed.

Employee Share Investment Plan

The Employee Share Investment Plan ("ESIP"), available to all Company employees, provides the opportunity to participate in CN's ownership through the purchase of CN common shares on the open market via payroll deductions. Employees may contribute between 1% and 10% of their gross base salary to the ESIP every pay period. The Company provides a 35% match on the first 6% of employee contributions. Since January 1, 2019, Company contributions to the ESIP are subject to a one-year vesting period and are forfeited should certain participant contributions be sold or disposed of prior to vesting. Over 80% of CN's employees are shareholders of the Company through participation in the ESIP, and in 2020, all NEOs participated in the ESIP.

On May 25, 2020, the Company suspended the 35% match in an effort to curb expenses during the pandemic. The 35% match was reinstated on October 1st, 2020.

The value of the Company match received by NEOs in 2020 under the ESIP is indicated in the "Details of the All Other Compensation Amounts" table on page 68.

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36500

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

EXHIBIT E

REPLY VERIFIED STATEMENT OF JONATHAN WAHBA AND MICHAEL J. NAATZ

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36500

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

REPLY VERIFIED STATEMENT OF JONATHAN WAHBA AND MICHAEL J. NAATZ

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1. We are Jonathan Wahba, CP's Vice President, Commercial Integration, and Michael J. Naatz, KCS's Chief Marketing Officer and Executive Vice President. We jointly submitted a Verified Statement supporting the Application, and we submit this Reply Verified Statement to address criticism of Applicants' estimates of Transaction-related traffic growth and specific critiques of CPKC's ability to attract additional traffic.

2. I, Mike Naatz, am submitting a separate Reply Verified Statement to address several issues raised by the Comments and Responsive Applications that are specific to KCS.

I. CRITICISM OF APPLICANTS' ESTIMATES OF TRANSACTION-RELATED TRAFFIC GROWTH ARE MISGUIDED

3. Several Class I railroads express a variety of conflicting disagreements with the estimates that we and other Applicant witnesses presented of the traffic growth and associated revenue gains that CPKC will realize as a result of the more effective competition it will deliver to the marketplace. Some assert that we have overestimated the potential for CPKC to win new traffic, and that CPKC will have to resort to foreclosure strategies to meet our forecasts. Others suggest that we underestimated the traffic gains that CPKC will realize.

4. These criticisms are without merit. We and other Applicant witnesses brought to bear significant market knowledge and experience in assessing the likely traffic shifts that CPKC will be able to attract. We carefully assessed the benefits that CPKC will bring to shippers as compared to the transportation services that CP and KCS are separately able to provide today, and we took account of what shippers value when choosing their transportation service provider. We incorporated feedback from the many, many customers we have engaged with since announcing the CP/KCS combination.

5. We recognize that CPKC will catalyze a more competitive transportation environment, so naturally our estimates are not a perfectly precise prediction of exactly how the

chips will fall out. But we are confident that CPKC single-line services will offer exciting new transportation options and succeed in attracting significant volumes of freight from other railroads and trucks, and in many cases will prompt shippers to adjust their shipping patterns to take advantage of the new options CPKC will introduce. For example, by creating new single-line connections between CP's network and KCS's network, the Transaction will increase opportunities for interchange between CPKC and CSX at East St. Louis.

6. Our outreach to customers since last October when we filed the Application shows great enthusiasm and interest in our new offerings. The views expressed by a number of shippers' submitting reply verified statements – along with the hundreds who previously submitted statements supporting the Transaction – are illustrative of the type of response we have received from CP and KCS's customers in the months since we submitted the Application. Many of those customers are planning to put their own money behind these views, with plans to invest in new facilities to take advantage of CPKC's new competitive potential.

7. As we explain below, the Class I railroads' criticism of our traffic estimates focus on an unduly narrow set of formulaic metrics and in the process miss the forest for the trees. They provide no basis for rejecting our traffic estimates, much less concluding that CPKC would irrationally be impelled to engage in foreclosure strategies to force traffic to CPKC. CPKC will instead attract traffic on the merits, while enabling shippers to keep their existing interline options if that is what they would prefer to do.

A. CPKC Growth Will Not Be Hindered by Longer Hauls as the Threatened Class Is Allege

8. The Class I railroads that criticize our traffic analysis behave as if their service and routes cannot be beat, such that shippers would never decide to shift to a CPKC option unless forced to do so. CPKC will show them otherwise.

9. These critics present a narrow and inaccurate views of the market and overlook important attributes of the enhanced services CPKC will offer. UP witness Thomas Haley, for example, expresses skepticism about revenues that CPKC projects from the new traffic attracted to the CPKC network on the grounds that CPKC's routes will in some cases be longer than UP and BNSF routes.[1] He alleges that "CP-KCS have a fundamental routing disadvantage – that is, their routes are longer, slower, and otherwise less efficient than available alternatives" and claims that "CPKC routes would be, *on average*, 217 miles longer than the existing movement."[2]

10. BNSF's witness Benton Fisher takes a similarly narrow focus when he points to the length of CPKC's routes as a basis for challenging our testimony that "[p]erhaps most compelling is the opportunity to open an entirely new corridor for containerized cargo moving between Asia and points in the Eastern United States and Canada via the Port of Lazaro Cardenas."[3] CN's witness David Hunt makes the same assertion.[4]

11. These perspectives ignore market realities and they ignore the attributes of CPKC's future service offerings.

12. Mr. Haley presents an overly simplistic analysis of distance and idealized minimum run times. These isolated metrics are out of sync with what we are hearing from our customers and what we know about competitive dynamics of the marketplaces CPKC will serve.

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[1] *See* UP-10, Verified Statement of Thomas Haley at 5 ("Applicants' routes between Mexico/Texas markets and Chicago/Twin Cities/Upper Midwest markets are significantly longer and less efficient than UP and BNSF alternatives.")

[2] UP-10, Verified Statement of Thomas Haley ("Haley V.S.") at 19 (emphasis in original).

[3] *See* BNSF-9, Verified Statement of Benton V. Fisher at 10 ("Such rail shipments would be among the longest on the North American continent, as Lazaro Cardenas is 900 miles south of KCS's Laredo gateway, and 2,500 miles from the Chicago gateway to connect with eastern US railroads.")

[4] *See* CN-13, Verified Statement of David T. Hunt at 6 ("For the Applicants' diversion estimates to be achievable, shippers would have to agree to use longer rail routes and pay higher rates.")

13. First, we know from experience that a shorter or *theoretically* "more efficient" route does not always mean that the route will be better at meeting shippers' service needs. UP's witness Haley claims, for example, that "a CPKC route from Chicago to Laredo would be substantially less efficient and slower than UP's existing route."[5] But this is just the output of counting of miles and measuring theoretical train performance using a train performance calculator.[6] Mr. Haley's theoretical speed estimates do not account for actual shipper experience, because real-world railroad service performance does not always track mileage or similar metrics.

14. Some (but not all) of CPKC's routes in these corridors will be somewhat longer, and perhaps *theoretically* somewhat slower, but only by a relatively small margin. And when real world experience is factored in, we expect CPKC's performance to be comparable if not better than what our rivals are able to offer. CPKC expects to offer transportation services that are not just timely and efficient, but *reliably so* (i.e., less variable), such that we consistently deliver transit times that meet our customers' needs. It would be unreasonable to expect CPKC will not succeed in attracting traffic with the improved new services we will be able to offer (and we know that "foreclosure" will never be a strategy that we would resort to, primarily because it would not work; it would instead drive traffic away from CPKC).

15. CP's experience in Canada is illustrative. CP's route from Toronto to Edmonton is longer and slower than the route of our principal rail competitor, yet we still compete quite effectively and win significant business with our intermodal and other services on this route. Similarly, CP's route from Vancouver to Detroit is shorter and slower than competitive

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5 UP-10, Haley V.S. at 21.

6 Id.

alternatives, and we still win business there as well. As our success has shown, reliability and consistency have value all their own. On the other side of the coin, CP's route from Vancouver to Toronto is faster and shorter than CN's route, yet CN still is able to compete effectively for traffic on those lanes.

16. Second, and equally important, even if it were lanes in which CPKC could not deliver quite the same speed of transit as BNSF or UP options, speed is not remotely everything in meeting customer needs. As these railroads know as well as we do, shippers make their transportation choices based on a wide array of factors. Modest disadvantages in any one parameter – speed included – will not disqualify CPKC (or any other option) from providing shippers with a valuable and important competitive option that many will choose.

17. We know from our extensive engagement with shippers across countless transportation markets (across commodities and geographies) that shippers consider an array of factors in assessing which transportation option best meets their needs: anticipated transit time is one, as is the variability/reliability of those transit time expectations. To many shippers other factors are equally or more important, including, in no particular order: equipment supply, loaded-to-empty cycle times, customization of service design, customer service, investments in loading or unloading facilities, service frequency, pricing, and many more. Different shippers weight these factors differently, and it is utterly wrong to suggest that a mere mileage or idealize transit time disadvantage would prevent a railroad – CPKC or any other – from competing successfully. The Class I witnesses who cherry-pick isolated metrics to support the alleged superiority of their existing routes provide no basis for invalidating our estimates, which are based on market reaction to the complete package we will put forward in our service offerings.

18. This is all the more the case with respect to the CPKC services the market impact of which we have assessed. We know how effectively both CP and KCS have been able to deliver reliable services that meet customer expectations. Both railroads will bring that acumen to CPKC, with a supercharged set of capabilities to compete more effectively against the larger Class Is. We do not doubt that they will try to respond, but our estimates of CPKC's likely traffic gains factor in that kind of competitive response. CPKC gains traffic and revenue, and more importantly from the Board's perspective, shippers will gain a more competitive transportation environment.

B. Our Forecasts Are Bolstered by Shippers' Emerging Plans to Make Significant Investments, Capitalizing on the Value Unlocked by the CP/KCS Transaction

19. Many shippers we have been in touch with since last October tell us that they are already planning significant investments to exploit the improved transaction options that CPKC will offer, including new grain investments in Mexico, Iowa, and Missouri, and new fertilizer investments. Some of them have submitted reply verified statements spelling out these plans and urging the Board to approve the Transaction. *See, e.g.*, Reply Verified Statement of NEW Cooperative, Inc. ("I write today to advise the STB of a potential investment that is contingent on the approval of the CP-KCS combination. This combination provides us the possibility to build a greenfield grain elevator to ship corn and soybeans in Northern Iowa, to capitalize on new, efficient single-line routes on CP-KC from Iowa to grain destinations on the KCS, including Mexico."); Reply Verified Statement of Kevin Hall, Vice President, Supply Chain & Continuous Improvement, Agriculture for CHS Inc. ("The increased efficiencies and market access created by the CP-KCS merger would be an impetus for rail-using companies, such as CHS, to make the most of those benefits by considering making new investments in supply chain infrastructure to

be served by CPKC."); Reply Verified Statement of Ray Carroll County Grain Growers, Inc. ("We are pleased to support the CP-KC transaction and believe that it opens up more possibilities for us. In fact, we anticipating making new investments in this corridor in the foreseeable future.").

20. We have also spoken to a number of other shippers who tell us privately that they plan to make similar investments. One such shipper is planning a $40 million investment in a grain elevator in the United States and a separate $15 million investment to enable a Mexican facility they operate to accommodate 8500-foot "HEP" grain trains. Another shipper has informed us of their interest in capitalizing on CPKC's new single-line service between their Canadian sources and the Gulf by investing in an export terminal option in Port Arthur, TX. Similarly, shippers of DRUbit have told us (and in some cases the Board) that further investment in the infrastructure necessary to remove diluent from Albertan heavy crude (and thus render it safer for rail transit) is unlikely to happen without the transportation service improvements unlocked by the Transaction. We have had ongoing discussions with others in the grain space about investments. The fact that these shippers, across a range of industries, are considering or planning substantial investments contingent on our Transaction provides further support for our estimation of the potential for new CPKC service to succeed in the market.

21. In addition to the customers who plan to invest, Applicants are encouraged by the support of shippers who rely on our offerings to expand facilities and investments. However, all of these new investments and their resulting benefits for shippers and the U.S. economy are contingent on CPKC coming to fruition.

C. Ultimately, Rail Customers Will Decide How Successful CP/KCS Is in the Marketplace, and We Will Strive to Earn Their Trust and Business

22. We recognize that our forecasts of CPKC's Transaction-related traffic gains will not dictate market outcomes. Ultimately, it is rail customers who will decide how successful CPKC will be in the marketplace. CPKC will compete hard and strive to earn our rail customers' trust and business. But, contrary to the assertions of railroads like UP, BNSF and others who are seeking the help of the Board to be protected from competition, CPKC has no ability to force any traffic to the CPKC lines.

23. Other witnesses are replying in detail to the claims by UP, BNSF and others that CPKC will have incentives or the ability to "foreclose" shippers' existing interline options and thereby force traffic to shift over to CPKC routes. Mr. Brooks, for example, explains why this is just not so, and how Applicants' commitment to keep gateways open will assure that it cannot happen.

24. Mr. Brooks and other witnesses also explain how the remedies proposed by certain commenters – especially UP and BNSF – would not only be unnecessary but a supposed "cure" that would be far worse than any disease. The mileage-prorate divisions mechanisms that UP and BNSF both seek to have the Board impose would be affirmatively anticompetitive, as would anything that discouraged CPKC from competing aggressively to attract traffic to its single-line routes, including lower single-line rates. The fact that UP and BNSF may have entered into an arm's-length agreement decades ago that incorporates certain mileage-prorate mechanisms into a divisional agreement that gave UP access to certain BNSF-served territory, in exchange for UP's sale to BNSF of a line that gave BNSF new single-line routes into UP territory, is not a justification for imposing such a regime in this case.

25. From the perspective of our assessment of the likely traffic gains that CPKC will achieve in the post-Transaction marketplace, let us be very clear. Our analysis took as a given that CPKC will have no incentive to degrade any of the interline options that CP or KCS shippers have chosen in today's marketplace. CPKC will not attract traffic by shutting down those options (or "closing" gateways). Our analysis reasonably anticipates that CPKC will attract traffic by providing shippers with improved new options that neither CP nor KCS could have delivered without the Transaction. CPKC will succeed – not always, but enough – through hard competition not foreclosure. Shipper choices will be what brings new traffic to CPKC, not anything else.

II. SPECIFIC CRITIQUES OF CPKC'S ABILITY TO ATTRACT ADDITIONAL TRAFFIC ARE INCORRECT

26. In addition to their claimed skepticism about CPKC's ability to compete against the lager Class Is, the Class I witnesses offer a handful of criticism of specific aspects of our traffic analysis. None have merit.

A. Class I Critics Are Wrong to Conclude that CPKC Will Be Unable to Attract International Intermodal Traffic from the Port of Lazaro Cardenas to the U.S. Midwest

27. CN witness David Hunt asserts that we have overestimated the potential for CPKC to attract international intermodal traffic moving from the Port of Lazaro Cardenas to the U.S. Midwest. Mr. Hunt's analysis is flawed. He claims that our estimates "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," and that our analysis ignored that this new traffic would require "shifting international container traffic … to more complex and circuitous water and rail routes via the Port of Lazaro Cardenas (on the Mexican Pacific coast)

and KCSM/KCS/CP." *See* CN Comment, Hunt V.S. at 27. He is wrong. We considered all of these factors and our assessment is both reliable and realistic, as recent experience and shipper input corroborates.

28. First, the interest of international container shippers (steamship companies and their beneficial owners) in developing alternative paths from Pacific ports to the U.S Midwest is well established, and not at all about "replacing" the dominant ports of Los Angeles and Long Beach. Mr. Hunt fails to consider the important factor of supply chain reliability. Sustained growth at LA/Long Beach has been constrained by capacity limitations involving the whole supply chain infrastructure associated with the port, as evidenced by its chronic congestion in recent years. Vessel owners and trans-Pacific intermodal shippers have long looked for complements to the LA/Long Beach port, as CN's growth at the Port of Prince Rupert (which CP does not serve) has shown. (CP already serves Vancouver, of course, and we would have exploited opportunities to tap more Asian trade were it not for limitations facing Vancouver, particularly capacity to grow to serve new markets. The CP/KCS Transaction will not have any effect on our ability to attract traffic using the Port of Vancouver.)

29. Second, the Port of Lazaro Cardenas already has the efficient intermodal facilities necessary to support its use as a viable option for trans-Pacific container shippers, but it is restricted by the lack of single-line rail access to the U.S. Midwest, which every U.S. and Canadian container port on the Pacific already possesses (*i.e.,* Prince Rupert, Vancouver, Seattle/Tacoma, San Francisco/Oakland, and LA/Long Beach). The APM terminals facility, the "first semi-automated and most technological advanced container terminal in Mexico," offers

"consistent high levels of productivity."[7] Semi-automated capabilities result in faster, safer, and more robust service than manual terminals can offer. Shippers also have the option of Hutchison's terminal in Lazaro Cardenas. Hutchison, like APM terminals, is one of the three largest international intermodal container operators in the world. Both APM and Hutchison are known globally as sophisticated, efficient, and safe operating terminals.

30. Third, contrary to Mr. Hunt's assertion, the additional rail mileage between Lazaro Cardenas and Chicago, and additional vessel mileage on some trans-Pacific sailing routes, is not a barrier to Lazaro Cardenas playing a role in delivering containerized cargo to the U.S. Midwest. From a steamship perspective, Lazaro Cardenas is not materially farther from Asia, taking into account vessel string designs. Modest increases in maritime distances are no barrier to Lazaro Cardenas' competitiveness.

31. From a rail-route perspective, as we have discussed above and in our initial Verified Statement, modest mileage disadvantages will not prevent routes via Lazaro Cardenas from being competitively viable. Indeed, given the efficiency and lack of congestion at Lazaro Cardenas, in the time it takes a container on a vessel arriving off the port of LA/Long Beach to arrive in port, get offloaded and ultimately placed on a railcar destined for Chicago, a CPKC intermodal train would already be well on its way toward the U.S./Mexico border.

32. Our analysis of the potential for CPKC to handle additional traffic from the Port of Lazaro Cardenas is not purely hypothetical. It is backed up by the assessments of many other market participants and "proof of concept" testing by CP and KCS working together on an interline basis in corporation with a number of shippers eager for alternatives to LA/Long Beach.

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[7] *See* APM Terminals website, available at https://www.apmterminals.com/en/lazaro-cardenas/about/our-terminal.

33. First, Hapag-Lloyd, a major ocean shipper, addresses Mr. Hunts dismissive analysis head on. Uffe Ostergaard, President for Hapag-Lloyd (America) LLC explains:

> "[W]e expect the Transaction to generate efficient and effective intermodal service between the port of Lazaro Cardenas and destinations in the United States and Canada. Much ocean freight from Asia bound for the United States and Canada flows through various Canadian and United States ports, including Los Angeles and Long Beach. While it is undeniable that those ports will continue to be lynchpins in the global supply chain, it is also evidence that the volumes shipping through most ports often strain their capacity, creating delays. The port of Lazaro Cardenas could handle some of this ocean freight from Asia to the United States and Canada, reducing the strain on other key gateways."[8]

Many other shippers have also expressed to us their similar interest and enthusiasm in the potential represented by for this new CPKC intermodal route.

34. Second, we have concrete market-based evidence that shipper enthusiasm is real and not just hypothetical. In March 2022, CP and KCS cooperated on an interline basis in a demonstration of the capabilities of this new route for several intermodal shippers. CP and KCS were approached by a logistics company that had arranged for the trans-Pacific shipment of containers for Dollar General and other beneficial cargo owners on a vessel operated by Hapag-Lloyd to explore the possibility of an inland rail move from the Port of Lazaro Cardenas to Chicago, for drayage beyond to other U.S. Midwest destinations. Working closely with these parties, KCSM, KCSR, and CP demonstrated the ability to deliver a train carrying 198 individual containers for grounding at Chicago, each arriving only seven days after docking at Lazaro Cardenas. These test runs yielded significant time savings for the shippers, as shipments typically wait longer than seven days just to leave the Port of Los Angeles. As this experience shows, the distance on the water, like the rail mileage, is a far less useful metric than the overall

[8] Reply Verified Statement of Hapag Lloyd (Americas) at 1.

travel time and reliability. Although the investments necessary to make this kind of performance consistent and repeatable will have to await consummation of the CP/KCS Transaction, these test runs prove the capability of this logistical pipeline (the port, CPKC's route network, and CPKC's efficiently located intermodal terminal outside Chicago) to produce real shipper benefits for intermodal shippers.

35. Based in part on this experience, Hapag-Lloyd concludes that "[t]he key is reliability and efficiency, and the Port of Lazaro Cardenas, couple[d] with efficient CPKC single-line rail service, will offer a very attractive alternative for companies like Hapag-Lloyd and our many intermodal customers." *See* Hapag-Lloyd R.V.S. at 2. Mr. Hunt is simply uninformed when he asserts that increased CPKC intermodal traffic from Lazaro-Cardenas to the U.S. Midwest is a fantasy.

B. CN's Criticisms of Other CPKC Traffic Opportunities Are Not Well Founded

36. CN's witness David Hunt also attacks our estimates with respect to new traffic opportunities relating to LPG, grain, and perishables. *See* Hunt V.S. at 33-35. In each case, his critiques are unwarranted.

37. ***LPG.*** First, with respect to LPG, Mr. Hunt asserts that (a) we claim CPKC will attract traffic that does not currently exist; and (b) the new facilities necessary to handle this traffic are not reflected in CPKC's capital expense plans. With respect to the first point, Mr. Hunt's contention actually underscores a key benefit of the CP/KCS Transaction: by creating new, single-line routing options that do not exist today, the Transaction will expand the market reach of CPKC's shipper base and create new, more efficient linkages between market participants. As to these LPG opportunities, CPKC will better link significant origins of LPG in Alberta with significant destination markets in Mexico. The fact that there are volumes of LPG

that do not move between these points today is precisely the point: the Transaction will create opportunities for LPG shipments that do not currently exist.

38. With respect to Mr. Hunt's second point, CPKC will assess investment in new facilities across its entire network as customer response to CPKC's new initiatives develop and will assess the particulars such as potential sites, timing, and capex requirements. There are ample resources in the combined capital budgets of CP and KCS to support business development initiatives such as this one.

39. ***Grain.*** Second, with respect to grain, Mr. Hunt makes the same mistake when he complains that we provided no explanation or reconciliation for the opportunities for traffic shifts that we identified that had not been identified in the rail-to-rail traffic analysis of Messrs. Brown and Zebrowski. The key point is that we are looking at a different set of potential opportunities that are cumulative rather than mutually exclusive. As we explained, CP/KCS Transaction will expand the market reach of grain shippers served by CP and allow them to ship to different markets than they currently ship to, which they cannot do as efficiently today. For example, we identified opportunities where new CPKC routes would enable origins on CP to increase their shipping volumes by sending grain to a major receiver of grain and DDGs ({{[redacted]}}) served by KCSM in Mexico. Grain shippers are excited about these new opportunities, as we explained in our initial Verified Statement. *See* Wahba/Naatz V.S. at paragraph 25.

40. Messrs. Brown and Zebrowski, by contrast were identifying existing flows from the same or nearby origins to the same or nearby destinations, that likely would shift to new single-line CPKC transportation options. In short, the Transaction will achieve both sets of gains, and we carefully avoided double counting any of these traffic opportunities.

41. ***Perishables.*** Third, with respect to perishables shipments that we anticipate CPKC will be able to attract from trucks to CPKC intermodal service, Mr. Hunt asserts that Applicant's expert on truck-to-rail diversions, Bengt Mutén, found a smaller volume of diversions of perishables than we did. This criticism is invalid, for reasons Mr. Mutén explains in his Reply Verified Statement. Mr. Mutén's analysis was necessarily limited to examining truck movements in the specific lanes in which those shipments take place today. Our analysis of potential new CPKC marketing opportunities had a wider lens. With our knowledge of the market, we were able to identify the potential to convert two-stage truck flows – from origin in Mecxico to intemediaet destination, and then to Upper Midwest end markets – and assess the potential for direct service by CPKC to be highly competitive. The fact that Mutén did not include these diversions in his analysis is simply a matter of limitations in the data available to him, not any disagreement with our assessment.

C. The CP/KCS Transaction Will Be a Vital Catalyst for Additional Investment in Conversion of Crude-by-Rail to DRUbit

42. Finally, CN witness Hunt claims that "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." *See* CN-—13, Hunt V.S. at 25. Mr. Hunt argues that "[t]he 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," and that the Gibson Energy press release indicates that this traffic opportunity "pre-dates the merger" and that "merger-related discussions could not have occurred with Gibson Energy at the time of the 2019 press release." *Id.*

43. Mr. Hunt is either confused or misinformed about the potential DRUbit traffic that we addressed in our initial Verified Statement. The press release Mr. Hunt cites related to

the first of three phases of a project undertaken by Gibson Energy and U.S Development Partners to build a diluent recovery unit (i.e., a "DRU") at Hardisty, AB, to support the rail movement of crude in non-hazardous DRUbit form to refineries in the United States. The rail traffic associated with Phase I, which is the only topic of the press release Hunt references, was *not part of our traffic forecast*.

44. The additional rail traffic that we anticipated would move via CPKC single-line routes from Hardisty is contingent on Phases II and III of the Hardisty project, which do not exist today and very well would never come to fruition absent the improvements in rail transportation economics – particularly improved equipment cycle times – that will be made possible by the CP/KCS Transaction.

45. Mr. Hunt may not understand these facts, but the shippers in question do. This is why the participants in the Hardisty DRU project have enthusiastically supported the Transaction. Josh Ruple, Executive Vice President, Chief Operating Officer of US Development Group, LLC, states that USD's "goal of additive Dilbit to DRUbit shipment transition is substantially more likely to increase in a world with CPKC than in one without."[9] This is because, as explained by Brad Sanders, Executive Vice President, Chief Commercial Officer of US Development Group ("USD Group"), "the single-line benefits and new investments made possible by the CP/KCS transaction will provide the improved rail efficiency and economics *necessary to support further investment* in our DRUbit by Rail Network."[10]

46. For DRUbit and so many other commodities, the benefits of CPKC's efficient new single-line services will change the calculus for companies evaluating their transportation

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[9] Reply Verified Statement of USD Group (Josh Ruple) at 2.

[10] Reply Verified Statement of USD Group (Brad Sanders) at 1.

options and considering investments that depend on efficient transportation options. CPKC, its shippers, and even shippers who choose to stick with their existing transportation providers, will all benefit from the new competition that the Transaction will bring, all to the clear benefit of the U.S public interest.

III. OTHER ISSUES

Applicants are aware that several individual U.S. Federal Maritime Commission commissioners have raised questions about the CP/KCS Transaction being targeted at diverting intermodal cargo from the U.S.[11] It is not. CP already serves those Canadian ports and connects them via efficient single-line intermodal services to the U.S. Midwest. Though the Transaction will enable CPKC to expand its single-line offerings to include Kansas City (where CP has no intermodal terminal today), we do not anticipate significant new intermodal between Kansas City and Canadian ports on the Atlantic or Pacific. Our estimate of the growth potential associated with the Transaction in these lanes is quite modest: only approximately 5,600 annual TEUs from the Port of Vancouver to Kansas City and approximately 2,800 annual TEUs from the Port of Saint John to Kansas City. And, if CPKC's new services were successful in achieving some gains in traffic it would be because they offered U.S. receivers and exporters better, more competitive transportation options, and in all likelihood would expand the total pie rather than divert traffic from other ports in the United States or elsewhere.

[11] *See* Comments of Commissioners Carl W. Bentzel, Louis E. Sola and Max M. Vekich of the Federal Maritime Commission (filed June 22, 2022) (alleging that "the proposed merger will adversely impact U.S. ports and the primarily U.S.-based intermodal railway systems that serve our ports, and would disproportionately benefit Canadian ports and the primarily Canadian-based intermodal railway systems that service Canadian ports for transportation of U.S.-bound cargo").

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VERIFICATION

I, Jonathan Wahba, declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this statement.

Executed on this 12 day of July, 2022

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Jonathan Wahba

DocuSign Envelope ID: 9BD4EE2C-8A57-4DB2-8646-9FEBF761D7FA

VERIFICATION

I, Michael J. Naatz, declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge. Further, I certify that I am qualified and authorized to file this statement.

Executed on this 12 day of July 2022.

DocuSigned by:
Mike Naatz
FD5BF2DEC92345C...

Michael J. Naatz

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36500

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

EXHIBIT F

REPLY VERIFIED STATEMENT OF MICHAEL A. NAATZ

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36500

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

REPLY VERIFIED STATEMENT OF MICHAEL J. NAATZ

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EXHIBIT 5 P – MAP OF KCS'S AGRICULTURAL CUSTOMERS ON THE SPRINGFIELD LINE

I. INTRODUCTION

1. I am Michael J. Naatz, Executive Vice President and Chief Marketing Officer at Kansas City Southern (KCS). A substantial portion of my responsibilities involves pricing strategy, market access analysis, development of business opportunities, and competition analysis. I have served in my current role since October 2018. KCS is a non-carrier holding company that owns and controls The Kansas City Southern Railway Company (KCSR), The Texas Mexican Railway Company (Tex Mex), Gateway Eastern Railway Company, Kansas City Southern de Mexico (KCSM), S.A. de C.V., and other non-rail subsidiaries. I joined Kansas City Southern in 2012 as Senior Vice President and Chief Information officer. In 2014, I was promoted to Senior Vice President of Operations Support & Chief Information Officer. I held that position until being promoted to my current position. Before joining KCS, I was president of YRC Holland, a division of YRC Worldwide (YRC). Prior to that role, I served in a variety of executive leadership positions at YRC, including the role of YRC's chief customer officer. I hold a Master of Business Administration from Northwestern University's Kellogg School of Management and a Bachelor of Arts in economics from the University of Illinois.

2. I am submitting this Reply Verified Statement to address several issues that have been raised by the various comments filed in the proceeding. My testimony will address the following: (1) BNSF's allegations regarding KCS's acquisition and control of Tex Mex and KCSM, and whether KCS has used that control to foreclose BNSF traffic through the Laredo gateway; (2) KCS's approach to KCSM pricing and why such pricing does support efficient UP-KCSM and BNSF-KCS-KCSM interline services via the Laredo gateway; (3) why Canadian National's (CN) proposed forced sale of KCS's Springfield Line would not be in the interest of shippers; (4) why it would not be in the public interest to grant the anticompetitive "mileage

prorate" rate-setting mechanism proposed by BNSF and UP (and echoed in the comments of ACC/TFI/NITL); (5) KCS's initial synergy proposals and why those proposals underestimated the amount of synergies that are indicated in the Application; (6) the conditions requested by various shippers of toxic inhalation hazard and poisonous inhalation hazard (TIH/PIH) commodities; and (7) the non-competition related conditions requested by Texas International Terminal and Evergy Metro, Inc. Concurrent with this statement, I am submitting a separate Reply Verified Statement jointly with Jonathan Wahba, Vice-President of Commercial Integration at Canadian Pacific Railway Company (CP), to address comments made about our previous joint testimony in support of the Application.

II. KCS HAS NOT USED ITS CONTROL OF TEX MEX AND KCSM TO FORECLOSE UP OR BNSF ROUTINGS THROUGH THE LAREDO GATEWAY

3. As I understand, BNSF makes the same arguments as it did in the 2005-2006 KCSR/Tex Mex/KCSM proceeding, and now argues that CP (as opposed to KCS) will use its control of KCS to "foreclose" efficient BNSF routings into and out of Mexico via an interchange with KCS (formerly Tex Mex) at Robstown.[1] To the best of my knowledge, without any shipper support or contemporary evidence, BNSF argues that KCS's and KCSM's actions with respect to BNSF/KCS (Tex Mex)/KCSM routings through Laredo via the Robstown interchange[2] have not been "commercially reasonable" for the past fifteen years and that the KCS/Tex Mex open

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[1] Kansas City Southern – Control – The Kansas City Southern Railway Company, Gateway Eastern Railway Company, and The Texas Mexican Railway Company, Decision No. 12, FD No. 34342 (STB Served Nov. 29, 2004) ("KCS/Tex Mex Decision"), at 30-34.

[2] Below, I set forth and explain the history of Tex Mex/KCSR's rights and interchange with BNSF at Robstown for movements through Laredo. Laredo is directly served by KCSR and UP via interchange with KCSM. BNSF has direct access to Mexico via a number of other gateways, including Brownsville and Eagle Pass, but interchanges with KCSR at Robstown to access Laredo. For purposes of this statement, I may use the "Robstown gateway" and "Laredo gateway" but both refer to this interchange connection at Robstown for BNSF traffic moving through Laredo by KCSR.

gateway condition remains ineffective.[3] According to BNSF, BNSF's ability to access Laredo was significantly diminished when KCS bought Tex Mex and the conditions imposed by the Board on KCS's acquisition of Tex Mex have not protected shippers from KCS pricing actions that have effectively frozen BNSF out of the Laredo gateway. The only "evidence" for such an argument is that BNSF's movements through the Laredo gateway declined dramatically after the KCS/Tex Mex merger and that BNSF shifted grain traffic to the Eagle Pass border crossing, where BNSF says it incurs greater costs for movements to several Mexican locations, including the areas that have the highest demand for grain.

4. To begin with, BNSF has failed to present the testimony, discovery document, letter, or any other statement from a single customer that any customer (as opposed to BNSF) believes that Tex Mex's[4] rate division between Robstown and Laredo for BNSF/KCS routings to Laredo (or any other KCSR or KCSM rate) was "commerically unreasonable." In my almost four years as KCS's Chief Marketing officer, no customer has ever once articulated to me that it believed that the KCSR Robstown to Laredo rate was "commerically unreasonable" or that the Tex Mex (KCSR) division of a rate to/from Laredo was preventing such customer from using the BNSF/Tex Mex routing.

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[3] BNSF 9-30

[4] Prior to KCS's acquisition of control of Tex Mex and for approximately two years following KCS control, Tex Mex provided overhead and local service over the Tex Mex lines and issued its own waybills, tariffs, and rates. KCSR eventually took over all operations and today, it is KCSR that operates over the entire Tex Mex line of railroad, provides local rail services to shippers on the Tex Mex rail line, and issues rate divisions, tariffs, and waybills for movements over the Tex Mex rail line. *See STB Finance Docket No. 34848, published in Federal Register on April 17, 2006, Vol. 71, No. 73, Page 19784*. As a result, Tex Mex is no longer included in the routing or bill of lading. For ease of discussion and because many of the allegations involve movements over the Tex Mex line, I use Tex Mex to refer to the KCSR movements and rates over the Tex Mex line.

5. While I was not employed by KCS in 2005 when KCS took control of Tex Mex, I have asked the very few KCSR marketing employees (mainly in the grain department) who have been with the company since then if they had ever heard of a customer complain that the Tex Mex division between Robstown and Laredo was "commerically unreasonable." None of them have ever received such a complaint. Likewise, no shipper (to my knowledge or that of our long term employees that I have spoke with on this topic) has ever invoked the NITL arbitration agreement (entered into as part of the KCS/Tex Mex/KCSM proceeding) to claim that KCSR's rate to/from Laredo or to/from internal points in Mexico (whether in interline or single-line service) were discriminatory or commercially unreasonable.

6. The fact that no shipper has complained does not surprise me. This is because KCS has not used its control of Tex Mex and KCSM to foreclose BNSF interchanges at Robstown for joint interline movements through the Laredo gateway. KCS remains willing and able to interchange with BNSF at Robstown for movements to and through the Laredo gateway. I also believe it is BNSF that has chosen not to use the Robstown gateway for many types of shipments, mainly because of a disagreement over divisions. It appears that BNSF has used its competitive options to shift traffic away from KCSR and the Laredo gateway, not the other way around. It is BNSF that is intentionally keeping its division requirement high and has steadfastly refused to lower its division requirements to make a joint BNSF/KCSR interline movement competitive with UP or the BNSF single-line movement. As such, it has been BNSF that has used its market power to favor its own single-line routes to the Mexican gateways.

7. As acknowledged by the Board in the KCS/Tex Mex/KCSM decision, KCS has no market power to force BNSF and its customers to continue to use a BNSF/KCSR/KCSM routing or to pay KCSR a commerically unreasonable rate. This is because, as shown in the

following figure, BNSF has several routing options into and out of Mexico via several gateways, and the choice to interchange with either KCSM or FXE:

FIGURE 1[5]

BNSF MEXICO GATEWAYS

8. While BNSF and its customers have options if they do not like the rates offered by KCS, such choices and options being the definition of a competitive market, KCS has only one gateway in and out of Mexico that connects KCSM with the rest of KCSs U.S. network.

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[5] http://www.bnsf.com/ship-with-bnsf/maps-and-shipping-locations/mexico/gateway-and-connections.html

Indeed, as BNSF's own comments and evidence show, BNSF has shifted its Mexican traffic to its other gateways – especially, El Paso and Eagle Pass. This shift did not occur because KCS is charging "commerically unreasonable" rates so as to foreclose BNSF from the Mexican marketplace – KCS having no power to do so given BNSF's competitive options – but rather because, and especially with respect to grain movements, BNSF has not lowered its own division to make the BNSF/KCSR route competitive. Instead, BNSF has apparently offered a rate that encourages shippers to use BNSF through Eagle Pass and El Paso. BNSF is thus using its market power to discourage shippers from using a BNSF/KCSR joint line route.[6] With this context, BNSF's "evidence" of foreclosure, i.e., the shift of traffic from Laredo to Eagle Pass, is revealed for what it is: BNSF's commerical decision to refuse to lower its divisions in order to protect its margins and favor its single-line service through the other gateways .

9. There is another rational commercial reason for BNSF "losing" the traffic and it has nothing to do with KCS exercising market power to force shippers to use a less efficient and more expensive KCS route (which is what foreclosure really means): KCS can provide a single-line service that shippers choose because it is both less expensive and a more efficient route. Any carrier, including BNSF, can usually offer a lower rate on single-line service versus an interchange to another carrier. So, yes, where KCS and BNSF both serve the U.S. destination or origin, the KCS/KCSM system is of course going to be able to provide an efficient single-line rate that is better than the joint-line rate with BNSF.

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[6] All KCS grain shippers have benefitted greatly from KCS's single-line option through Laredo. This single-line option was only made possible through the KCS/Tex Mex/KCSM transaction. This proves exactly what KCS argued in the KCS/Tex Mex/KCSM proceeding – acquisition of Tex Mex/KCSM would provide shippers with a new single-line option to continued dominance by BNSF or UP.

A. Grain Movements Are Illustrative of How KCS Has Not Foreclosed BNSF From the Mexican Marketplace

10. When one examines the grain market, it represents exactly the concepts I note above. It is important to understand the historical context of the Tex Mex/BNSF relationship. Prior to the UP/SP merger in 1996, FD No. 32760, Tex Mex's primary interchange partner was Southern Pacific.[7] The SP/Tex Mex route was the only competitive route to UP's single-line route to Laredo. As a result, BNSF and KCSR had to interchange Mexican traffic with SP, which interchanged it with Tex Mex. As I understand it, Tex Mex had to rely upon SP as its lifeblood –making Tex Mex dependent upon SP feeding it traffic and at whatever division SP would dictate to Tex Mex.

11. Given that (1) UP was merging with its primary competitor (i.e., SP) for Laredo bound traffic; (2) BNSF expressed little interest in serving Mexico; (3) Tex Mex was financially unstable and likely would go bankrupt without additional connections and traffic densities; and (4) KCSR had expressed a strong interest in connecting with Tex Mex (of which, KCS owned 49 percent at the time of the UP/SP merger), the Board granted Tex Mex trackage rights to connect with KCSR at Beaumont. Tex Mex would, through the BNSF Settlement agreement, also have connections with BNSF at Robstown and Corpus Christi. The Board's grant of trackage rights provided Tex Mex with access to both BNSF and KCSR as a means by which to replace SP traffic and continue to provide a competitive route to/from Laredo.

12. The condition worked, and Tex Mex survived. The BNSF-Tex Mex interline relationship originated in this era. Even though Tex Mex had received trackage rights extending

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[7] See Union Pacific Corp., et al. – Control and Merger – Southern Pacific Rail Corp., et al., FD No. 32760. Background regarding Tex Mex's prior competitive position and request for trackage rights is explained in the Board's August 6, 1996 Decision No. 44. 1 S.T.B. 233, 1996 STB LEXIS 220. (the "UP/SP merger decision").

its network to Beaumont, as I discuss later, it nonetheless continued to give BNSF very low rate factors for BNSF-Tex Mex interline routes via Robstown/Corpus Christi. At the time KCS took control of Tex Mex, Tex Mex was offering BNSF a rate of $260 per car if BNSF hit certain volume requirements, which I am told they always did. Given that the Tex Mex portion of the move was approximately 150 miles, as I discus below, such a low rate was barely remunerative to Tex Mex, if at all.

13. When KCS acquired KCSM and Tex Mex, I understand BNSF vigorously opposed and sought numerous conditions, as they do here.[8] The Board rightly rejected those conditions finding that competitive harm would not result from the merger because the combined KCSR/Tex Mex/TFM rail network would not gain sufficient market power (nor have the incentive) to foreclose BNSF. In making this determination, the Board noted the distinction between protecting U.S. carrier's leverage over divisions versus protecting shippers from raised rates, and that the result may be that KCS earns more revenue at the expense of BNSF and UP, but this is not a harm to competition.

14. Here, BNSF makes much of the fact that KCS raised the division requirements for the rail movement over the Tex Mex rail lines after the merger. It is true that KCS did raise Tex Mex's division requirements. KCS did so because the then rates existing prior to the merger were not remunerative and had not been raised in years.

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[8] KCS/Tex Mex Decision Docket, at 32-33. One such condition was a five year "freeze" on Tex Mex divisions. As KCS explained in its October 15 .2004 Reply to Additional Comments filed September 30, 2004 ("2004 Reply Comments"), KCS and BNSF were in negotiations over the fact that Tex Mex's divisions were too low and Tex Mex was losing money. Id. at 17. During these negotiations, BNSF threatened to "simply shift its traffic to its other gateways" if Tex Mex's rates were too high. Supplemental Verified Statement of Gerald K. Davies, Executive Vice President and Chief Operating Officer of KCSR, at 60, attached to the 2004 Reply Comments. BNSF and Tex Mex extended the division agreement until December 31, 2004, BNSF and KCS came to a separate agreement, and BNSF did not renew its request for the freeze in supplemental comments filed in 2004.

15. BNSF points to the fact that its share of grain moves to Laredo via a BNSF/KCSR/KCSM move has consistently declined. BNSF argues that this is evidence of KCS exercising undue market power. It is not. It seems more likely than not that BNSF's market share decline via a joint BNSF/KCSR/KCSM routing through Laredo is a direct result of BNSF deciding to favor its own single-line move through Eagle Pass or El Paso.

16. This is exactly what was predicted back in the UP/SP merger. There, as explained by the Railroad Commission of Texas, and as adopted by the Board, BNSF had little incentive then (and even less of an incentive now) to route its grain traffic via Tex Mex to Laredo.

> "Were it not for the fact that Laredo currently enjoys a competitive advantage over the other gateways to Mexico because there is a larger infrastructure of customs brokers located at Laredo than at the other gateways, there would be little or no incentive for BN/SF to route traffic via TexMex. Certainly, there is no reason to assume that BN/SF would deliberately route unit trains of grain in joint-line service with TexMex via Laredo when it will have a comparatively direct shot in single-line service at Eagle Pass. Given the admitted concentration of BN/SF's traffic from the grain belt and the Pacific Northwest and the industrial Midwest, it is only logical to assume that BN/SF would favor the less circuitous, single-line routing via Eagle Pass."[9]

17. In the 26 years since those findings, there has been extensive investment by UP, BNSF, and governmental agencies in customs and other infrastructure at Eagle Pass and other Mexico gateways, making them much more comparable to Laredo. This provides BNSF with even less incentive to utilize KCS/Tex Mex. And as stated earlier, it is BNSF that is using its market power and its competitive options to not use the BNSF/KCSR/KCSM routing through Laredo.

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[9] UP/SP Decision, 1 S.T.B. 233, *423 (citing the Railroad Commission of Texas's submission, RCT-7 at 22-23).

18. BNSF's argument is simply a fight over the division of the rate so as to favor its single-line route to Eagle Pass. To illustrate why I say this is just a fight over the division, one only needs to compare the various rates in place since KCS acquired Tex Mex and KCSM. After control was implemented, KCS did raise its rate for movements over the Tex Mex rail lines, initially to $525 and now, with adjustements, it stands at $595.[10] Even at this rate, this is not a "commercially" unreasonable rate for the 150-mile move over the Tex Mex rail line.

19. Revenue to variable cost (R/VC) ratios, while not definitive in and of themselves, are generally indicative of revenue contribution to costs and usually reflect the market conditions that affect rates. I note that the R/VC ratio for the current rates for the Tex Mex portion of the move from the two interchange locations with BNSF – Robstown and Corpus Christi – are set forth below. Clearly, the division that BNSF complains about as foreclosing BNSF's use of the Laredo gateway barely covers variable costs (based upon 2020 URCS costs). There can be no argument, nor is there any evidence (and BNSF presents none) that shows that KCSR's rate is an attempt to exercise undue market power to foreclose BNSF's use of Laredo. Again, not one shipper has, nor has BNSF, presented any evidence or argument that this division requirement is "commercially unreasonable."

[10] It was explained to me by a long time KCS employee, that BNSF complained when KCs raised the rate from $260 to $525. KCS (Mike Bilovesky) informed BNSF (Al Virgine) that if he could identify any line-haul rate in a BNSF tariff lower than $525, KCS would lower its rate to that level. BNSF did not identify any such lower rate.

TABLE 1[11]
KCS R/VC LEVELS FOR CURRENT ROBSTOWN-LAREDO RATE FACTORS

	Robstown to Laredo	Corpus to Laredo
Miles	**145.1**	**161.6**
Freight Rate	**$611**	**$613**
Line Haul	*$595*	*$595*
Fuel Surcharge	*$16*	*$18*
URCS: Var Cost	**$536**	**$570**
R/VC	**114%**	**107%**

20. Indeed, when one examines the R/VC ratios (based upon 2006 URCS) that were in existence shortly after KCS took control of Tex Mex and KCSM, and after KCSR raised the rates for movements over the Tex Mex rail lines from $260 to $525, it shows a similar point: the KCSR post-control rates, even at the higher level following KCS's decision to increase them, still barely covered costs and were nowhere near the Board's jurisdiction threshold of 180 percent to even bring a rate complaint.

TABLE 2[12]
KCS R/VC LEVELS FOR 2005 ROBSTOWN-LAREDO RATE FACTORS

2006 Basis	Robstown > Laredo	Corpus > Laredo
Miles	**145.1**	**161.6**
Freight Rate	**$541**	**$543**
Line Haul	*$525*	*$525*
Fuel Surcharge	*$16*	*$18*
URCS: Var Cost	**$445**	**$472**
R/VC	**121%**	**115%**

21. I did not have access to the 2004 URCS costs, but the 2004 costs should not be that dissimilar to the 2006 costs. Assuming such 2004 URCS costs were like those in 2006, and

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11 Workpaper – HC – Current Robstown-Laredo RVC Factors.

12 Workpaper – HC – 2006 Robstown-Laredo RVC Factors.

when one considers that prior to 2005 Tex Mex was charging approximately $260 per car or less for grain, intermodal, and automotive traffic, Tex Mex *was charging hundreds of dollars less than URCS costs*.[13] This fact confirms what I have previously said – that Tex Mex was basically acting as the agent of BNSF, even charging below costs. This may explain why BNSF vigorously opposed KCS's acquisition of Tex Mex. It it also not surprising that when KCS raised Tex Mex's rates to a compensatory level, and BNSF refused to lower its division, that BNSF lost market share and shifted its traffic to the El Paso and Eagle Pass gateways.[14] But one thing is clear: the shift of BNSF traffic was not the result of KCS using its control of Tex Mex to foreclose BNSF from using the Laredo gateway. KCS would have no incentive to discourage BNSF from using the Tex Mex route and causing it to shift business to aother gateway, eliminating KCSM's role in handling traffic on the south side of the border.

22. Since the intitial rate increase to $525, which KCS imposed after taking control, KCS held Tex Mex's division level steady at that level until 2015. At that time, KCS did take a $70 increase (to $595), which has held steady for seven years. In contrast and based upon my discussions with my marketing personnel, we believe BNSF, beginning in 2005, has raised its grain rates by 1,000's of dollars. BNSF blames its inability to use the Laredo gateway on KCSR's division requirement, but as noted above, KCSR's rate continues to barely covers its variable costs for the movement of the freight over the Tex Mex rail lines. Clearly, KCS is not foreclosing BNSF from using the Laredo gateway.

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[13] I can only speculate as to why Tex Mex's and KCSM's prior owners allowed Tex Mex to charge non-compensatory rates. I suspect that the desire was to drive as much traffic as possible to the Laredo gateway and over KCSM's predecessor, TFM. I have been told that at the time, Tex Mex's and TFM's owner, Transportacion Maritima Mexicana SA ("TMM"), was struggling financially. Perhaps the goal was to generate as much traffic as possible even if such traffic barely covered costs on a Tex Mex/TFM through basis.

[14] Of course, BNSF threatened to do just that in negotiations, supra, fn. 9.

23. We understand from customers that BNSF's single-line rates to Eagle Pass at grain origins where BNSF, KCS, and/or UP compete are lower by approximately the difference between the current KCSR rate and the original $260 Tex Mex rate. In other words, it appears that BNSF has adopted a deliberate policy of maintaining a higher division for its portion of a BNSF/KCSR through rate to Laredo in an attempt to encourage shippers to use the Eagle Pass and El Paso gateways.

24. In this sense, it is BNSF that is foreclosing KCSR and KCSM from being able to effectively compete against UP. Indeed, at grain origins that are not served by KCS but are served by UP and BNSF, when KCS has requested BNSF to take a lower division so as to make a BNSF/KCSR route competitive so as to increase both BNSF's and KCSR's share of this traffic to Laredo, BNSF has refused to do so -- favoring the BNSF single-line to Eagle Pass or El Paso. It would appear that BNSF is unwilling to lower its division requirement by $260 in order to make a BNSF/KCSR routing to Laredo competitive with UP or BNSF to Eagle Pass.

25. Yet, BNSF criticizes KCS for refusing to lower KCSR's division at those locations where BNSF and KCS compete -- KCS offering lower rates for its single-line option, but, BNSF is doing the same thing -- favoring its single-line options by refusing to lower its division. This is the nature of competition – railroads usually can provide a single-line rate at lower costs than joint line rates. This is not evidence of KCS exercising any kind of foreclosure strategy, nor could it be given that KCSR's rate to Laredo over the Tex Mex rail lines barely covers its variable costs. Rather, this is called competition. It is exactly what KCS said would occur in the KCS/Tex Mex/TFM transaction, i.e., the combined KCS entity would be in a stronger position to compete against both UP and BNSF.

26. Besides examining R/VC ratios, as further evidence that KCS is not "foreclosing" BNSF from the grain market place through rate manipulation, we can examine the extent of KCSR's and KCSM's revenue per unit ("RPU") increases with respect to grain when compared to BNSF or UP RPU increases. If BNSF or UP were right about its foreclosure theories, it would have to be the case that KCS increased its rates south of the gateways after it obtained control of Tex Mex and KCSM as a way of defeating the competitiveness of UP-KCSM or BNSF-KCS-KCSM route options. But the facts show that nothing like this occurred. KCS's consolidated rates for grain have increased at {[redacted]} percent compounded annual growth rate since 2005 as shown below. Over the same period, UP's public reports show that its growth rate for agriculture and mineral traffic has been {[redacted]} percent while BNSF's has been {[redacted]} percent. KCSM's pricing is certainly not an outlier.

FIGURE 2[15]{

[redacted]

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[15] Workpaper – HC – Class 1 Grain RPU 2005-2019

Naatz R.V.S. at 16

27. The same point can be made by examining overall RPU trends from 2003 until 2021. This includes the period before KCS took control of KCSM and Tex Mex, as well as the post-transaction period. The below chart shows that KCSR's and KCSM's rates, individually and on a consolidated basis, have actually risen less than UP's and BNSF's.

FIGURE 3 [16]{

B. Intermodal And Automotive Traffic Is Also Illustrative Of How KCS Has Not Foreclosed BNSF From the Mexican Marketplace

28. An examination of the intermodal and automotive traffic since KCS's acquisition of KCSM and Tex Mex also establishes that KCS has not foreclosed BNSF from use of the Laredo gateway. If anything, it is BNSF that can exercise its market power or adopt (or fail to

[16] Workpaper – HC – Average RPU 2003-2021.

adopt) operating practices to shift traffic away from a Tex Mex interchange at Robstown or Corpus Christi. I will use some specific shipper examples to illustrate my point, but the points I make are applicable to other shippers as well.

29. The first example involves multiple customers' traffic {[redacted]} that is originated and controlled by BNSF. It is my understanding that BNSF has a long-term exclusive contract with {[redacted]} so that if BNSF provides intermodal service to a point on BNSF's network, {[redacted]} is required to use BNSF to that location.

30. Since May 19, 2017, BNSF, KCSR, and KCSM have been parties to an Intermodal Service Agreement ("ISA") effective December 1, 2016.[17] The ISA provides the rates and service parameters for intermodal traffic through the Robstown interchange and into/out of Mexico. The agreement expired on December 31, 2021. Leading up to the expiration date, KCS was willing to extend that agreement under substantially similar terms and conditions for another five years. In contrast, BNSF would agree to another five-year term, but requested significant changes to the terms and conditions including insisting on a {{[redacted]}} clause. KCS was unwilling to accept those conditions because market conditions change over time and KCS does not enter into {{[redacted]}} clauses in the intermodal world.

31. Upon refusing to agree to BNSF's demands, in conversations, BNSF stated that it may switch its routings *with all customers* (not just {[redacted]} to favor its Eagle Pass gateway given they have a contract that would force {[redacted]} to switch to Eagle Pass and an FXE

[17] The existence of the Intermodal Service Agreement belies any notion that KCS is not interested in working with BNSF to facilitate a Robstown interchange and is using its ownership of Tex Mex and KCSM to "foreclose" efficient BNSF service to Laredo.

(KCSM's competitor in Mexico) routing.[18] {[redacted]} informed KCS that they preferred Laredo and the KCSM routing, but it would have no choice given its contract with BNSF.

32. Clearly, BNSF's intent is to imply a threat to switch all traffic subject to this contract to Eagle Pass and FXE. This shows that it is BNSF that possesses the market power to foreclose KCS routings, not the other way around. Due to the potential of KCS losing all of this traffic and KCSM losing a substantial amount as well (some of this traffic would have to eventually be switched to a KCSM destination, but KCSM would have lost the long haul), KCS and BNSF, at the urging of the customer, agreed to a one-year extension of the existing agreement with no material changes.[19] This preserved the BNSF/KCSR/KCSM routing through Laredo, at least for the near-term. The same discussion is already being undertaken for 2023.

33. Since signing the one-year extension, BNSF approached KCS to request through rates to Mexico from/to St. Paul, MN origin/destination be added to the Intermodal Service Agreement. After negotiations over the rates and divisions, KCS and BNSF were able to amend the one-year Intermodal Service Agreement covering multiple customers traffic to include St. Paul. Again, if KCS were attempting to foreclose BNSF from using the Robstown/Corpus interchange, it would have been uncooperative and would have refused to add St. Paul and instead taken the long-haul to Kansas City for itself. If KCS had requested too high of a division, BNSF would not have agreed to the arrangement. It is BNSF that can move this traffic to Eagle Pass and Brownsville. Unlike BNSF and UP, KCSR/Tex Mex's U.S. network only

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[18] BNSF made the same threat when Tex Mex attempted to raise its divisions to a compensatory level during the 2005 KCS/Tex Mex transaction, supra fn. 9.

[19] The Board predicted this outcome in the KCS/Tex Mex decision, at 17-18. ("Moreover, KCS's experts credibly explained that market conditions would prevent KCS from raising rates to shippers or foreclosing UP and BNSF from the Mexican market, because the later two carriers account for more than 90% of the rail traffic interchanged with TFM at Laredo, and it would be unprofitable for KCS to use its control of TFM to take actions that would foreclose this traffic.").

connects with the Mexican rail network via its link to KCSM at Laredo and Brownsville. As a result of BNSF's relationship with multiple customers, including {[redacted]}, and its ability to use other gateways and FXE, it is BNSF that has the market power with respect to this intermodal traffic. KCS has no ability to "foreclose" BNSF from such routings.

34. With respect to intermodal marketing companies, the evidence brought to my attention shows that any loss of Mexican cross-border business by BNSF was not due to actions undertaken by KCS, but rather changes in the types of equipment preferred by customers and by aggressive competition from UP. Prior to the KCSR/Tex Mex/KCSM transaction, BNSF/Tex Mex did have a significant amount of this business in competition with UP over the Laredo gateway. But after the KCSM/Tex Mex transaction, BNSF lost a significant amount of this business to UP. BNSF contends that this was due to the KCS post-transaction pricing policies. This is simply not true.

35. At the time, {[redacted]}, a U.S. Based intermodal shipper with offices in Mexico, used to have a long-term contract with BNSF and post-UP/SP merger would route {[redacted]} traffic via the BNSF/Tex Mex interchange and through Laredo. This service competed against UP. This BNSF/Tex Mex {[redacted]} service was part of and dependent upon the North American Container System ("NACS") box system. At the time, every Class I participated in the NACS program except UP. During this time, {[redacted]} also participated in the Equipment Management Pool ("EMP"), which was an interline pool arrangement and product started between UP and NS. EMP and NACS competed against each other. BNSF was not a part of EMP.

36. After the KCSR/Tex Mex/KCSM transaction, the NACS program was struggling and eventually, in 2006, BNSF leased almost all of its 53' NACS boxes to Swift Intermodal and a

few years later, NACS was dissolved. At this time, BNSF began to partner with asset owners (as compared to pool arrangements) like {[redacted].} In the 2009 time period {[redacted]} decided to transition all of its western carrier business to UP, including its Mexico business. I believe this was largely due to the dissolution of the NACS program. BNSF's loss of traffic was not related to KCS pricing BNSF out of the market, but due to its prior dependence upon NACS, the type and ownership of the boxes, and BNSF's shift to asset-based customers. I do not believe this was the result of KCS or KCSM pricing.

37. Contrary to the notion that KCS seeks to foreclose BNSF business, KCS works with BNSF today, as it has in the past, to provide a competitive KCS/BNSF routing to that of UP for automotive traffic. For example, currently, KCS works with {[redacted]} to provide a joint BNSF/KCSR/KCSM routing through Laredo for northbound automotive traffic out of {[redacted]} Mexican plant. This is an example of how BNSF and KCS do continue to work together to route traffic through the Laredo gateway. KCS has no desire to "foreclose" such a routing option for {[redacted]} by charging a high KCSR division or by charging high KCSM rates. Either such action would reduce KCS's revenues – an action that would not be economical for either KCSM or KCSR. If KCS took such an action, {[redacted]} would simply shift its routings to a KCSM/FXE/BNSF routing through Eagle Pass. This is something KCS would not want to see as it would result in KCSM getting only a short-haul and an overall loss of revenue.

38. KCS's current interchange arrangements with BNSF at Robstown can only accommodate unit train traffic. KCSM gives the train to KCSR at Laredo, and KCSR in turn takes the unit train and eventually interchanges it at Robstown to BNSF via a mainline step on/step off interchange operation. There are no tracks available at Robstown to facilitate the interchange of less-than-unit-train traffic, so-called manifest traffic. Such an interchange of

manifest traffic would require yard or sidetracks necessary to store cars and build trains, which do not exist at the Robstown interchange with BNSF.

39. Recently, {[redacted]} and BNSF approached KCS about amending the existing contract to quote a rate for a Robstown interchange for {[redacted]} manifest traffic, not unit train traffic. Because adding revenue for such additional traffic is in KCS's economic interests (and incidentally also mindful of its obligations under the KCS/Tex Mex/KCSM decision to keep Robstown interchange open on commercially reasonable terms), KCS has quoted such a rate to {[redacted]} and is working with BNSF on developing an operating plan. Given there are no interchange tracks at Robstown for accommodating a manifest interchange, KCS is working with BNSF to develop a plan to bring such northbound manifest traffic to Corpus Christi.

40. The point of the above discussion is to disprove the notion that KCS has no interest in developing Laredo interchange traffic with BNSF through a Robstown interchange. Nothing could be further from the truth. Indeed, between KCSM-served terminals in Mexico and BNSF-served terminals in Texas and the West. KCS and BNSF negotiated interline rates covering joint-line KCS-BNSF intermodal services via the Laredo gateway in {[redacted]} different origin-destination lanes. KCS welcomes such traffic.[20] It is in KCS's self-interest to work with BNSF to provide a joint routing that would compete with UP. Indeed, the KCS/BNSF cross-border traffic in competition with UP has been a remarkable success, as the below chart shows. Since 2016, when the new partnership was announced, revenues have grown substantially.

[20] It is important to note that over 80% of KCS's shipments originate on the rail line of other Class I carriers.

FIGURE 4[21]

41. This self-interest will not change with the CP/KCS transaction. The only change will be that there will now be a new single-line option for shippers, especially Chicago and Detroit/Eastern Canada shippers, to move traffic to/from Mexico via Laredo. This is not foreclosing BNSF routings, but rather, the transaction will enhance competition by providing new options for shippers. To the extent a combined CP/KCS cannot provide an efficient single-line option that shippers prefer, it remains in CP/KCS's self-interest to work with BNSF to continue to provide shippers with options, especially in those origins and destinations that are served only by UP and BNSF.

[21] Workpaper – C – BNSF- KCS Cross Border Intermodal Offering.

C. Energy Is Another Commodity That Illustrates How KCS Has Not Foreclosed BNSF From the Mexican Marketplace

42. Another example of how KCS is not foreclosing BNSF is to examine the petroleum and energy products markets. BNSF's witness, Mr. Hirsch, notes that BNSF obtains business only where KCS does not serve the origin or where the movement is part of a larger contract where KCS does not serve some origins. The insinuation is of course that KCS is somehow foreclosing BNSF from opportunities. In his verified statement, Mr. Hirsch does not point to any specific customer rate quote, routing, or O/D pair establishing that it is the KCS division that is "too high" or "commercially unreasonable" that is prohibiting BNSF from competing. His argument is simply BNSF cannot compete and cannot win the traffic. Apparently, in his view, it cannot be BNSF's division that is too high, but rather, if BNSF loses the traffic, it is because KCS is "foreclosing" BNSF from competing.

43. An examination of the actual specific markets and customers for the energy market from the Gulf region to Mexico shows that KCS is winning the traffic due to its customer relationships, its service, its efficient routings, and its single-line rates. KCS is not forcing a Gulf Coast energy customer to use a KCS single-line route at a higher rate and less efficient routing because it was pricing the division over the Tex Mex rail lines at commercially unreasonable rates, but rather the customer is choosing KCS. And where KCS cannot provide a more efficient route or rate, KCS will work with BNSF to provide that customer with additional routing options.

44. One relevant example is traffic to/from Jefferson Energy Terminal, which is a public-private partnership between the Port of Beaumont Navigation District of Jefferson County, Texas and Jefferson Energy Companies located in Beaumont, Texas, which is owned by Fortress Investment Group LLC (certainly no stranger to the rail industry). In December 2017, and with logistics support from Jefferson, ExxonMobil became the first company to provide an

integrated product offering along the entire fuels value chain in Mexico. Unit trains of gasoline and diesel delivered to Central Mexican markets originated at the Jefferson Energy Terminal. The unit train loading was done under an agreement with ExxonMobil. These volumes originated at Jefferson Energy Terminal and were safely delivered through destination terminals in San Luis Potosi, Mexico and San Jose Iturbide, Mexico to retail gasoline stations in the Bajio region of Mexico. Jefferson Energy Terminal is served by UP, BNSF, and KCS. ExxonMobil received bids from all three railroads. KCS won the bid and handled the entire movement. In addition, until recently, ExxonMobil also originated traffic at loading facilities located on the Port Terminal Railroad Association (PTRA) shortline at the Port of Houston. All three carriers have had access to PTRA (in KCS's case only for traffic to/from Mexico and other points on Tex Mex's original Corpus Christi-Laredo mainline). BNSF was able to receive traffic from PTRA and move it to the border at Brownsville, to Laredo through Robstown interchange, or to Eagle Pass or El Paso, which are not KCS served.

45. The market and subsequent increase in rail traffic became possible due to changes to the Mexican Constitution that allowed for the importation of refined commodities into Mexico and commercialization of Mexico's gasoline and diesel markets. As a result of those changes, ExxonMobil tapped several of its existing relationships to develop a retail-based strategy that brought energy products to Mexico from the Gulf region. ExxonMobil's strategy focused on the eastern part of Mexico as its refinery base in Beaumont and Houston is aligned well to that geography, which corresponds with KCSM's existing rail infrastructure and KCS's connection to the Gulf region. Conversely, Valero, another large exporter of refined product to Mexico has primarily focused on markets in Western Mexico due to the locations of its refinery base, which are oriented further west. While BNSF, KCS, and UP all serve Jefferson Energy Terminal, one

of ExxonMobil's major Gulf fuel terminals, ExxonMobil, contracted with KCS to take advantage of the KCSM infrastructure and pricing offered by a single KCS/KCSM routing that matched ExxonMobil's commercial strategy.

46. ExxonMobil has made no allegations that KCS was pricing the KCSR portion of a BNSF routing at a commercially unreasonable rate or that KCS was otherwise using its control of KCSM to force a KCS routing in preference to a UP move, nor could it given that KCSM has to give the same rate for the Mexico portion of the move to UP, BNSF, and KCS. Indeed, under its contract, ExxonMobil has the option to use the UP single-line rate to Laredo and at Laredo KCSM must charge the same rate as it charges KCSR.[22] In fact, KCSM does receive both UP and KCSR ExxonMobil traffic at Laredo. The simple fact is that ExxonMobil awarded the business to KCS given the single-line nature of KCS's move, KCS's service focus, and KCS's willingness to undertake a long-term partnership with ExxonMobil. The relationship continues to this day, and to the extent ExxonMobil prefers KCS, or use KCS for related or similar moves, it is because of KCS's relationship with ExxonMobil, not because KCS is using market power to force ExxonMobil to use the KCS rail system.

47. The same is true with respect to other Gulf Coast energy customers. Where it is more efficient to move traffic over a single-line rail network, customers will do so. If the customer prefers a joint-line move, or a joint-line move is more efficient, that is the way the traffic will move. For example, the Entergy coal fired electric plant in Lake Charles, Louisiana, is served by UP, KCS, and BNSF. Both UP and BN serve the coal origins and the destination

[22] To underline the competitive nature of the marketplace, ExxonMobil recently solicited bids from UP, BNSF, and KCS for various lanes of traffic, including both FXE and KCSM routings. ExxonMobil chose a UP/FXE routing over the BNSF/FXE routing for traffic to the west and chose KCS/KCSM for traffic to the Gulf and the Southeast. There was no allegation from ExxonMobil that KCS was manipulating the rates to disfavor a BNSF/KCSM routing.

and can provide single-line service. KCS can only serve the destination. KCS must interchange coal with either UP or BNSF to complete the route. In the past, KCS was able to provide routings, service, and divisions requirements that allowed for competitive joint-line service via UP/KCS or BNSF/KCS. However, in the two most recent rounds of bidding, the customer selected a single-line service over a joint-line move, even though KCS offered the same division to both UP and BNSF for a Kansas City interchange. KCS is certainly not contending, as BNSF seems to do here, that because it lost the traffic, BNSF or UP must have "foreclosed" a KCS routing option. Rather, KCS understands that the customer chooses the routes and rates, and, generally, a single-line option can be more competitive than a joint-line option and that KCS can only price its division so low before it drops below its costs.

48. As noted above, sometimes joint-line routes and rates can win the traffic vis-à-vis a single-line rate, as KCS did for some time for the Entergy business. It just depends upon what division a connecting carrier is willing to take. In the existing situation, BNSF simply refuses to lower its division, even if doing so would win the business for the joint line move. Therefore, it is not KCS who is foreclosing BNSF's routings, but rather BNSF's refusal to lower its division to take less profit that underlies BNSF inability to complete against KCS.

49. The principle that carriers can find it in their economic interest to accept a lower division is illustrated by BNSF's and KCS's cooperation to serve the Luminant Martin Lake coal fired electric plant located in Tatum, TX. This facility can be directly served by BNSF origins in the Powder River Basin for subbituminous coal. However, despite BNSF's ability to serve the plant in single-line service from origin to destination, the most efficient route is through a BNSF/KCSR interchange at Kansas City. KCSR then moves the traffic to Shreveport, Louisiana, where it is interchanged back to BNSF for delivery at destination. The traffic has

moved this way for years. KCS is willing to offer a division that facilitates the customer's desire for the most efficient route and to avoid losing the business to a BNSF single line move.

50. KCS and BNSF will also work together to develop joint-line alternatives to UP single-line service for Gulf Coast energy moves as well, and I see no reason why that will change under a merge CP/KCS. A fact that BNSF admits with respect to intermodal and automotive traffic but is also true with respect to Gulf Coast energy products. For example, KCS has worked with BNSF to gain some liquified petroleum gas (LPG) business coming out of Mont Belvieu, Texas origins. The origin of Mont Belvieu, Texas has multiple terminals: Targa Transport and Enterprise Products. These terminals are served at origin by both UP and BNSF. Over the past year, working together, KCS and BNSF, via an interchange at Corpus Christi where BNSF gives the traffic to KCSR, were able to compete with UP direct to Laredo, Texas. The point of this is that we try to work together so that BNSF and KCS can be competitive. [23]

51. The overarching theme of the above discussion with respect to grain, intermodal, automotive, and the energy business is that at those locations where UP and BNSF compete, KCS does, and is more than willing, to work with BNSF or any other carrier to provide a competitive route and rate to Laredo, Texas. But BNSF is not always willing to work with KCS, preferring instead to favor its own single-line haul to Eagle Pass, even if that route is less efficient than the BNSF/KCS route. The same goes with those locations solely served by BNSF where the most efficient route is through Laredo, Texas via a KCSR Robstown interchange. KCS would strongly prefer to move this traffic over the Laredo Gateway and onto KCSM. It is

[23] For example, in 2021, BNSF/KCS moved 853 tank cars to the Laredo interchange, which is almost double from 2020. In fact, our records indicate that the BNSF/KCSR volumes from those origins exceeded the UP Laredo volumes by 70 percent in 2021. KCS is certainly not trying to "foreclose" BNSF business and it would not be in the economic interests of a merged CP/KCS to forego any such BNSF traffic.

in KCS's self-interest to do so. But clearly, BNSF prefers its own single line move to Eagle Pass and for interchange with FXE. Likewise, at those locations where BNSF and KCS compete, to the extent KCS does win the business, it is because the KCS single-line route and rate to Laredo, Texas is chosen by the customer.

52. To the extent BNSF claims it cannot compete because KCS is "foreclosing" a BNSF routing to Laredo, Texas that is simply not borne out by the facts. BNSF has not pointed to a single customer or single bid situation where the KCSR rate for a Robstown interchange was "commercially unreasonable" or was so high as to foreclose a more efficient BNSF routing so that the customer was forced to use a less efficient KCS routing. KCSR's division requirements for BNSF moves barely cover its URCS costs. Clearly something else is at play. That something else may be BNSF's desire to keep its division requirement to the Robstown interchange at levels that discourage use of the Laredo gateway and favor Eagle Pass, even if Laredo might be more efficient. Unfortunately, when it comes to a Robstown interchange, BNSF simply refuses to lower its division requirements so that a BNSF/KCS routing can work. Instead, choosing to maintain its rates at levels that ensure BNSF makes it contribution thresholds. In this sense, it is BNSF who is foreclosing KCS, not the other way around.

53. The Board should reject BNSF's self-serving arguments (and UP's similar arguments) that KCS is using its control of KCSM and Tex Mex to force customers to use inefficient and expensive KCS routings at the expense of more efficient BNSF and UP routings. KCS has not (as shown above), will not (CP and KCS have agreed to abide by the commitments set out in the KCS/Tex Mex/KCSM decision), and cannot (due to the lack of market power and BNSF's and UP's abilities to use other gateways) use its control of KCSM or Tex Mex, or even KCSR, to force customers to use KCS at commercially unreasonable divisions or to force less

efficient routings. There are no customers saying that we have or could do so. It is simply our competitors making these claims. As such, there is no basis to grant any of the conditions requested by BNSF or UP.

III. UP'S SIMILAR FORECLOSURE THEORY IS NOT SUPPORTED BY PAST PRACTICE AND IGNORES MARKET REALITIES

54. Like BNSF, UP argues that a combined CP/KCS will have both the incentive and ability to foreclose competition through the Laredo gateway. UP asks for conditions that require CP/KCS to provide mileage prorated rates in certain circumstances. UP also asks that CP/KCS not only be required to abide by the commitments made by KCS in the KCS/KCSM transaction, but that UP be granted access to the second Laredo, Texas international rail bridge that KCS is building solely with private KCS dollars.

55. UP's theory is premised on the notion that CP/KCS will have the ability and incentive to foreclose UP (and BNSF) through manipulation of U.S./Mexico rates as well as degradation of service and operations to force traffic from UP (and others) to CPKC. While I will leave it to the economists to debate the various economic theories, UP's comments, like those of BNSF, fundamentally misunderstand, or misrepresent, the realities of cross-border movements. Indeed, they are identical to the very same arguments that UP raised when KCS was acquiring KCSM and Tex Mex. UP argued then, as it does now (except this time it is with respect to CP rather than just KCS), that KCS (now CPKC) would use its control of Tex Mex and KCSM to raise KCSM's or Tex Mex's divisions to disadvantage UP-KCSM or BNSF-Tex Mex-KCSM routings and thus force shippers to use a less efficient CPKC routes

56. In reading the Board's decision in KCS/KCSM, I note that these issues were thoroughly reviewed and debated in the KCS/KCSM transaction and were rejected, as the Board should do again. There, the Board said:

> **"[**I]f KCS tried to raise rates on TFM movements that are not rail dependent, the traffic would shift to motor or water carriage. And on TFM movements that are rail dependent, if for some reason TFM is not presently extracting monopoly rents, then the connecting carrier within the United States could be doing so. Therefore, UP's argument seeks to protect the U.S. carrier's leverage regarding divisions of joint rates (that is, concerns over how the interline rail partners will divide the profit), not to protect shippers. KCS-22 (filed Oct. 15, 2004) at 37-38. Moreover, KCS's experts credibly explained that market conditions would prevent KCS from raising rates to shippers or foreclosing UP and BNSF from the Mexican market, because the latter two carriers account for more than 90 percent of the rail traffic interchanged with TFM at Laredo, and it would be unprofitable for KCS to use its control of TFM to take actions that would foreclose this traffic."

KCS/Tex Mex Decision at 17-18.

57. I believe the Board had it 100 percent correct. One only needs to review the automotive market as proof of the Board's findings. On the automotive side, 17 years later and notwithstanding UP's arguments that KCS was going to foreclose UP's routings, {{[redacted]}} of KCS's automotive business that originates in Mexico interchanges with UP at Laredo or BNSF at Robstown. Only {{[redacted]}} moves single line on KCS that KCS interchanges with CP or CN for Canada destinations. In the First Quarter of 2022, KCSM originated {{[redacted]}} automotive loads. {{[redacted]}} of those were interchanged to UP at Laredo, {{[redacted]}} with BNSF at Robstown, and {{[redacted]}} stayed on KCS for interchange to CP or CN. Yet, as it did before, UP and BNSF argue the same old vertical foreclosure arguments.

58. Over the past 12 months, the story is similar for intermodal traffic. Currently, there are four competing routes to/from Chicago for intermodal traffic: BNSF Chicago to/from Mexico with interchange at Robstown with KCSR; UP Chicago to/from Mexico with interchange at Laredo; KCS/CP Chicago to/from Mexico with interchange in Kansas City; and KCS/CN with interchange at Jackson. Over the past 12 months, the BNSF route totaled {{[redacted]}}. This does not count the fact that BNSF also has a routing via

El Paso and FXE. For the UP route, UP carloads totaled {{[redacted]}}. The KCS/CP route included a few test loads.

59. Clearly, what UP and BNSF are afraid of is not that CP/KCS will foreclose them, but rather that a combined CP/KCS may actually be able to provide a low-cost, efficient single-line alternative to UP's and BNSF's continued dominance for a select portion of U.S./Mexico automotive traffic. Indeed, if KCS had the ability to foreclose UP and BNSF routings, it would already be doing so. But KCS doesn't have this ability and neither will CP/KCS.

60. There are several reasons grounded in marketplace realities why KCS cannot foreclose UP and BNSF today (and could not over the past 17 years). Both UP and BNSF have the choice to use five different gateways into and out of Mexico and the choice to use FXE as an alternative to KCSM. Those gateways and the serving railroads are: Brownsville (KCSM), Laredo (KCSM), El Paso (FXE), Eagle Pass (FXE), and San Diego (FXE). CP/KCS will only have Laredo. If CP/KCS tried to undertake the foreclosure theory advanced by UP, UP and BNSF would simply shift gateways. BNSF has already used this competitive alternative, and although BNSF claims this is due to KCS foreclosure, as the above discussion on BNSF delineates, BNSF has made a deliberate choice to maintain high divisions and refuses to drop its division requirements below its targeted profit levels, while KCSR's division barely covers costs.

61. Other market factors also come into play. Shippers to and from Mexico may have multiple options. Trucks, ships, and air cargo all serve Mexico. Further, some shippers may have access to specialized transport such as the rail ferry from Mobile, Alabama to Coatzacoalcos, VL, Mexico, or short sea shipping of vehicles. Both UP and BNSF have long term relationships (many exclusive) with numerous automotive, intermodal marketing companies, trucking companies, third-party logistic providers, and large customers. KCS cannot

today, and CP/KCS will not be able to in the future, simply raise KCSM's division to force these shippers to use a CP/KCS system. Undertaking such a strategy risks losing traffic to other UP and BNSF routes, especially where such traffic is exclusive to UP and BNSF or served by both UP and BNSF, and/or to trucking.[24] It would also not be in CP/KCS's economic interests. UP and BNSF both serve origins and destinations that are not served by either CP or KCS. Why, given the alleged "aggressive synergy and growth predictions" would the combined CP/KCS risk losing the KCSM revenue? It would not. It is to CP/KCS's economic interest to feed as much traffic over KCSM as possible. Thinking that a combined CP/KCS would make up lost BNSF and UP revenues on just CP/KCS moves is not grounded in market realities.

62. UP's theory also ignores the Mexican regulations. Mexican regulations require KCSM to offer a Rule 11 rate to/from Laredo that is the same for similarly situated customers, and for each customer, KCSM cannot discriminate between a UP, BNSF, or KCS interchange at Laredo by offering different rates. The Rule 11 rates must be the same even if the customer or connecting carrier does not have visibility into the KCSM rate. KCS would be violating Mexican law if it did not issue rates in this manner. At those locations that theoretically could be served by UP, BNSF, and CP/KCS, if KCSM were to seek a commercially unreasonable division, i.e., a monopoly price, KCSM would also have to quote the same elevated KCSM rate for all the KCSM-UP traffic that CPKC had no hope of competing for. CPKC would have nothing to gain from such a strategy, and everything to lose – as that traffic could shift to another gateway, may shift to trucks, or may dry up altogether because of an above-market KCSM rate.

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[24] In 2021, trucks carried the bulk of freight passing through Laredo followed by rail. In 2021, truck's (loaded and empty) moved 2,568,471 containers through Laredo. In the same period, rail moved 508,192 containers through Laredo. https://explore.dot.gov/views/BorderCrossingData/Annual?%3Aembed=y&%3AisGuestRedirectFromVizportal=y . Clearly trucks provide the real competitive alternative, and any market analysis should not focus on rail vs. rail but rather be inclusive of trucking.

63. If such a commercially unreasonable rate made a UP/KCSM or BNSF/KCSR/KCSM routing too expensive, the customer would simply switch to other gateways or other transportation modes. And to the extent the customer does switch, this again would cause a loss of overall revenue to KCS as customers choose other UP or BNSF routings or switch to other transportation modes. Such customers are not "captive" to CP/KCS so as to be forced to use the CP/KCS system at monopoly rates. The customer would only use the CP/KCS single-line rate, as opposed to using UP, BNSF, or another transportation mode, if doing so produced an overall lower price, including the alleged elevated KCSM division. In that case, there is actually no harm to the customer.

64. UP's and BNSF's arguments also ignore the realities of the marketplace with respect to how pricing for cross-border traffic really works. Due to Mexican regulations, whether the shipper is seeking a Rule 11 rate to/from Laredo or a U.S./Mexico through rate, KCS must provide the shipper (or interline partner in the case of through rates) with the same KCSM rate or factor regardless of the interline partner. KCS cannot also provide itself with a lower KCSM rate. Thus, when a shipper is the negotiating party, it (not KCS) seeks Rule 11 rates and deal directly with each carrier for each individual leg. These rates are confidential to the shipper giving the shipper both transparency into all competitive options and the negotiating ability to select the route and pricing that best matches its needs. The shipper is free to compare rates and negotiate with each individual for better rates, service conditions, or other benefits. The tradeoff is the time and effort required to negotiate with multiple carriers.

65. With respect to through rates, they are negotiated between the shipper and one railroad, usually the originating carrier. The shipper seeks competitive total prices for a movement. The originating carrier and interline partners will negotiate the divisions and other

conditions among partners. A shipper could request a through rate using the same originating carrier and different interline partners. If a shipper requests a price decrease or other conditions, the carriers negotiate among themselves on how to respond. That may include developing counterproposals, renegotiated divisions splits, or other cost sharing divisions. As with any price negotiations, an interline partner can refuse to lower its divisions. The risk is, of course, lost business for one or more carriers.

66. The rate process is thus an iterative process and usually includes multiple rounds of discussion with the customer, or for through rates, with the negotiating carrier. Rate quotes are multidimensional and consider a variety of factors, such as volume, margin, cost, asset utilization, growth strategy, cycle times, route length and time, power needs, peak/off-peak needs, specific service conditions, equipment needs, multi-year or multi-lane agreements.

67. The point is that KCS does not, and will not, have the power to dictate rates or to foreclose UP or BNSF options. It is ultimately the customer that selects the rate and the route. For example, recently, KCS renegotiated a major contract with a large company for all cross-border movements carried by KCSM. The same rates applied regardless of the interchange partner. This negotiation went through multiple rounds and was competitive. In response to both outside factors and aggressive pricing by FXE, KCS modified its commercial strategy, again for all KCSM movements regardless of interchange partner, to retain the business. The customer separately negotiated with KCS and UP for the U.S.-side of the movements after interchange with KCSM at Laredo. In the end, because the customer has the option of using UP, BNSF, and KCS, and the option to use other gateways, KCS cannot exercise market power. Indeed, in the above example, KCS lost some volume because the UP/FXE route better aligned with the customer's business needs. There is nothing in the merger that will change this process.

68. The final factor that prevents KCS from engaging in any foreclosure strategy and will also prevent CP/KCS from doing so, is the fact that the shippers have both a regulatory remedy at the STB and a private remedy to arbitrate any rate dispute via the NITL Agreement. In KCS/TFM, KCS offered, and the Board imposed, five commitments/pledges on KCS. One of those pledges was to keep the Laredo gateway open on commercially reasonable terms for customers that desire to use BNSF and UP routings. The NITL Agreement also contains that condition and contains an arbitration provision as well. The NITL Agreement also involves Mexico pricing issues. In the 17 years since KCS took control of Tex Mex and KCSM, not one shipper has complained that KCS was not abiding by its commitments, nor has any shipper invoked the NITL Agreement. I don't see that changing. Indeed, CP has agreed to abide by all the KCS/TFM commitments. In addition, CP has committed to additional conditions, such as bottleneck pricing and the right to challenge bottleneck rates, which such conditions further protect cross-border shippers. Shippers will thus have transparency in the rates and will know whether such a rate is "commercially unreasonable."

69. In conclusion, all of the aforementioned factors discussed above will prevent CP/KCS from exercising any form of foreclosure: UP's and BNSF's abilities to use other gateways and FXE; the strong competition provided by other modes of transportation; UP's and BNSF's relationships (many, exclusive) with customers; the scope of the Mexican anti-discriminatory pricing laws and regulations; the dynamics of cross-border pricing; and KCS's commitments made in the KCS/TFM decision, which commitments CP has agreed to comply with and actually expanded upon, will not change as a result of the CP/KCS transaction. The only difference will be that a combined CPKC will be able to provide shippers with a stronger single-line competitor. In my opinion, there is no competitive harm due to the CP/KCS

transaction. UP's and BNSF's concerns are just concerns over divisions and rate factors couched in the form of concerns over shipper rates. As the Board did before with respect to KCS/TFM, given all of the above, there is no basis for imposing either a mileage pro-rate (I discuss below the problems with a mileage pro-rate system) or for granting UP access to KCS's second Laredo Bridge span, which is being built solely with KCS funds and is not covered by the existing agreements or decisions regarding the existing Laredo Bridge. Whether UP is granted access to the second privately funded Laredo bridge should be at the discretion of CPKC on terms that are operationally efficient and economical to CPKC. If it is efficient and economical to provide UP with access to the second span, the parties will negotiate those terms. The merger of CP and KCS has no bearing on the terms of the bridge access by UP nor does the merger create any competitive problems that would justify granting UP access over the new span.

IV. THE MILEAGE PRO-RATE RATE SETTING MECHANISM PROPOSED BY UP, BNSF, AND OTHERS WOULD ADVANTAGE THE LARGER CLASS 1 CARRIERS AND HARM COMPETITION

70. The mileage pro-rate mechanism proposed by UP, BNSF and others is a rather transparent attempt to thwart effective competition from CP/KCS. Billed as a "concrete" standard to enforce open gateway commitments, the mechanism would only constrain CP/KCS's ability to price competitively. The mechanism seeks to shift money to the pockets of UP, BNSF, and others at the expense of competition in general, as well as away from CP/KCS shippers who would benefit from lower single-line rates that the price mechanism would prohibit.

71. The proposed mechanism fails to account for how prices are set and the market economics that underlie those pricing decisions. Instead, it would constrain CPKC to rigid parameters divorced from the market factors that influence rate setting. The result undermines CP/KCS's ability to price competitively, innovate, and invest while protecting UP and BNSF's ability to price freely. In a perverse outcome, the mechanism may actually incentivize CP/KCS

to raise prices in order to maintain minimum revenues, while BNSF, UP, and others, reap the windfall.

72. I understand other witnesses will address the mileage pro-rate condition from an in-depth economics and future-looking CP/KCS perspective, but I will provide some background on how the proposed mileage pro-rate mechanism fails to consider pragmatic pricing concerns using current KCS/KCSM operations and the effects of this failure on a market-based pricing approach.

A. The Mileage Pro-Rate Mechanism Does Not Reflect The Real World Or Market Economics

73. Both UP and BNSF attempt to frame the mileage pro-rate mechanism as a "concrete" method to enforce Applicants' promise to keep gateways open on "commercially reasonable" terms. Both complain that "commercially reasonable terms" lacks a defined "check the box" like standard. Both dismiss the common sense (and prior Board-accepted explanations) by Applicants, their witnesses, and their attorneys that "commercially reasonable terms" is a context-specific determination. That is because all pricing decisions are context-specific and dependent on the interplay of a variety of factors, such as market conditions, regulatory requirements, volumes, overall business strategy, cost, special requirements, resource use, and asset availability.

74. Although the promise to provide commercially reasonable terms has been approved by the Board and successfully implemented in prior transactions, including the Laredo gateway at issue here, UP and BNSF seek to advantage themselves by asking the Board to go further and to define commercial reasonableness in a way that constrains CP/KCS and favors them. Specifically, UP suggests that "when a customer asks CP/KCS to provide rates for (i) CP/KCS service on only former-CP, former-KCS, and/or former-KCSM portions of an origin-to-

destination route, and (ii) CP/KCS "single line" service on a "competitive" route, CP/KCS must provide the customer with a Rule 11 rate for the former-CP, former-KCS, or former-KCSM portions that reflects a mileage-based prorate of the rate provided for the CP/KCS single-line service."[25]

75. BNSF proposes essentially the same mechanism but calls this concept a proportional rate.[26]

> "As explained by Dr. Reishus, the basic concept of such a proportional rate is that the railroad with the long-haul, single-line route (here, CP-KCS) must charge a rate for the sole-served portion of that single-line route (here, Mexico) that is proportional to the through rate it charges for single-line service based on the length of haul of the sole-served portion of the route (here, Mexico to a CP-KCS location). (*See* V.S. Reishus 49-50). Specifically, the through revenue for actual long-haul single-line movements provided recently by the single-line carrier should be calculated on a per ton mile basis, on metrics such as commodity and car type, over the single-line route. That per-ton mile factor should then be applied to the mileage of the movement on the sole served portion of the route (here, Mexico) to create a proportional rate."[27]

76. Although those parties make a mileage pro-rate sound simple – "CP/KCS would simply calculate its mileage-based share"[28] – the mechanism does not reflect the real world or market economics of railroad pricing. One problem with this proportional rate is obvious on its face: CP/KCS is prohibited from realizing the efficiencies of single-line service. Single-line and interline moves have different characteristics, including different cost structures that result from handlings and efficiencies in single-line movement.

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[25] Union Pacific Railroad Company's Comments and Requests for Conditions (filed Feb. 28, 2022) at 9.

[26] BNSF Comments and Requests for Conditions (filed Feb. 28, 2022) at 46.

[27] BNSF Comments and Requests for Conditions (filed Feb. 28, 2022) at n. 20.

[28] Verified Statement of Kenny Rocker and John Turner (filed Feb. 28, 2022) at 20.

77. The mechanism also disrupts normal interline division practice. Interline divisions do not adhere to a strict mileage prorate allocation of revenues between carriers. Rather, in the real world, revenue allocations between rail carriers participating in an interline movement depend on many things, including market conditions, resource availability, and relative costs. Interline partners may agree to reduce their divisions or agree on weighted cost sharing to secure a particular contract or develop business on a particular new route. Such divisions are negotiated based upon market forces and are not formulaic in nature.[29]

78. Such a mechanism inhibits CP/KCS's ability to price competitively because it ignores the numerous factors impacting interline rates. Pricing is a dynamic process based on a multitude of factors. For example, length of haul is a major consideration in pricing as the economics of how costs and revenue are weighted are different for short versus long haul. Longer hauls allow railroads to spread their costs out per mile whereas shorter hauls may have higher costs per mile and thus require more revenue per mile to make economic sense.

79. UP and BNSF both know that interline rates are not set on mileage-based proration and that rates are market dependent. The Verified Statement of Mr. Kenny Rocker does not say that UP prices this way because UP does not do so. Similarly, none of BNSF's verified statements say that BNSF prices based on mileage prorates, because it does not do so. They do not price this way because it does not make economic sense and does not reflect market conditions.

80. Further, the mileage pro-rate mechanism does not account for non-price factors that may be part of a price negotiation and ultimate differences in a single-line quote versus

[29] For example, KCS has agreed in the past to a take a shorter haul in an interchange partnership where its interline partner agreed to provide the customer locomotives and took on the higher power costs.

interline quote, such as additional service conditions, time commitments, volume commitments, switching location, equipment or assets usage, risk allocation, or added premiums. Nor does the mileage pro-rate mechanism account for the fact that the way prices are negotiated may account for differences in the ultimate contract term. Rule 11 rates are negotiated directly with the shipper and the ultimate considerations may be different (such as price per car, service conditions, cycle time) than when negotiating with an interline partner (such as revenue divisions, power and equipment, or switching location).

81. Finally, if a shipper is concerned that the interline quote is not commercially reasonable, the shipper is able to test its concerns by asking KCSM for a Rule 11 rate from the origin to the U.S. interchange point and by asking CPKC for a Rule 11 rate from the interchange point to the destination or the interchange point with the next interchange carrier, as applicable. These Rule 11 rates can be compared to the combined interline through-rate to determine whether the through-rate being quoted is commercially reasonable.

B. The Mileage Pro-Rate Mechanism Would Prevent CP/KCS from Pricing Competitively and Would Only Benefit UP And BNSF

82. The mileage prorate mechanism would be particularly distorting as applied to U.S.-Mexico traffic, because KCSM must and does abide by Mexican regulations, which prohibit price discrimination. The mileage pro-rate mechanism would prohibit KCS from passing on any cost savings from a single-line route unless it gives UP, BNSF, and others the same discount. This point bears repeating. To my knowledge, in no other situation have I heard of a pricing restriction that requires one railroad to subsidize its competition at that railroad's expense. This is a one-way street. There is no reciprocity. BNSF and UP do not have to reduce rates to shippers nor do they pass any discounts to KCS in any circumstance. If KCS cannot account for some of the competitively negotiated single-line or longer haul rates in the overall

CP/KCS/KCSM rate, then CP/KCS cannot price competitively nor pass along the benefits of single-line service to shippers.

83. Moreover, a mileage prorate mechanism would inhibit competition from new CP/KCS single-line services. With new single-line services, CP/KCS will be even more competitive with UP and BNSF in many lanes. Merger synergies will allow CP/KCS to compete hard for business, including on rates. To do that, however, CP/KCS will need flexibility in the face of market conditions, the precise opposite of the proposed conditions. A mileage prorate is intended by our future competitors to prevent us from bringing that competition to the market.

84. The condition also does not benefit shippers, but rather the interline railroads. If the condition is imposed, CPKC would have incentives to either (a) not pass on to shippers the lower rates generated by the cost efficiencies in providing a single-line rate; or (b) if CP/KCS did offer a lower single-line rate, those savings would have to be passed on to BNSF, UP, and others in the form of a mileage pro-rate that would not be passed onto shippers, but rather allow the carriers to absorb those savings while the shipper retains the higher costs associated with interline service.

85. For example, assume the KCSM-UP rate today is $3,000, with KCSM collecting $1,200 and UP collecting $1,800. KCSM's share of the miles is one-third while UP's is two-thirds, but KCSM's costs are higher for this move.[30] In the post-merger world, since CP/KCS knew $3,000 would move the traffic, CP/KCS could offer the same $3,000 as UP. But with the mileage pro-rate mechanism, KCSM's rate would be capped at $1,000 (33 percent of the miles

[30] Rail service in Mexico may require additional costs that UP does not incur in the United States, such as increased security, historically high fuel costs, and regulatory impositions such as taxes and concession fees. KCS has also had the incentive to invest in and develop Mexico-specific service options, such as proprietary seal tracking to enhance security, which it has made available to U.S. interline partners without their investment for KCS to maintain secure transport in Mexico.

times the rate of $3,000). Under Mexican law, KCSM must charge $1,000 to KCS and UP. It cannot discriminate. So, under the mileage pro-rate system, UP could charge the same $3,000 that it does today and pocket $200 more in revenue. The mileage pro-rate has not benefitted any party other than UP. The mileage pro-rate has simply shifted revenue from the pocket of KCSM to UP without any benefit to the shipper.

86. Let's say, however, that CP/KCS wants to offer a lower single-line rate than the $3,000 charged to the shipper today. CP/KCS offers a rate at a 20 percent discount -- $2,400. Under that scenario, KCSM's rate would be capped at $800 (a mileage pro-rate of 1/3 the miles times the rate of $2,400). UP can match the $2,400 CP/KCS single-line rate but still earn $1600 because CP/KCS has in effect subsidized UP. KCSM would receive $400 less than what KCSM had been receiving but UP only receives $200 less. While the shipper may benefit in that scenario in the form of an overall lower rate, that lower rate comes not at UP's expense, but rather at CP/KCS's expense. The mileage pro-rate system thus creates the perverse incentive of not encouraging CP/KCS to offer lower single-line rates. All the mileage pro-rate mechanism does is benefit one carrier at the expense of the other or act as a disincentive to offer lower-single line rates.

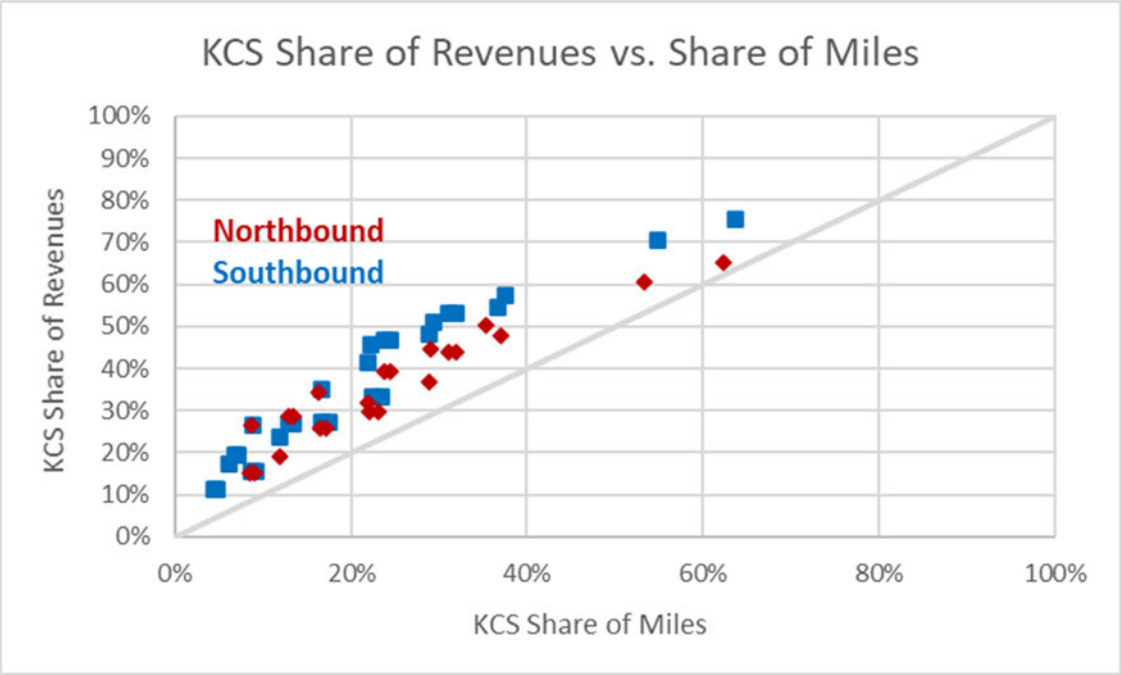
87. This principle is also illustrated by looking at how a mileage prorate would distort actual interline rates from BNSF and KCS if it were applied. Figure 5 below illustrates KCS's (including KCSR and KCSM) share of revenues for interline intermodal traffic it moves with BNSF via Robstown by KCS's share of miles.[31] The X axis shows KCS's share of miles for the movement. The Y axis shows KCS's share of revenue for the movement. As you can see,

[31] Workpaper – HC – BNSF KCS Intermodal Rates Compared to Mileage Prorate.

KCS's share of interline revenue is higher than its share of miles. The diagonal line represents what KCSM's rate would be if the mileage pro-rate was imposed.

88. The blue and red squares represent revenues realized in the marketplace and thus reflect what the shippers are willing to pay. A mileage prorate metric would force the KCSM portion of the rate down to the line shown on the graph. BNSF however has no incentive to reduce the overall rate to the shipper. The market already determined the competitive market rate at the original pre-prorated level. BNSF has every incentive to quote the original rate to the shipper and keep the windfall created by the artificial cap on CP/KCS's rate. UP would gain the same advantage.

FIGURE 5
BNSF-KCS INTERMODAL RATES COMPARED TO "MILEAGE PRORATE"



89. The bottom line is that a mileage pro-rate mechanism not tied to market conditions and factors is anti-competitive, not pro-competitive. The proposed mechanism fails to account for how prices are set in the marketplace and the idea that customers make value-based

decisions. Instead, mileage pro-rate pricing constrains CP/KCS to rigid parameters while providing a potential windfall to CP/KCS's connecting carriers. It is not narrowly tailored to remedy a specific competitive harm nor is it consistent with all prior precedent regarding gateway commitments. It should not be adopted.

V. CANADIAN NATIONAL'S (CN) PROPOSED FORCED SALE OF KCS'S SPRINGFIELD LINE IS NOT COMPETITIVELY JUSTIFIED AND WOULD NOT BE IN THE INTEREST OF SHIPPERS

90. As I understand it, CN requests that as a condition of the CP/KCS transaction, the Board require the divestiture of certain valuable KCS assets pertaining to KCS's rail line between Kansas City, Missouri and Springfield, Illinois, including track, terminal ownership, and related agreements and rights and have these assets (collectively I will refer to the bundle of assets CN seeks to acquire as the "Line") sold to CN. CN's justification for this drastic condition rests on the assertion that a post-merger CP/KCS will abandon the millions of dollars of investment and strong shipper relationships KCS has developed on this Line because CP is incented to promote its single-line Kansas City to Chicago service over the existing CP route and will thus ignore the somewhat parallel KCS line to Springfield, IL. CN's evidence seems to be the lack of new merger-specific investment in improving the Springfield Kansas City to Chicago route.

91. I believe the assertions on which CN relies are not accurate. First, I will provide a little background about KCS's purchase and investment in the Line and provide some details about the strong commercial relationships that have resulted from that investment and why the Line is such an important part of KCS service to Mexico that it would make no sense to walk away from those investments. Second, I will provide background into the failed efforts to develop a robust Kansas City to Chicago interline service with CN and make it clear that there is no successful CN/KCS route that would be lost in a CP/KCS transaction to justify CN's

divestiture request. This background also makes clear CN's likely purpose: it seeks divestiture to improve its position not to preserve competition. Finally, I will address how CN's request is not in the public interest and actually would harm post-merger CP/KCS service for the shippers on the Line.

A. The Line Plays An Important Role For KCS Grain Deliveries Into Mexico And It Would Not Make Economic Sense For A Merged CP/KCS To Walk Away From Years Of Investment

92. The Line today is a valuable asset because KCS invested significant amounts to make it so. KCS purchased the owner of the Line, Gateway Western Railway Company ("Gateway") in 1997 from CN's Illinois Central (the same entity that now seeks to buy it back at a significant discount and in improved condition).[32] At that time, the Line carried very little traffic because the tracks were in poor condition. Since that time, KCS has spent significant funds rehabbing this previously underutilized asset. For example, between 2012 and 2014, KCS spent over $50M on rehabbing the Line including customer specific projects, and KCS spends an average annual amount of $17.5M to maintain this track segment (based on the last 5 year history). These projects included upgrading the former Gateway track and ties in order to handle heavy grain trains, upgrading tracks connecting to shipper facilities to promote efficient connections, and upgrading sidings to handle longer trains. These investments and commitments attracted similar commitments and investments by customers. Likewise, customers invested in their facilities along the Line in order to utilize the upgraded track and improved transport options to their preferred destinations, in particular the growing grain market in Mexico. We have been advised that Bartlett Grain, Ray-Carroll County Co-op, and Central Missouri Agri

[32] Gateway was subsequently merged into KCSR on or about October 1, 2001.

Services invested over $95M in three new shuttle train loop track facilities on the Line. Bartlett built in Jacksonville, IL, Ray Carroll built in Corder, MO, and Central Missouri Agri Services built in Marshall, MO. Today, the Line serves as an important origination point for many customers shipping to/from Mexico. In 2021, grain shippers alone generated more than {{ }} in revenue for KCS with just under 90 percent originated on the Line and terminated in Mexico.

93. A prime example of how and why the Line has today become such an important part of the KCS U.S./Mexico service is seen by looking at just one customer served by the Line: Bartlett Grain ("Bartlett"). Bartlett is now KCS's largest customer on the Line,[33] but it was not always so. Bartlett's growth reflects an evolution in both KCS's business strategy, the dynamic cross-border grain market, and the symbiotic nature of KCS and Bartlett's investments. In the late 1990s, Bartlett had established a limited presence shipping grain, primarily to domestic feed mills. Over the following decade, both KCS and Bartlett invested significantly in their infrastructure and operations to grow the market independently and in response to each other's development. More broadly, in 2005, KCS purchased Tex Mex and KCSM and began developing U.S./Mexican traffic. Bartlett also developed substantial commercial opportunities in Mexico through partnerships, business agreements, and investments in facilities to open up new international markets for its grain origins. In the U.S., Bartlett invested significant sums in its grain facilities and elevators, including purchasing its Atchison facility in 2007, building the Jacksonville facility in 2013, and upgrading its facilities over time.[34] Some of these investments

[33] Bartlett is also KCS's largest grain customer across its entire network.

[34] Facilities that Bartlett upgraded include the Council Bluffs north facility in 2013, the Kansas City River Rail facility in 2014, the Council Bluffs south facility in 2016, and the Atchison, Kansas elevator in 2019.

were done in partnership and in response to investment from each other. For example, in the 2005-2006 time period, KCS adopted a shuttle train service for grain, in part because of the interest in a 75-car cross-border service by Bartlett. The introduction of shuttle service helped grow the Agriculture & Mineral business unit's revenue by 8.1 percent in 2006.[35] Additionally, much of the symbiotic investment made was directly associated with facilities and assets on the Line. While several of Bartlett's facilities were dual served, and thus Bartlett had the choices of rail routings, Bartlett and KCS nonetheless entered into a strategic alliance/contract in 2012 based on, among other things, KCS's rates, equipment, and single-line service to Mexican destinations. This long-term contract provided KCS and Bartlett with the stability and security to invest more in the upgrade of the tracks and facilities on the Line to handle the heavier and longer grain trains, which are beneficial to both parties. In 2013, Bartlett made further investments, building a major new grain facility in Jacksonville, Illinois, on the Line at a cost of over $25 million and acquiring destination facilities in Mexico.[36] As a result of this long term relationship and of KCS's single-line service, in 2021, Bartlett shipped on KCS almost 11,000 cars from its facility in Jacksonville to Mexico.[37] The value of this symbiotic investment can be seen in exponential growth of Bartlett traffic over the KCS system (the below figures represent Bartlett cars over the entire KCS system, not just on the Springfield Line):

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[35] KCS 2006 Annual Report, p. 6.

[36] Verified Statement of Mr. Bob Knief filed June 20, 2022, at 1 and 2; Exhibit 1 HC - Bartlett Update – August 2014.

[37] Verified Statement of Mr. Bob Knief filed June 20, 2022, at 2. This facility was built to have a loop track for efficient single-line service to Mexico.

FIGURE 6[38]

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94. Beyond infrastructure, KCS has also invested in equipment and has developed a dedicated fleet of cars and locomotives for these grain shipments. These investments have not only benefited Bartlett but attracted other opportunities from other grain shippers, and shippers of other commodities as well, such as steel. As a result, this Line has become an important part of the KCS system and will continue to be so in a merged CP/KCS. The notion that this Line would be degraded or somehow currently provides a parallel competitive service to a CP service so that the merger would reduce horizontal competition requiring divestiture is simply not accurate. Given the investment from both KCS and shippers on the Line, it would not make sense for a merged CP/KCS to walk away from the Line or disinvest in it in order to favor CP

[38] Workpaper – HC – Bartlett Grain Shipped.

grain origins. CPKC will be committed to the Line and to continuing to serve the shippers on the Line. Furthermore, as discussed more below, divestiture of the Line to CN would harm shippers, and in fact, is not supported by any shipper currently using the Line. Divestiture would benefit only one party: CN.

B. There Will Be No Loss of Competition in The Kansas City-Chicago Corridor

95. CN asserts that the competition between the CP move between Chicago and Kansas City and the hypothetical KCS-CN move from Kansas City through Springfield would be eliminated in a post-CP/KCS merger environment and/or that a merged CP/KCS will no longer have any incentives to continue to interchange existing KCS/CN interline traffic over the Line. The problem with CN's argument is that the Springfield Line plays no competitive role in any such marketplace. Today, there is almost no traffic that moves over the Line on an interline basis with CN. Almost all of traffic on the Line is originated on the Line and moves on KCS single-line traffic to Mexico. In other words, there is no significant CN/KCS interline service that would be eliminated or "foreclosed" if the CP/KCS transaction went forward.

96. There is a tiny amount of CN-KCS interline traffic that gets billed via the Springfield gateway. Importantly, even though this traffic is listed as interchanged at Springfield, most of it is only "paper interchanged" there. That is, while the waybill data shows the interchange at Springfield, the rail cars are physically interchanged in East St. Louis. The cars are interchanged elsewhere in part because the operations in the Springfield area are complicated by the need for KCS to move cars over a segment of track owned by UP in order to interchange cars to CN. This operational challenge would remain even if the Board entertained the unreasonable idea of divesting the Line to another party, including possibly CN. This traffic does not compete against KCS traffic to/from Mexico.

97. The traffic levels showing CN/KCS interline traffic since 2019 are shown in the Table below.[39] The table shows the physical interchange, without regard to the destination to which the traffic was billed.

TABLE 3
KCS-CN INTERLINE TRAFFIC AT SPRINGFIELD AND EAST ST. LOUIS

Linehaul Only <> CN		
	COCKRELL	EAST ST LOUIS
2019	132	361
2020	0	214
2021	0	225

98. I believe the low levels of current interline traffic between CN and KCS reflects a lack of interest from both parties. Prior to my arrival at KCS, CN and KCS in 1998 entered into a 15-year alliance agreement to move traffic over this Line.[40] The parties touted the goal in a press release issued on April 16, 1998: "The marketing alliance will offer shippers pro-competitive connections to new rail routes for their products and the ability to tap new markets through a coordinated rail network. Services will link points in Canada with the major U.S. Midwest markets of Detroit, Chicago, Kansas City, and St. Louis, along with the key Southern markets of Memphis, Tenn., Dallas, and Houston." Springfield (along with Jackson, MS) was supposed to have been one of the principal interchange gateways for Alliance traffic. However, that Alliance was unsuccessful and did not produce any real traffic gains. The deal expired with no substantial gains. I have been told it was complete failure, mainly because each party

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39 Workpaper – HC - CN Gateway Volumes.

40 Exhibit 2, Press Release – Canadian National, Illinois Central, and KCSR in Shipping Alliance, Bloomberg Business, April 16, 1998_ available athttps://www.bloomberg.com/press-releases/1998-04-16/canadian-natl-illinois-central-kcsr-in-shipping-alliance

continued to favor its long haul and refused to adopt arrangements that would short haul one party in favor of a long haul on the other.

99. Beyond the Alliance, there have been no significant efforts to develop commercial opportunities between KCS and CN using the interchange at Springfield for movements to Kansas City and beyond to other destinations in the United States or Mexico. Over the years there has been minor interest floated in co-funded infrastructure projects, such as upgraded sidings, but to my knowledge none have passed the initial stages of discussion. In fact, in 2019, CN reached out to KCS to shut down the Springfield interchange entirely because of the low volumes. According to Rhonda Anderson, Director, Service Design at CN, in a May 30, 2019 email to Michael Wilkinson, KCS's Superintendent-Service Design, Ms. Anderson indicated that the desire to close Cockrell[41] (aka Springfield) came from CN's Regional VP. In a later July 2, 2019, email Ms. Anderson further explained that CN would "like to remove the service from the Cockrell interchange. Volumes are small and from what I can see, neither of us is doing a bang up job of pulling. From our perspective, East St. Louis looks like the best alternative gateway."[42] While it does not appear that the gateway was closed, I am unaware of CN proposing any new efforts to build business using this interchange.

100. Even if CN were able to theoretically establish that the KCS/CN route between Chicago and Kansas City provides a meaningful competitive alternative to CP's Kansas City-Chicago line, this would still not justify divestiture of the Line. This is because there would be no real reduction in competition for Chicago to Kansas City traffic as a result of the CP/KCS

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[41] The interchange location between KCS and CN is sometimes referred to as the Cockrell. KCS's Line ends in Cockrell, Illinois, where it connects to UP track over which KCS has trackage rights to connect with CN's line that runs through neighboring Springfield, IL.

[42] Exhibit 3 CN-KCS May 30 Email RE_Cockrell interchange to be closed asap; Exhibit 4 CN-KC July 2 Email RE_Cockrell interchange to be closed asap.

transaction. Indeed, there are multiple viable routes for rail traffic between Chicago/Detroit and Kansas City, including UP, BNSF, and NS's single-line route that stretches beyond Chicago to Detroit. The KCS-CN route via Springfield is simply not a competitive alternative. What limited CN interchange traffic there currently is with KCS at "Springfield" (really East St. Louis), the merged CP/KCS will have every incentive to continue this limited CN interlined traffic because such traffic does not currently compete, nor will it, in the future with CP/KCS.

101. CN claims that competition in this corridor will be "lost," but the only thing that would be "lost" should the transaction be approved is CN's chance to realize its vision of a CN-controlled "Kansas City Speedway." The purpose of CN's responsive application is not to "preserve competition" (which as I have explained does not exist and thus does not need preserving) but rather, as CN itself makes clear in its comments and inconsistent application, the real purpose of its request is to "foster" and "improve competition" through an improved competitive position as owner of a new CN single-line route from Mexico to Chicago and beyond. CN's proposed divestiture is not directed at remedying an anticompetitive impact of the merger.

102. Further, I find dubious CN's claims that it can generate two trainloads per day or intermodal traffic between Kansas City and Chicago. It is unrealistic to think that any CN route to Kansas City would attract this traffic in lanes already well served by single-line rivals. CN's claim that it would raises the questions of if this traffic were ripe for the picking, why has CN not developed this with KCS before (or at least tried)? The likely answer is that this traffic could materialize only if CN cannibalized the benefits of the CP/KCS transaction, which it seems is part of CN's objective by asking for 50 percent rights to the International Freight Gateway terminal.

103. The bottom line is that there is no justification for the divestiture because there is no loss of competition. The Transaction will not result in KCS neglecting the Line, downgrading service, or foreclosing interline movements with CN. A CP/KCS/CN interline partnership would be as viable a Kansas City to Chicago option as the KCS/CN route is today, should the market develop enough to make it worthwhile. Given the importance of the Line to KCS and its shippers, there is no economic incentive to abandon, degrade, or stop upgrading the Line. KCS has fostered valuable relationships with the shippers on the Line that benefit significantly from KCS's single-line service to Mexico and both shippers and KCS foresee them continuing and growing.

C. Divestiture Of The Line Would Be Disruptive and Harmful To Existing Service On The Line

104. As stated above, KCS has invested heavily in the Line and has developed strong commercial relationships with shippers in the region, particularly those seeking access to Mexico. It cannot be understated how important the Line is to some shippers for KCS's single-line service to Mexico. Before 2002, KCS shipped approximately {[redacted]} cars of grain to Mexico. Following KCS's acquisition of Tex Mex and TFM (now KCSM), and following KCS's and the customers' investments in the Line, today, KCS ships {[redacted]} carloads of grain to Mexico. Today, KCS has more than 20 agricultural customers on the Springfield Line, including many grain elevators. These customers have the ability to ship their grain east, to the Mississippi River or west to KCS domestic feed mills and to Mexico. All of the Line's customers' locations are shown in the map attached as Exhibit 5 to this statement.

105. KCS has 20 shippers on the Line, including three large grain shippers that rely on KCS service. KCS does move freight to and from grain handling facilities in the St. Louis area, but the majority moves West mainly to Mexico. These customers depend upon KCS to serve

markets to the West and in Mexico. Some of them have made substantial investments to support that business, such as Bartlett, Ray-Carroll, and Central Missouri Agri Services, as discussed above. Others are considering new investment because of the benefits that they see would result from the CP/KCS transaction. Let me mention two of these shippers (other than Bartlett, which is discussed in detail above) and the importance to the KCS system.

- Ray Carroll serves markets in Mexico and other points reached via the Line through Kansas City to the west of its facility. In 2021, Ray Carroll shipped in excess of {[redacted]} cars, of which {[redacted]} moved West or to Mexico on KCS.
- Central Missouri AgriService shipped only {{[redacted]}} of its shipments to the East. {{[redacted]}} of its grain shipped to Mexico from the Line.

106. It is particularly noteworthy that not one shipper who originates or terminates traffic on the Line has filed in support of CN's divestiture request. Ray-Carroll, Central Missouri Agri Services, and Bartlett Grain have all filed letters opposing the divestiture of the line. Ray-Carroll and Central Missouri Agri Services were originally neutral on the proposed CP/KCS merger. When CN filed for the forced sale of KCS's Springfield Line, both shippers have come forward to testify against CN's proposal and in support of the CP/KCS merger. For example, Ray-Carroll foresees both new opportunities resulting from the CP/KCS transaction as well as new investments in the corridor in the foreseeable future, but believes these opportunities will be constrained if the Line is forced to be divested.[43] Richardson International Limited recently purchased a St. Louis grain facility and has expressed concern that divestiture would

[43] Verified Statement of Beau Hepler, filed concurrently with Applicants' Reply Comments, July 12, 2022.

eliminate single-line service on routes that currently exist and those that may become available as a result of the CP/KCS transaction.[44]

107. KCS has worked hard to develop a competitive, efficient single-line service for shippers on the Line. KCS has worked to provide seamless services from the origin to destination, including local service. Each of the customers that I mentioned above would lose single-line service toward the West and Mexico from a divestiture of the Springfield Line – even if CP/KCS were granted back haulage rights as proposed by CN. Today, KCS designs the service from the origin to destination. If there were a divestiture, years of planning, strategic partnerships, and symbiotic relationships would be significantly changed and disrupted. These customers would have to rely on CN designing service at their location, and then moving the freight to Kansas City, where it would be interchanged to CP/KCS. With truck competition on the line, the economics play a very important part of rail competitiveness. Thus, customers would lose the benefits of the single-line service that they have today, which would make the transportation a less competitive option. Any forced divestiture of the Line to CN would substantially harm the interests of these shippers and would not be in the public interest.

VI. THE "CONSERVATIVE" ESTIMATES OF SYNERGIES PRESENTED TO KCS'S BOARD ARE NOT INCONSISTENT WITH THE ESTIMATES PRESENTED IN THE APPLICATION

108. I understand that some commenters have tried highlight the fact that an early KCS analysis of synergies is lower than the synergies Applicants presented in the Application. Those commenters simply overlook the context and nature of the two estimates.

109. The KCS Board of Directors expected to review and test all of the various ranges, from low to high, in order to understand the potential impact of either a CP or CN transaction.

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[44] Richardson International R.V.S. filed concurrently with Applicants' Reply Comments, July 12, 2022.

Based upon the information available at the time, the KCS board considered a range of synergy analysis from approximately $377 million to approximately $990 million (annualized EBITDA synergies for the combined company).[45]

110. A commonly accepted approach to valuation analysis typically presents a range of outcomes. Synergies are by design forecasts/estimates of future results based on assumptions, making it prudent to review a range of scenarios, both an upside case and a low side sensitivity case. Further, multi-year forecasts for the underlying businesses are .far more impactful to determining value in a merger decision than estimated synergies.

111. Additionally, due diligence performed by the KCS Board of Directors confirmed that the range of outcomes would likely lead to a strong financial position for a merged CP/KCS. Within the range of the business case, and accounting for the additional debt to help fund the transaction, CP/KCS is expected to earn a fair margin and produces enough free cash flow to safely fund planned investments in the network, support customer traffic, and grow the franchise.

112. The initial estimates mentioned above provided a solid range of scenarios for the KCS Board to consider and review. Six months of customer feedback from the first merger announcement with CP in March 2021 provided additional clarity on synergies that was not available at the date of the initial announcement before the proposed merger became public knowledge. This revised view was reflected in the Application and reflected work by the KCS and CP teams working together. Additionally, it also reflected a combined operating and marketing plan. This difference in purpose and difference in underlying information led to a

[45] Canadian Pacific SEC Form F-4 Registration Statement, KCS-CP PROXY STATEMENT, filed October 1, 2021.

Naatz R.V.S. at 57

different estimate of synergies in the Application than what was presented to the Board of Directors.

VII. NO CONDITION SHOULD BE IMPOSED THAT FREEZES KCS'S TARIFFS OR TRANSPORTATION SERVICE TERMS RELATING TO PIH/TIH TRAFFIC

113. Unlike many other carriers, KCS has not traditionally had complaints about the terms of its tariffs and rules publications specifically applicable to TIH/PIH traffic. Some of this may be limited to the relatively small amount of such traffic handled by KCS. Indeed, KCS handles very little such TIH/PIH traffic. In 2021, KCS handled {[redacted]} cars of TIH/PIH traffic, which is less than 1 percent of all traffic transported by KCS. Of this traffic, KCS originated almost {[redacted]} of these cars.

114. Some parties assert that KCS today uses its TIH/PIH to differentiate itself from the other Class I's to attract traffic and that this incentive will go away with the CP/KCS transaction. This is not an accurate assumption. In fact, the locations that receive TIH/PIH traffic on KCS are at locations that are singly-served by KCS, which means the terms of our tariffs and rules publications are not a means to differentiate our services and attract this business.[46] KCS has not had any adverse incidents that have forced us to revisit these terms or modify the terms to require explicit liability allocations (e.g., arising from insistence by our insurers). KCS's terms do not reflect an additional assumption of risk or liability by KCS as a commercial incentive. The terms of our tariffs and rules publications reflect our chosen way of dealing with a set of business risks.

[46] KCS also originates TIH/PIH shipments from dual-served locations, such as Chaison TX, and at joint operating facility locations, such as Lake Charles, LA. But KCS does not use the terms of its TIH/PIH tariff and rules publication as a marketing tool to differentiate itself from the other carriers also serving those locations.

115. I realize that parties have benefitted from what is seen as "customer friendly" tariffs and rules publications, but as noted, the policies are always subject to change and are certainly not actually intended to be a business or marketing tactic to encourage TIH/PIH shipments on KCS or to market KCS's TIH/PIH policies as "customer friendly." I can understand those customers who are concerned that a merged CP/KCS will cause KCS to change its policies, but those concerns do not justify the types of remedies proposed by some shippers. While there are no immediate plans to changes these tariffs and rules publications, I would note that KCS evaluates its tariffs and rules publications in the ordinary course of its business on a regular basis. KCS routinely makes changes to its tariffs and rules publications based upon market conditions. It would be overreaching to freeze KCS's tariffs and rules publications terms at their pre-Transaction state when absent the Transaction, KCS would have been free to change its terms at any time, subject to STB regulations and challenge.

VIII. OTHER ISSUES RAISED BY COMMENTERS

A. The Conditions Sought by Texas International Terminals Are Not Related to Competition or This Transaction and Instead Seek to Improve TxIT's Commercial Position.

116. I understand Texas International Terminals Ltd. ("TxIT") filed a comment and is requesting a condition requiring CPKC to "effectuate (as necessary) and maintain the access rights that KCS was granted in UP-MKT to Galveston" and to "actively and cooperatively work with rail shippers and TxIT to reasonably market and enable such right to be actively utilized."[47] TxIT complains that KCS "has not effectuated or sought to aggressively market those rights with respect to rail service to TxIT to date."

[47] Comments and Request for Conditions of Texas International Terminals Ltd. ("TxIT Comments") (filed February 28, 2022) at 8.

117. KCS was granted these rights in the UP-MKT merger, but KCS has not exercised them because it is not economically advantageous to do so. The haulage rights were granted as part of UP's 1988 merger with Missouri-Kansas-Texas Railroad and originally designed to give KCS haulage rights for grain traffic originating in the Omaha, Nebraska and Council Bluffs, Iowa region, and haulage rights over UP between Beaumont and Galveston to deliver the grain to Galveston.[48] However, KCS found alternative and more advantageous routes to get grain to destination markets, including through other Gulf ports that KCS serves directly, such as Port Arthur and New Orleans. Simply, KCS has not needed to exercise these rights because it has better economic options. But KCS has not turned away any traffic and I understand TxIT's Galveston facility is served by UP and BNSF. Moreover, there is nothing in this merger which would diminish these rights and should they become economically advantageous, CPKC may exercise them.

B. Evergy Metro, Inc.'s Request to Impose a Condition regarding Service Quality is an Attempt to Extend Board Jurisdiction to its Contractual Agreement with KCS.

118. I understand Evergy Metro, Inc. ("Evergy") filed Comments seeking a condition requiring five years of Board oversight and the formal submission of reports on a quarterly basis on, among other things, the service quality to Evergy and other bulk commodity shippers, and for the Board to retain jurisdiction to impose additional conditions to remedy any service shortfalls.[49]

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[48] See Union Pacific Corp., et al. – Control – Missouri-Kansas-Texas R.R. Co., et al., 4 I.C.C.2d 409, 452-458 (1988) ("UP/MKT").

[49] See Evergy Metro, Inc. Comments, filed February 28, 2022, at 17-18.

119. Evergy acknowledges that KCS provides transportation services to Evergy for the movement of coal pursuant to a contractual agreement that was negotiated between the parties. This agreement includes service protections against decreases in service levels, including {{ }}

120. Specific service conditions are a term that parties negotiate for, as Evergy did. The exact nature of these terms involves give and take as part of the overall private agreement. Evergy here is seeking to insert the Board into the private agreements between shippers and KCS and to impose additional service terms for which they did not negotiate. Evergy's conditions are not merger related, but an attempt to put itself in a better commercial position than it would otherwise be in.

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VERIFICATION

I, Michael J. Naatz, declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge. Further, I certify that I am qualified and authorized to file this statement.

Executed on this 12 day of July, 2022.

DocuSigned by:
Mike Naatz
FD5BF2DEC92345C...

Michael J. Naatz

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36500

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

NAATZ R.V.S. EXHIBIT 1

HIGHLY CONFIDENTIAL - BARTLETT UPDATE - AUGUST 2014

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36500

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

NAATZ R.V.S. EXHIBIT 2

PRESS RELEASE – CANADIAN NATIONAL, ILLINOIS CENTRAL, AND KCSR IN SHIPPING ALLIANCE

REDACTED PUBLIC RECORD VERSION

Business

CANADIAN NATL, ILLINOIS CENTRAL, KCSR IN SHIPPING ALLIANCE

April 16, 1998 at 7:23 AM CDT

(The following is a reformatted and edited version of a press release issued by Canadian National Railway Company.)

CANADIAN NATIONAL, ILLINOIS CENTRAL AND KANSAS CITY SOUTHERN RAILWAY FORM PRO-COMPETITIVE, 15-YEAR MARKETING ALLIANCE TO LINK KEY NORTH AMERICAN MARKETS WITH NEW RAIL FREIGHT SERVICES

Railways plan coordinated marketing and operations in fast-growing NAFTA transportation corridor

WASHINGTON, D. C., April 16, 1998--Canadian National Railway Company (CN), Illinois Central Corporation (IC) and Kansas City Southern Railway Company (KCSR) announced today a 15-year marketing alliance that will offer shippers new competitive options in a rail freight transportation network linking key north-south continental freight markets.

CN and KCSR have also signed a separate access agreement regarding certain haulage and trackage rights, which is contingent upon United States Surface Transportation Board approval of CN's previously announced merger with IC. The affected tracks are owned by IC and KCSR.

Neither CN nor KCSR will acquire equity interests or other financial holdings in the other.

CN-IC-KCSR plan to launch their marketing alliance immediately; it does not require approval by the STB.

The marketing alliance will offer shippers pro-competitive connections to new rail routes for their products and the ability to tap new markets through a coordinated rail network. Services will link points in Canada with the major U.S. Midwest markets of Detroit, Chicago, Kansas City and St. Louis, along with the key Southern markets of Memphis, Tenn., Dallas and Houston. In addition, this new marketing alliance will give shippers access to Mexico's largest rail system, Transportacion Ferroviaria Mexicana, S.A. de C.V. (``Grupo TFM'').

Under terms of the marketing alliance, the companies will coordinate sales and marketing, operations, fleets, and information systems, but not for traffic movements where any two of them provide the only direct rail service.

The railways will target new markets in key north-south international and significant domestic U.S. traffic corridors. They will also seek to increase rail business in existing markets, primarily in automotive and intermodal, but also in key carload markets, including those for chemicals and forest products.

CN-IC-KCSR expect the marketing alliance to generate revenue and earnings growth and position them as the pre-eminent

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north-south rail carriers in the NAFTA corridor, where north-south transborder railway traffic is growing annually at between 12 per cent and 14 per cent.

The carriers plan to utilize two main interchanges:

- Jackson, Miss., for traffic moving between southern KCSR territory or Mexico and CN or IC territory;

- Springfield, Ill., for traffic moving between CN and northern IC territory, and U.S. Midwest KCSR territory.

To improve customer service and operating efficiency at Jackson - a critical junction between IC and KCSR -- the railways have agreed to arrange for joint operation of yards, terminals, transload and intermodal facilities.

Under a separate access agreement, subject to STB approval of the CN-IC merger, CN and KCSR plan investments in automotive, intermodal and transload facilities at Memphis, Dallas, Kansas City and Chicago to capitalize on the growth potential represented by the marketing agreement. The railways' access to the proposed terminals would be assured for the 25-year life span of the facilities, regardless of any change in corporate control.

Under the terms of this access agreement, KCSR would also extend its rail system in the Gulf area. For traffic other than coal, KCSR would receive overhead trackage rights on the merged CN-IC in Mississippi between Jackson and Palmer, and overhead haulage rights between Hattiesburg and Mobile, Ala.

The merged CN-IC would reach the Port of Gulfport from Hattiesburg under overhead haulage rights in Mississippi granted by KCSR.

The access agreement would give KCSR access to three chemical plants at Geismar, La., now served by IC, with associated overhead haulage rights from Geismar to Baton Rouge and, for traffic moving to or from certain eastern centres, from Baton Rouge to Jackson. KCSR access to the three Geismar plants is expected to take effect in the fall of 2000.

CN President and Chief Executive Officer Paul M. Tellier said: ``The marketing agreement is good news for shippers. It's pro-competitive because of the new routing options and extended market reach that it offers shippers. Of significance to automotive and intermodal shippers, the agreement will permit CN to offer single-price, efficient service between points in Ontario and Michigan to Kansas City and Dallas and neighboring regions. It will give CN greater penetration of U.S. Southwest markets and the ability to develop a Canada-Mexico rail freight market. The access agreement would also pave the way for investments in important new terminal facilities and give CN broader reach in the southern U.S. States.''

KCSR President and Chief Executive Officer Michael Haverty said: ``The marketing agreement will improve service performance and reliability by providing increased routing options for shippers and reducing transit time by improving equipment and locomotive utilization. KCSR access to chemical producers at Geismar under the access agreement would certainly enhance rail competition.''

IC President and Chief Executive Officer John D. McPherson said: ``This new alliance builds on IC's history of working with other carriers. It builds on the strengths of the IC route structure and reliable service offering. Not only do we provide the link between Canada and Texas Mexico, IC will have opportunities to originate and terminate business to and from CN points and to and from KCSR points, immediately expanding the reach of shippers along our line.''

CN, IC and KCSR expect new jobs would be generated by increased revenue flowing from the extended network reach of the

REDACTED PUBLIC RECORD VERSION

carriers' automotive and intermodal customers.

The previously announced merger of CN and IC will create the fifth-largest railway in North America, serving Canada from Vancouver to Halifax, and the rapidly growing north-south trade corridor, including service between Detroit, Chicago, St. Louis, Memphis and Jackson, New Orleans and Mobile.

KCSR's parent, Kansas City Southern Industries Inc. (NYSE: KSU) is a transportation and financial asset management company with headquarters in Kansas City. KCSR's 6,000-mile rail network of companies and affiliates include the Kansas City Southern Railway Company, the Texas-Mexican Railway, Transportacion Ferroviaria Mexicana (TFM), the wholly-owned Gateway Western Railway Company (GWWR) and the Panama Canal Railway Company, a joint venture with Mi-Jack Products Inc. KCSR's rail network, and those of its affiliates, extend from Kansas City, East St. Louis, Springfield, Ill., and Meridian, Miss., to Mexico City.

CN (NYSE: CNI, TSE/ME: CNR) is Canada's largest and North America's sixth-largest freight railway. Its network serves Canada, including the key ports of Vancouver, Montreal and Halifax, and Chicago and Detroit, with connections to all points in North America.

IC (NYSE: IC) is a holding company whose principal subsidiaries are the Illinois Central Railroad, a 2,600-mile system from Chicago south to the Gulf of Mexico, and the 850-mile Chicago Central system running west of Chicago through Iowa.

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

NAATZ R.V.S. EXHIBIT 3

CONFIDENTIAL - CN-KCS MAY 30 EMAIL "RE:_ RE_COCKRELL INTERCHANGE TO BE CLOSED ASAP"

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36500

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

NAATZ R.V.S. EXHIBIT 4

CONFIDENTIAL - CN-KCS JULY 2 EMAIL "RE_COCKRELL INTERCHANGE TO BE CLOSED ASAP

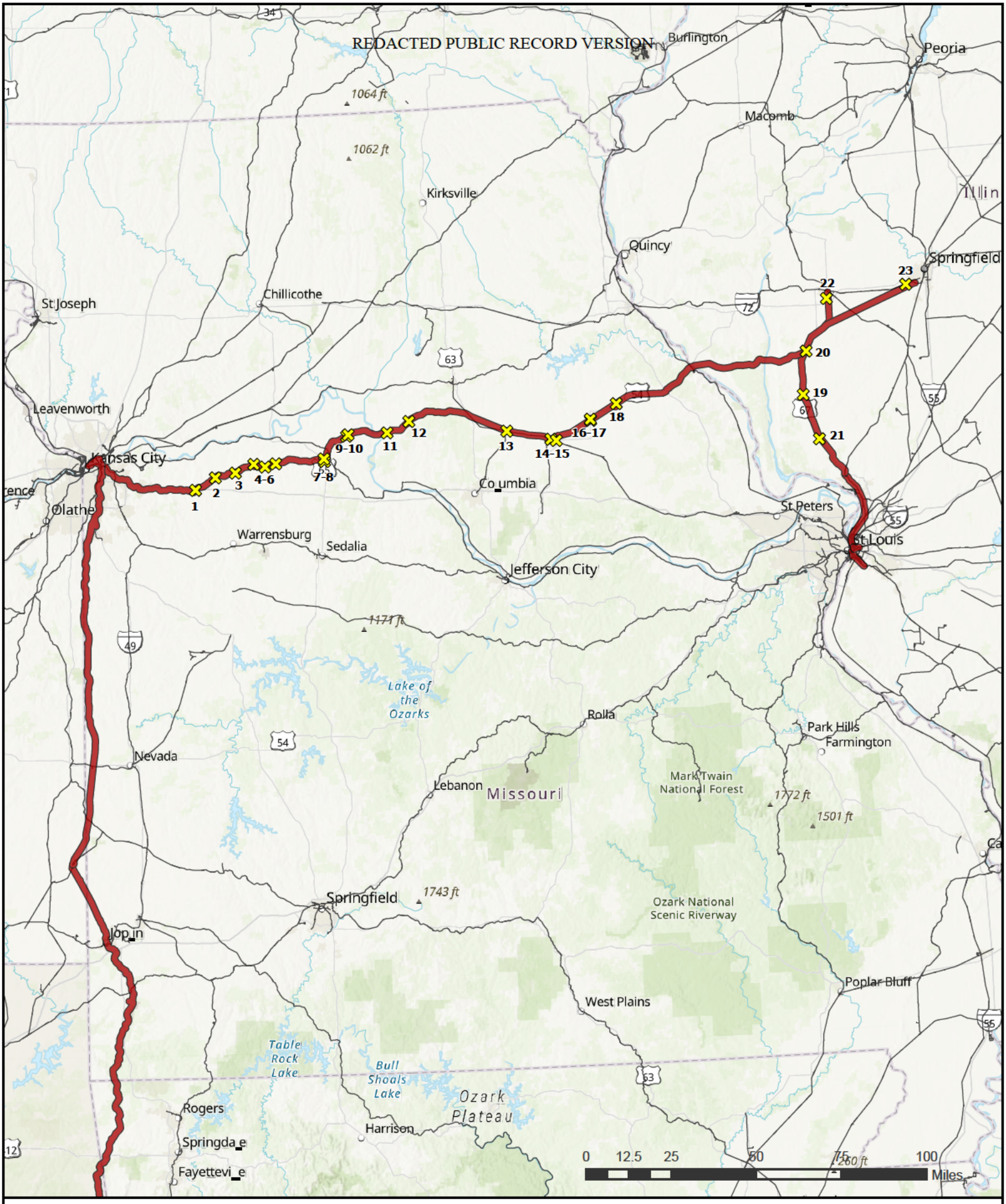
BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36500

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

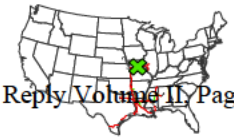
NAATZ R.V.S. EXHIBIT 5

MAP OF KCS'S AGRICULTURAL CUSTOMERS ON THE SPRINGFIELD LINE



MEXICO - SPRINGFIELD GRAIN CUSTOMERS

- Agriculture & Minerals
- KCSR
- Other Railroad



Kansas City Southern Lines

kcsgis/6.22.22

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Map Label	Customer	Address	City	State	LAT	LNG
1	RIVER VALLEY MFA	110 NW RAILROAD	ODESSA	MO	39.003611	-93.951795
2	RAY-CARROLL COUNTY GRAIN GROWERS IN	110 N RAILROAD ST	MAYVIEW	MO	39.054544	-93.835087
3	RIVER VALLEY MFA	105 W 22ND ST	HIGGINSVILLE	MO	39.072887	-93.718461
4	RAY-CARROLL GRAIN GROWERS	26194 HWY 20	CORDER	MO	39.107841	-93.610282
5	RIVER VALLEY MFA	106 COLLINS ST	ALMA	MO	39.095192	-93.545302
6	CENTRAL MISSOURI AGRISERVICE LLC	215 W PARK ST	BLACKBURN	MO	39.107513	-93.48269
7	CENTRAL MISSOURI AGRISERVICE LLC	211 N LYON AVE	MARSHALL	MO	39.122393	-93.202001
8	KENT FEEDS INC	HWY 20 W	MARSHALL	MO	39.111192	-93.199089
9	CENTRAL MISSOURI AGRISERVICE LLC	227 INDUSTRIAL BLVD	SLATER	MO	39.216224	-93.066343
10	RAY-CARROLL COUNTY GRAIN GROWERS	ROUTE 2 BOX 4A	SLATER	MO	39.22191	-93.057032
11	HEART OF MISSOURI MFA	402 10TH ST	GLASGOW	MO	39.224475	-92.830169
12	HEART OF MISSOURI MFA	101 MILL ST	ARMSTRONG	MO	39.269764	-92.701167
13	MFA INC	202 N JEFFERSON ST	CENTRALIA	MO	39.212088	-92.133694
14	ADM SOYBEAN PROCESSING	400 E HOLT ST	MEXICO	MO	39.169418	-91.87943
15	MFA INC	2818 E LIBERTY ST	MEXICO	MO	39.163277	-91.848466
16	POET BIOREFINING	809 N PINE	LADDONIA	MO	39.24667	-91.645257
17	MFA INC	506 E 1ST ST	LADDONIA	MO	39.241707	-91.643704
18	MFA INC	411 W STATE ST	VANDALIA	MO	39.307629	-91.489825
19	ILLINOIS VALLEY SUPPLY	80 N MAIN ST	CARROLLTON	IL	39.302027	-90.399307
20	TRICOUNTY FS INC	US ROUTE 267	ROODHOUSE	IL	39.486063	-90.367037
21	TRICOUNTY FS INC	COUNTY RD E	JERSEYVILLE	IL	39.109942	-90.32103
22	BARTLETT GRAIN COMPANY LP	2350 S MAIN ST	JACKSONVILLE	IL	39.7039	-90.22916
23	ADM CURRAN	5848 OLD RTE 54	NEW BERLIN	IL	39.741891	-89.760101

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36500

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

EXHIBIT G

REPLY VERIFIED STATEMENT OF JOHN F. ORR

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36500

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

REPLY VERIFIED STATEMENT OF JOHN F. ORR REGARDING HOUSTON AREA INFRASTRUCTURE CAPACITY

EXHIBITS

EXHIBIT 1: JOINT MEETING PRESENTATION, JUNE 29, 2022

EXHIBIT 2: HOUSTON TERMINAL PLAYBOOK, TERMINAL DISCIPLINE (UP)

EXHIBIT 3: PTRA HOUSTON RAILROAD MAP

EXHIBIT 4: EMAIL, TIMOTHY L. WOOLEY (UP) TO BRIAN E. GORTON (UP), APRIL 8, 2019

EXHIBIT 5: JOHN ORR LETTER TO ERIC GEHRINGER AND MATTHEW GARLAND, MAY 1, 2022

1. My name is John F. Orr. I am Kansas City Southern's Executive Vice President – Operations.

2. This statement describes why the rail lines utilized by The Kansas City Southern Railway Company ("KCS") between Beaumont and Robstown, Texas have adequate capacity for all users if properly operated and maintained.

3. My background includes nearly 40 years in all phases of railroad operations. I began my railroading career in 1984 as a conductor with Canadian National Railway ("CN"). Over the next 34 years, I progressed through many phases of CN's operating department, including service as senior vice president-operations for CN's U.S. (Southern) Region, CN's vice president-transportation for its network in Eastern Canada, and vice president-chief safety and sustainability officer for CN's entire North American network. I concluded my career with CN in 2019 as senior vice president and chief transportation officer, responsible for network assets and operations across CN's nearly 20,000-mile U.S. and Canadian network. From 2019 until early 2021 I worked as a top-level operations executive in railroading and transportation ecosystems across Europe, Asia, and North America. In February 2021 I joined KCS as a consultant, and moved to my current position in mid-April, 2021.

4. KCS operates between Beaumont and Robstown, Texas via trackage rights over track owned jointly by Union Pacific Railroad Company (UP) and BNSF Railway Company

(BNSF),[1] solely by UP, and by Houston Belt & Terminal Railway Company (HBT).[2] *See* Reply Verified Statement of Stephen D. Simmons (Simmons V.S.), paragraphs 15 - 17.

5. The trackage rights lines used by KCS, plus KCS's Laredo Subdivision and a portion of KCS's Beaumont Subdivision, are dispatched from the Spring, Texas Joint Dispatch Center (Spring Center). UP, BNSF and KCS all have dispatchers at the Spring Center. The theory behind the Spring Center is that having all 3 companies dispatching traffic over these shared lines from the same facility will improve communication, coordination and overall operating efficiency because the dispatchers can talk to each other. While that is true to some extent, each company dispatches its trains from its own system. The amount of information that KCS has about either UP or BNSF trains and operations is limited, is shared only at UP's and BNSF's convenience, and often is not shared timely enough for making or assessing decisions in near real time.

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[1] In 1998, the STB granted UP and BNSF's petition for exemption for joint, equal ownership of the lines from Dawes, TX to Avondale, LA. *The Burlington Northern and Santa Fe Railway Company and Union Pacific Railroad Company--Acquisition Exemption—Lines Between Dawes, TX, and Avondale, LA*, STB Finance Docket No. 33630, 63 FR 51991-01 (Sept. 29, 1998). KCS operates over the Beaumont to Dawes portion of this joint line, which is part of UP's Houston Subdivision.

[2] UP and BNSF operate HBT's lines under trackage rights over all of HBT's tracks. *Southern Pacific Transportation Co.-Trackage Rights Exemption-The Houston Belt & Terminal Railway Co.*, STB Finance Docket No. 33461, *Union Pacific Railroad Co.-Trackage Rights Exemption-The Houston Belt & Terminal Railway Co.*, STB Finance Docket No. 33462, and *The Burlington Northern and Santa Fe Railway Co.-Trackage Rights Exemption-The Houston Belt & Terminal Railway Co.*, STB Finance Docket No. 33463, 62 Fed. Reg. 50049 (Sept. 24, 1997).

HBT is controlled by UP and BNSF. *See Southern Pacific Transportation Company—Trackage Rights Exemption—The Houston Belt & Terminal Railway Company*, et al., STB Finance Docket Nos. 33461, 33462 and 33463, and *The Texas Mexican Railway Company and Kansas City Southern Railway Company v. The Houston Belt & Terminal Railway Company, The Burlington Northern and Santa Fe Railway Company, Union Pacific Railroad Company, and Southern Pacific Transportation Company*, STB Finance Docket No. 33507 (served Dec. 21, 1998), slip op. at 15.

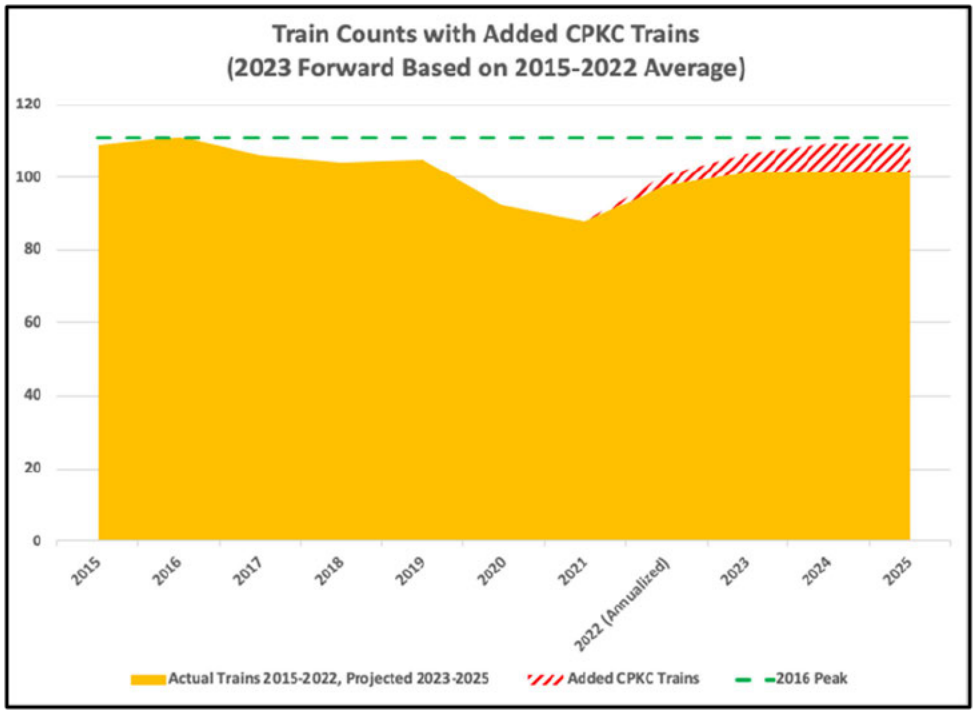
6. During my tenure with CN, I was involved with the Chicago Integrated Rail Operations Center (CIROC), where all of the railroads serving Chicago—UP, BNSF, CN, Canadian Pacific, Norfolk Southern, CSX, the switching carriers IHB and BRC, and the passenger carriers Amtrak and Metra – all manage traffic in the Chicago area. CIROC provides much greater visibility than the Spring Center does for all participating carriers to understand actions affecting their traffic. I have proposed to my counterparts at UP and BNSF that we work together to move the Spring Center toward the CIROC model to improve all carriers' visibility of the operating environment from Beaumont to the border. I believe that change would allow better management of traffic on shared lines in south Texas.

7. The trackage rights lines are capable of accommodating more traffic than moves over them today. Historically, the portion of these lines in and east of Houston has accommodated more trains than are being operated today. The decline in the number of trains operated is due principally to operating practices of UP and BNSF, not to a lack of adequate infrastructure.

8. Each month UP, BNSF and KCS, along with PTRA,[3] meet to discuss operations over the jointly-used lines in and east of Houston. A copy of the report from the most recent of those meetings is attached as Exhibit 1. These reports are prepared by the Spring Center joint directors, currently Tim Wooley of UP and Robin Taylor of BNSF, to guide the meeting discussion.

[3] PTRA is the Port Terminal Railroad Association, which owns and operates lines along the Houston ship channel. UP, BNSF and KCS are members of the Association, along with the Port of Houston Authority of Harris County and Houston Belt & Terminal Railway Company (HBT). https://www.ptra.com/index.php/about-us/members-of-the-association.html .

9. As shown on the third slide in the report, train counts in the Houston complex from 2015 through 2019 were well above current levels, up to 111 trains per day on average in 2016. On peak days, train counts range as high as 127 trains.[4] A simple graph shows that the projected additional CPKC trains can fit easily within the available capacity already shown by pre-pandemic train counts in Houston shown in the June 29 presentation:



10. Similarly, slide 5 shows that yearly average train counts on the "Joint Line" – the UP-BNSF Dawes, TX to Avondale, LA line – were as much as 14 trains per day higher pre-pandemic than they are today. Again, a simple graph shows that the demonstrated capacity of UP's Houston Subdivision[5] infrastructure can accommodate projected CPKC trains:

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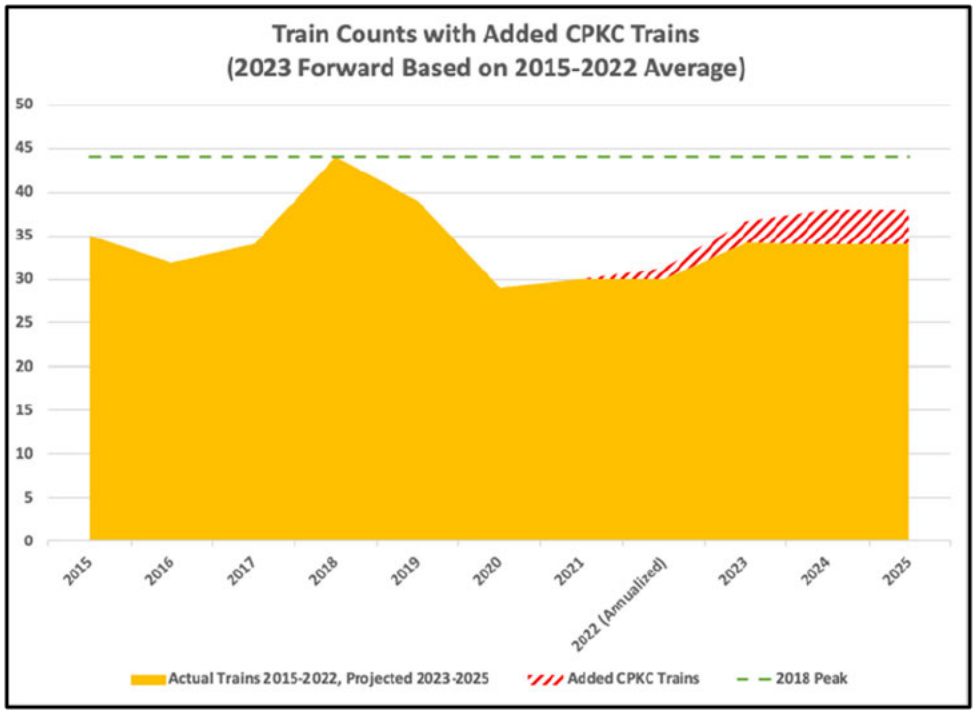
4 *See* Exhibit 2, Houston Terminal Playbook, Terminal Discipline (UP).

5 UP's 2020 timetable produced in discovery shows the line between Beaumont and Houston that UP formerly designated as its Lafayette Subdivision is now designated as UP's Houston Subdivision.



11. These historical data clearly show that the Houston complex and UP's Houston Subdivision have already handled as many or more additional trains than CPKC is projecting in Year 3 post-merger.

12. But even these data do not demonstrate the full capacity of the trackage rights lines to handle added traffic. The dotted green lines on the two graphs above represent only comparisons to past traffic volumes; that is, they represent only use, not capacity. Capacity of these lines may well have exceeded these prior traffic peaks because, as I understand it, Houston operations were generally fluid when these peaks occurred. Also, substantial infrastructure has been added to the Houston-area system since those past traffic peaks in 2016 and 2018, including the quarter billion dollars of infrastructure additions in the past 3 years to Englewood and Settegast Yards referenced by UP's Executive Vice President of Operations Eric Gehringer at the

STB's Ex Parte 770 hearing in April.[6] In short, the dotted green lines are only demonstrated use; they are not the maximum capacity of these lines. But even if the dotted green lines on the graphs were the current capacity of these sections of the trackage rights lines, the trackage rights lines could accommodate projected CPKC trains.

13. Importantly, almost all KCS trains and projected CPKC trains simply transit the "Joint Line" and the "Houston Complex" without blocking, switching, serving customer locations or other activities that slow the passage of trains through this area.[7] This allows KCS and CPKC trains to fit more easily into available capacity than do UP and BNSF trains. For that reason alone, any suggestion by UP or BNSF that CPKC should bear the cost of capacity expansion in these areas is clearly misplaced. And, as explained by Steve Simmons, *see* Simmons V.S., paragraphs 26-35, the Board-approved trackage rights agreements already provide for allocation of costs of any capacity expansions that may be needed in the future. As CPKC trains will be only a small portion of the volume of trains using any expanded capacity, under the trackage rights agreements, CPKC should bear a similarly small portion of the cost.

14. Attached as Exhibit 3 is a schematic representation of the lines in the Houston area over which KCS, UP and BNSF operate.[8] The schematic shows how the Lafayette Subdivision (since renamed by UP as its Houston Subdivision) runs through Dayton Yard, the connection to UP's Baytown Subdivision, and past the connections to and from Settegast Yard at

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[6] Testimony of Eric Gehringer, Executive Vice President, Operations, Union Pacific Railroad Company at Ex Parte No. 770, April 27, 2022 Public Hearing, Transcript STB Document ID 304765, posted June 15, 2022, page 906, line 13 through page 907, line 9.

[7] KCS does operate interchange trains to and from PTRA, currently at the rate of 4 times per week.

[8] This 2011 schematic, though slightly dated in some of its labeling (e.g., UP Houston Subdivision shows its former name, Lafayette Subdivision) remains an excellent representation of the main routes in and through Houston.

the northeast end of Englewood Yard. UP, BNSF and KCS all use these tracks to enter Houston from Beaumont and points east.

15. Slide 25 of Exhibit 2, a UP-prepared schematic, represents specifically the flow of KCS's traffic through the Houston complex. In that Exhibit, light blue arrows represent KCS's normal westbound route, while darker blue arrows represent KCS's normal eastbound route. There are numerous routes for trains through Houston and the green arrows represent the preferred alternate or clear route path for KCS.[9] Both exhibits demonstrate how operational impediments to moving trains past Englewood and Settegast Yards can impair all carriers' traffic moving from Beaumont to Houston.

16. Englewood Yard lies along UP's Houston Subdivision, the westbound trackage rights line into Houston. Settegast Yard lies about a half-mile north of Englewood Yard, between the Houston Subdivision and the Beaumont Subdivision, and connects to the Houston Subdivision at Englewood Yard. Even though Englewood and Settegast are massive yards,[10] adding a large amount of workload and additional switching, including arriving, departing and building longer trains at these two yards situated astride the entrance to and exit from Houston, has contributed to the increased challenges KCS has experienced traversing Houston.

17. What has changed from the pre-pandemic period to now is how UP and BNSF operate on these lines. In significant part this is due to UP closing yards elsewhere on its system, including curtailing construction in April 2019 of its Brazos Yard in Hearne, Texas, which was

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[9] Green arrows represent some of the routes that the Spring Center could use to route KCS traffic under the STB's "clear route" condition. (*See* paragraph 23 below.)

[10] {[redacted]}.

slated to be one of the largest switching yards on UP's system.[11] In January 2021 UP announced a write-off of one half of the value of the Brazos Yard investment to date despite unchanged volume outlook for their Southern Region. At the time UP indicated that their network had been redesigned and that merchandise traffic in the Gulf Coast was growing and expansion was underway at Englewood Yard in Houston to increase processing capacity.[12] These changes have pushed more car switching activities into Englewood and Settegast Yards. For over two years, UP has been in the process of converting Englewood Yard from handling roughly 2700 cars per day to the largest hump yard on UP's system, intended to handle more than 3000 cars per day.[13] This has included major track, tie and rail replacements and substantial new construction activity which have disrupted yard operations.

18. The tracks in this area - from Dayton Yard past Settegast and Englewood Yards – are points where UP's and BNSF's current operational decisions often cause disproportionate delays to movement of KCS trains vis-à-vis their own. The graphic below represents KCS train delay data from February through May of this year, and shows that Dayton, Fauna and Tower 87/Settegast-Englewood are the largest contributors to delay of KCS trains attempting to transit Houston. These 3 locations – Dayton, Fauna and Tower 87/Settegast-Englewood, approximately Mileposts 327, 348 and 356.6 on UP's Houston Subdivision - all repeatedly impede KCS's westbound moves through Houston, largely due to yard-related activity of UP and BNSF.

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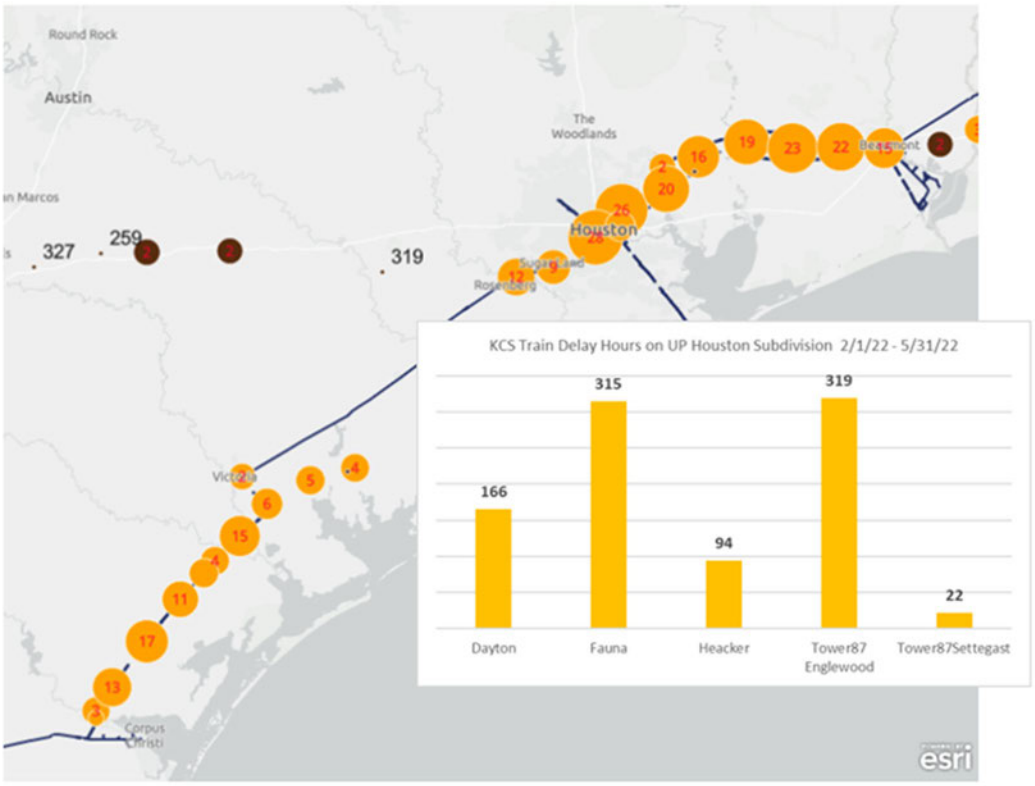
[11] *See* https://www.up.com/media/releases/180125-brazos-yard.htm.

[12] *See* https://www.trains.com/trn/news-reviews/news-wire/union-pacific-writes-down-brazos-yard-investment/.

[13] *See* https://www.up.com/aboutup/community/inside_track/englewood-yard-transformation-it-220324.htm.

KCS Train Delay Frequency – UP Houston Subdivision (2/22 – 5/22)



19. This is not an infrastructure problem - it's an operations problem. Nothing makes this clearer than UP's having invested a quarter billion dollars in its main Houston yards[14] - enough money to remedy virtually any localized infrastructure problem. Despite that investment, trains are being broken up and made up on the main lines outside these yards, congesting routes for through traffic like KCS trains that simply need to pass through the area. For example, trains entering and exiting the west end of Englewood Yard often occupy both Main Tracks 1 and 2. The "Houston Terminal Playbook"[15] that was developed and is maintained

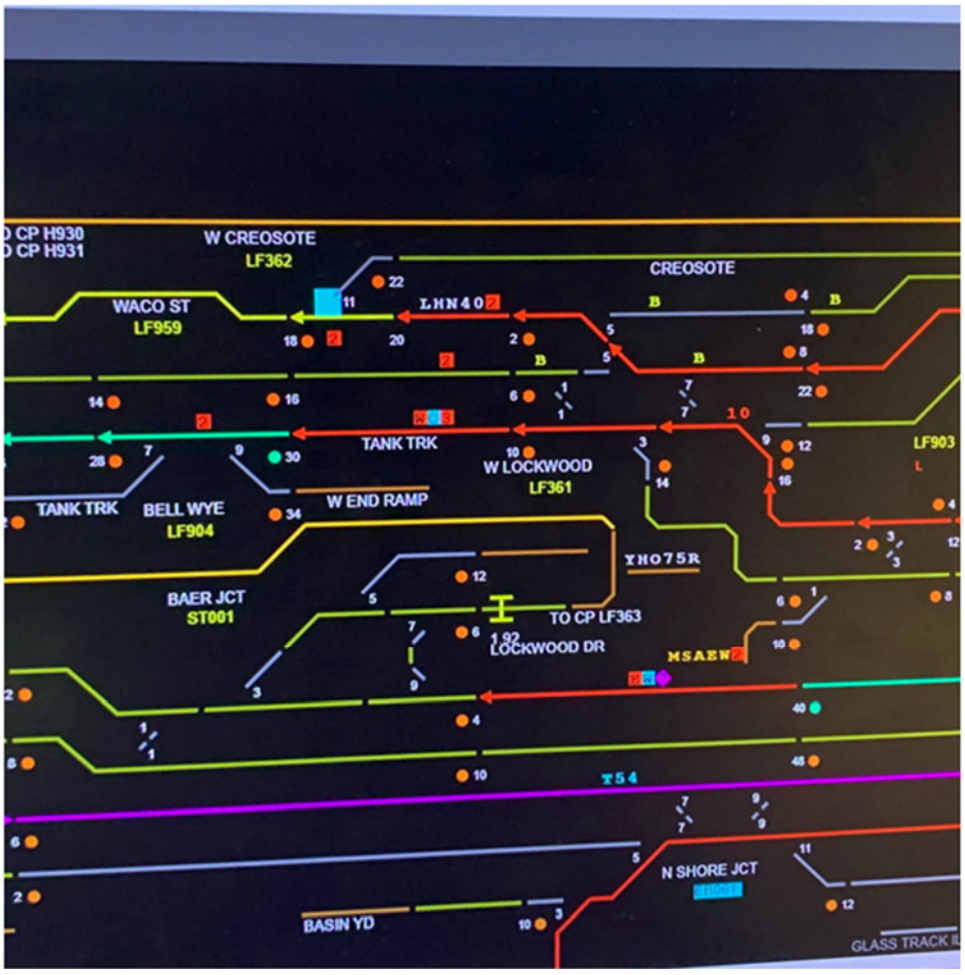
[14] Testimony of Eric Gehringer, Executive Vice President, Operations, Union Pacific Railroad Company at Ex Parte No. 770, April 27, 2022 Public Hearing, Transcript STB Document ID 304765, posted June 15, 2022, page 906, line 13 through page 907, line 9.

[15] Exhibit 2.

on an ongoing basis by UP to maintain fluidity throughout Houston, identifies Main 1 as the track that is supposed to be open for KCS westbound trains and other run through traffic to run by Englewood,[16] but it often is blocked by UP trains operating in and out of Englewood in opposition to prescribed departure and inbound routing protocol.

20. I was able to experience this first hand on June 8, 2022 while on an inspection and Town Hall meeting trip from Kansas City, MO to Laredo, TX on KCS's Southern Belle Executive Train. As seen from the dispatcher's screen below, both Mains at Englewood were occupied when the Executive Train approached Englewood. The screen shot below of the dispatcher's screen shows this situation with the train coming out of Englewood blocking both Main 1 and Main 2. Compare that to Exhibit 2, Slide 17, which is labeled "Incorrect Departure, Blocks routes, Should have used #2 main for MEWFPB."

[16] *See* Exhibit 2, Houston Terminal Playbook, slide 5.



21. The blockage of Main 1 necessitated alternate routing for the Executive Train. Because we could not bypass Englewood on Main 1, we were routed north at Tower 87 (on the northeast end of Englewood) onto the East Belt and through Pierce Yard to Belt Junction, then south to Tower 26 back onto the Houston Subdivision west of Englewood. This added about 45 minutes to our overall transit through Houston; however, it also demonstrated that there are numerous routing options through Houston that are available to each carrier.

22. At times, UP even allows yard crews to bring a train onto the main line before the over-the-road crew is available, resulting in a crew change on the main line. KCS regularly

Orr R.V.S. at 12

experiences similar obstacles to eastbound trains, waiting for traffic to process in and out of the north end of UP's Settegast Yard. [17]

23. These are operational problems, not infrastructure problems. They can be remedied by using tools such as timely data, managing and maintaining the infrastructure more wisely, coordinated decision-making that includes all participating railroads, agreed standards and proper presentation of the trains operating in the complex, enabling the Spring Center to correct operating practices to conform to existing infrastructure, rather than trying to fit a square peg into a round hole. They can also be alleviated through alternate routing.

24. In addition, BNSF and UP have both been short of locomotives, so their ability to recover if a locomotive breaks down on line of road is limited. Shortages of power have led to some trains being underpowered, and if there is a problem with any of the locomotives on those trains, the train may not be able to move until new power is found and brought to the train, resulting in blocked track and delays. Both UP and BNSF told the STB at its Ex Parte 770 hearing in late April that they are bringing on locomotives.

25. BNSF and UP have also both been short of crews, and their ability to recrew trains is limited when a delay occurs. Both UP and BNSF told the STB at its Ex Parte 770 hearing in late April that they are short of crews but that, as with locomotive shortages, they are working hard to rectify their crew shortages.

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[17] Another decision by UP that has exacerbated Houston area congestion has been UP's use of smaller-than-normal work gangs. These smaller work gangs do not accomplish as much work during a work curfew as a normal-sized work gang, leading to more work curfews to accomplish the same amount of work. Impactful examples of this were the recent tie program executed by UP on their Beaumont Sub from mid-March to late June where curfews ran a 5-on/5-off schedule for 5 hours a day, significantly impacting KCS eastbound flows through Houston and extending the period of time to remedy well over 100 Brownsville Sub track defects in early Spring after reports of rough track were submitted by KCS following an inspection train trip in February.

26. The shortage in timely availability of both crews and locomotives to move trains in and out of Englewood Yard has been one of the major factors that has led to the blockages that KCS has experienced entering Houston from Beaumont. UP and BNSF reports to the STB in EP 770 do confirm that UP and BNSF are adding locomotives and crews as promised.

27. To guard against potential crew needs on the trackage rights lines, KCS ramped up its hiring in 2021, so that we actually had more crews positioned to serve the trackage rights lines than we should need. That was a good decision. However, we have found that the Joint Director at the Spring Center, who is paid by UP and BNSF, will now hold our trains and direct us to recrew them while moving UP or BNSF trains because KCS has recrews available and UP and BNSF do not. This leads to higher cost for, and slower movement of, KCS trains, as compared to UP and BNSF trains.[18]

28. This certainly is not the only instance of inefficient, unequal treatment KCS has experienced on the trackage rights lines. For example, attached as Exhibit 4 is an email from Tim Wooley – the UP employee who serves as the Spring Center co-director – complaining to UP about the uneven impacts UP's unilateral decisions have on BNSF and KCS operating efficiency on the Beaumont to Dawes line:

> The BN and KCS have re-crewed their trains time over time trying to get through Beaumont - which fall short of Houston. What is the plan for the UP to reduce the work event time [at] Beaumont to provide parity to the other carriers?

[18] This certainly is not the first example of UP taking advantage of KCS forethought. I am told that before KCS rebuilt the Rosenberg-Victoria line, KCS operated over UP's entire Cuero Subdivision from Flatonia to Placedo to traverse between the Glidden and Brownsville Subs. KCS built a siding between Flatonia and Victoria on the Cuero Sub to improve fluidity by allowing trains to pass. UP refused to contribute to the cost of the siding, claiming that the siding was solely for KCS's benefit and therefore the cost was wholly attributable to KCS under the trackage rights agreements. Then, because the trackage rights agreement prohibited UP from using infrastructure it had not contributed to, UP would park KCS trains in the siding and then run multiple UP trains past the KCS train in the siding. When KCS rebuilt the Rosenberg-Victoria line, UP had to get KCS's permission to use the siding, even though KCS no longer used that route, because UP had not contributed to cost of the siding and was not entitled to use it under the trackage rights agreements.

29. This type of unequal treatment is one thing that a CIROC-type arrangement could help avoid. Based on KCS observation, there is no indication that either UP or BNSF experience recrews and train delays in the same proportion as KCS trains do. Again, the current problems in Houston do not result from infrastructure inadequacy; they result from bad, biased or inadequately-informed operating decisions.

30. Another current, and longstanding, failure of the Spring Center's dispatching of Houston area lines is the failure to implement the Board-imposed clear route condition on a more consistent basis. As a result of the 1997-1998 Houston/Gulf Coast service crisis, the Board imposed what it called a "'clear route' condition":

> [W]e have decided to adopt a so-called "clear route" condition to enhance efficiency and facilitate the smooth movement of railcars through the Houston Terminal. Under the "clear route" condition, the neutral and highly efficient joint Union Pacific Railroad Company (UP)/Burlington Northern Santa Fe Railway Company (BNSF) dispatching center at Spring, TX, will have the authority through its Joint Director to route traffic through Houston over any available route, even a route over which the owner of the train does not have operating authority.
>
> . . .
>
> We will impose a "clear route through Houston" condition to enhance efficiency and facilitate the smooth movement of traffic through the Houston Terminal, … To ensure, however, that the Joint Center staff do not feel constrained from making decisions necessary to efficient operations in the Houston Terminal due to trackage rights or other operational limitations, we are imposing a condition directing the Joint Center carrier-participants to authorize the Joint Director to use the best judgment in selecting alternative routings for train operations by UP, BNSF, and Tex Mex through the terminal, particularly when customary routings are unavailable or congested.[19]

31. Despite the Board's imposition of the clear route condition, UP largely refuses to use it. At times, KCS has had to contact UP's Director of Joint Facilities to get UP's

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[19] *Union Pacific Corporation, Union Pacific Railroad Company and Missouri Pacific Railroad Company--Control and Merger--Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railway Company [Houston/Gulf Coast Oversight]*, 3 S.T.B. 1030, 1038 (1998).

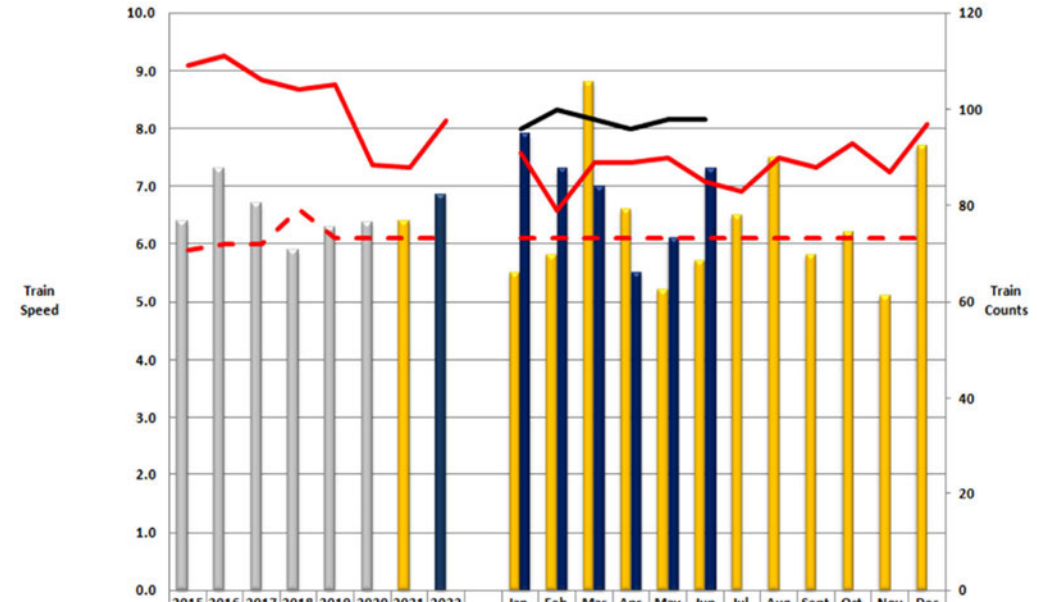
authorization for the Spring Center Director to utilize this Board-imposed efficiency maximizing authority. As indicated above, I was able experience first-hand on my June 8 Executive Train trip the flexibility and intended benefits of the clear route condition imposed by the Board. This is a very viable option to assist in handling current and future train movement through Houston given the vast routing options that exist.

32. KCS is not the only one adversely impacted by UP and BNSF operating practices. At the monthly Spring Center operations meetings, PTRA has spoken of problems with its interchange with UP, of UP's failure to communicate, UP's refusal to participate in daily coordination calls, and UP's bringing unscheduled, too-long trains to Englewood that affect all other carriers' operations.[20]

33. All of this is not to say that Houston is hopelessly bollixed up as happened in 1997-1998. There are some positive signs. For example, Exhibit 1 shows average train speeds in both the Houston Complex and on the "Joint Line" are trending up and are exceeding targets set for those areas.

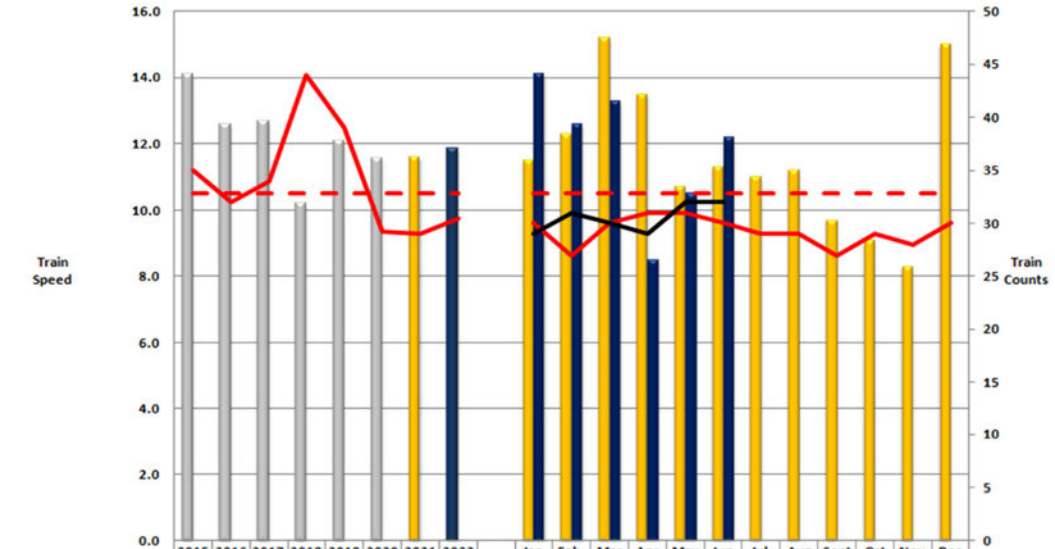
[20] The standard practice of the Spring Center director is to limit KCS trains through Houston to less than 10,000 feet due to restrictions on their Beaumont and Brownsville Subdivisions. Although Eric Gehringer of UP testified April 27, 2022 at the STB's Ex Parte 770 hearing that when UP "build[s] our transportation plan, we restrict train length on certain corridors. So we don't take, for example, a 12,000-foot train and put it on a corridor that only has 8800-foot sidings", Testimony of Eric Gehringer, Executive Vice President, Operations, Union Pacific Railroad Company at Ex Parte No. 770, April 27, 2022 Public Hearing, Transcript STB Document ID 304765, posted June 15, 2022, page 900, lines 6-10. UP's Houston Area Timetable effective August 31, 2020, produced in discovery (UP-C-000205 – UP-C-000289), shows that the {{[redacted]}}. Nevertheless, KCS believes that UP does not limit its own trains to the same less-than-10,000-foot standard. Through communication within the Spring Center, KCS understands that UP will allow trains up to 15,000 and 12,000 feet on its Glidden and Houston Subdivisions, respectively, with both of those subdivisions feeding and receiving trains to and from UP's Englewood and Settegast Yards.

HOUSTON COMPLEX PERFORMANCE



	2015	2016	2017	2018	2019	2020	2021	2022		Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec
2021 Speed	6.4	7.3	6.7	5.9	6.3	6.4	6.4	6.9		5.5	5.8	8.8	6.6	5.2	5.7	6.5	7.5	5.8	6.2	5.1	7.7
2022 Speed										7.9	7.3	7.0	5.5	6.1	7.3						
Goal	5.9	6.0	6.0	6.6	6.1	6.1	6.1	6.1		6.1	6.1	6.1	6.1	6.1	6.1	6.1	6.1	6.1	6.1	6.1	6.1
2021 Train Counts	109	111	106	104	105	88	88	98		91	79	89	89	90	85	83	90	88	93	87	97
2022 Train Counts										96	100	98	96	98	98						

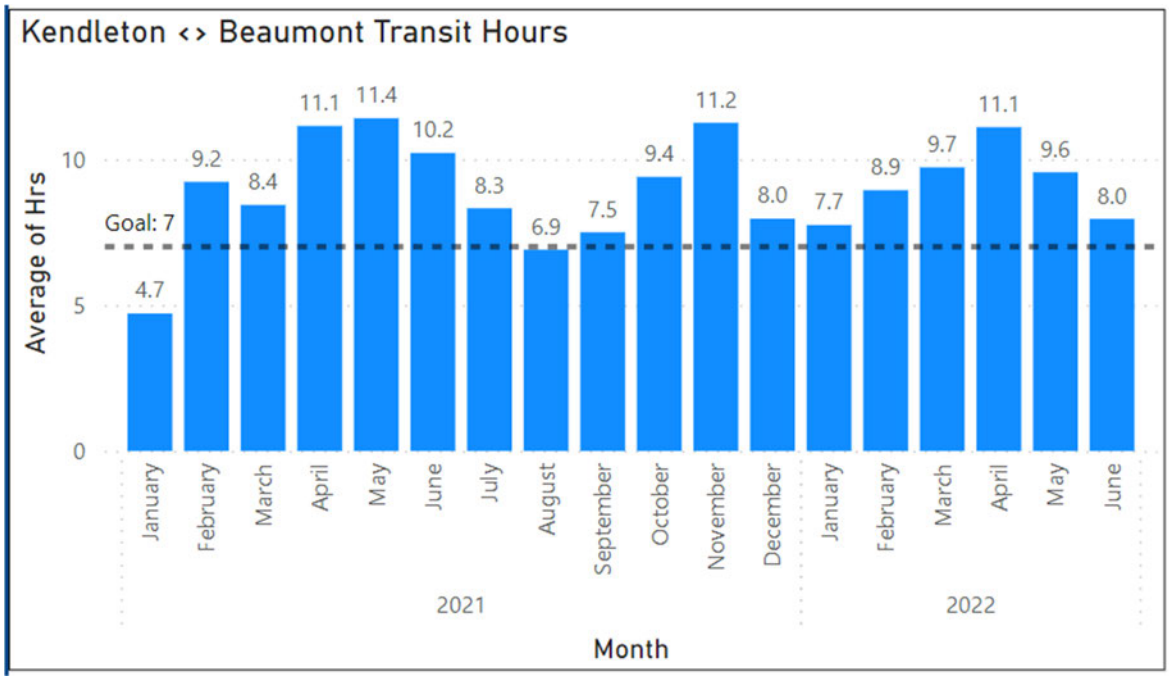
JOINT LINE PERFORMANCE



	2015	2016	2017	2018	2019	2020	2021	2022		Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec
2021 Speed	14.1	12.6	12.7	10.2	12.1	11.6	11.6	11.9		11.5	12.3	15.2	13.5	10.7	11.3	11.0	11.2	9.7	9.1	8.3	15.0
2022 Speed										14.1	12.6	13.3	8.5	10.5	12.2						
Goal	10.5	10.5	10.5	10.5	10.5	10.5	10.5	10.5		10.5	10.5	10.5	10.5	10.5	10.5	10.5	10.5	10.5	10.5	10.5	10.5
2021 Train Counts	35	32	34	44	39	29	29	31		30	27	30	31	31	30	29	29	27	29	28	30
2022 Train Counts										29	31	30	29	32	32						

34. As shown by the graph below, KCS has seen improvement in overall transit times for trains operating between Beaumont and Kendleton, TX in May and June, after transit times peaked in April 2022 following overall Houston trends.

Orr R.V.S. at 18



35. In addition, infrastructure enhancement projects are currently in progress in the Houston area, including improvements in Englewood Yard,[21] north Basin crossovers, and second main tracks from Dawes to Fauna and Crosby to Dayton, the lattermost being completed in late June. The Englewood north "Creosote" bypass track extension should be completed this Fall, and should restore KCS's ability to bypass Englewood Yard that recently had been lost due to UP's blocking both Main 1 and Main 2 going in and out of Englewood.

36. Additional capacity expansion is also occurring on UP's lines southwest of Houston. Four additional or extended sidings underway on the UP Angleton Subdivision will improve the ability to get UP and BNSF trains out of Houston and to stage UP and BNSF trains entering the Houston complex without preventing trains from leaving the complex. KCS is also

[21] *See* UP customer announcements dated July 15, 2021, December 22, 2021, January 5, 2022 and March 16, 2022. *See* https://www.up.com/customers/announcements/customernews/index.htm.

aware of future planned projects over the next several years that would help with overall Houston fluidity and train transit once completed.

37. I have reached out to my counterparts at UP and BNSF to engage in a conversation about ways to improve the current situation and future operational efficiency. My letter to Eric Gehringer at UP and Matt Garland at BNSF following the STB's Ex Parte 770 hearing and proposing ways to work together for positive solutions for the trackage rights lines is attached as Exhibit 5. Both gentlemen have indicated a willingness to discuss the issues, which is a positive sign. Senior Operating representatives from KCS and UP recently met in Houston for the first time since pre-COVID to review performance trends and discuss process, planning and other improvement opportunities to work on together for Houston, Southern Border, and Kansas City rail operations.

38. What I have advocated to my UP and BNSF counterparts is the need for structural improvements in the way the trackage rights lines are operated, to improve the use of existing capacity. All users of these lines need a shared base of information, a common platform to use that information, joint maintenance and schedule planning, and an agreed set of standards to measure use of the facilities. That will enable all users to work together to stay ahead of capacity needs, whether through operational or infrastructure changes.

39. Unfortunately, the trend over the past three years has been for UP to share less information, to cut KCS off from UP information that KCS previously received. Joint planning activities have also been reduced over this timeframe, with the most recent example being extended simultaneous curfew periods on the UP Brownsville and Beaumont Subdivisions in 2022. KCS trains currently comprise the majority of the train count on the UP Brownsville Subdivision, and this traffic was impacted heavily in the Spring, driven by major curfews daily

on both the UP Brownsville and Beaumont Subs. These curfews on both ends of the KCS Beaumont-Robstown trackage right route added 24+ hours to the transit times of all trains since we could only advance from Robstown to Kendleton overnight before encountering the next curfew. Prior to 2020, work plans like these had been discussed and reviewed in bi-annual meetings between KCS and UP to ensure we were not independently planning production on key Subdivisions through south Texas and the Gulf Coast region.

40. Appropriate and equitable use of the trackage rights lines according to the STB-approved trackage rights agreements requires sharing more information, not less. The recent trend in reduced information sharing needs to be reversed.

41. Operational improvement on the trackage rights lines is needed, but it is within the power of the parties to make the right decisions to operate the trackage rights lines effectively. Infrastructure is adequate to meet the current KCS needs and projected CPKC needs. When added infrastructure becomes necessary, as it eventually will be if all carriers grow their traffic as they would like to do, the existing agreements provide how that infrastructure is to be paid for. KCS has demonstrated a willingness to invest in efficiency and capacity projects on the trackage rights lines, and has worked with UP in the past on process improvements. CPKC remains committed to doing so in the future.

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VERIFICATION

I, John F. Orr, declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

Executed this 12 day of July, 2022.

DocuSigned by:
John F. Orr
37E7994A57084ED...

John F. Orr
Executive Vice President - Operations
Kansas City Southern

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36500

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

ORR R.V.S. EXHIBIT 1

JUNE 29, 2022 JOINT MEETING PRESENTATION

JOINT MEETING
JUNE 29, 2022

JUNE DISCUSSION

Complex Workshop Success

YH387J: On Duty Change Working

YH185J: Round Tripping

Relief Crews (Complex/Joint Line)

Re-crews on downward trend

KCS GTB Automation

Timeline for Completion?

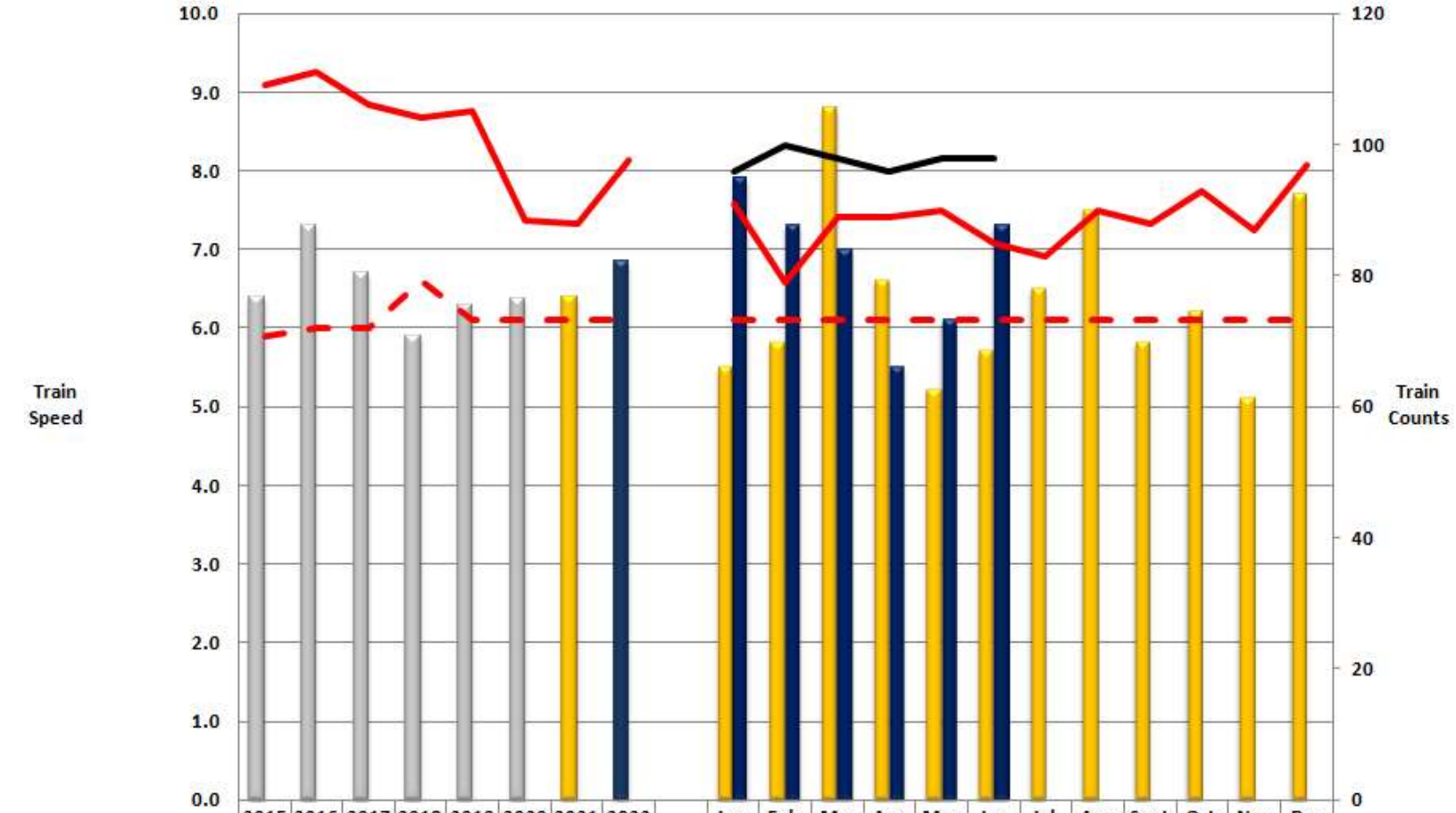
KCS

Kendleton Local Mon, Wed, Fri to discuss today

UP Beaumont

MLKBT/MBTLK time change to 0400

HOUSTON COMPLEX PERFORMANCE

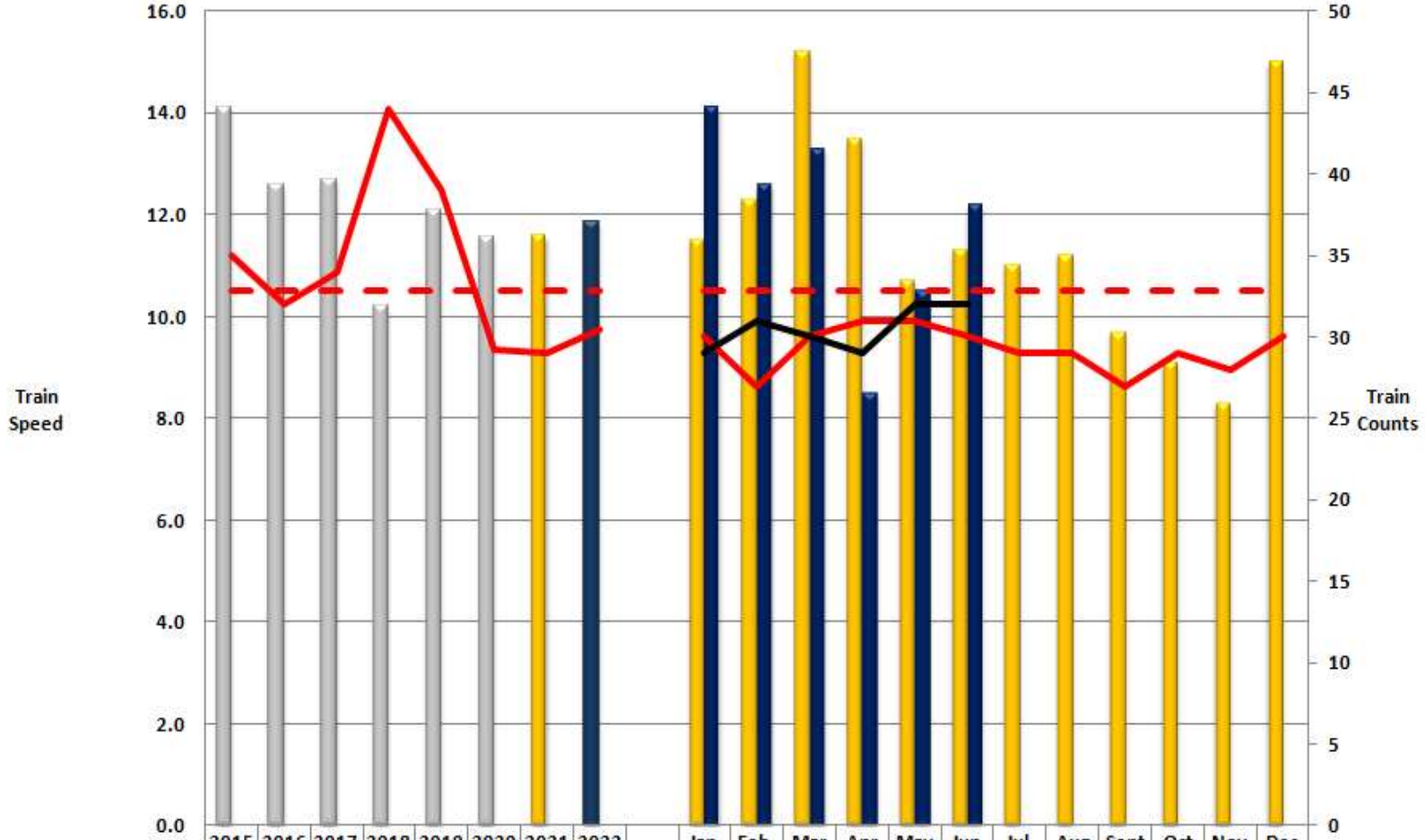


	2015	2016	2017	2018	2019	2020	2021	2022		Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec
2021 Speed	6.4	7.3	6.7	5.9	6.3	6.4	6.4	6.9		5.5	5.8	8.8	6.6	5.2	5.7	6.5	7.5	5.8	6.2	5.1	7.7
2022 Speed										7.9	7.3	7.0	5.5	6.1	7.3						
Goal	5.9	6.0	6.0	6.6	6.1	6.1	6.1	6.1		6.1	6.1	6.1	6.1	6.1	6.1	6.1	6.1	6.1	6.1	6.1	6.1
2021 Train Counts	109	111	106	104	105	88	88	98		91	79	89	89	90	85	83	90	88	93	87	97
2022 Train Counts										96	100	98	96	98	98						

HOUSTON COMPLEX MOW ACTIVITIES 2ND QUARTER 2022

- Glidden Road Crossing
  - Replacements in progress
    - Completion Date 07/28
- Englewood Bypass Track
  - In progress. ETO 4th Quarter 2022
- Glidden Tie Gang
  - ETA Sept. 28th, 2022

JOINT LINE PERFORMANCE



	2015	2016	2017	2018	2019	2020	2021	2022		Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec
2021 Speed	14.1	12.6	12.7	10.2	12.1	11.6	11.6	11.9		11.5	12.3	15.2	13.5	10.7	11.3	11.0	11.2	9.7	9.1	8.3	15.0
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2021 Train Counts	35	32	34	44	39	29	29	31		30	27	30	31	31	30	29	29	27	29	28	30
2022 Train Counts										29	31	30	29	32	32						

JOINT LINE INFRASTRUCTURE ENHANCEMENTS 2ND QUARTER, 2022

- July 7th
  - 24’ Liberty Bridge Replacement “Final”
- July 28th
  - 12’ Double Bridge Replacement at West Lake
- Joint Elimination
  - UP Houston Sub
    - Weld out new Double Track

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36500

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

ORR R.V.S. EXHIBIT 2

HOUSTON TERMINAL PLAYBOOK, TERMINAL DISCIPLINE (UP)

Terminal Discipline

HOUSTON TERMINAL MANAGEMENT

Senior Director: Kenny Gomez

Joint Director: Tim Wooley

Trains processed

"Corridor 38"

- Dispatchers move on average 110 trains a day with Peak days up to 127 trains with speeds ranging from 6.5 to 12 mph.

- CM manages 4 carriers, UP, BNSF, KCS and PTRA

- Complies with City of Houston Blocked Crossing and Quiet Zone initiatives.

Terminal Priority Trains

- All internal traffic must be protected to maintain Yard integrity
  - (MSRHO, MEWSR, MEWPT, MPTHO, YHO70, YHO70B, YEW64/YHO91, YH187J, YH185J, YH387, YH289)
- Run Through Traffic Must Remain on designated routes unless MOW or a Service Interruption exist
- Directional Flow is the **Standard** which maintains balance on Belts and Cross Traffic at Twr87 and Twr26
- Englewood North Side must be kept at 90 inbound spacing
- Use of the Bell Main for Inbounds to the South Side reduces conflict at the West End of Englewood
- Lufkin Sub Exit Plan must be followed to maintain fluidity on the Lufkin Sub

REDACTED PUBLIC RECORD VERSION

Terminal Sub Routing
Making Englewood 1st os

Preferred Routing

- Main #1 used for run through traffic
  - Reserved for through freight via Creosote Track
    - Used to run ZG4HO, AMT1, KCS and BNSF

- Main #2 used for the outbound process
  - All outbound traffic to enter main 2 at LF903 from the Tank Track, ET and WT allowing multiple departures during peak outbound times and limited inbounds.

Bringhurst Protocol

45” Minutes

45”

Minutes to Double Over, Crew on Train, Set and Release and Depart the Yard

If locomotive Issues develop, Car issues develop – Train is to shove Main #2, Double Back in the Yard or move to Pierce for resolution

This is an Absolute Must

Get a Broke Train Out of The Way

Next Level Management

REDACTED PUBLIC RECORD VERSION

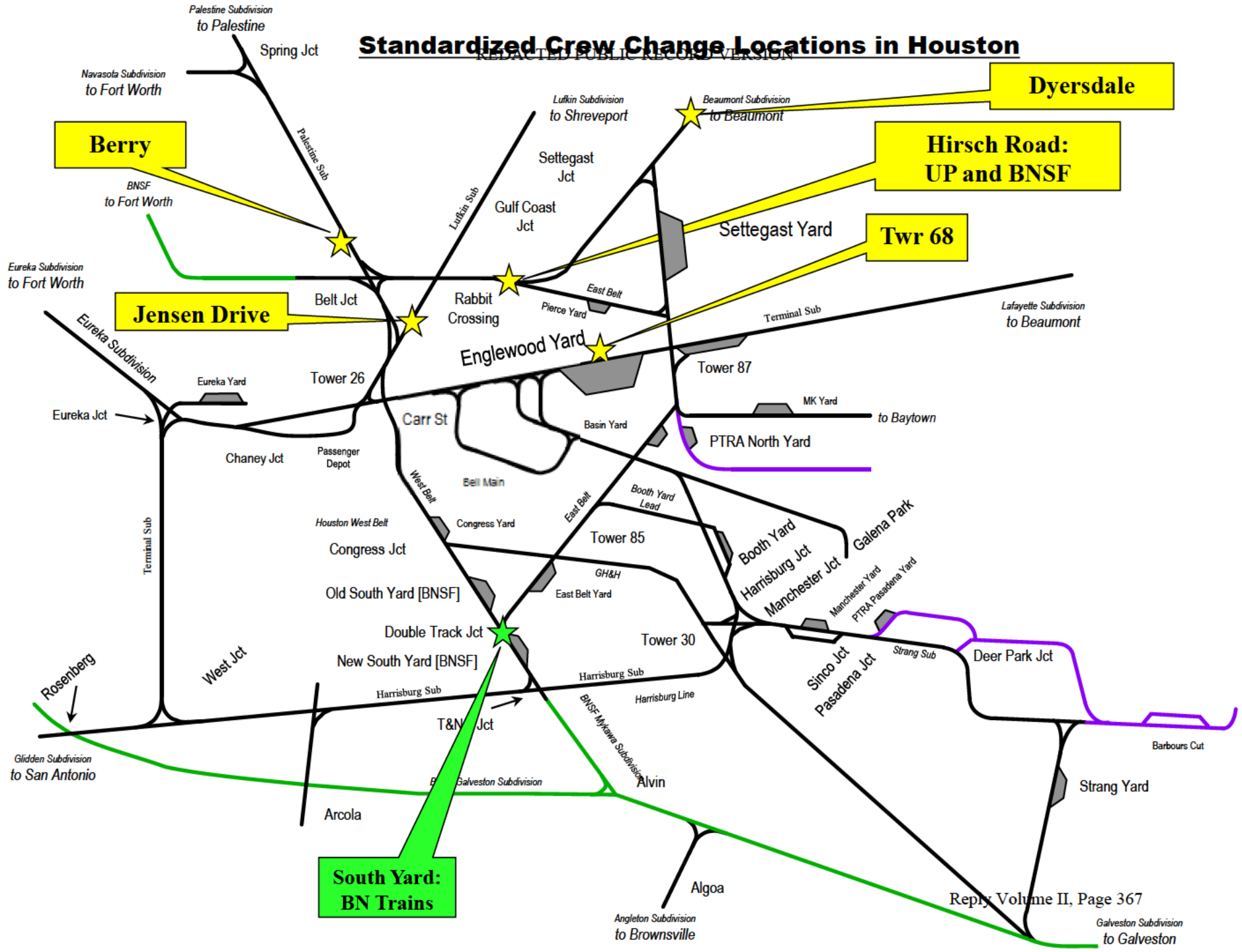
Improving Velocity and Reducing Recrews

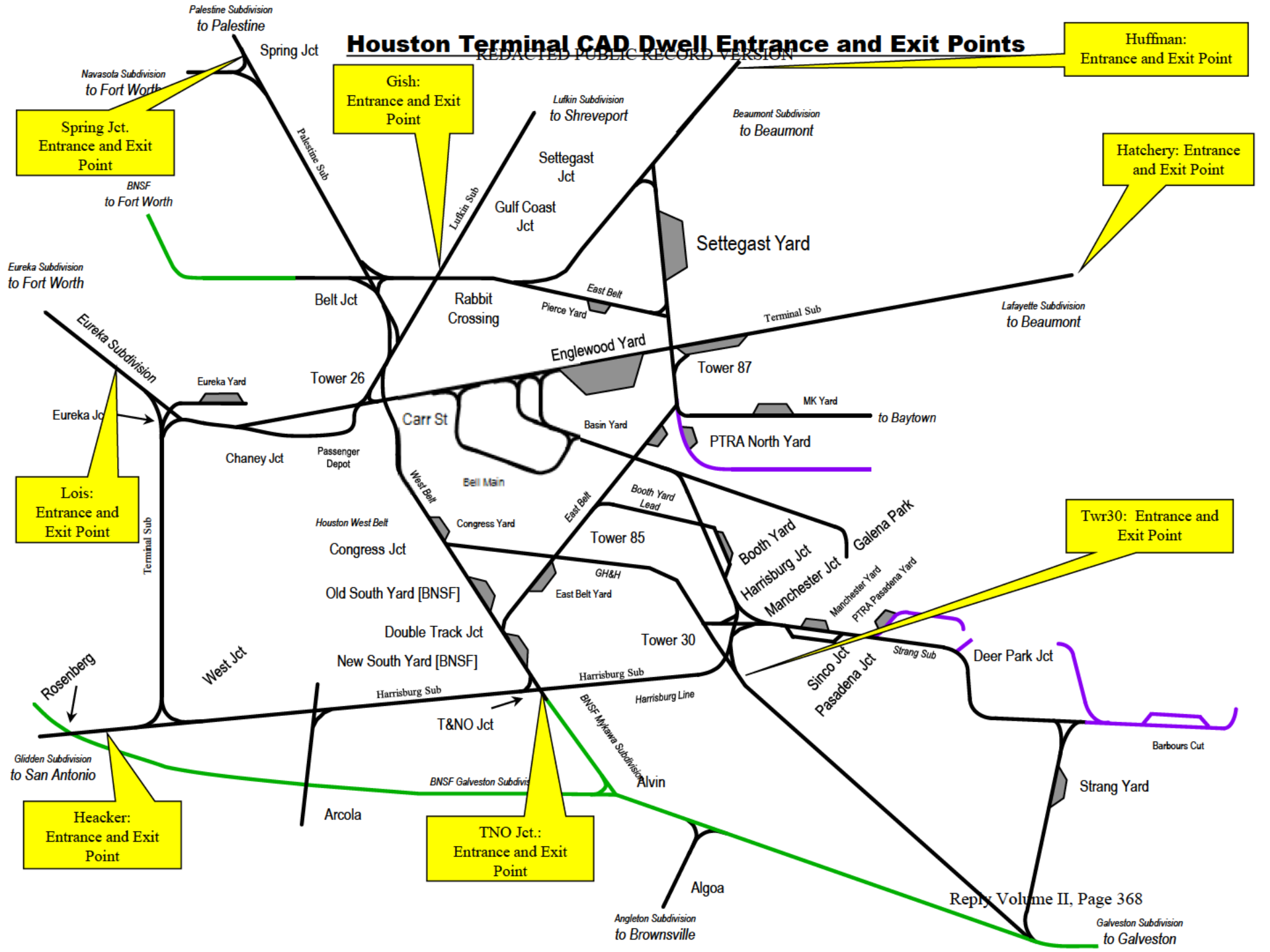
Locomotive Issues (L-Codes) 10 Step Process		Limo Issues (CT) 9 Step Process		Crew Issues (CR) 8 Step Process	
B.U. (is unit required ?)		Time Frame (acceptable)		Time Frame (acceptable)	
Contact Help Desk		Service Unit Mgmt		Other source (local)	
Can Road Truck repair ?		Alternate Vendor		Short Pool	
Main Line Cuts		CAB Company		Alternate route	
Reduce and Run		Scheduled Bus Service		Prioritization Down Line	
Piece Meal Train		Transport by Amtrak		Prioritize Trains (bump & run)	
Combo Opportunities		Transport by Train		Director Notification	
Director Escalation		Director Notification			
Pull Power					
Update Trains Held w/resolution		Update Trains Held w/resolution		Update Trains Held w/resolution	
Terminal Issues (YG) 9 Step Process		**Corridor Issues (TG) 6 Step Process**		**Incident Recovery (WA-DR-ETC) 7 Step Process**	
Escalate to Term. Mgmt. Team		Slotting requirements		Notifications (Go Team)	
Develop alternate switching plan		Alternative Open Routes		Crew Planning (Get crews)	
Notify S.U. Superintendent		Terminal Cooperation		Alternative Routes	
Reduce restricted block & run		Entry Point Plan		Crew Balancing (prior/to plan)	
Piece Meal Train		Director Escalation		Start Up Plan	
Combo Opportunities				Director Involvement	
Director Escalation					
Pull Power					
Update Trains Held w/resolution		Update Trains Held w/resolution		Update Trains Held w/resolution	
Bad Order Car Issues (BO) 8 Step Process		**Customer Holds - AQ / AE 6 Step Process**			
Notifications (Go Team)		Commodity Group Escalation			
Necessary to setout		Time Frame (acceptable)			
Can Road Truck repair ?		Slotting requirements			
Slotting requirements		Controlled Launches			
Alternative Routes		Director Involvement			
Entry Point Plan					
Director Escalation					
Update Trains Held w/resolution		Update Trains held w/resolution			

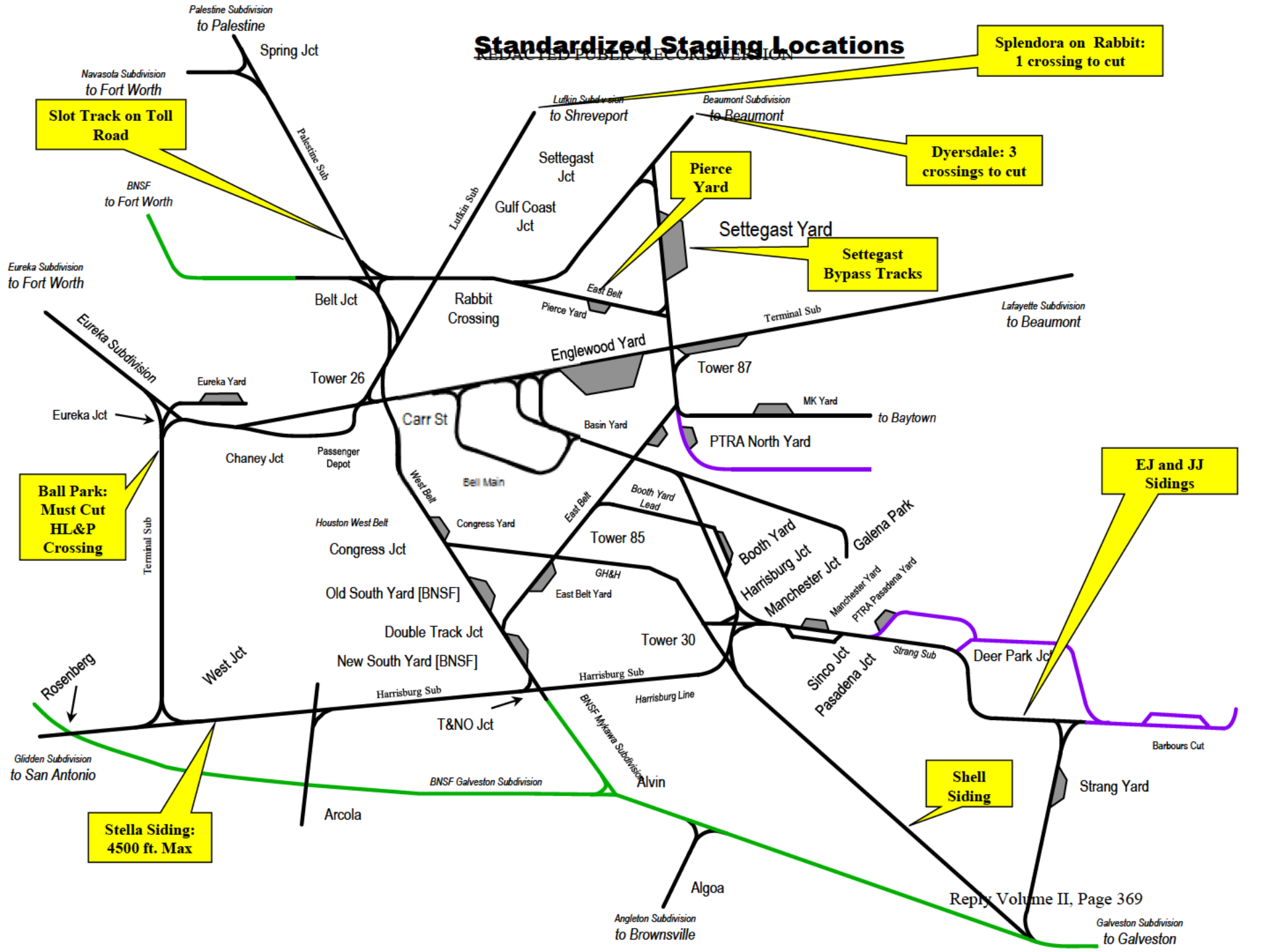
Superintendent _____ Corridor Manager _____

Standardized Crew Change Locations in Houston

REDACTED PUBLIC RECORD VERSION




Houston Terminal CAD Dwell Entrance and Exit Points
REDACTED PUBLIC RECORD VERSION
Palestine Subdivision
to Palestine
Spring Jct
Navasota Subdivision
to Fort Worth
Spring Jct. Entrance and Exit Point
Gish: Entrance and Exit Point
Huffman: Entrance and Exit Point
Lufkin Subdivision
to Shreveport
Beaumont Subdivision
to Beaumont
Hatchery: Entrance and Exit Point
Palestine Sub
Lufkin Sub
Settegast Jct
Gulf Coast Jct
Settegast Yard
BNSF
to Fort Worth
Eureka Subdivision
to Fort Worth
Belt Jct
Rabbit Crossing
East Belt
Pierce Yard
Terminal Sub
Lafayette Subdivision
to Beaumont
Eureka Subdivision
Englewood Yard
Tower 87
Eureka Yard
Tower 26
MK Yard
to Baytown
Eureka Jct
Carr St
Basin Yard
PTRA North Yard
Chaney Jct
Passenger Depot
Lois: Entrance and Exit Point
Bell Main
West Belt
Booth Yard Lead
East Belt
Houston West Belt
Congress Yard
Tower 85
Booth Yard
Harrisburg Jct
Manchester Jct
Galena Park
Twr30: Entrance and Exit Point
Terminal Sub
Congress Jct
GH&H
Old South Yard [BNSF]
East Belt Yard
Manchester Yard
PTRA Pasadena Yard
Double Track Jct
Tower 30
Sinco Jct
Pasadena Jct
Strang Sub
Deer Park Jct
West Jct
New South Yard [BNSF]
Harrisburg Sub
Harrisburg Sub
Harrisburg Line
Rosenberg
T&NO Jct
BNSF Mykawa Subdivision
Barbours Cut
Glidden Subdivision
to San Antonio
BNSF Galveston Subdivision
Alvin
Strang Yard
Heacker: Entrance and Exit Point
Arcola
TNO Jct.: Entrance and Exit Point
Algoa
Angleton Subdivision
to Brownsville
Galveston Subdivision
to Galveston


Standardized Staging Locations
REDACTED PUBLIC RECORD VERSION
Splendora on Rabbit: 1 crossing to cut
Dyersdale: 3 crossings to cut
Slot Track on Toll Road
Pierce Yard
Settegast Bypass Tracks
Settegast Yard
Ball Park: Must Cut HL&P Crossing
EJ and JJ Sidings
Shell Siding
Stella Siding: 4500 ft. Max
Palestine Subdivision
to Palestine
Spring Jct
Navasota Subdivision
to Fort Worth
BNSF
to Fort Worth
Palestine Sub
Lufkin Subdivision
to Shreveport
Lufkin Sub
Beaumont Subdivision
to Beaumont
Settegast Jct
Gulf Coast Jct
Eureka Subdivision
to Fort Worth
Belt Jct
Rabbit Crossing
East Belt
Pierce Yard
Terminal Sub
Lafayette Subdivision
to Beaumont
Englewood Yard
Tower 87
Eureka Subdivision
Eureka Yard
Tower 26
Eureka Jct
MK Yard
to Baytown
Carr St
Basin Yard
PTRA North Yard
Chaney Jct
Passenger Depot
Bell Main
West Belt
Booth Yard Lead
East Belt
Houston West Belt
Congress Yard
Tower 85
Booth Yard
Harrisburg Jct
Manchester Jct
Galena Park
Terminal Sub
Congress Jct
GH&H
Manchester Yard
PTRA Pasadena Yard
Old South Yard [BNSF]
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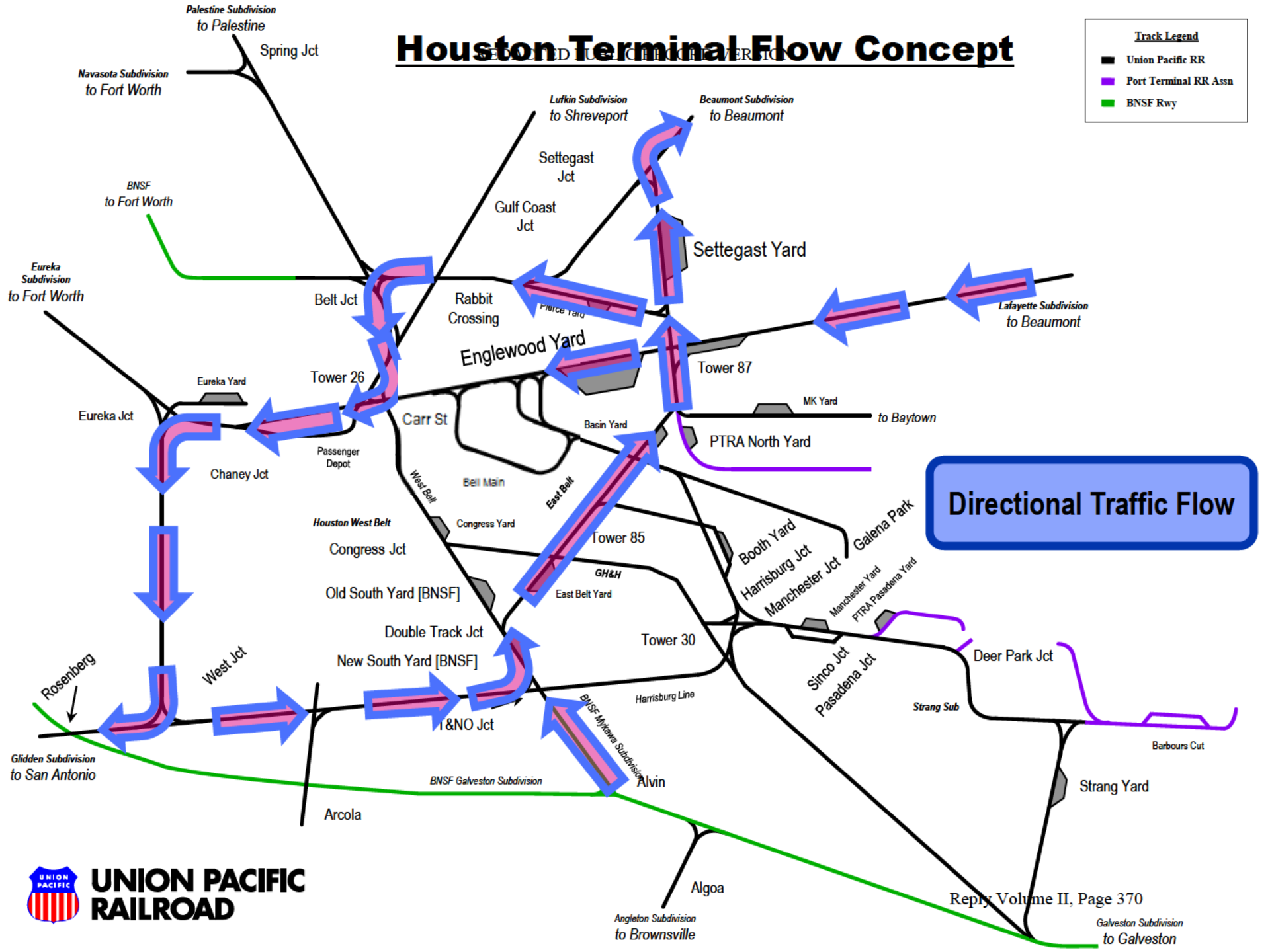
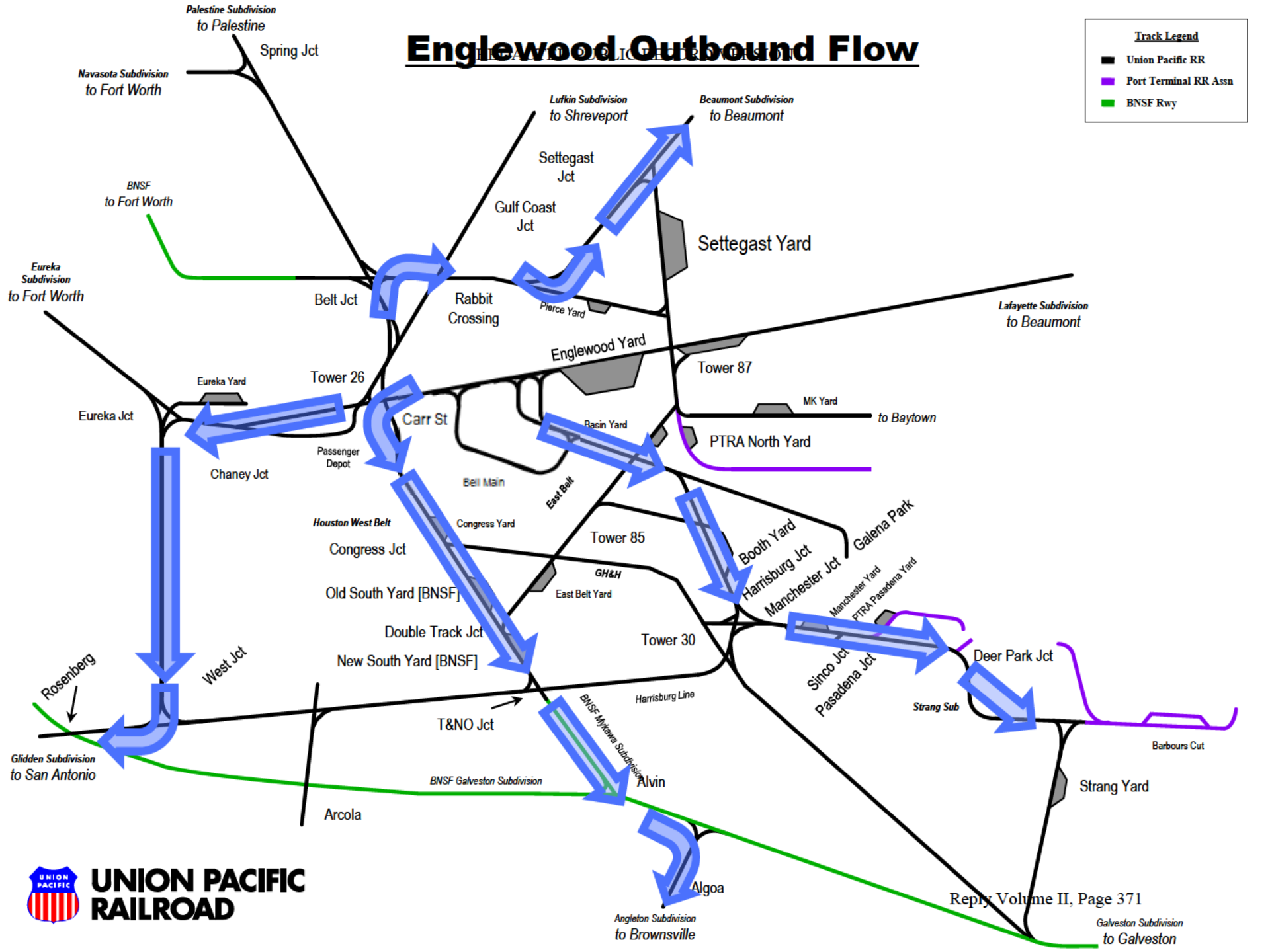
Tower 30
Sinco Jct
Pasadena Jct
Strang Sub
Deer Park Jct
Rosenberg
West Jct
New South Yard [BNSF]
Harrisburg Sub
Harrisburg Sub
Harrisburg Line
T&NO Jct
Barbours Cut
Glidden Subdivision
to San Antonio
BNSF Galveston Subdivision
BNSF Mykawa Subdivision
Alvin
Strang Yard
Arcola
Algoa
Angleton Subdivision
to Brownsville
Galveston Subdivision
to Galveston

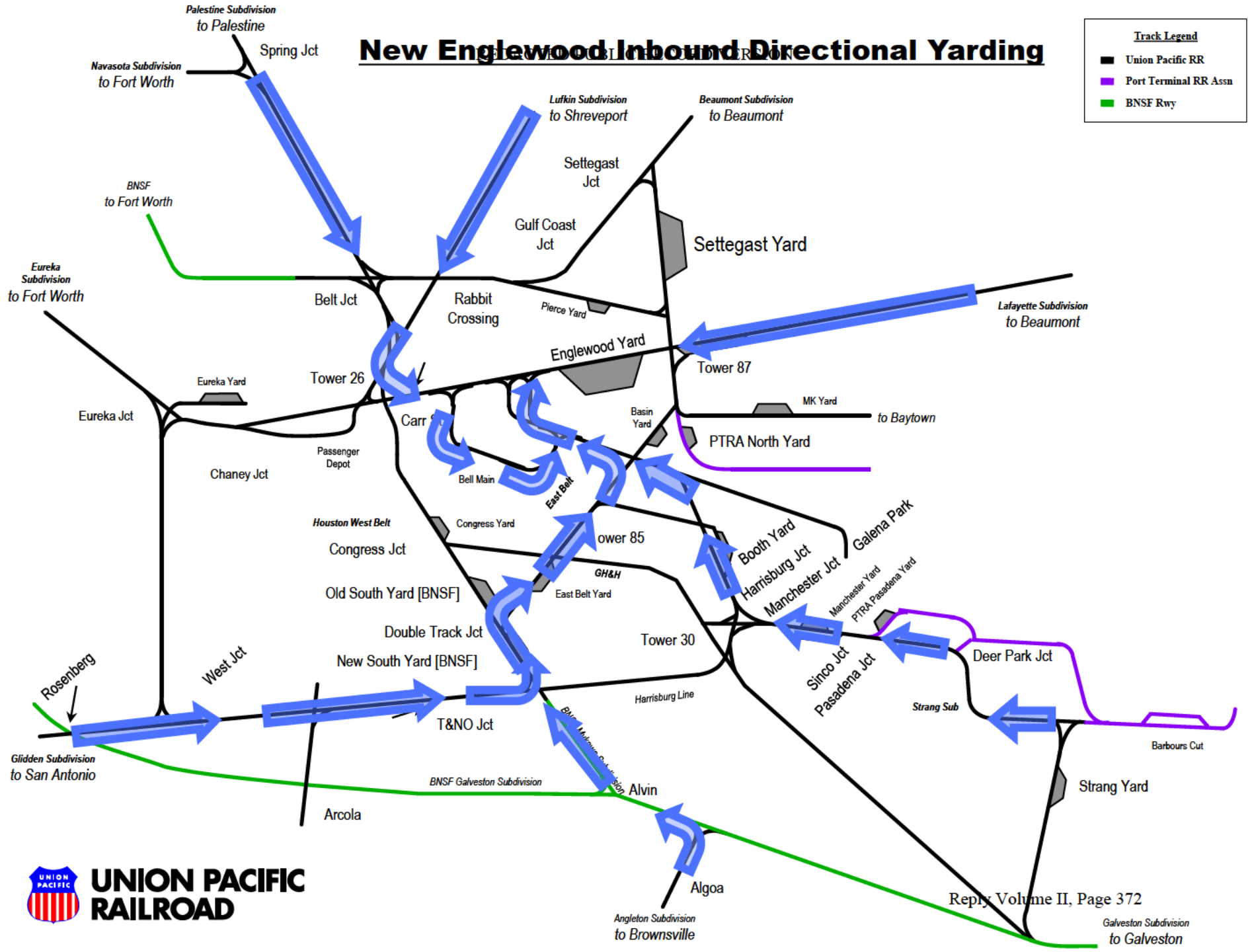


SECOND SUPPLEMENTAL VERSION

Englewood Outbound Flow



UNION PACIFIC RAILROAD


New Englewood Inbound Directional Yarding
Track Legend
Union Pacific RR
Port Terminal RR Assn
BNSF Rwy
Palestine Subdivision
to Palestine
Spring Jct
Navasota Subdivision
to Fort Worth
Lufkin Subdivision
to Shreveport
Beaumont Subdivision
to Beaumont
Settegast Jct
BNSF
to Fort Worth
Gulf Coast Jct
Settegast Yard
Eureka Subdivision
to Fort Worth
Belt Jct
Rabbit Crossing
Pierce Yard
Lafayette Subdivision
to Beaumont
Englewood Yard
Tower 87
Eureka Yard
Tower 26
MK Yard
to Baytown
Eureka Jct
Basin Yard
PTRA North Yard
Passenger Depot
Chaney Jct
Bell Main
East Belt
Houston West Belt
Congress Yard
Congress Jct
Booth Yard
Harrisburg Jct
Galena Park
Manchester Jct
Manchester Yard
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Double Track Jct
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Pasadena Jct
New South Yard [BNSF]
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Strang Sub
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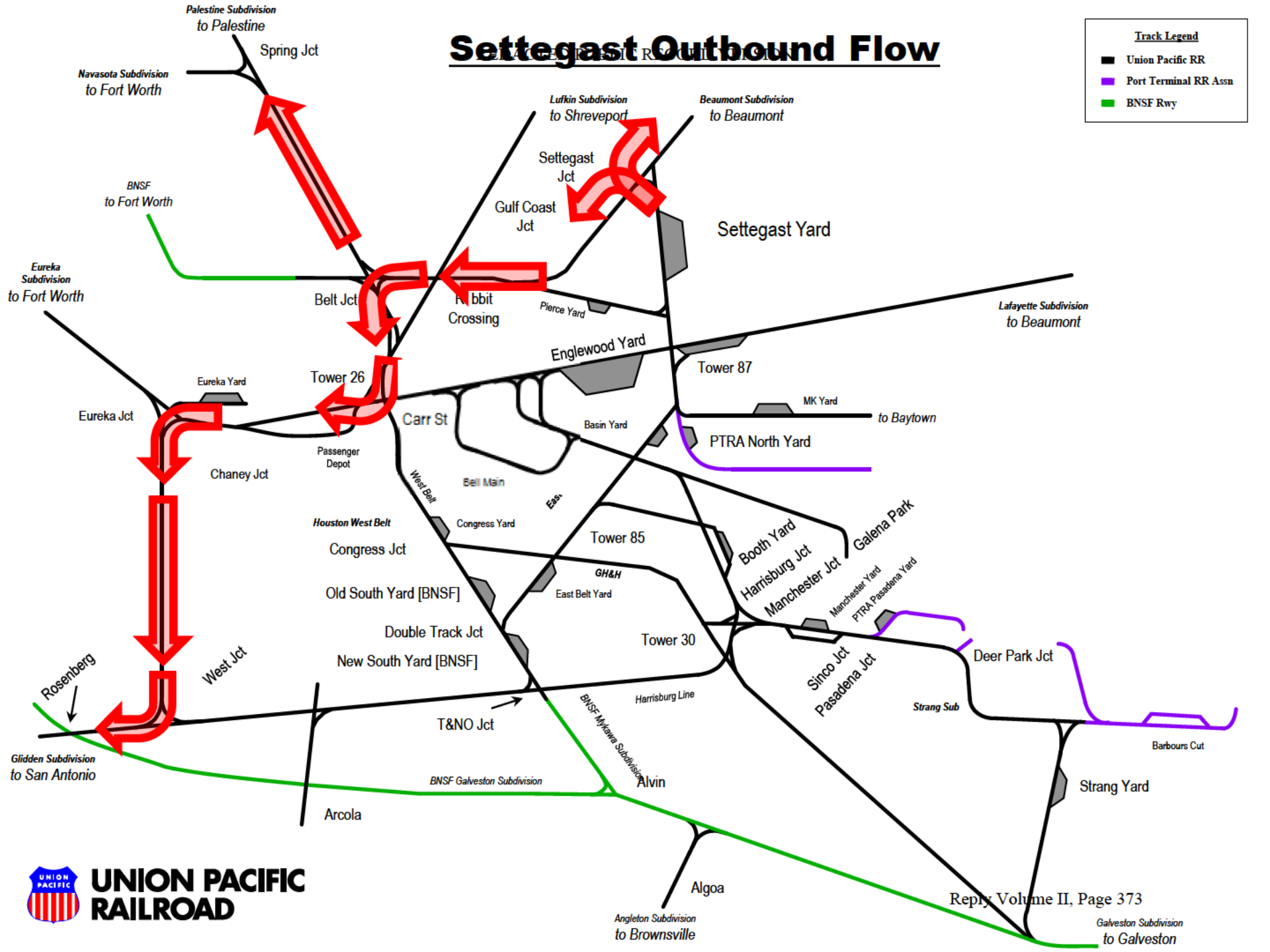
Barbours Cut
Glidden Subdivision
to San Antonio
BNSF Galveston Subdivision
Strang Yard
Alvin
Arcola
Algoa
Angleton Subdivision
to Brownsville
Galveston Subdivision
to Galveston
UNION PACIFIC RAILROAD


Settegast Outbound Flow
Track Legend
Union Pacific RR
Port Terminal RR Assn
BNSF Rwy
Palestine Subdivision
to Palestine
Spring Jct
Navasota Subdivision
to Fort Worth
BNSF
to Fort Worth
Eureka Subdivision
to Fort Worth
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to Shreveport
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to Beaumont
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West Belt
Bell Main
East
Houston West Belt
Congress Yard
Congress Jct
Tower 85
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Manchester Jct
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New South Yard [BNSF]
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Sinco Jct
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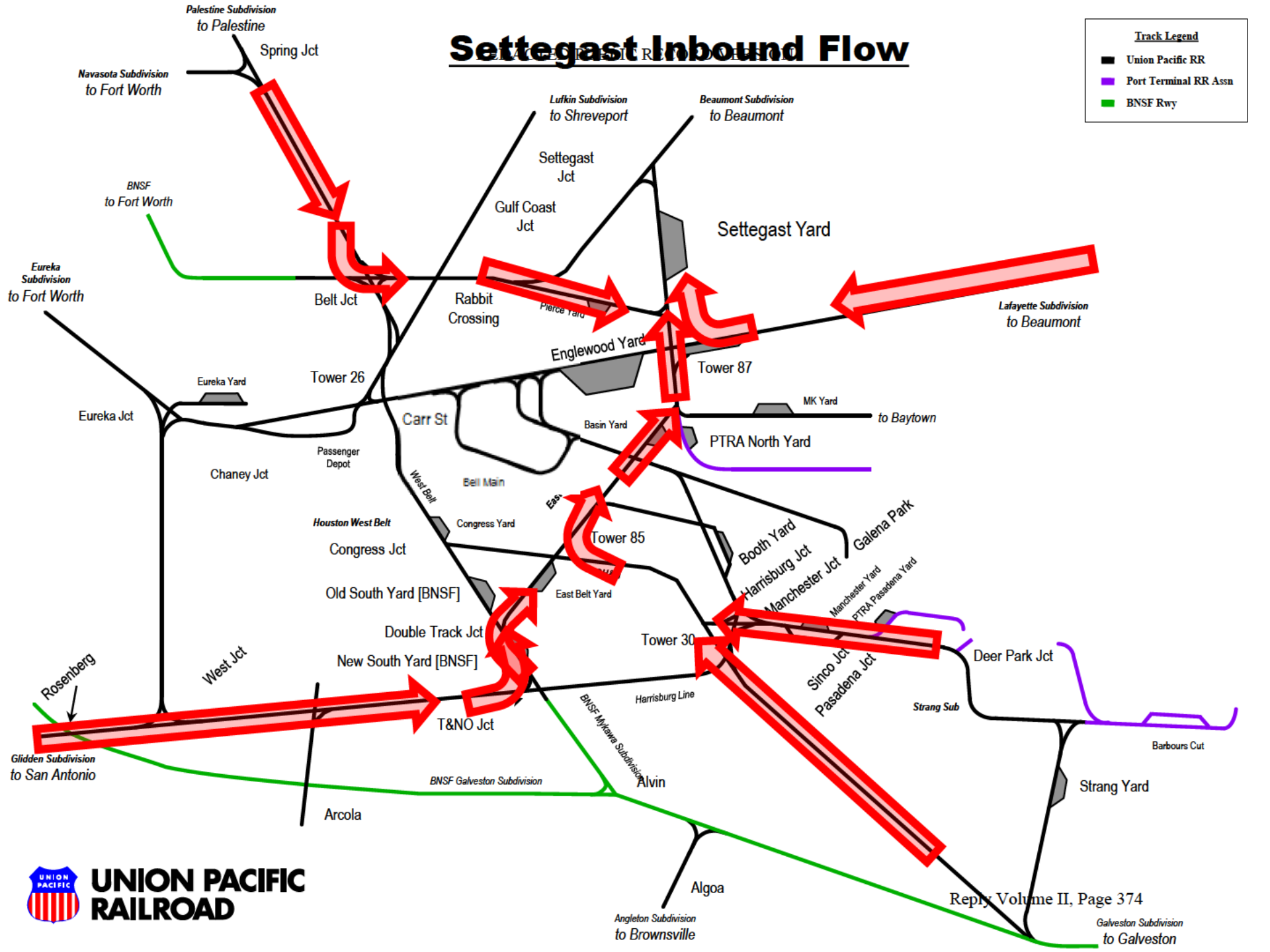
Glidden Subdivision
to San Antonio
BNSF Galveston Subdivision
Alvin
Strang Yard
Arcola
Algoa
Angleton Subdivision
to Brownsville
Galveston Subdivision
to Galveston
UNION PACIFIC RAILROAD


Settegast Inbound Flow
Track Legend
Union Pacific RR
Port Terminal RR Assn
BNSF Rwy
Palestine Subdivision
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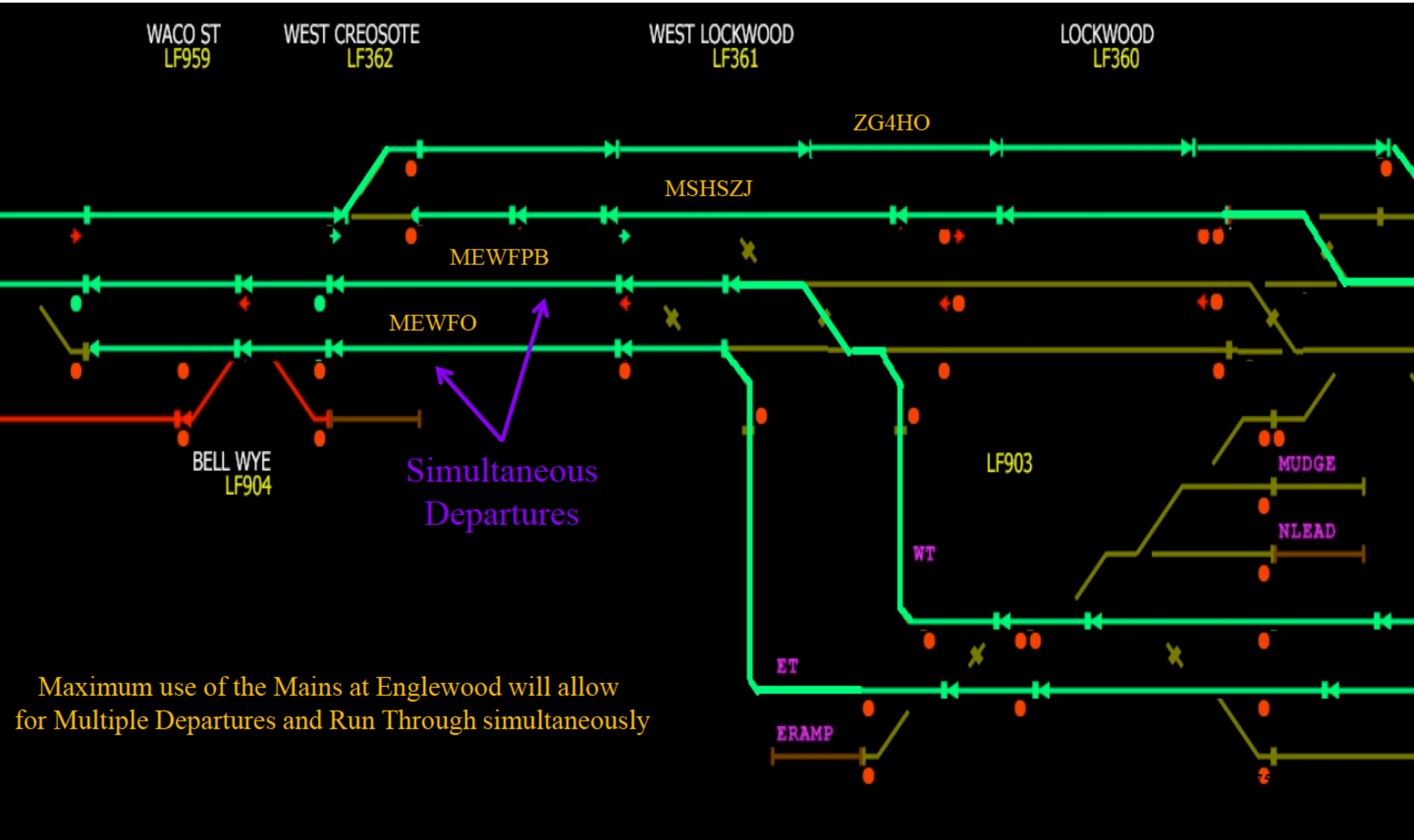
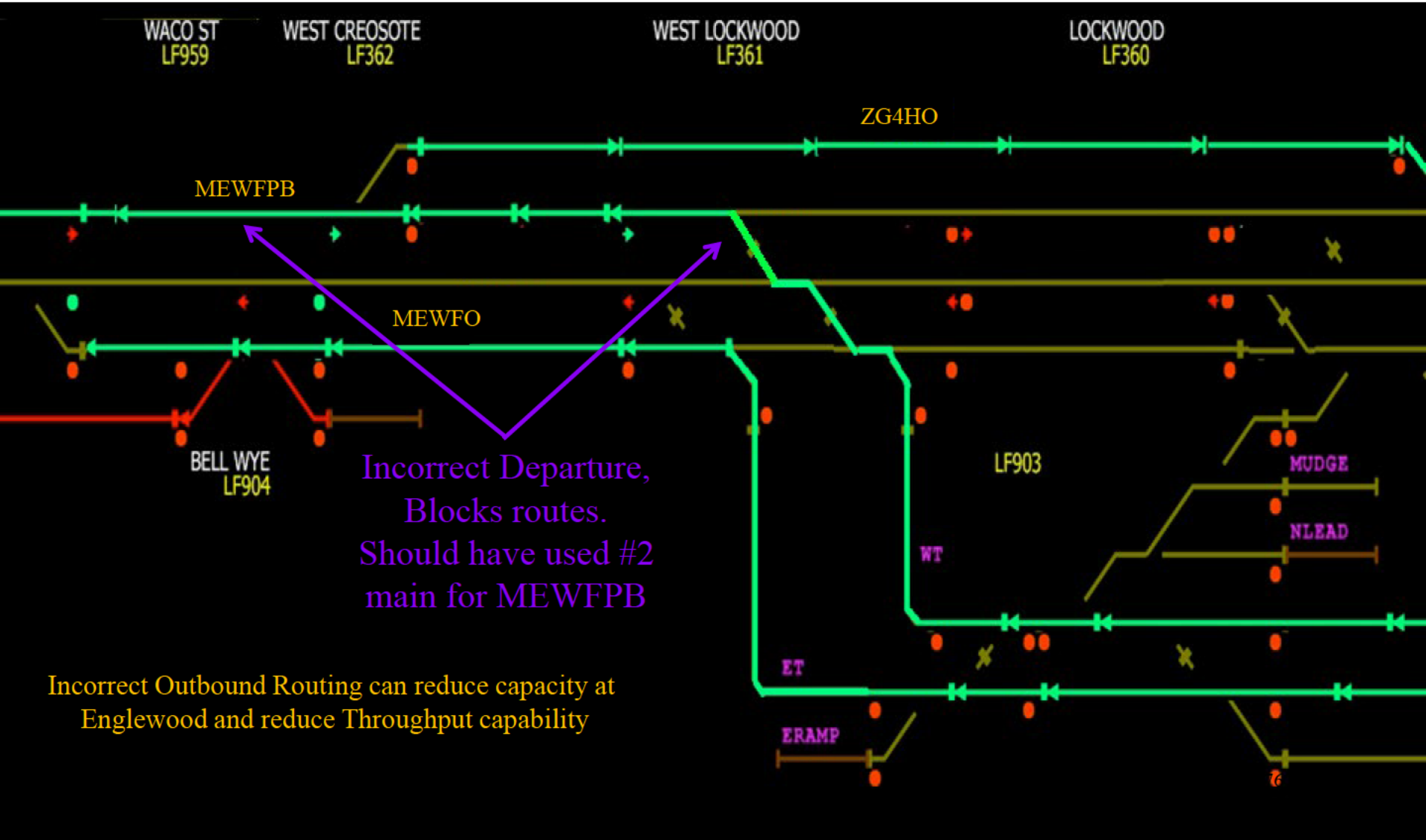
BNSF Mykawa Subdivision
Alvin
Strang Yard
Arcola
Algoa
Angleton Subdivision
to Brownsville
Galveston Subdivision
to Galveston
UNION PACIFIC RAILROAD

REDACTED PUBLIC RECORD VERSION

“Multiple Departures”



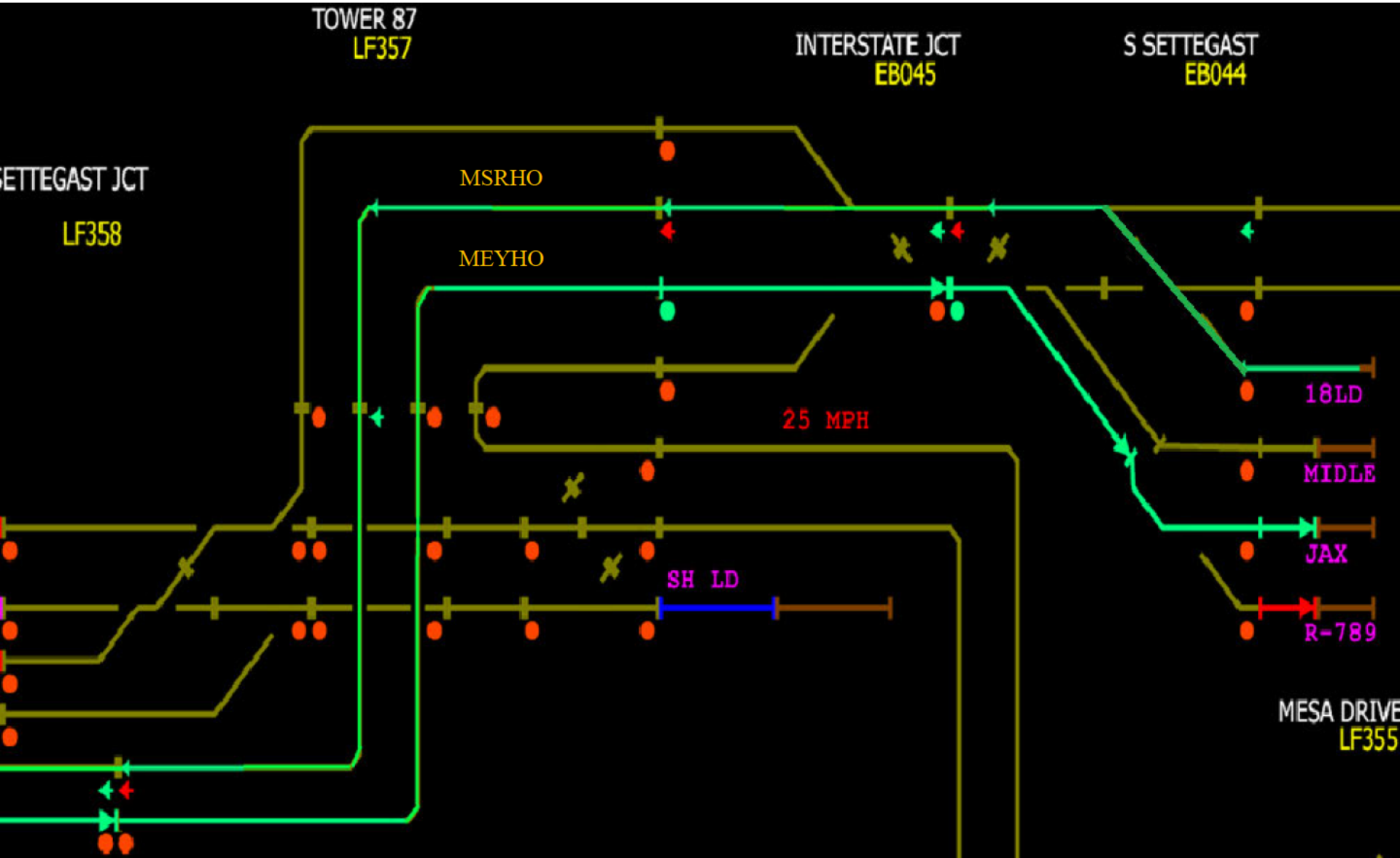
"Incorrect Departure Routing"



Incorrect Outbound Routing can reduce capacity at Englewood and reduce Throughput capability

REDACTED PUBLIC RECORD VERSION

"Correct Inbound Routing"



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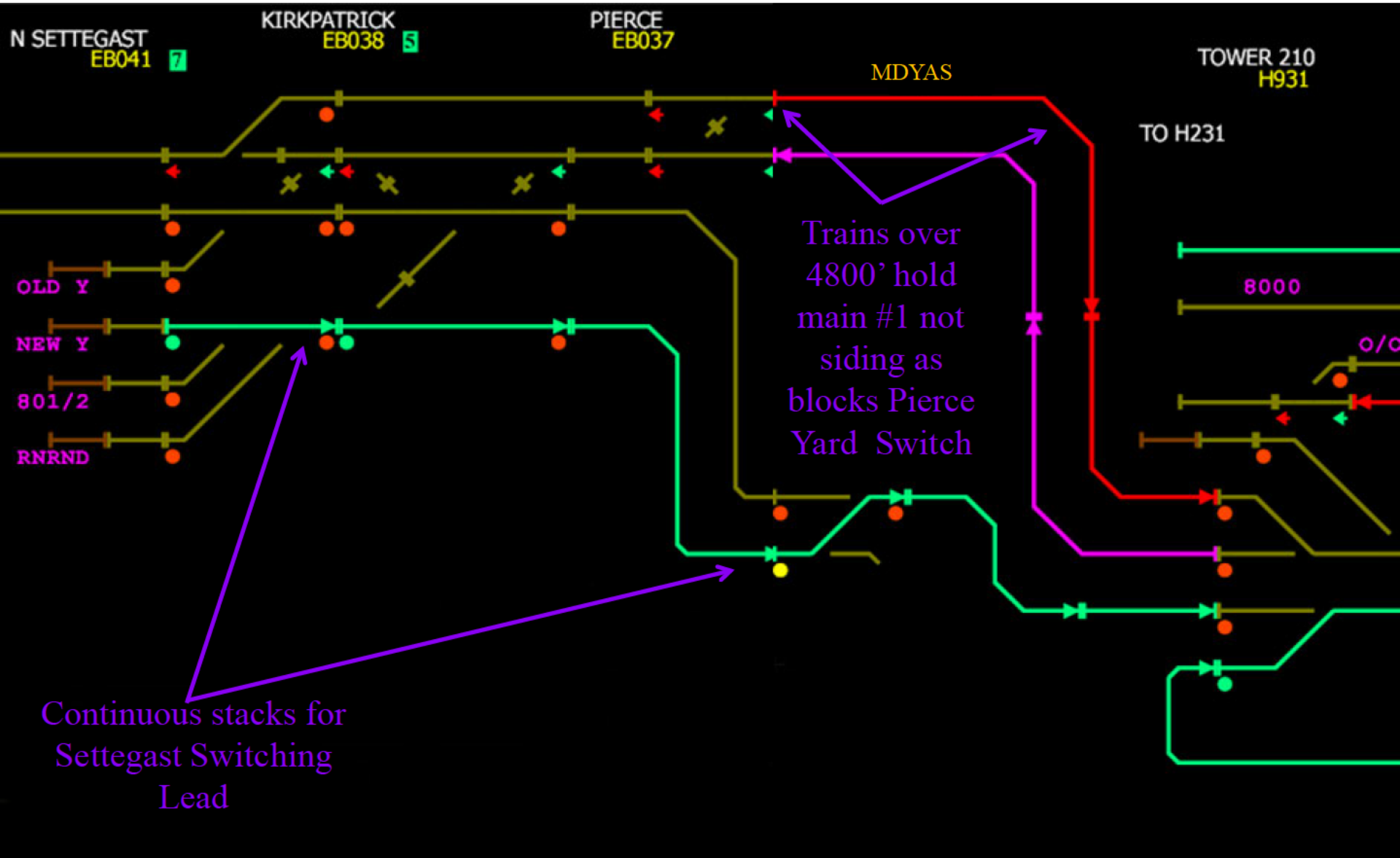
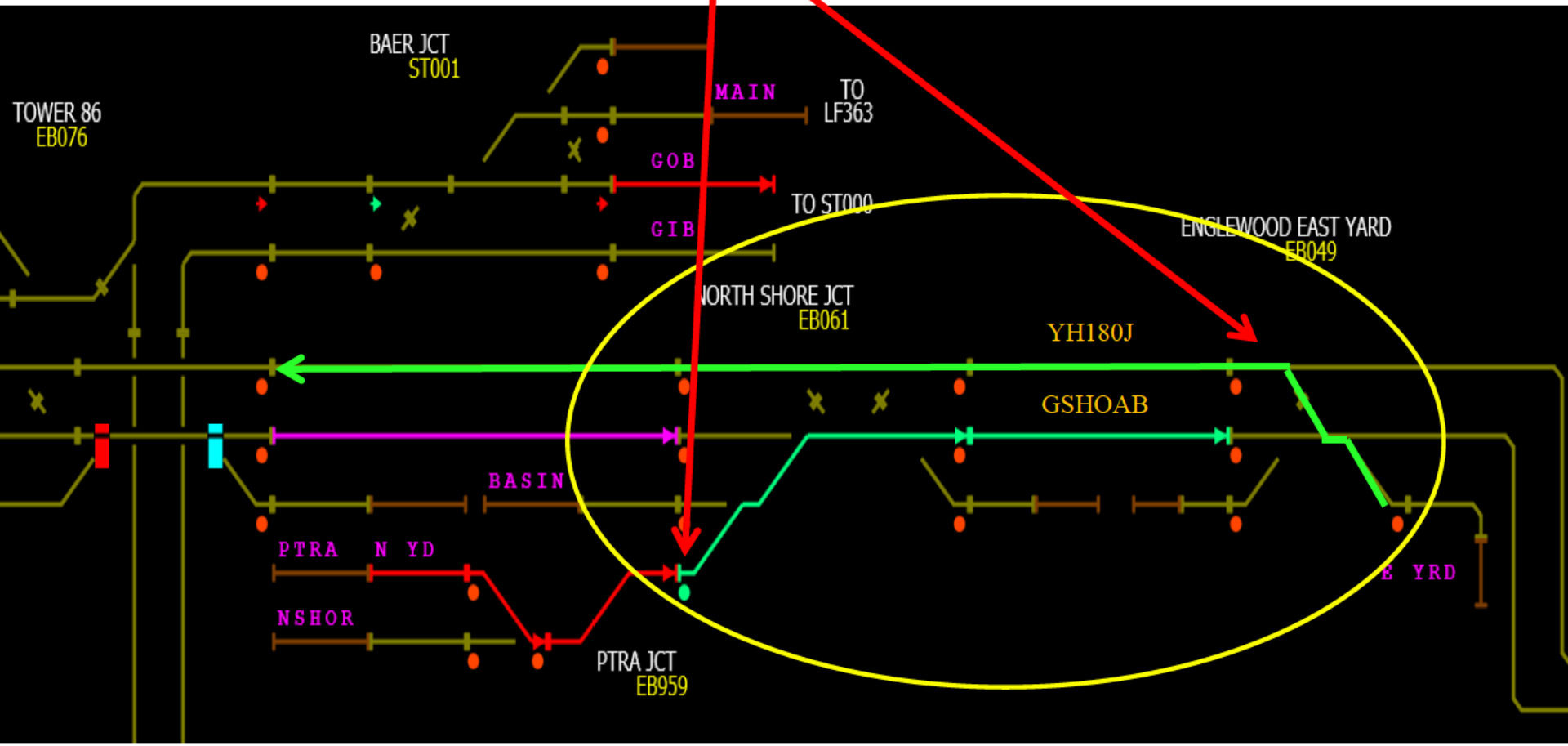
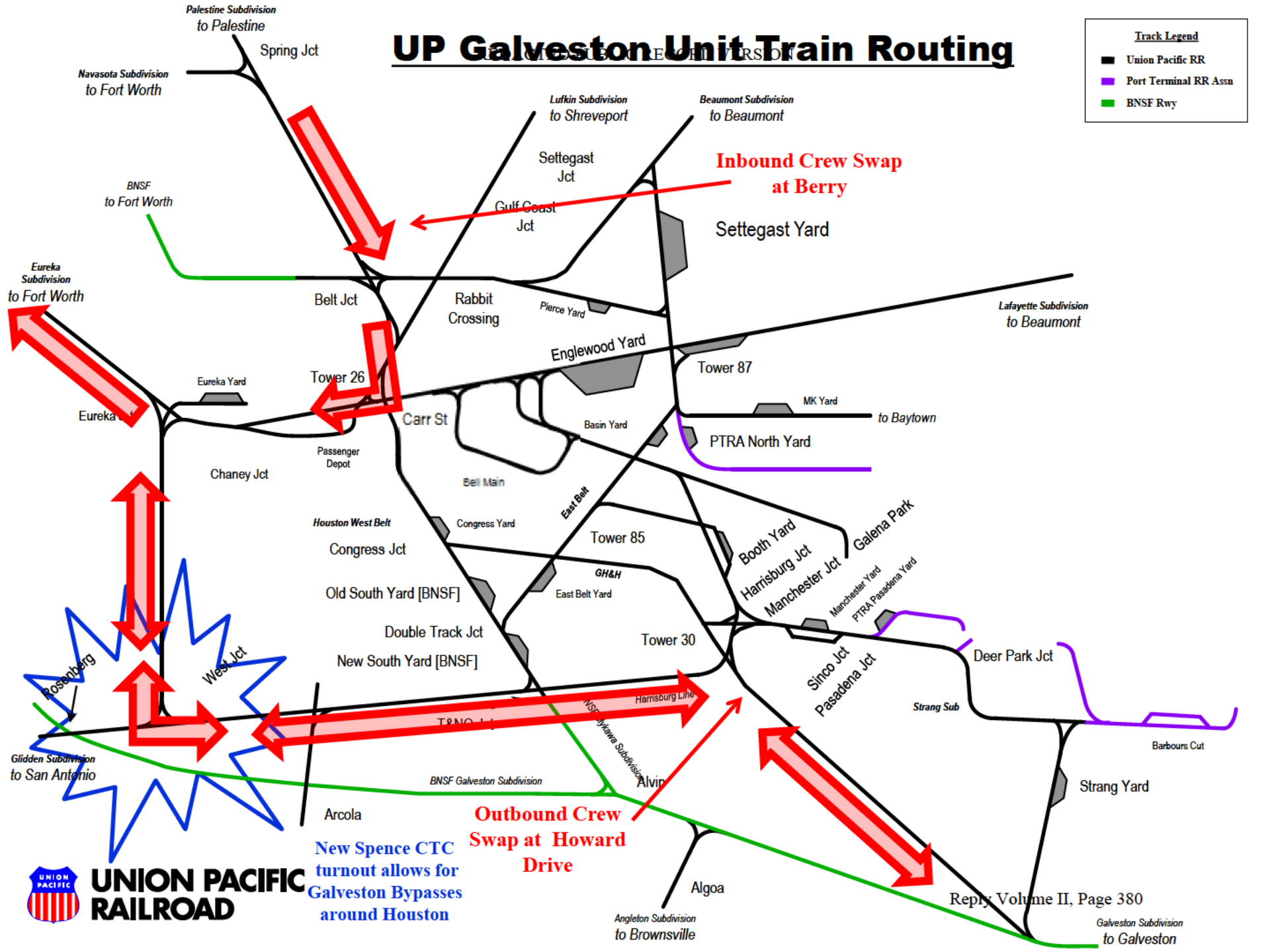
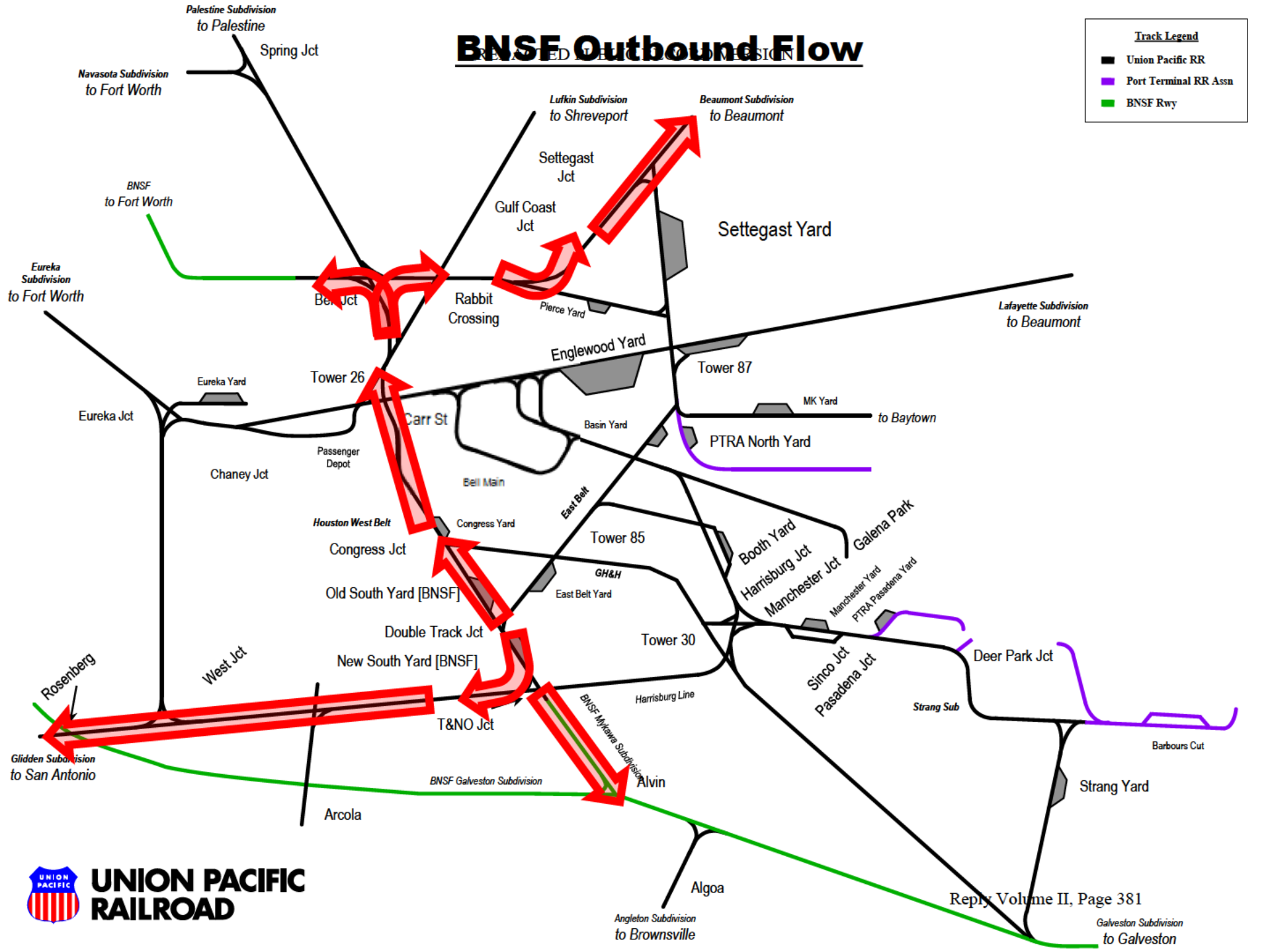


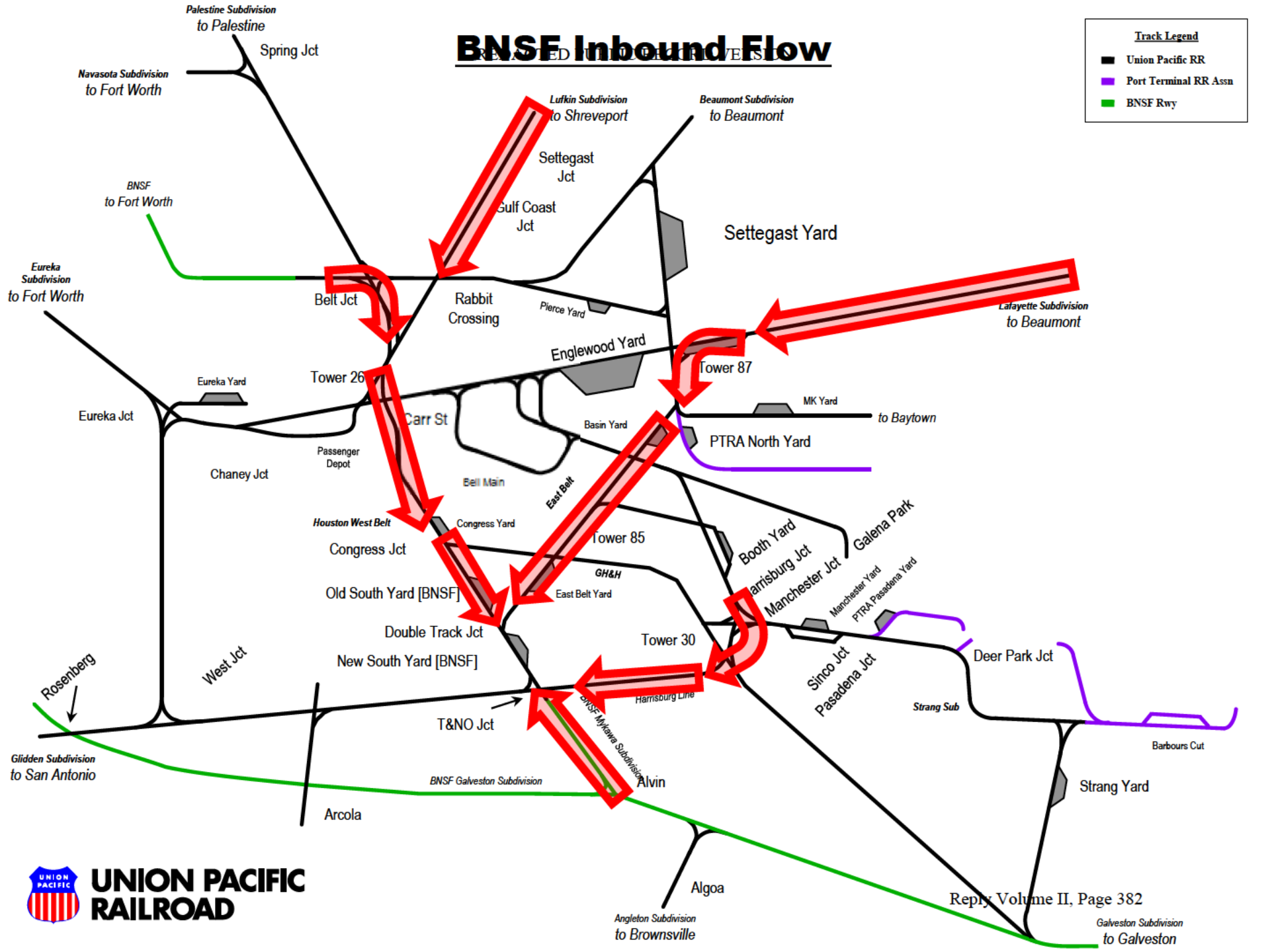
Eastbelt Routing for BNSF Inbound and PTRA North Yard

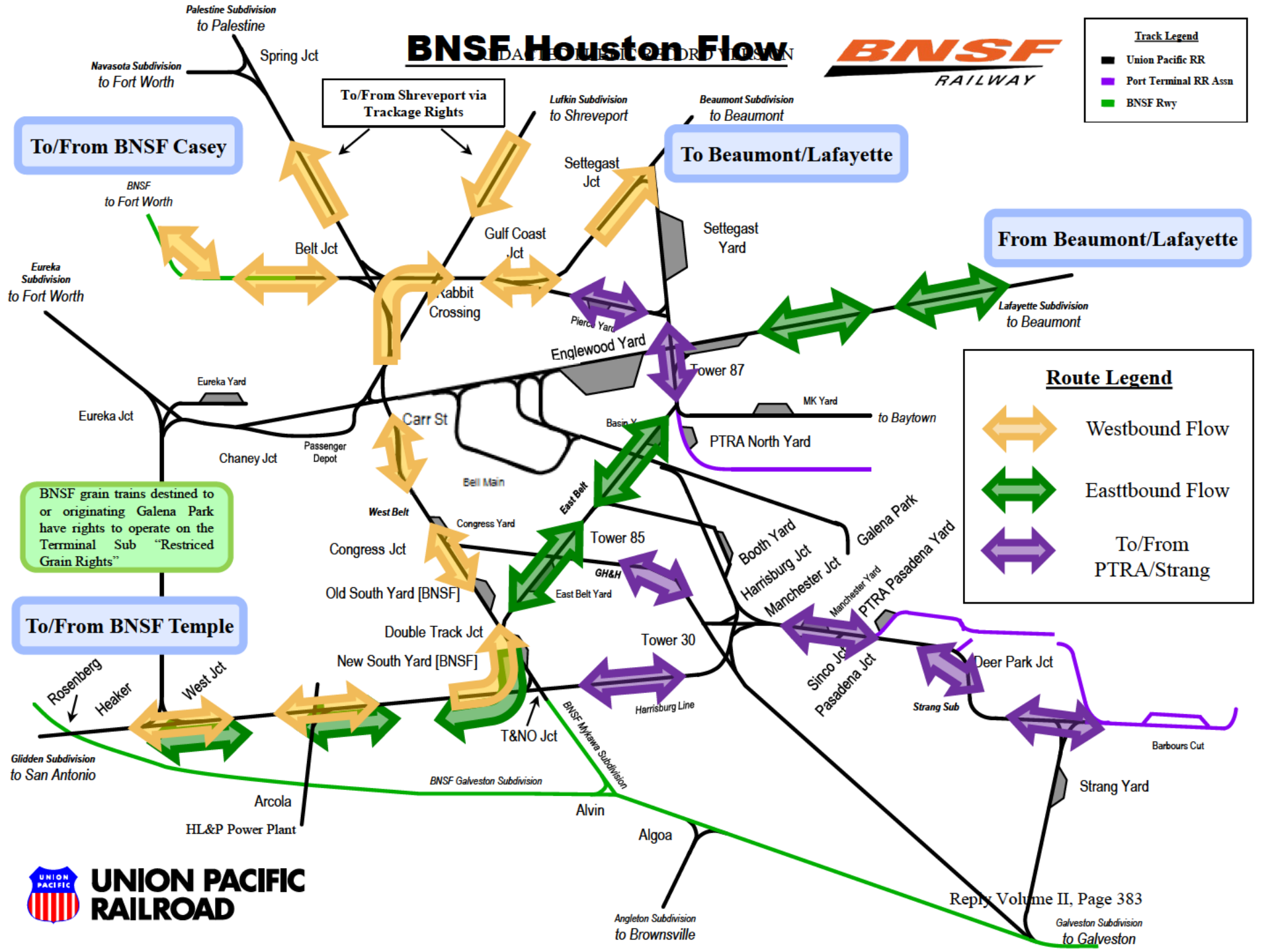
Correct Routing allows PTRA to Depart and BNSF Inbounds to arrive BN Yards

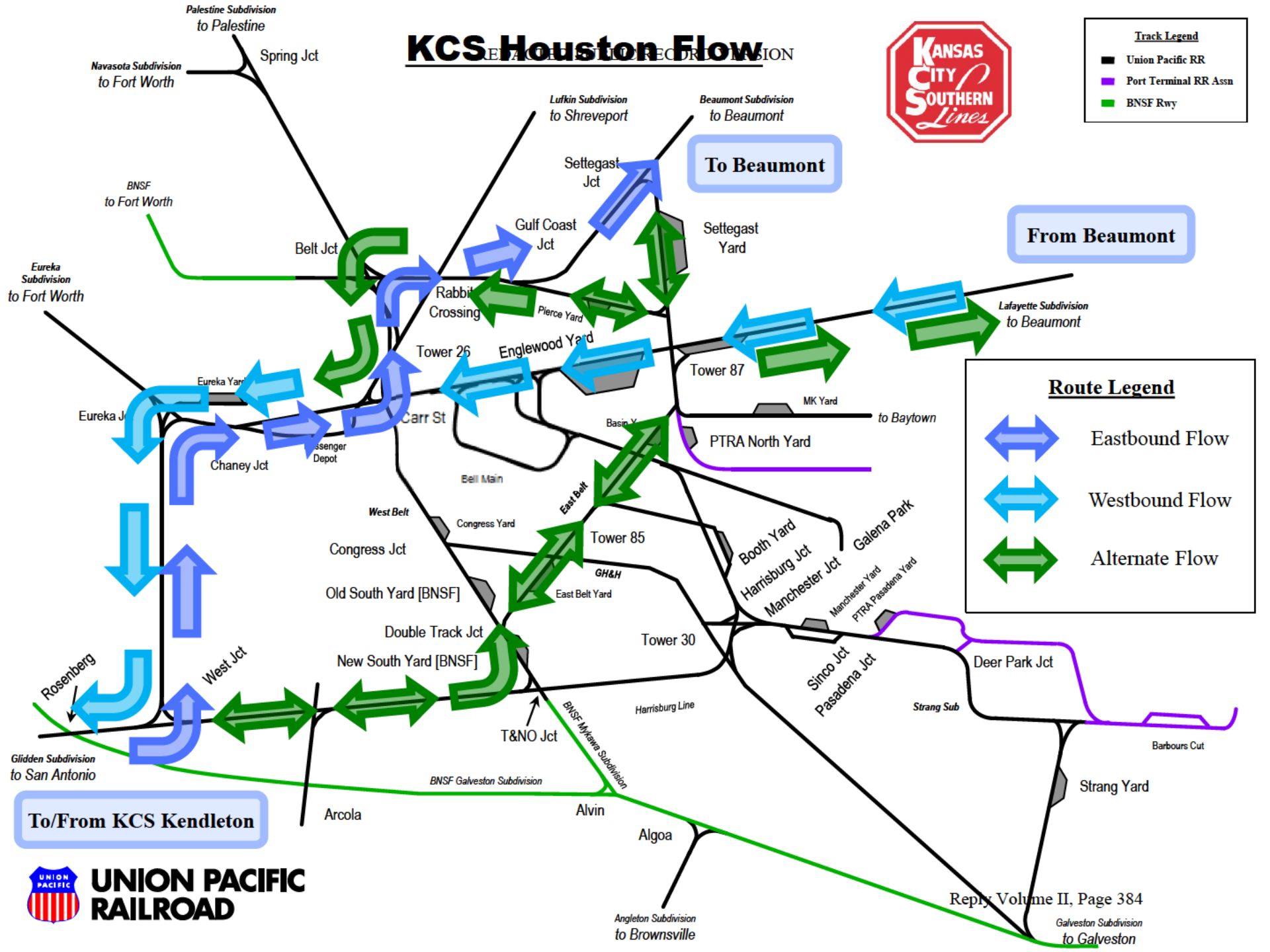



UP Galveston Unit Train Routing
CONFIDENTIAL REDACTED VERSION
Track Legend
Union Pacific RR
Port Terminal RR Assn
BNSF Rwy
Palestine Subdivision
to Palestine
Spring Jct
Navasota Subdivision
to Fort Worth
Lufkin Subdivision
to Shreveport
Beaumont Subdivision
to Beaumont
Settegast Jct
Inbound Crew Swap at Berry
Gulf Coast Jct
Settegast Yard
BNSF
to Fort Worth
Eureka Subdivision
to Fort Worth
Belt Jct
Rabbit Crossing
Pierce Yard
Lafayette Subdivision
to Beaumont
Englewood Yard
Tower 87
Eureka Yard
Tower 26
MK Yard
to Baytown
Carr St
Basin Yard
PTRA North Yard
Passenger Depot
Chaney Jct
Bell Main
East Belt
Houston West Belt
Congress Yard
Tower 85
Booth Yard
Harrisburg Jct
Manchester Jct
Galena Park
Manchester Yard
PTRA Pasadena Yard
Congress Jct
GH&H
Old South Yard [BNSF]
East Belt Yard
Double Track Jct
Tower 30
New South Yard [BNSF]
Sinco Jct
Pasadena Jct
Deer Park Jct
Strang Sub
Rosenberg
West Jct
Harrisburg Line
Barbours Cut
Glidden Subdivision
to San Antonio
BNSF Galveston Subdivision
Alvin
Strang Yard
Arcola
Outbound Crew Swap at Howard Drive
New Spence CTC turnout allows for Galveston Bypasses around Houston
UNION PACIFIC RAILROAD
Algoa
Angleton Subdivision
to Brownsville
Galveston Subdivision
to Galveston


BNSF Outbound Flow
Track Legend
Union Pacific RR
Port Terminal RR Assn
BNSF Rwy
Palestine Subdivision
to Palestine
Spring Jct
Navasota Subdivision
to Fort Worth
Lufkin Subdivision
to Shreveport
Beaumont Subdivision
to Beaumont
Settegast Jct
Gulf Coast Jct
Settegast Yard
BNSF
to Fort Worth
Eureka Subdivision
to Fort Worth
Bell Jct
Rabbit Crossing
Pierce Yard
Lafayette Subdivision
to Beaumont
Englewood Yard
Tower 87
Eureka Yard
Tower 26
Eureka Jct
Carr St
MK Yard
to Baytown
Basin Yard
PTRA North Yard
Passenger Depot
Chaney Jct
Bell Main
East Belt
Houston West Belt
Congress Yard
Tower 85
Booth Yard
Harrisburg Jct
Manchester Jct
Galena Park
Congress Jct
GH&H
Old South Yard [BNSF]
East Belt Yard
Manchester Yard
PTRA Pasadena Yard
Double Track Jct
Tower 30
Deer Park Jct
Rosenberg
West Jct
New South Yard [BNSF]
Sinco Jct
Pasadena Jct
Harrisburg Line
Strang Sub
T&NO Jct
BNSF Mykawa Subdivision
Barbours Cut
Glidden Subdivision
to San Antonio
BNSF Galveston Subdivision
Alvin
Strang Yard
Arcola
Algoa
Angleton Subdivision
to Brownsville
Galveston Subdivision
to Galveston
UNION PACIFIC RAILROAD


BNSF Inbound Flow
Track Legend
Union Pacific RR
Port Terminal RR Assn
BNSF Rwy
Palestine Subdivision
to Palestine
Spring Jct
Navasota Subdivision
to Fort Worth
Lufkin Subdivision
to Shreveport
Beaumont Subdivision
to Beaumont
Settegast Jct
Gulf Coast Jct
Settegast Yard
BNSF
to Fort Worth
Eureka Subdivision
to Fort Worth
Belt Jct
Rabbit Crossing
Pierce Yard
Lafayette Subdivision
to Beaumont
Englewood Yard
Tower 87
Tower 26
Eureka Yard
Eureka Jct
Carr St
Basin Yard
MK Yard
to Baytown
PTRA North Yard
Passenger Depot
Chaney Jct
Bell Main
East Belt
Houston West Belt
Congress Yard
Congress Jct
Tower 85
Booth Yard
Harrisburg Jct
Manchester Jct
Galena Park
GH&H
Manchester Yard
PTRA Pasadena Yard
Old South Yard [BNSF]
East Belt Yard
Double Track Jct
Tower 30
Deer Park Jct
New South Yard [BNSF]
West Jct
Rosenberg
Sinco Jct
Pasadena Jct
Harrisburg Line
Strang Sub
T&NO Jct
BNSF Mykawa Subdivision
Barbours Cut
Glidden Subdivision
to San Antonio
BNSF Galveston Subdivision
Alvin
Strang Yard
Arcola
Algoa
Angleton Subdivision
to Brownsville
Galveston Subdivision
to Galveston
UNION PACIFIC RAILROAD


BNSF Houston Flow
BNSF RAILWAY
Track Legend
Union Pacific RR
Port Terminal RR Assn
BNSF Rwy
Palestine Subdivision
to Palestine
Spring Jct
Navasota Subdivision
to Fort Worth
To/From Shreveport via Trackage Rights
Lufkin Subdivision
to Shreveport
Beaumont Subdivision
to Beaumont
To/From BNSF Casey
To Beaumont/Lafayette
From Beaumont/Lafayette
BNSF
to Fort Worth
Belt Jct
Gulf Coast Jct
Settegast Jct
Settegast Yard
Eureka Subdivision
to Fort Worth
Rabbit Crossing
Pierce Yard
Englewood Yard
Tower 87
Lafayette Subdivision
to Beaumont
Eureka Yard
Eureka Jct
Carr St
Basin Y
MK Yard
to Baytown
PTRA North Yard
Chaney Jct
Passenger Depot
Bell Main
East Belt
West Belt
Congress Yard
Tower 85
Congress Jct
GH&H
East Belt Yard
Old South Yard [BNSF]
Booth Yard
Harrisburg Jct
Manchester Jct
Galena Park
Manchester Yard
PTRA Pasadena Yard
Route Legend
Westbound Flow
Easttbound Flow
To/From PTRA/Strang
BNSF grain trains destined to or originating Galena Park have rights to operate on the Terrminal Sub "Restriced Grain Rights"
To/From BNSF Temple
Double Track Jct
New South Yard [BNSF]
Tower 30
Sinco Jct
Pasadena Jct
Deer Park Jct
Strang Sub
Rosenberg
Heaker
West Jct
Harrisburg Line
T&NO Jct
BNSF Mykawa Subdivision
Barbours Cut
Glidden Subdivision
to San Antonio
BNSF Galveston Subdivision
Strang Yard
Arcola
HL&P Power Plant
Alvin
Algoa
Angleton Subdivision
to Brownsville
Galveston Subdivision
to Galveston
UNION PACIFIC RAILROAD


KCS Houston Flow
Track Legend
Union Pacific RR
Port Terminal RR Assn
BNSF Rwy
Palestine Subdivision
to Palestine
Spring Jct
Navasota Subdivision
to Fort Worth
Lufkin Subdivision
to Shreveport
Beaumont Subdivision
to Beaumont
To Beaumont
From Beaumont
Settegast Jct
Settegast Yard
BNSF
to Fort Worth
Belt Jct
Gulf Coast Jct
Eureka Subdivision
to Fort Worth
Rabbit Crossing
Pierce Yard
Tower 26
Englewood Yard
Lafayette Subdivision
to Beaumont
Tower 87
Eureka Yard
Eureka Jct
Carr St
MK Yard
to Baytown
Basin Y
PTRA North Yard
Chaney Jct
Bell Main
West Belt
East Belt
Congress Yard
Tower 85
Booth Yard
Harrisburg Jct
Manchester Jct
Galena Park
Congress Jct
GH&H
Manchester Yard
PTRA Pasadena Yard
Old South Yard [BNSF]
East Belt Yard
Double Track Jct
Tower 30
New South Yard [BNSF]
Sinco Jct
Pasadena Jct
Deer Park Jct
Rosenberg
West Jct
Harrisburg Line
Strang Sub
T&NO Jct
BNSF Mykawa Subdivision
Barbours Cut
Glidden Subdivision
to San Antonio
BNSF Galveston Subdivision
Strang Yard
To/From KCS Kendleton
Arcola
Alvin
Algoa
Angleton Subdivision
to Brownsville
Galveston Subdivision
to Galveston
Route Legend
Eastbound Flow
Westbound Flow
Alternate Flow
UNION PACIFIC RAILROAD

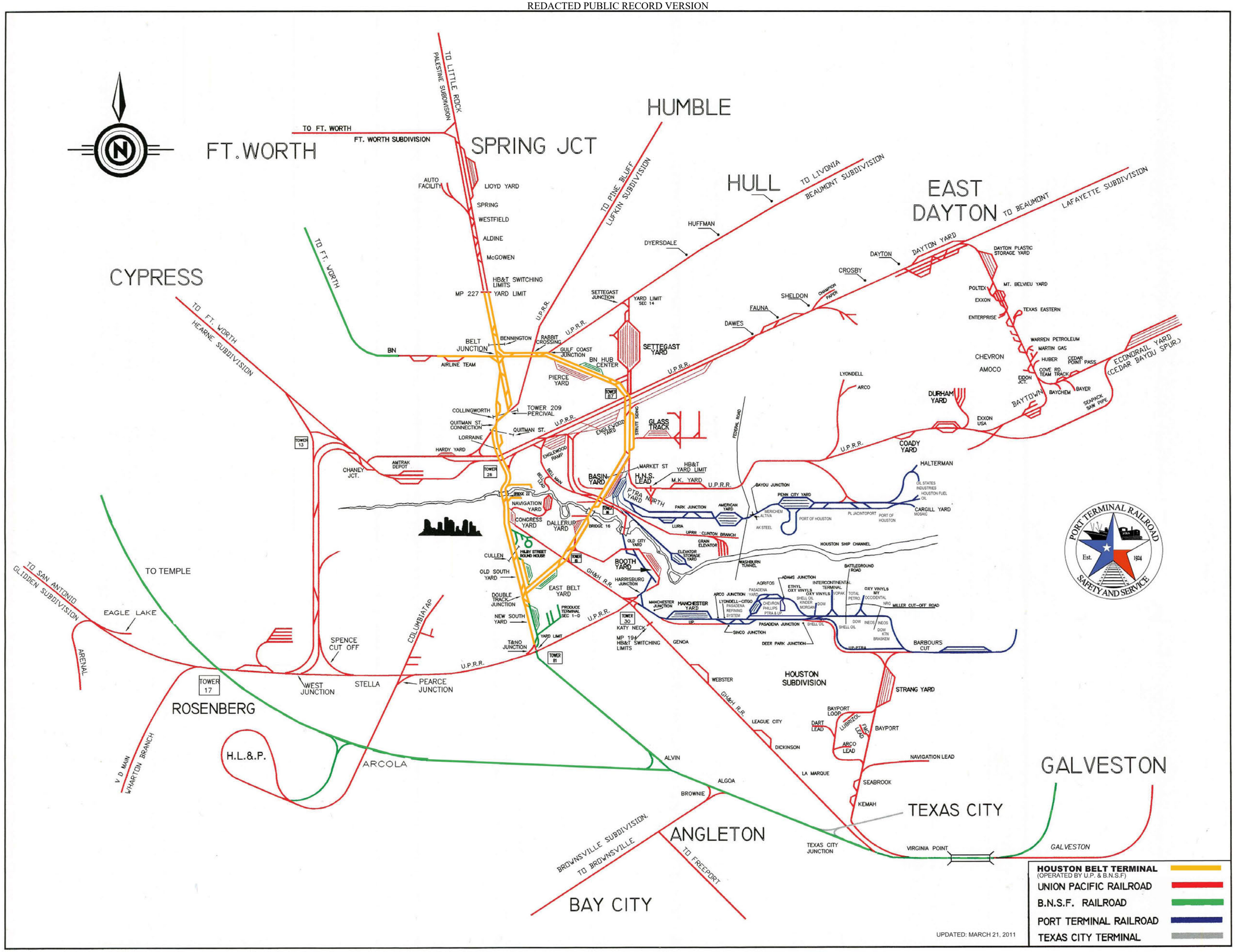
BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36500

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

ORR R.V.S. EXHIBIT 3

HOUSTON PTRA MAP RAILROAD MAP AE V4_EMAIL2 – FINAL


FT. WORTH
TO FT. WORTH
FT. WORTH SUBDIVISION
TO LITTLE ROCK
PALESTINE SUBDIVISION
SPRING JCT
HUMBLE
TO PINE BLUFF
LUFKIN SUBDIVISION
HULL
TO LIVONIA
BEAUMONT SUBDIVISION
EAST DAYTON
TO BEAUMONT
LAFAYETTE SUBDIVISION
CYPRESS
TO FT. WORTH
HEARNE SUBDIVISION
TO FT. WORTH
BN
AUTO FACILITY
LLOYD YARD
SPRING
WESTFIELD
ALDINE
McGOWEN
HB&T SWITCHING LIMITS
MP 227
YARD LIMIT
HUFFMAN
DYERSDALE
DAYTON
DAYTON YARD
DAYTON PLASTIC STORAGE YARD
CROSBY
SHELDON
CHAMPION PAPER
FAUNA
DAWES
SETTEGAST JUNCTION
YARD LIMIT SEC 14
SETTEGAST YARD
BELT JUNCTION
BENNINGTON
RABBIT CROSSING
GULF COAST JUNCTION
BN HUB CENTER
AIRLINE TEAM
PIERCE YARD
U.P.R.R.
TOWER 87
COLLINGWORTH
TOWER 209
PERCIVAL
QUITMAN ST. CONNECTION
QUITMAN ST.
LORRAINE
HARDY YARD
ENGLEWOOD YARD
ENGLEWOOD RAMP
STRUTT SIDING
GLASS TRACK
TOWER 13
AMTRAK DEPOT
CHANEY JCT.
TOWER 28
BELL LINE
BASIN YARD
MARKET ST
H.N.S. LEAD
HB&T YARD LIMIT
M.K. YARD
PTRA YARD NORTH
BRIDGE 22
NAVIGATION YARD
CONGRESS YARD
DALLERUP YARD
BRIDGE 16
TOWER 18
PARK JUNCTION
AMERICAN YARD
LURIA
UPRR - CLINTON BRANCH
BAYOU JUNCTION
PENN CITY YARD
MERICHEM
ALTIVA
AK STEEL
PORT OF HOUSTON
PL JACINTOPORT
PORT OF HOUSTON
OIL STATES INDUSTRIES
HOUSTON FUEL OIL
CARGILL YARD
MOSAIC
HALTERMAN
GRAIN ELEVATOR
OLD CITY YARD
ELEVATOR STORAGE YARD
HOUSTON SHIP CHANNEL
WASHBURN TUNNEL
BOOTH YARD
HARRISBURG JUNCTION
CULLEN
MILBY STREET ROUND HOUSE
TOWER 15
OLD SOUTH YARD
DOUBLE TRACK JUNCTION
EAST BELT YARD
PRODUCE TERMINAL SEC 1-D
NEW SOUTH YARD
YARD LIMIT
T&NO JUNCTION
TOWER 81
GH&H R.R.
TOWER 30
KATY NECK
MP 194 HB&T SWITCHING LIMITS
GENOA
MANCHESTER JUNCTION
MANCHESTER YARD
ARCO JUNCTION
LYONDELL-CITGO
PASADENA REFINING SYSTEM
PASADENA YARD
AGRIFOS
ADAMS JUNCTION
ETHYL
OXY VINYLS
INTERCONTINENTAL TERMINAL
VOPAK
TOTAL PETRO
OXY VINYLS MY
OCCIDENTAL
NRG
MILLER CUT-OFF ROAD
BATTLEGROUND ROAD
CHEVRON PHILLIPS
PTRA & UP
SHELL OIL
KINDER MORGAN
DOW
INEOS
DOW KTN
BRASKEM
PASADENA JUNCTION
SINCO JUNCTION
DEER PARK JUNCTION
BARBOURS CUT
HOUSTON SUBDIVISION
WEBSTER
STRANG YARD
LEAGUE CITY
BAYPORT LOOP
DART LEAD
LUBRIZOL
PMO LEAD
BAYPORT
ARCO LEAD
DICKINSON
NAVIGATION LEAD
LA MARQUE
SEABROOK
KEMAH
TEXAS CITY
TEXAS CITY JUNCTION
VIRGINIA POINT
GALVESTON
GALVESTON
ALVIN
ALGOA
BROWNIE
ANGLETON
BROWNSVILLE SUBDIVISION.
TO BROWNSVILLE
TO FREEPORT
BAY CITY
TO SAN ANTONIO
GLIDDEN SUBDIVISION
TO TEMPLE
EAGLE LAKE
ARENAL
SPENCE CUT OFF
COLUMBIA TAP
WEST JUNCTION
STELLA
PEARCE JUNCTION
TOWER 17
ROSENBERG
H.L.&P.
ARCOLA
V D MAIN
WHARTON BRANCH
COADY YARD
DURHAM YARD
EXXON USA
LYONDELL
ARCO
CHEVRON
AMOCO
EIDON JCT.
COVE RD. TEAM TRACK
HUBER
CEDAR POINT PASS
WARREN PETROLEUM
MARTIN GAS
POLTEX
EXXON
ENTERPRISE
MT. BELVIEU YARD
TEXAS EASTERN
BAYTOWN
BAYCHEM
BAYER
SEAPACK SAW PIPE
ECONORAIL YARD (CEDAR BAYOU SPUR)
PORT TERMINAL RAILROAD
Est. 1924
SAFETY AND SERVICE
HOUSTON BELT TERMINAL
(OPERATED BY U.P. & B.N.S.F)
UNION PACIFIC RAILROAD
B.N.S.F. RAILROAD
PORT TERMINAL RAILROAD
TEXAS CITY TERMINAL
UPDATED: MARCH 21, 2011

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36500

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

ORR R.V.S. EXHIBIT 4

TIM WOOLEY E-MAIL

I have not seen a reply from Tim's question.

From: Timothy L. Wooley <TIMWOOLEY@UP.COM>
Sent: Monday, April 8, 2019 4:29 PM
To: Brian E. Gorton <BEGORTON@up.com>
Cc: Steven E. Truitt <STruitt@KCSouthern.com>; lance.brewer@bnsf.com; Lizabeth S. Brubeck <lsbrubeck@up.com>; Olivia.Templeton@BNSF.com; BDSTARR@up.com; kagomez@up.com; Robin.Taylor@BNSF.com; Wesley.Thompson@BNSF.com
Subject: Re: New Organizational Structure - Gulf Coast Service Unit

This email originated from outside the company. Please use caution when opening attachments or clicking on links. If you suspect this to be a phishing attempt, please report via PhishAlarm.

The BN and KCS has been getting screwed by the 10 Hrs worth of work events off main #2 at Beaumont. I agree with their complaints about throughput at Beaumont. The BN and KCS have re-crewed their trains time over time trying to get through Beaumont - which fall short of Houston. What is the plan for the UP to reduce the work event time a Beaumont to provide parity to the other carriers? About time to put the MBTLI, MBTHO, MBTEW back on - enough with the pick up of these trains! This is the 50/50 line! BN has no Trackage Rights - they own it and have a say so! Please provide explanation so I can explain to the other owner of the UP Lafayette Sub and Houston Sub what the plan is.

Tim

832-482-8959

Sent from my iPhone

On Apr 8, 2019, at 3:17 PM, Brian E. Gorton <BEGORTON@up.com> wrote:

> A couple of changes with the organizational structure since the note that I put out last Friday
>
> Brian Mcgavock has the responsibility of the Houston Complex which consists of the following:
>
> Englewood terminal, Settegast terminal, Houston Industries, Eureka, Eagle Lake, Strang, the Branch, Galveston, and Lloyd operations.

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

ORR R.V.S. EXHIBIT 5

JOHN ORR LETTER TO ERIC GEHRINGER AND MATTHEW GARLAND

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REDACTED PUBLIC RECORD VERSION

KANSAS CITY SOUTHERN www.kcsouthern.com

JOHN F. ORR
EXECUTIVE VICE PRESIDENT - OPERATIONS
TEL. (816) 983-1794
E-MAIL: JOrr2@KCSouthern.com

May 1, 2022

VIA E-MAIL: Ejgehrin@up.com
Mr. Eric Gehringer
Executive Vice President
Union Pacific Railroad Company
1400 Douglas Street
Omaha, NE 68179

VIA E-MAIL: Matthew.Garland@bnsf.com
Mr. Matthew Garland
Vice President, Transportation
BNSF Railway Company
2650 Lou Menk Drive
Fort Worth, TX 76131

Re: Urgent Issues in Freight Rail Service, Houston

Dear Eric and Matt,

I am writing to follow up with you on issues raised in the Surface Transportation Board's hearing this week concerning service problems in Houston, and to offer to get together with you both at your earliest opportunities to jointly discuss short term and longer term solutions to operational problems in the Houston complex and the lines feeding into it.

As background, I have attached that portion of my letter to the STB dealing with our cross-border grain business and the headwinds it has faced in March and April, largely due to operational congestion in Houston. I am also attaching the presentations about Houston and the UP-BNSF Joint Line from the March and April Spring Center joint meetings. I would draw your attention particularly to the third and fifth pages of the April report, showing substantially-reduced train speeds in the Houston complex and on the Joint Line year to date.

I am also attaching a report that KCS presented at the April 2022 Spring Center joint meeting, showing the dramatic rise in KCS recrew rates and transit times through Houston and on the joint track since the beginning of this year. I would like to discuss in detail your evaluation of the reason for this marked deterioration of KCS train performance when you both indicated at the STB's hearing that Houston train fluidity is not a problem for either BNSF or UP. I would also like you to tell me why KCS train performance has been sacrificed in deference to UP and BNSF trains for the last two months: what has changed since March?

As stated in my letter to the STB, KCS has offered support to both UP and BNSF in terms of using KCS crews to move trains UP and BNSF could not move due to crew shortages. We have assisted a few BNSF trains in this way; while UP originally accepted this offer, it later declined, citing current work ownership rules as preventing alternate crew resourcing. I suggest that we undertake a review of train staffing with our labor stakeholders. I remain willing to discuss this and other possibilities, as Chairman Oberman suggested.

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Lending KCS crews to support UP and BNSF operations would be a short-term bandage to operational problems that, instead, need a long-term fix. In the near term, KCS, UP and BNSF need to figure out a way – in conjunction with PTRA and Amtrak - to improve operational coordination in Houston. Based on my experience, Chicago's CIROC model offers that capability.

As you both stated in the STB hearing, BNSF and UP work "hand-in-glove" in Houston. The same cannot be said from the KCS perspective.

CIROC has improved operations in the Chicago terminal because of a common operations platform: shared access to information and utilizing a regional overview of operations by all parties that operate in Chicago, with parties meeting as equals and operating according to a set of agreed principles and structured procedures to resolve the daily operational challenges in a major city. There are agreed measures, standards and response protocols ready to be put into action whenever conditions become problematic, and systems for advanced visibility and accountability to provide the architecture for working together to assess and solve operational constraints and impediments.

Houston already has the infrastructure for its own version – H-ROC – in the Spring Center. We also have provisions granted by the STB for routing optimization: the clear route condition that the STB imposed in 1998 to maximize terminal operating efficiency every day.

In its current use, the Spring Center falls short in terms of information sharing and full cooperation in management. For example, over the past 2 years, KCS has been cut off from the regular information about UP operations that we had for many years. We asked for that access back, and were denied, without reason and without substitution of data. Similarly, use of the clear route condition is withheld as only an emergency measure – we have had to elevate that issue to the level of calling UP's Director of Joint Facilities even when clear routing was obviously needed. The STB ordered clear route as a permanent solution in Houston – it must be integrated into dispatch planning more readily and rapidly. In the case of detour rights, they must be reasonable and available.

Eric, Matt: KCS is willing to do its part. We're willing to work with you on staffing strategies. We're willing to strategically deploy "stand-by" resources, and to make reasonable arrangements to create resilience and responsiveness where necessary. We've already made information on operations of our Rosenberg and Laredo Subs available to UP Spring dispatchers, and if we need to do more to make that useful, we will, along with information on the jointly-used portion of our Beaumont Sub. We will give you information on our operation equivalent to what we're asking from you.

We're willing to share equally with you (and PTRA and Amtrak if appropriate) in the costs of creating a CIROC-like Houston center, including the costs of Railinc involvement to set parameters on when problems loom and systems for resolving them. As a symbol of our commitment, we're willing to immediately take a one-third share of the costs of the Spring Joint Director's position, and to work out any agreements needed to do that. We want to be a partner

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in making everyone's operations better. We need access to information as we used to have in order to be able to participate fully with you.

I heard your testimony at the STB's hearing, Eric, that UP has poured money into its yards in Houston and does not believe that its yards are a problem. KCS knows that considerable money has been spent on Houston infrastructure – we've been billed for a share of that under the trackage rights agreements. While I'm not fully able to judge the adequacy of those expenditures from the information we've been given, we agree that this isn't an infrastructure issue. It's a matter of resolving operating challenges. KCS wants to help you fix those issues because they impact us all. If an infrastructure issue arises, the STB-approved trackage rights agreements provide the process for remedying those issues, assuming that we can return to sharing information about capacity and doing capacity planning in this area, as we used to do. But infrastructure isn't the problem, in our view.

Chairman Oberman said at Wednesday's hearing "Can we do something ….to ease the congestion in Houston at least in the immediate future as a temporary measure if not a permanent one?". I am writing you in that spirit. I offer to work with you to move quickly to keep Houston operating conditions from continuing to deteriorate as the joint meeting reports show that they have over the past 2 months, and to pull them back at least to where they were earlier in the year.

Eric, thank you for your call late last week to discuss border operations issues. I hope that we all can get together very soon to discuss Houston issues as Chairman Oberman requested that we all do.

Sincerely,

DocuSigned by:
John F. Orr
37E7994A57084ED...
John F. Orr

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SERVICE ISSUES

Generally, although we face challenges in several areas, in those areas that we can control, I am pleased to say that KCS has managed well and has avoided many of the problems others have experienced. Nevertheless, we are being adversely impacted due to problems on other roads. KCS is highly subject to service problems on other carriers' networks because a higher percentage of KCS's traffic (over 80%) is interlined with other carriers. Also, a large segment of KCS's cross-border franchise operates over trackage rights on track owned by UP or jointly by UP and BNSF. Thus, when those carriers have problems on their tracks that we use, as in Houston as explained below, KCS suffers those problems as well.

A good indicator of our operations is our cross-border unit grain train cycle times. Our cross-border unit grain train cycle times have shown steady improvement since 2019. Beginning in September 2021, our unit grain cycle times between the U.S. and Mexico were as consistently good as they have ever been.[1] While our cross-border unit grain train cycle times historically have averaged in the 24 – 27 day range, from September through March we averaged 17.25 days per cycle. That enabled us to carry more grain for our customers, averaging well over 70 trains per month from October through March.

Unfortunately, our grain business started to hit some headwinds in early April. Our last 20 unit train cycles averaged almost 24 hours longer per cycle than in the September – March timeframe. In addition to the essential annual track maintenance cycles occurring now on KCS's Heavener Subdivision and occurring now and into early summer on the UP trackage rights lines, these grain cycle time increases are due largely to (a) delays getting through Houston, where KCS operates via trackage rights and is dependent upon the dispatching and operating choices of others; and (b) interchange delays, particularly in Kansas City.

Houston Congestion

Due to the importance of its cross-border operations, it is KCS's objective to move over its trackage right lines through the Houston complex as quickly as possible. Due to congestion in Houston, however, this has become extremely difficult.

Because of congestion in Houston, KCS is currently averaging about one recrew per train moving through Houston. That means that essentially every train that should be able to move between Beaumont and Kendleton with a single crew requires a second, replacement crew to complete the trip due to exhaustion of the first crew's federally-mandated hours of service. The chart below shows our week-by-week recrew experience on trains moving over the UP Beaumont-Rosenberg and UP Victoria-Robstown trackage rights through the greater Houston area.

[1] *Kansas City Southern's Strong Operational Performance Drives Record Grain Performance*, https://www.kcsouthern.com/media/news/news-releases/kansas-city-southern-s-strong-operational-performance-drives-record-grain-performance

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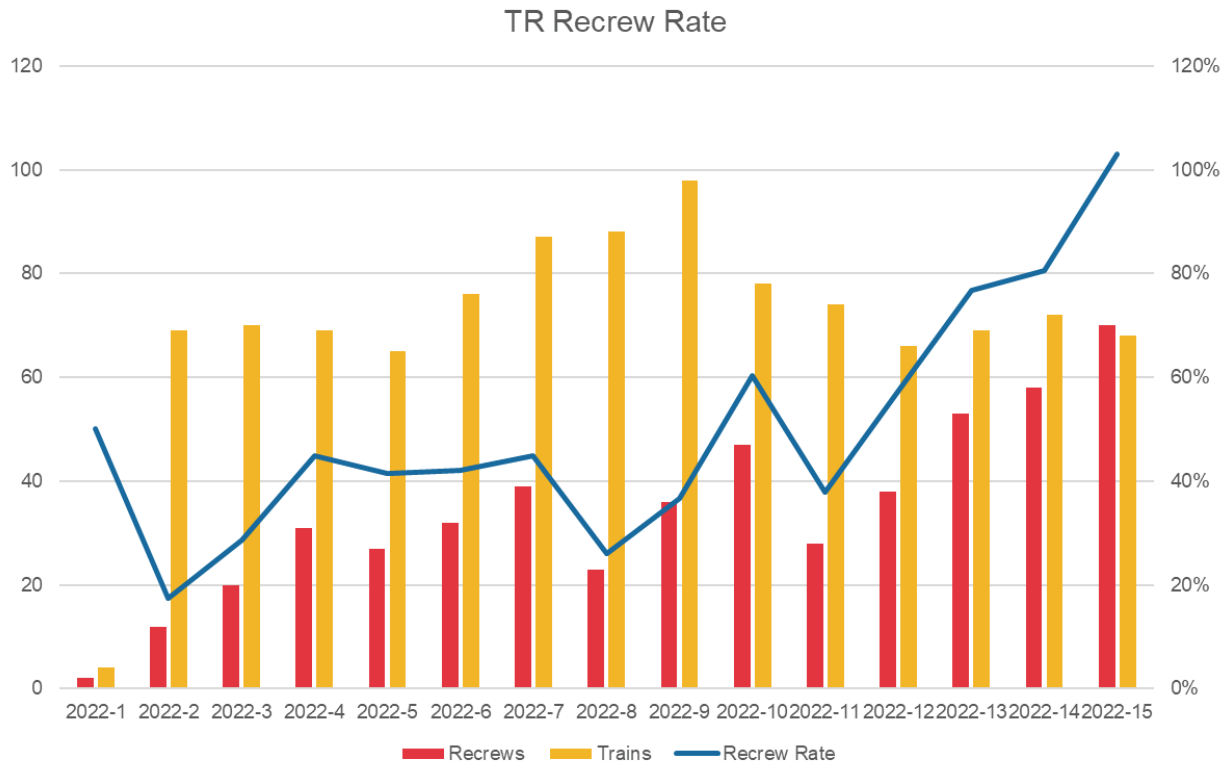

Recrews are needed primarily because of other carriers' shortages of crews and other resources in the Houston area. Those shortages delay movement of their trains and ours.[2] In addition, other carriers have made operational changes such as operating longer trains through the Houston area and shifting work from closed yards into the main yards in Houston. These changes have caused their trains to sit on the main line instead of in sidings because they no longer fit in the siding, or to be assembled and broken up on the main line because they are too long to clear the main completely without being split to move into and out of the yard.

Similar to our recrew issue, the congestion issues in Houston are having adverse impacts on our transit times. Transit times on the Beaumont-Houston portion of the trackage rights have exceeded the 12 hours on-duty allowed to each train crew by federal law at least half of the months in the past year:

[2] Other carriers are aware of and have spoken about their service and crew issues, often coupled with reports of excessive numbers of cars on their networks. See, for example, https://www.up.com/customers/announcements/customernews/generalannouncements/CN2022-15.html , and http://www.bnsf.com/news-media/customer-notifications/notification.page?notId=intermodal-network-update-for-thursday-april-14-2022.

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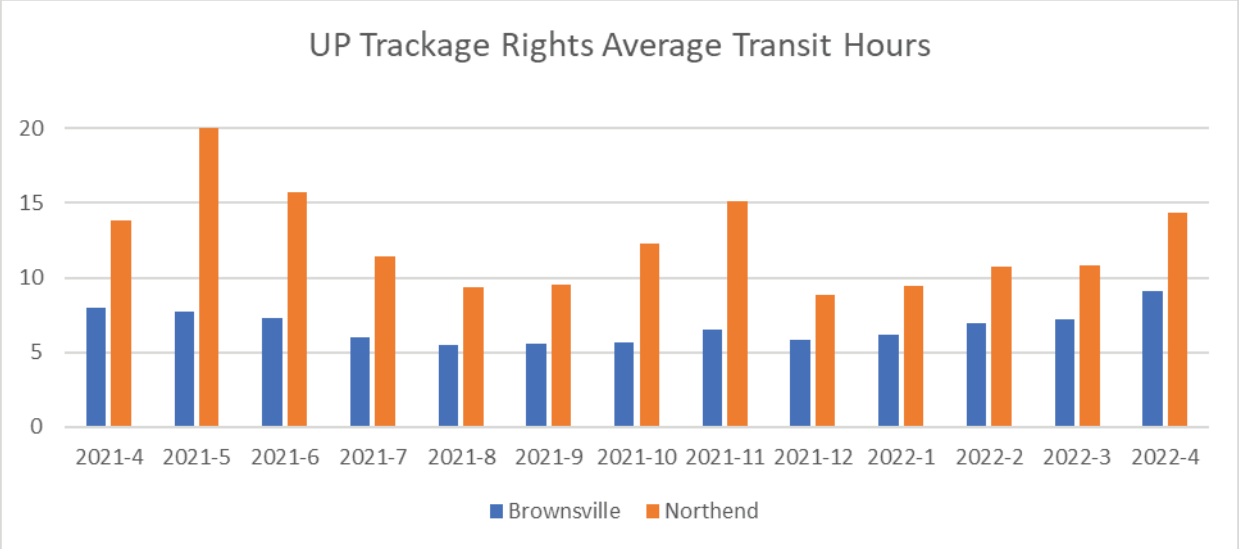

To help resolve the Houston congestion problems, KCS has actually offered its crews on several occasions to move BNSF and UP trains that lacked crews off the main line so that KCS trains can pass. We have also moved our interchange with BNSF for some auto traffic from the Robstown/Corpus Christi area to Rosenberg, just west of Houston, so BNSF has to expend fewer crews from their over-taxed crew base.

There may be other ways to help resolve the problems in Houston. For example, in the original Houston Gulf Coast service crisis, the Board imposed a so-called "clear route" provision. [3] Unfortunately, it is not clear to KCS to what extent the UP-BNSF Spring, TX dispatching director has been utilizing the clear route condition to enhance efficiency and facilitate the smooth movement of trains through the Houston Terminal. The Board might also consider granting temporary trackage rights or other routes so that KCS and others could bypass Houston to get to the Mexican gateways.

[3] See Union Pacific Corp., et al.-Control and Merger-Southern Pacific Rail Corp., et al. [Houston/Gulf Coast Oversight], STB Finance Docket No. 32760 (Sub-No. 26), 3 S.T.B. 1030, 1998 STB LEXIS 999, served Dec. 21, 1998. ("Under the "clear route" condition, the neutral and highly efficient joint Union Pacific Railroad Company (UP)/Burlington Northern Santa Fe Railway Company (BNSF) dispatching center at Spring, TX, will have the authority through its Joint Director to route traffic through Houston over any available route, even a route over which the owner of the train does not have operating authority. Thus, as a result of the Board's decision, a BNSF train may be permitted to operate over track of UP; a UP train may be permitted to operate over track of BNSF; and a Texas Mexican Railway Company (Tex Mex) train may be permitted to operate over track of either UP or BNSF.")

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36500

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

EXHIBIT H

REPLY VERIFIED STATEMENT OF RAYMOND A. ELPHICK AND JOHN F. ORR

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36500

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

REPLY VERIFIED STATEMENT OF RAYMOND A. ELPHICK AND JOHN F. ORR

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I. INTRODUCTION

1. My name is Raymond A. Elphick. I am the Assistant Vice President Service and Product Design for Canadian Pacific Railway Company ("CP").

2. My name is John F. Orr. I am the Executive Vice President – Operations of Kansas City Southern ("KCS").

3. We sponsored and verified Applicants' Operating Plan and Amended Operating Plan in this proceeding, which explained how the separate operations of CP and KCS will be integrated into a single consolidated CP/KCS network. This joint statement addresses the following topics:

- We first address certain critiques put forward by a few Class 1 railroads regarding Applicants' Operating Plan;
- We explain that adequate capacity exists to support the level of traffic growth anticipated from the Transaction;
- We address the specific critiques by certain Class 1s relating to the impacts of planned CPKC operations on capacity (and thus operations of all users of jointly used lines) over lines that are currently owned by CP or KCS;
- We explain that the Transaction will not threaten CPKC's ability to provide high quality service;
- We explain why divestiture of KCS's Kansas City-St. Louis/Springfield Line would limit CPKC's ability to operate efficiently; and
- Finally, we address Norfolk Southern's Contingent Trackage Rights Request.

II. APPLICANTS' OPERATING PLAN AND THE TRAFFIC ASSUMPTIONS UNDERLYING IT PROVIDE A PROPER AND RELIABLE BASIS FOR ASSESSING TRANSACTION-RELATED CHANGES

A. The Operating Plan Was Developed in the Same Way Applicants Would Design a Plan in the Ordinary Course to Flow Real-World Rail Traffic

4. Applicants undertook a sensible process to create the Operating Plan. The Operating Plan was built in the same way that CP would design a plan in the ordinary course to flow real-world rail traffic. The Operating Plan was also constructed in a way that would enable reliable assessments of the changes resulting from the Transaction for purposes of the Board's public interest review. Applicants built a base operating plan that—as best as possible using all available data—accurately and reliably reflects pre-Transaction conditions in a way that allows for apples-to-apples comparisons between the base and projected post-Transaction operations. As previously explained in our Amended Operating Plan, developing the Operating Plan involved tools, data, and service design processes that have been tested and proven over more than 20 years at CP, as well as the participation of top-tier service design personnel who are industry leaders and experts in railway service design.

B. The Operating Plan Was Built on Proper Traffic and Other Data

5. We have reviewed CN's Amended Comments, in which CN asserts various arguments to critique the data analysis underlying Applicants' Operating Plan. None of those critiques (many of which are trivial and/or immaterial to the analysis[1]) provide any reasonable basis to doubt the sufficiency or reliability of the Applicants' work in designing the Operating

[1] For example, Mr. Van Dyke alleges that yard activity measures are unsupported and alleges CP did not identify certain yards experiencing a 20% change. This is factually wrong. CP comprehensively identified changes in yard cars processed per day for all traffic (demand and scheduled trains) between the base and transaction-related growth scenarios, and derived from this analysis a complete list of yards which would experience increases in activity of at least 20% included in Appendix T. *See* Workpaper "Yard CPD Figures CP REPLY.xlsx."

Plan, or of the Operating Plan itself. In general, CN witness Carl Van Dyke notes that Applicants' Amended Operating Plan was prepared using CP and KCS traffic for the following time periods: (1) "CP and KCS non-unit train traffic from a single month, October 2020," (2) "CP unit train traffic from March-June 2021," (3) "KCS unit train traffic from February-May 2021," and (4) "Non-unit train service plans in effect on CP and KCS during the first quarter of 2021." CN criticizes Applicants' chosen time periods—claiming that it is "noteworthy" that "the data used by Applicants to construct a '2019 base year' does not actually include *any* data from 2019"—and criticizes Applicants' use of the data.[2]

6. CN's criticisms are based on the mistaken premise that it was realistic, or even possible, to use full year 2019 data as the basis for the Operating Plan Team's modeling of train operations and yard activity. As we will explain in the following paragraphs, there are several reasons why using full year 2019 data was not a viable option.

7. *First*, the starting point in CP's ordinary course operational planning is a base operating plan that reflects the current operational design (*i.e.*, active blocking patterns, train patterns, etc.). But as already explained in this proceeding, the KCS design for 2019 was not even available to the Operating Plan Team, because KCS/KCSM does not maintain an archive of past operating plans.[3] Needless to say, it would not have been possible for the Operating Plan Team to use a design that was not available.[4]

[2] *See* CN-17, Verified Statement of Carl Van Dyke ("Van Dyke V.S.") at 7-8.

[3] *See* Amended Operating Plan, ¶ 75.

[4] As explained earlier in this proceeding, attempting to reconstruct the KCS/KCSM blocking and train plans in place during 2019 would not have supported reliable analysis of pre-Transaction operations. *See* Amended Operating Plan, ¶ 76.

8. *Second*, even if the KCS 2019 design had been available, to develop a reliable basis for the Transaction-related changes associated with the Operating Plan, the Operating Plan Team had to use data relating to a base operational design for a period other than 2019 because the KCS design had changed since 2019.[5] Because a full-year 2019 train plan would not have been representative of current operations, it would not have made sense for the Operating Plan Team to use full year 2019 data as the basis for its forward-looking modeling exercise.

9. *Third*, with respect to the 2019 reported segment density data that was available, in addition to not disclosing the nature of the train operations (blocking patterns, train origins and destinations, etc.) that generated the density figures, the data itself was clearly not accurate, and we were unable to accurately derive train counts (much less the operating design relating to those counts) from it. For example, KCSM's 2019 reported segment density data shows 188 million daily gross ton-miles ("GTMs"), which is vastly different than KCSM's actual GTM level of 120 million daily GTMs.[6] Applicants have already explained in this proceeding how KCS's assignment of trains traveling short distances to the entire segment caused the mismatch in its calculations of segment densities.[7] We provide a separate illustrative example in the following paragraph, centered around the train L-AR101, to show why Mr. Van Dyke's critique has no merit.

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[5] *See* Operating Plan, ¶ 75 n.4 (explaining that "[b]ecause of changes in KCS's train plan from 2019 to 2020, particularly within Mexico, we made use of KCS traffic flow data for the peak month of October 2020 to provide a better match between the train plan design and the way the traffic actually flowed over the network."). Even CN witness Dr. Malkhom acknowledges this, in his discussion of "known and measurable changes." *See* CN-17, Verified Statement of Jeff D. Makholm, Ph.D. ("Makholm V.S.") at 6.

[6] *Compare* Reply workpaper KCSM 2019 density CP REPLY.xlsx (188 million KCSM GTMs) *with* CP Amended Operating Plan workpaper "Cost Metrics Growth Model.xlsx", tab "KCS OP Metrics" at cell F39 (120 million KCSM GTMs).

[7] *See, e.g.*, Amended Operating Plan, ¶ 187.

10. KCS's reported 2019 density data for the 85-mile segment in Mississippi between Meridian and Artesia would have included all of the tonnage associated with the train L-AR101 as if it traversed all 85 miles of the segment. However, this train starts near Artesia and heads *north* towards Aberdeen, rather than south towards Meridian, such that it operates only a trivial distance on the Meridian-Artesia segment. KCS's process for segment density calculations developed GTMs as though this train travelled the full distance between Meridian and Artesia, just because the train touches a small portion of track around Artesia that is technically counted as part of the Artesia-to-Meridian segment. Applicants' process likewise identified the L-AR101 train as travelling on the Artesia-Meridian segment initially. But through the Operating Plan Team's application of the "25% rule" – under which the Operating Plan Team's methodology properly excluded trains that do not generate GTMs by excluding from the trains per day count trains that passed by less than 25% of a subdivision's segment stations (nodes) – the Operating Plan Team recognized that this was not appropriate. Thus, the Operating Plan Team included L-AR101 only on the segments where the train actually operated over significant portions of the segment (in this case, Artesia to West Point, and West Point to Aberdeen), resulting in a more accurate train count.[8]

11. Even if the Operating Plan Team had attempted to use the flawed KCS reported segment density data that was available for 2019, this data would not have allowed Applicants to map any of the trains-per-day ("TPD") or cars-per-day ("CPD") statistics they might have derived from that data or obtained from other sources to the critical, but missing, KCS transportation plan for the corresponding period. In other words, if the Operating Plan Team had used the flawed KCS reported 2019 data and then developed an Operating Plan to handle post-

[8] MREE.TRAIN_EXPANDED_ROUTE_008.xlsx, at tab "Sheet 1", at rows 176,727-35 and "TPD Base MREE.xlsx", at tab "Base Trains at segment lvl", at rows 3224-5.

Transaction traffic flows, there would have been no reliable basis for comparing the pre- and post-Transaction operations on an apples-to-apples basis. In particular there would have been no way to derive a reliable assessment of the changes between base TPD/CPD and post-Transaction TPD/CPD, which is critical to an accurate assessment of Transaction-related changes.[9] This was one of the key considerations weighed by the Operating Plan Team in concluding that it would not be appropriate to use KCS's flawed 2019 data.

12. For all these foregoing reasons, the Applicants' Operating Plan Team reasonably chose to use the most current design at the time, and applied this design to October 2020 traffic. October 2020 was selected because it was the nearest peak month to the period covered by the current design. These volume levels were representative of the typical monthly range experienced in full year 2019.[10] The operating statistics developed using this approach are the most accurate reflection of current pre-Transaction levels possible.

13. With respect to demand trains, Mr. Van Dyke criticizes Applicants' use of KCS data from February to early May 2021 for developing pre-Transaction demand train levels. The use of this period was reasonable because it is aligned with the current train design that was used

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[9] It is important to note that density data is not used to create an operating plan itself, but rather to illustrate the level of activity on a given network. In the context of the CP/KCS Transaction, where the Operating Plan Team's goal in using density data was to isolate and forecast the changes in traffic levels *caused by the Transaction*, it was vital to avoid capturing differences that were caused by something else, such as methodological differences between CP and KCS/KCSM density figures or the inevitable differences in methodology between the Operating Plan approach to these calculations and the railroads' separate ordinary course approaches.

[10] *See* Amended Operating Plan at page 40, Table 1. Annualized October 2020 KCS GTMs of {{ }} billion are nearly identical to {{ }} billion FY 2019 GTMs for KCS, and October 2020 monthly GTMs of {{ }} GTMs are between the monthly low of {{ }} and monthly high of {{ }} in FY 2019. *See* Workpaper "Cost Metrics Growth Model.xlsx", tab "KCS OP Metrics" at cells B39 ({{ }}), B30 ({{ }}), B33 ({{ }}) B55 ({{ }}).

in our analysis, it is representative of pre-Transaction operations, and it is closely aligned with 2019 average levels. Contrary to Mr. Van Dyke's suggestion that this period may be skewed due to seasonality changes within the year or changes across years, there are no meaningful changes in bulk train-per-day levels by subdivision between the full year 2019 period and the February to April 2021 period.[11] In fact, if Applicants had measured using full-year 2019 data (which, as discussed above, would not have enabled full-year 2019 modeling because such data did not match up to KCS's current operational design) compared to February-April 2021 data, only three KCS subdivisions would have had more than one additional demand train per day. These three subdivisions are Laredo, Greenville, and Shreveport Terminal, none of which have overall train levels or capacity constraints that would be affected by such small variations. All other subdivisions would have effects of less than 1 train per day.

14. Mr. Van Dyke further asserts that "[i]f Applicants had taken the straightforward approach of using full-year 2019 traffic, including unit trains, within MREE, and producing all of their key line and yard metrics using MREE, none of the issues Applicants now confront would have arisen." CN-17, Van Dyke V.S. at 18. CN's criticisms are based on the mistaken premise that "using MREE for everything" is a singular cure-for-all. In fact, the process that the Operating Plan Team followed to develop segment volumes is equivalent to how Mr. Van Dyke uses MREE to generate segment volumes. Specifically, MREE is capable of generating output data tables that break down volumes by link and by train. Once out of the MREE environment, these links are assigned to segments, and then trains and carloads are counted across all segments. This is the same process followed in Mr. Van Dyke's calculations and in the calculations of Applicants' Operating Plan Team: the only difference is that Applicants

[11] *See* Workpaper TPD by Subdivision Period Comparison.xlsx

developed links for base demand trains outside of MREE, but incorporated the same network inputs and assigned the links to segments using equivalent processes.[12]

15. Regardless, Mr. Van Dyke's workpapers show that {{[redacted]}}[14]

16. Even assuming, for the sake of argument, (i) that CN's view that 2019 reported densities should be used as the basis *were* appropriate (to be clear, again, it is not), and (ii) that calibration and synergy factors Van Dyke criticizes should also be dismissed, this would not materially impact any metrics relevant to assessing the effects of the proposed Transaction. It is conceptually possible to start with flawed reported densities, and estimate the growth increment

[12] *Compare* HC Springfield Line – Applicants' VS ex 14 VS MultiRail.xlsx at Tab Base Multirail data table; HC-Operating Metrics Estimation of Line Density and Train Count Methodology.pdf at page 3 with CP amended operating plan workpapers "MREE.TRAIN_EXPANDED_ROUTE_008.xlsx" and "TPD MREE Base.xlsx".

[13] Workpaper HC Springfield Line - Applicant vs Ex 14 vs Multirail CP REPLY.xlsx.

[14] {{[redacted]}}

based on the difference between two modeled scenarios. This entails starting with 2019 reported densities, and running the same calculations to determine the change in GTMs as a result of Transaction-related growth traffic. {{ }} Leaving aside the question of the appropriate base, it is important to emphasize that the Transaction-related growth, which is the key driver to assessing impacts of the Transaction, would continue to be accurate under either CP's standard approach or the adjusted process described above using 2019 reported segment densities. This is independently verified by other calculations included in the Application and demonstrates the internal consistency of CP's calculations. Specifically, {{ }}[16] This {{ }} amount is closely aligned to corresponding figures of {{ }} daily GTMs developed for the system cost model and the {{ }} daily GTMs developed when computing incremental costs.[17]

C. The Before-and-After Density and Train Count Outputs from the Operating Plan Are Reliable

17. Van Dyke claims that there are "significant and varying fluctuations between the actual 2019 data that Applicants first presented in Exhibit 14 Part A and the Applicants'

[15] The Rosenberg to Kendleton segment would go from a 45% tonnage increase to 61%, and the Kendleton to Victoria segment would go from a 43% tonnage increase to 57%, but both of those segments had already triggered the OEA's assessment. *See* Workpaper "Trains Per Day and Gross Ton Miles CP REPLY.xlsx."

[16] *See* Elphick/Orr Workpaper "Trains Per Day and Gross Ton Miles CP REPLY.xlsx."

[17] Baranowski R.V.S; Amended Operating Plan Workpaper "1.Proposed Final FTI Rail to Rail Diversion Results for Merger Application 10_21_20 UPDAT_TRUCK_REV_RS.xlsx", tab "Volumes & TMs GTMs" at cells AR3+AX3+BD3.

proposed data that they now assert is a proper substitute for actual full-year 2019 densities." CN-17, Van Dyke V.S. at 55. In his Exhibit A-1, Van Dyke presents 5 sample line segments and compares "Applicants' proposed density calculations with those in the original Exhibit 14 Part A Density Data, adjusted to account for the inclusion of locomotives." CN-17, Van Dyke V.S. at 55.

18. Contrary to Van Dyke's assertions, Applicants' process is accurate, and CN zeroing in on isolated examples confirms the reliability of the overall process. The density fluctuations that Van Dyke identifies only affect a handful of the 178 segments relevant to this Transaction. Indeed, only the few examples he focuses on out of 178 segments exhibit signs of counter-intuitive variance. Of these, only the UP trackage segments from Victoria to Robstown and Beaumont to Rosenberg show a significant discrepancy, *i.e.*, more than a few percentage point changes either way which are simply reflective of underlying variance and complexity in the train operations being modelled. The reason for these isolated discrepancies is that KCS system average train weights were used because no train weight specific to this trackage segment was available. Applicants individually examined each of Mr. Van Dyke's so-called discrepancies and determined that they do not cause meaningful distortions, *i.e.*, even using the adjacent densities would not affect any of the results of analysis.[18] Review of the density maps

[18] Mr. Van Dyke apparently confronted troubles when developing densities for this segment, as his workpapers show he developed segment MGT values that differ more from KCS's 2019 reported segment densities than CP's process. *See* Elphick/Orr Workpaper "HC Springfield Line – Applicant vs Ex 14 vs Multrirail CP REPLY.xlsx" at tab "Summary", at cells H50, H55, I50, and I55. {{ [redacted]

provided by Applicants confirms that the estimated density levels are accurate and internally consistent across both the CP and KCS systems.

19. Applicants' analytical process is simple and rational. The computational effects related to hard-coding growth levels have minimal effects (overall, a 4% overstatement of synergy growth GTMS) and updating this calculation to flow through only causes increases of more than 1 MGT on 2 of 178 segments (Rosenberg to Kendleton and Kendleton to Victoria, both of which have already been identified for environmental review, and are thus not impacted by any revisions to the density calculation).[19] Contrary to Van Dyke's attempt to obfuscate with several pages of drawn out calculation tables, the fundamental calculations that Applicants use are simple and intuitive[20]:

- Base GTMs = segment miles x TPD x train weight x calibration
- Synergy GTMs = base GTMs x Synergy CPD/Base CPD x synergy factor x calibration

III. THERE IS ADEQUATE CAPACITY FOR THE ADDITIONAL TRAINS THAT WILL HANDLE APPLICANTS' ANTICIPATED TRAFFIC GROWTH

20. Traffic routinely grows and fluctuates over time and in different areas due to various factors, including as a result of changing market forces or the strategic initiatives of a particular company. When traffic grows in particular areas due to these factors, there is hardly

[redacted]}}

[19] *See* Elphick/Orr Workpaper "Trains Per Day and Gross Ton Miles CP REPLY.xlsx", at tab "Summary."

[20] *See* Elphick/Orr Workpaper "Trains Per Day and Gross Ton Miles CP REPLY.xlsx", at tab "Summary Sheet," and columns BQ-BU.

ever cause for reflexively demanding costly capacity improvements on the rail lines that support them. To be clear, capacity should continually be assessed in response to changing market demands and traffic growth, but rail capacity is generally built with the understanding that the results of a dynamic, competitive market place may result in traffic growth. That traffic will grow in certain areas as a result of the Transaction is no different. Just as existing rail capacity is there to support changes in market forces that spur traffic growth, it too is there to support Transaction-related growth. As explained further below, to the extent such capacity may not exist to support the level of traffic growth anticipated from the Transaction, Applicants endeavored to identify those areas and propose needed infrastructure.

A. The Operating Plan Team Applied its Ordinary Course Tools for Assessing Whether New Infrastructure Would Be Needed to Support Anticipated Post-Transaction Traffic Growth

21. Applicants did not simply assume that capacity existed to support the traffic growth anticipated from the Transaction. To the contrary, Applicants' Operating Plan Team assessed all segments over which CPKC will operate. For single-track segments, the various single-line main track segments of the combined CPKC network were reviewed to determine what, if any, additional infrastructure would be required to support the merger-related growth. To do so, Applicants utilized the "grid time analysis" method to calculate capacity on each single-line main track segment and assess the capacity capital requirements related to the potential CP and KCS Transaction. Heavily utilized at CP, the Grid Time Analysis provides

strategic insights into smart capital investment over a long term horizon. CP is a leader in both service and return on capital, in part, due to the value of this approach in planning capital.[21]

22. At one level, the capacity formula is a simple one and commonly understood. NHCRP report 773 – Capacity Modeling Guidebook for Shared Use Passenger and Freight Rail Operations – paragraph 3.4.2.3 – Grid Time Analysis). CP utilizes the 65% threshold to measure and monitor capacity utilization across its corridors. Sixty-five percent provides buffer capacity for the network which, when coupled with a refined approach to planning buffers in train schedules, creates resilience for trains moving over long distances while also allowing for other railroad activities requiring track time to interlace.

23. CP runs an efficient operation with the vast majority of siding-to-siding sustainable (*i.e.* practical) capacities below 65%. Certain segments do operate efficiently above the 65% number depending on whether there is excess capacity in nearby segments.

24. Corridors, at CP, have the basic grid for expansion thought out years in advance: CP ensures the uniform distribution of sidings at varying lengths. It is critical to think through where the long sidings will lay 5, 10 or 15 years from today. Lengthening one siding in isolation of how you might lengthen or add future sidings, could ultimately lead to waste if future locations can't be built that are in-phase with the one presently being expanded.

25. The approach above along with a review of subdivision delays, locomotive downloads, train speed, train utilization, re-crew events and other measures help form the basis

[21] Per normal course of business, and to the extent data was available, the following was considered for double-track segments; time between trains, (headway) and train run times were reviewed – both optimal and recent historical; train counts, current and historical; field observations and discussions with local Operations; cross-over counts and locations to understand the resilience of the infrastructure. Grid time analysis (e.g. the Elgin sub) was developed to review slot capacities.

of multi-year planning for network capital. Of course, interviews with field operations, engineering, mechanical and dispatchers also provide input into decision making.

B. As Traffic Is Attracted to the CPKC Network Over the Three Year Implementation Period, CPKC Will Assess Operations on an Ongoing Basis and Work With Entities that Share Lines Used By CPKC

26. It is important to note that traffic growth resulting from the Transaction will not materialize overnight. Traffic growth depends first upon attracting new traffic from other railroads and from highways, which is a lengthy and gradual process. Additional capacity to support the new traffic Applicants project from the Transaction will not be required all at once but will be needed at a rate commensurate with the rate at which Applicants attract additional traffic.

27. With that understanding, Applicants will carefully monitor traffic as it gets added to the CPKC network, and will proactively adjust operations and/or infrastructure as needed to ensure that no disruptions occur to its operations, or the operations of other railroads, as a result of insufficient capacity. Indeed, Applicants are well aware that the entire Growth Plan depends upon being able to deliver a high quality product, which is impossible to deliver if lines are over capacity. If additional investments are necessary on the lines that CPKC trains will use to deliver this high quality product, CPKC will be eager to make those investments, consistent with the well-established processes and mechanisms for making such capacity improvements.

28. Further to this end, Applicants will work with other joint line users (particularly UP and BNSF in Texas, UP in Missouri, and Metra in the Chicago area) to identify and implement mutual adjustments needed to accommodate increased CPKC traffic. We address specific contractual arrangements in more detail in separate sections below.

IV. SPECIFIC CLAIMS THAT THE TRANSACTION WILL OVERTAX AVAILABLE CAPACITY ARE MISGUIDED

29. In this section, we address specific critiques by other Class 1s relating to the impacts of planned CPKC operations on capacity (and thus operations of all users of jointly used lines) over lines that are currently used by CP or KCS.[22]

30. Before analyzing each portion of the CPKC network, Applicants discuss the following generally applicable points.

a. CN witness Hugh Randall raises capacity issues in several subdivisions.[23] Below, we explain the specific flaw(s) in Mr. Randall's approach to each portion of the network, but first, Applicants discuss three general issues with Mr. Randall's analysis.

i. First, Applicants note that Mr. Randall at times neglects to clarify whether certain capacity calculations are percentages of practical, or maximum capacity.

ii. Second, in certain segments, Mr. Randall raises a deficiency in the number of 10,000-foot sidings, but has failed to recognize that not all trains on that particular segment are 10,000 feet long.

iii. Third, Mr. Randall utilizes the wrong run time within a segment, based on an average assumed speed rather than real-world run time observations.

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[22] In a separate Elphick Reply Verified Statement, Ray Elphick address specific arguments concerning lines that CP shares with Metra, as well as issues relating to CP's lines between Sabula and River Jct., between Savanna and Chicago, and between Chicago and River Junction. Similarly, John Orr addresses in a separate Orr Reply Verified Statement UP and BNSF's arguments related to capacity on the lines radiating from Houston, *i.e.*, where KCS operates over UP-owned lines between Rosenberg and Houston and between Houston and Beaumont, and over HB&T lines (jointly owned by UP and BNSF) in Houston.

[23] CN-13, Randall VS, Appendix B.

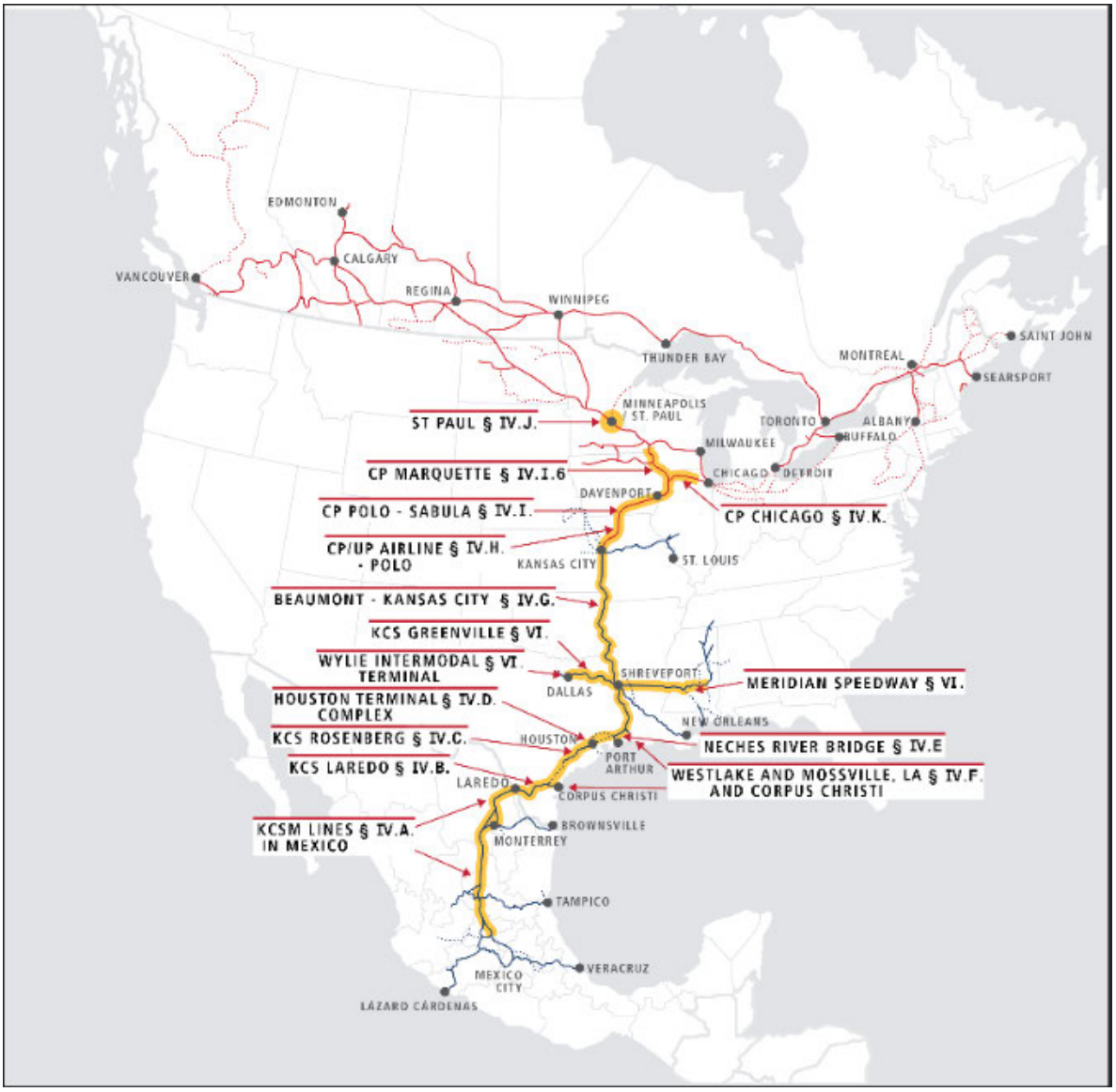
iv. Fourth, Mr. Randall's analysis does not take into account ordinary course capital work on the CP and KCS networks.

b. While Applicants will demonstrate that there are no concerns related to capacity, we also note that CPKC will of course continue to make improvements on its own network. Additionally, CPKC will support capacity improvements on other lines it uses to support growth that occurs independent of the Transaction.

c. In the Operating Plan, Applicants carefully analyzed the impact of the anticipated increase in traffic due to the Transaction and determined that there was sufficient capacity to accommodate the incremental traffic.

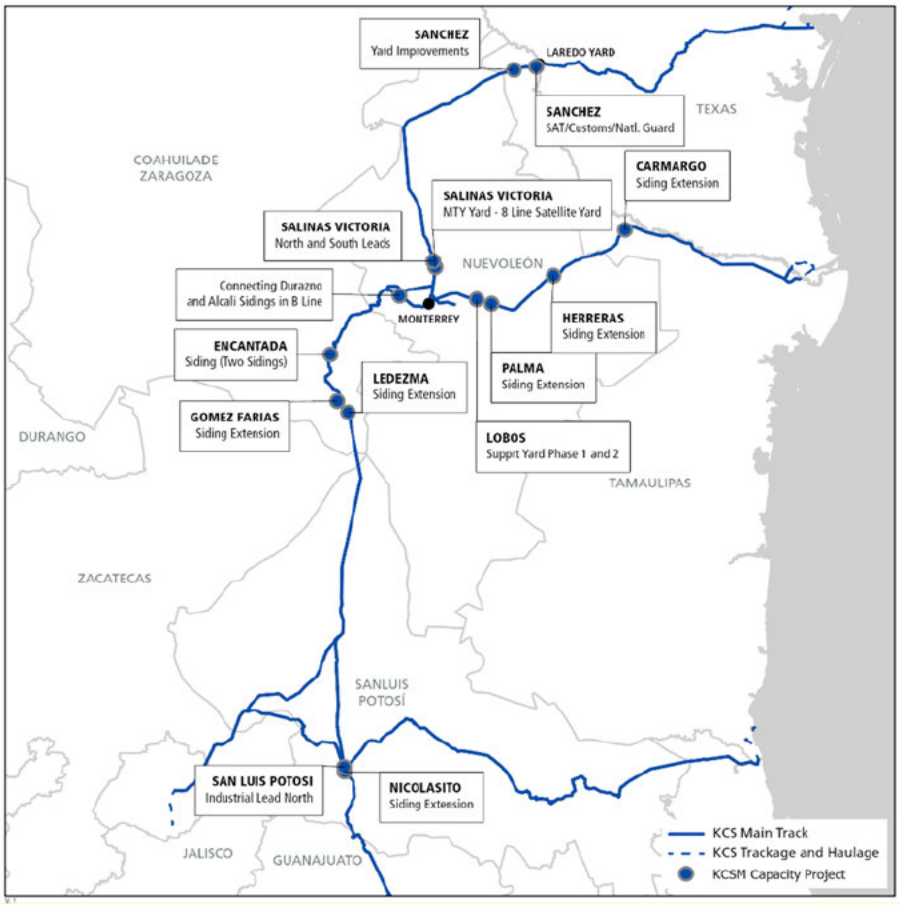
31. With those points in mind, we now proceed from south to north across the CPKC network, demonstrating that there is no basis for concerns about capacity. For ease of reference, Figure 1 below is an index map of the CPKC network, showing where in the Reply Verified Statements the capacity arguments regarding each location are addressed.

FIGURE 1
INDEX MAP OF CAPACITY ARGUMENTS



A. KCSM's Lines in Mexico Have Ample Capacity

FIGURE 2
RECENTLY COMPLETED KCSM PROJECTS
MAP OF MEXICO LINES WHERE CN (OR OTHERS) ASSERT CAPACITY CONCERNS



32. Figure 2 above shows the recently complete KCSM projects on lines in Mexico. Hugh Randall's verified statement raises capacity issues at three districts: Tula, Vanegas and Saltillo.[24] Mr. Randall's verified statement states that the Tula Subdivision is "orange" for capacity while the Saltillo and Vanegas Subdivisions are "red." Mr. Randall defines red to be most severe as exceeding practical capacity and orange to be at practical capacity. For the red subdivisions, he asserts that there is a need for several 10,000-foot sidings. In other words, Mr.

[24] CN-13, Randall VS, Exhibit B-4.

Randall contends that there will be insufficient 10,000-foot sidings for the number of trains that will run up to 10,000 feet.

33. First, CN suggests that on the Tula Subdivision 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. Mr. Randall also contends that an additional siding may be needed. To reiterate, that 96% is of practical capacity, not maximum capacity.[25] There is a second significant issue in Mr. Randall's analysis; the actual number of trains is 8.5, and the actual amount of practical capacity therefore is 54%.[26] The Tula Subdivision begins at San Luis Potosi and traffic splits at a key junction at Buchanan Lopez where some trains move to the Celaya Subdivision and onto destinations like Toluca, Port of Lazaro Cardenas, and Escobedo, and other trains remain on the Tula Subdivision to Mexico City.[27] The 55KM segment CN references is south of the junction at Buchanan Lopez. The following chart, Figure 3, provides both the total train counts expected by segments on that subdivision as well as the number of scheduled trains that could operate up to 10,000 feet. Note, on the Tula subdivision south of Ing Buchanan Lopez, only two of the trains will run up to 10,000 feet. Based on this, there is more than sufficient capacity to handle anticipated volumes.[28]

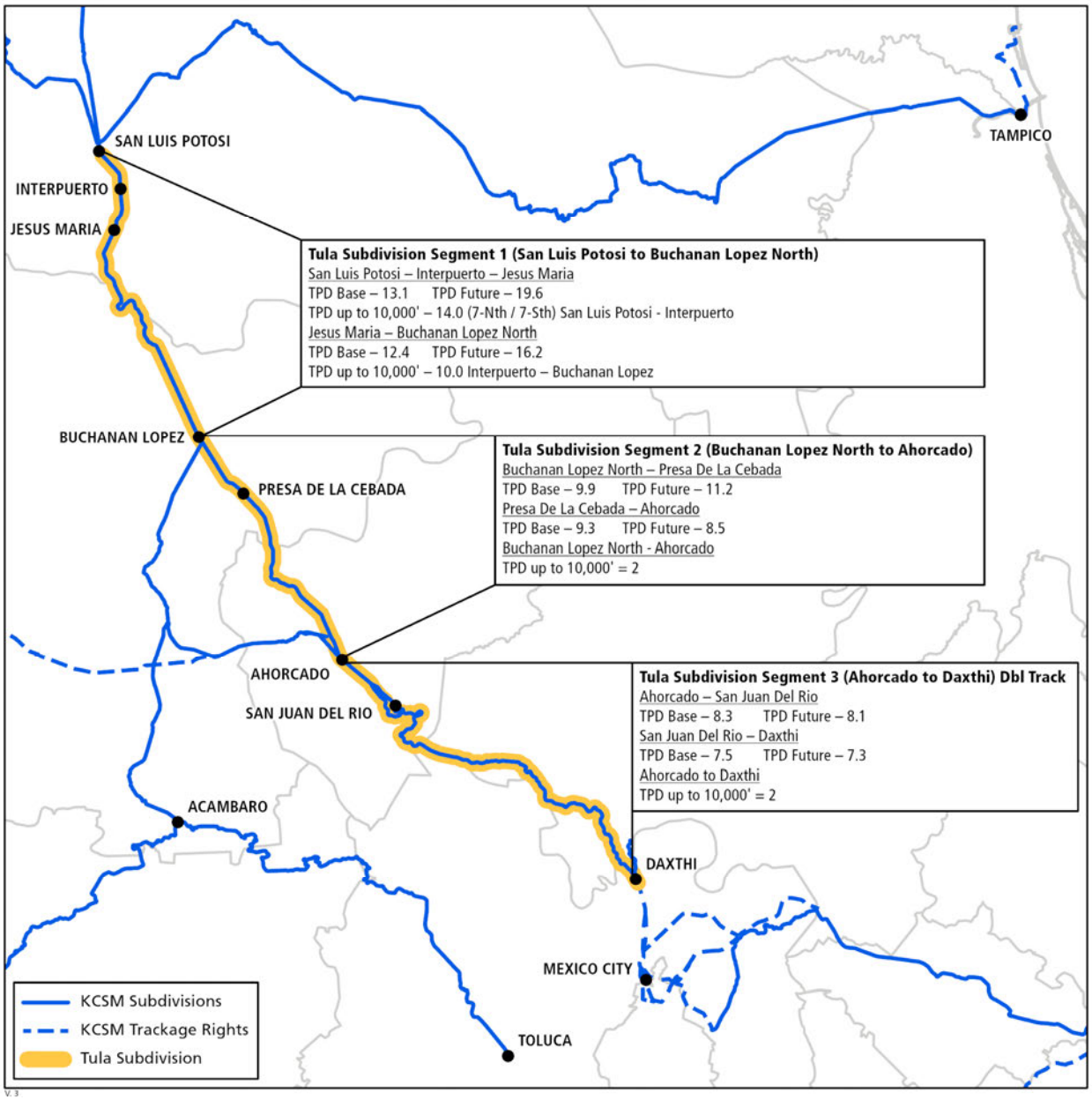
[25] Elphick/Orr Workpaper "KCSM Segment Capacity Calculations.xlsx."

[26] Elphick/Orr Workpaper "KCSM Segment Capacity Calculations.xlsx."

[27] *See* Amended Operating Plan, Appendices C, E, H, and I.

[28] Although additional capacity is not necessary based on estimates of Transaction-related growth, on the segment CN flags between Ahorcado and Puerto Carrozas, Applicants have the option to extend sidings, which could be executed at a relatively low cost of approximately $2.5 million per siding extension and with the capability to construct within four months.

FIGURE 3
MAP OF GROWTH ON THE TULA SUBDIVISION



34. Second, CN suggests that on the Vanegas Subdivision the current capacity for long trains is less than 12 (6 each way per day) compared to a projected total train demand of 20.8. From a review of Mr. Randall's working papers, the two segments referenced as lacking capacity are between Charcas and San Luis Potosi and between Benjamin Mendez and El Salado. In the first segment, between Charcas and San Luis Potosi, double track between Bocas

Elphick/Orr R.V.S. at 23

and Pinto was not considered. With the double-track factored, and now measuring between Charcas and Bocas, the practical capacity on the south-end is 15.7 trains per day and the anticipated trains running up to 10,000 feet in this segment is 16.[29] While just over 65%, applicants believe there is opportunity to monitor and schedule for more efficiency. In the second segment, between Benjamin Mendez and El Salado, Mr. Randall omits two sidings at 15,400 feet and 13,400 feet respectively. The practical capacity of trains up to 10,000 feet is 18.6 against demand of 16 trains of up to 10,000 feet as now measured between Ledezma and El Salado. This segment will again be monitored to optimize for efficiency and throughput.

35. Third, CN states that on the Saltillo Subdivision, current siding lengths limit the capacity for long trains to 16 per day. KCSM plans through normal course capital to extend Escobedo and construct a new siding near Soledad in 2023 well in advance of the uptick in volume brought on by the Transaction. The Saltillo train counts change at junction points. CPKC expects 22 trains up to 10,000 feet from Laredo to Leal.[30] From Leal to CP983, 16 trains will be up to 10,000 feet and from CP983 to Benjamin Mendez, there will be 18 trains up to 10,000 feet. With the new siding and siding extension, the practical capacity for 10,000-foot trains after the completion of projects in Escobedo and Soledad will be 18.7, and CPKC anticipates 18 trains will run up to 10,000 feet by the end of year 3.[31] While Mr. Randall notes 80% of overall capacity between Brazil & Rodriguez is utilized, in actual fact, the capacity utilization is well below that and there is sufficient capacity on the line.[32]

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[29] Elphick/Orr Workpaper "KCSM Segment Capacity Calculations.xlsx."

[30] Elphick/Orr Workpaper "KCSM Segment Capacity Calculations.xlsx."

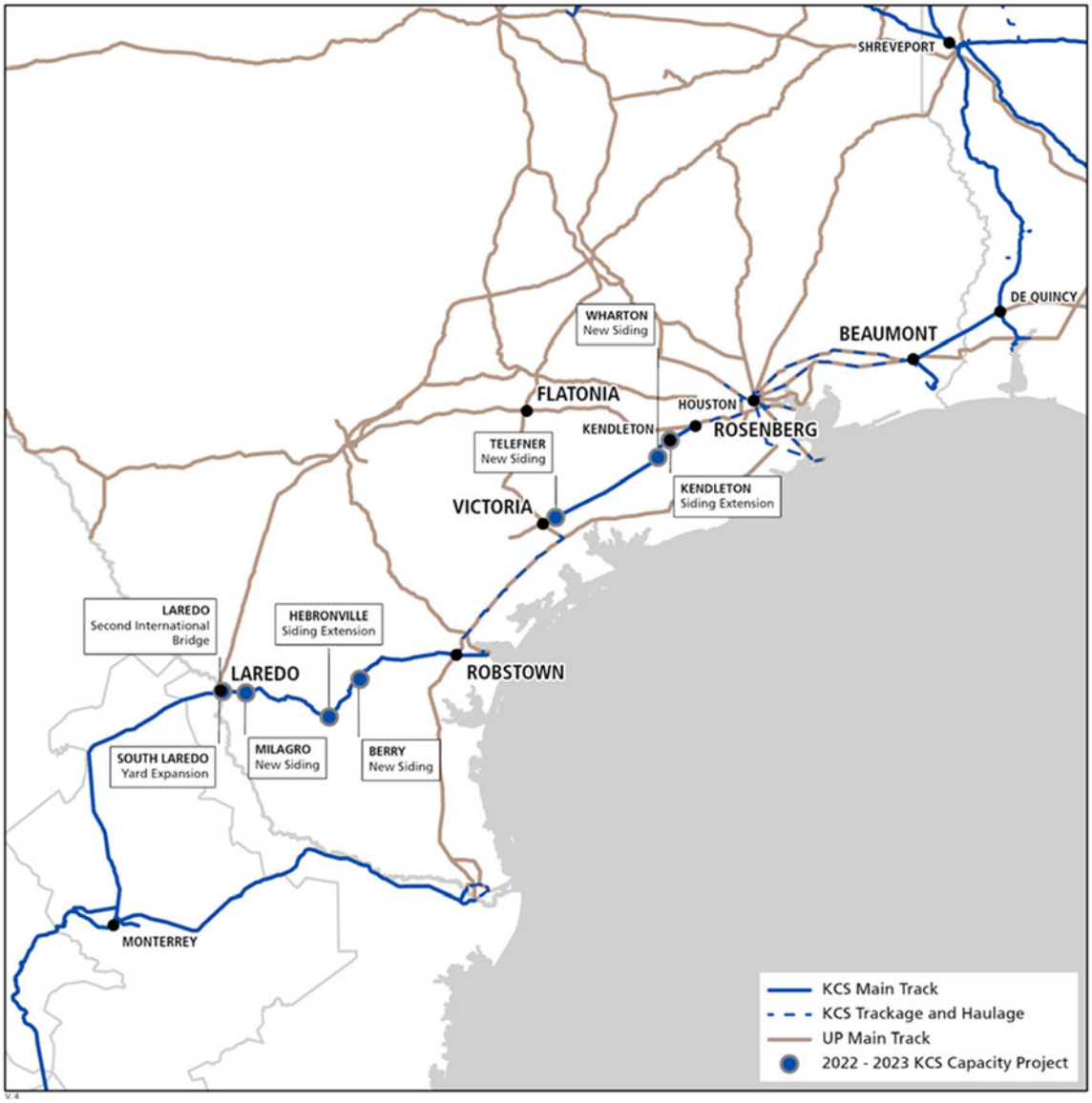
[31] Elphick/Orr Workpaper "KCSM Segment Capacity Calculations.xlsx."

[32] Elphick/Orr Workpaper "KCSM Segment Capacity Calculations.xlsx."

B. The Lines KCS Uses in Texas Have Ample Capacity

36. Here, we offer an overview of KCS's lines in Texas and describe the availability capacity on these lines. To facilitate that discussion, Figure 4 and Figure 5 below are maps of Laredo to Rosenberg lines. The first map illustrates KCS line investment ongoing in 2022. The second figure illustrates siding level detail for both KCS and UP as well as distances and run times between sidings. As we demonstrate below, KCS's network in Texas has ample capacity to handle future CPKC traffic.

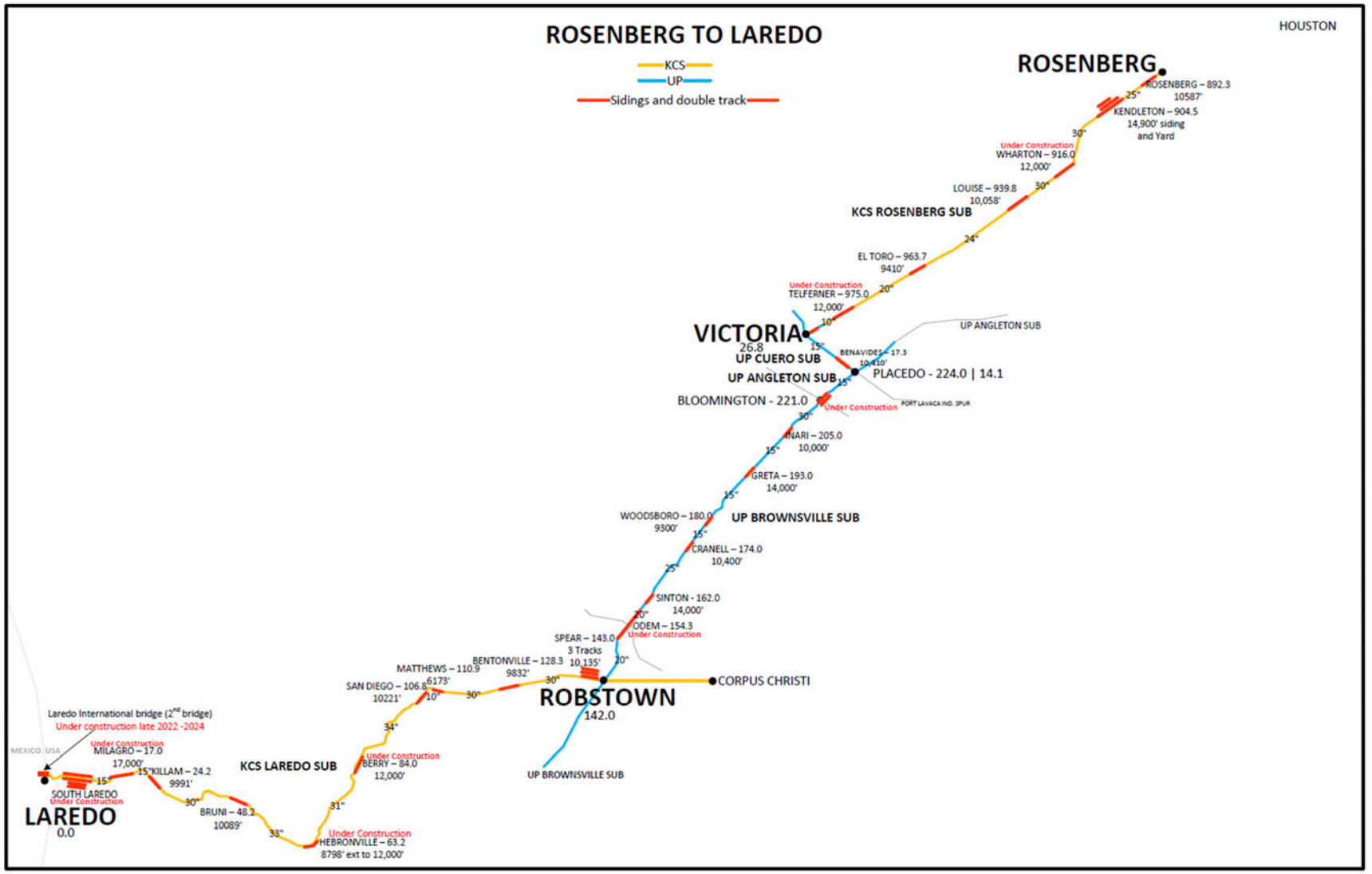
FIGURE 4
KCS CAPITAL ON KCS LINES IN 2022 VICTORIA TO ROSENBERG



37. Both of these figures also show that KCS is in the process of preparing to construct a second cross-border bridge at Laredo. KCS currently anticipates beginning construction late in 2022 and completing the construction in 2024. The addition of the new bridge will increase cross-border capacity at and traffic fluidity Laredo.

FIGURE 5

MAP OF LINES USED BY KCS BETWEEN ROSENBERG AND LAREDO WITH KNOWN CAPITAL PROJECTS



Elphick/Orr R.V.S. at 27

38. As shown through Figure 5 above, KCS routing between Laredo and Rosenberg is made up of three parts: (1) Laredo to Robstown, (2) Robstown to Victoria; and (3) Victoria to Rosenberg. All three sections are part of a corridor between Laredo and Beaumont which is dispatched centrally at the joint dispatching center in Spring, Texas. Since re-opening the Rosenberg Subdivision in 2009, KCS has invested in capacity between Laredo and Rosenberg, both on its tracks and on UP's tracks, including siding extensions, diamonds, and bypasses. Today, the entire route between Laredo and Rosenberg is CTC-controlled. KCS's investment on UP's line south of Victoria benefits other carriers operating on this portion between Victoria and Robstown. In addition, KCS's use of its Rosenberg Subdivision improves fluidity for the other carriers by removing KCS traffic from the UP line between Victoria and Flatonia and on UP's Glidden Subdivision to Rosenberg.

39. Figure 4 also demonstrates that KCS's Laredo and Rosenberg Subdivisions will be built to handle 10,000-foot trains by the end of 2022. KCS's Laredo Subdivision between Laredo and Robstown will have ample capacity to handle Transaction related trains by the end of 2022. As detailed below, KCS is adding extensive capacity to allow for staging to and from the Border that will support fluid movement on this line, and also augment capacity on UP-owned lines between Robstown and Victoria. KCS's Rosenberg Subdivision between Victoria and Rosenberg will see the benefit of two new sidings in 2022, Telferner and Wharton. A project to extend Kendleton siding to 14,900 feet and, in doing so, extend the switch lead is already under way.

40. We understand that CN suggests that the Laredo Subdivision will be above capacity. This is incorrect. First, CN's witness underestimates capacity on this segment because he fails to include KCS's 2022 capacity program. Specifically, KCS has six major projects

occurring on the Laredo Sub in 2022 including: (1) a new 12,000-foot siding, "Milagro", between MP 15.8 and 18.5, (2) extension of the Hebbronville siding to 12,000 feet from MP 64.1 to 65.15, (3) a new 12,000-foot siding, "Barry", between MP 83.5 and 85.8, (4) extension of the East switching lead at Laredo from MP 9.2 to 11.2, (5) building a double main through Laredo Yard between MP 7.4 and 9.2, and (6) extending three main tracks towards the border from Laredo Yard between MP 4.7 and 7.4. After this additional investment, the KCS Laredo Subdivision will have a practical capacity (*i.e.*, 65% of maximum capacity) of 24.0 trains per day.[33] Second, the trains that CPKC plans to run include twelve up to 10,000-foot trains per day on the Laredo Subdivision by Year 3; there are no capacity concerns with this incremental traffic.[34]

41. CN also suggests that the Rosenberg Subdivision will have a capacity limited to sixteen 10,000-foot trains per day, and that it will be above capacity even with a new 10,000-foot siding between Kendleton and Louise. However, CN's witness understates capacity on this segment again by assuming that all trains will be 10,000 feet. CPKC plans to run twelve trains of up to 10,000-foot length per day, and 18.1 trains total, on the Rosenberg Subdivision by Year 3.[35] In light of the fact that the Rosenberg Subdivision will have a practical capacity of 19.9 total trains per day, of which 12 are up to 10,000 feet, there are no capacity concerns with this incremental traffic.[36]

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[33] *See* Elphick/Orr Workpaper "Rosenberg to Laredo Capacity end 2022.xlsx."

[34] Elphick/Orr Workpaper "Rosenberg to Laredo Capacity end 2022.xlsx;" Amended Operating Plan, Appendices, A, H, I.

[35] Elphick/Orr Workpaper "Rosenberg to Laredo Capacity end 2022.xlsx."

[36] Elphick/Orr Workpaper "Rosenberg to Laredo Capacity end 2022.xlsx"

42. CN's witness states that there are no sidings on KCS's line at either Robstown or Victoria. However, KCS is constructing a new siding at Telferner between MP 973 and MP 975.3 on the Rosenberg Sub, which is 4 miles north of Victoria. KCS also already has a siding and two staging tracks at "Spear" MP 143 on the Laredo Sub, immediately west of Robstown. Finally, KCS is constructing a new siding on the Rosenberg Sub at Wharton, MP 916.0, between Kendleton and Louise in 2022 and as previously mentioned KCS is constructing an extension of its switching lead on the North end of Kendleton Yard by 6,900 feet, freeing the existing switching lead and allowing for the siding to be extended to 14,900 feet.

C. The UP-Owned Line Between Robstown and Victoria Has Ample Capacity

43. Here, we offer an overview of UP and KCS lines between Laredo and Rosenberg, with the UP lines between Robstown and Victoria highlighted in blue. Note UP 2022 projects are underway on the Brownsville Subdivision to create a runaround track at Bloomington and to extend the Odem siding. Table 1 below represents capacity calculations as well as available capacity remaining subsequent to the end of the 2022 construction season.[37] As Table 1 demonstrates, each of the segments are below 65% sustainable capacity.[38] As we demonstrate below, there are no capacity concerns with this line.

[37] Elphick/Orr Workpaper Rosenberg to Laredo Capacity end 2022.xlsx

[38] *Id.*

TABLE 1[39]

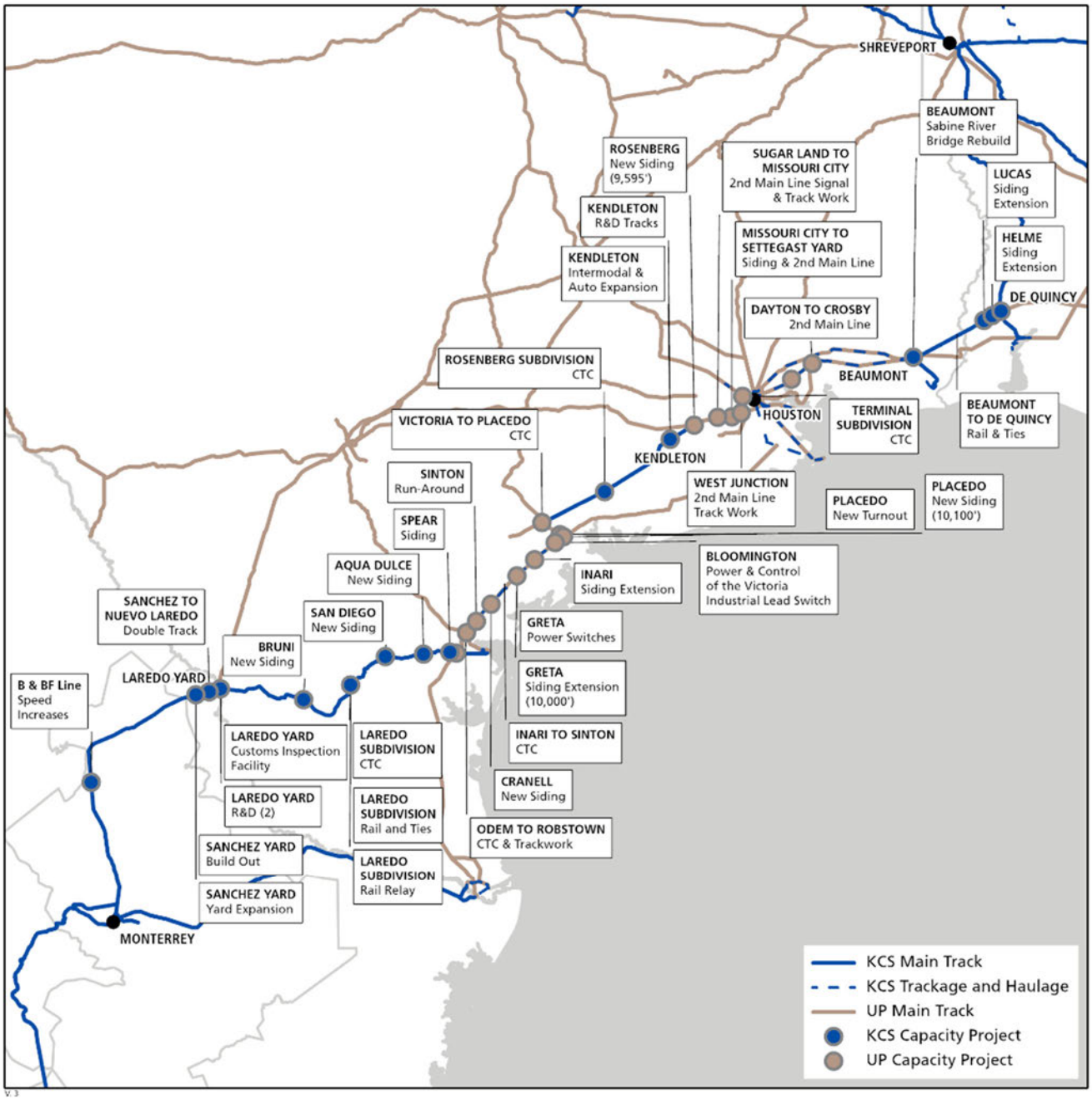
CAPACITY CALCULATIONS AND REMAINING CAPACITY – VICTORIA TO ROBSTOWN

Subdivision	Segment	Length	Time SB	Time NB	Capacity 100%	Capacity 65%	TPD at End of 2022 vs. 65%
UP Cuero	UP Victoria - UP Benavides	10,400	15	15	72.0	46.8	21.8
UP Angleton	UP Benavides - UP Bloomington	14,000	15	15	72.0	46.8	21.8
UP Brownsville	UP Bloomington - UP Inari	10,000	25	25	48.0	31.2	6.2
UP Brownsville	UP Inari - UP Greta	14,000	15	15	72.0	46.8	21.8
UP Brownsville	UP Greta - UP Woodsboro	9,300	15	15	72.0	46.8	21.8
UP Brownsville	UP Woodsboro - UP Cranell	10,400	15	15	72.0	46.8	21.8
UP Brownsville	UP Cranell - UP Sinton	14,000	25	25	48.0	31.2	6.2
UP Brownsville	UP Sinton - UP Odem	14,000	20	20	57.6	37.4	12.4
UP Brownsville	UP Odem - Robstown	10,135	20	20	57.6	37.4	12.4

44. As explained in Mr. Simmons' Reply Verified Statement, the STB-approved trackage rights agreements under which KCS operates between Beaumont and Robstown, Texas provide for UP to make the capital investments needed to maintain the capacity to accommodate traffic growth of CPKC. As shown through Figure 6 below and as Mr. Simmons further explains, KCS has collaborated with UP, and KCS has funded significant capacity on these lines in the past.

[39] See Elphick/Orr Workpaper "UP Brownsville Capacity.xlsx."

FIGURE 6
MAP OF UP LINE ROBSTOWN-VICTORIA
SHOWING HISTORY OF KCS-FUNDED CAPACITY EXPANSION



45. UP's witnesses Rocker and Turner state that after the extensions/new sidings at Greta, Inari, Cranell, and Placedo, Benavides, a runaround track at Sinton and CTC between

Elphick/Orr R.V.S. at 32

Robstown and south Odem, these projects will not be enough. They advise the Board to consider that all of these projects added capacity of only 3-4 trains per day. In the Rocker/Turner VS, there are multiple references to West Junction which may suggest the 3-4 trains per day calculation covers from Robstown through to Houston.[40] When looking at this larger corridor, UP's assertion of a limited 3-4 train capacity increase could fully be a function of constrained capacity between Victoria and Flatonia, where there are limited sidings. Considering only the line of road affected by the Transaction, and factoring in the added infrastructure and the siding being built at Odem in 2022, Applicants calculate the capacity of the segment to be 31.2 trains / day for trains up to 10,000 feet (see table 1 above). This capacity is adequate to handle CPKC trains, UP trains and BNSF trains.[41] KCS's holding capacity at Spear, immediately west of Robstown, enables the capacity off and onto the UP Brownsville subdivision. Note that even without having completed the projects referenced by Rocker and Turner, or Odem, we estimate that this line would have a practical capacity of 20.8 trains per day, of which up to 7.8 trains could be 10,000 feet long.[42] There is no indication of how witnesses Rocker/Turner measured what sections of track drove their capacity calculation, or verification in any way that the CPKC Transaction cannot be accommodated. Regardless, should additional capacity be required at some point in the future, there are existing mechanisms to address any shortfall.

D. There Will Be No Capacity Shortfall in the Houston Terminal Complex

46. UP and BNSF raise a number of capacity concerns related to the Houston Terminal. Applicants respond to these concerns in detail below, but Applicants emphasize that

[40] UP Comments, Rocker/Turner V.S. at 28.

[41] *See* Elphick/Orr Workpaper "UP Brownsville Capacity.xlsx."

[42] *See* Elphick/Orr Workpaper "UP Brownsville Capacity.xlsx."

the Transaction will add just e*ight* trains per day; this is a mere drop in the bucket compared to what is run in Houston.

47. Many other witness already address the Houston Terminal. John Orr addresses a number of these arguments in his standalone Reply Verified Statement, which shows that the rail lines utilized by KCS between Beaumont and Robstown, Texas, including the Houston complex, have adequate capacity for all users. Mr. Orr also makes clear that any capacity issues with the Houston Terminal are due to operations, not infrastructure. Additionally, Jason Wilkerson, who served as UP's Director of Transportation Services for the Houston complex from 2008 to 2013, confirms in his Reply Verified Statement that the Houston Terminal has tremendous capacity when operated effectively. Mr. Wilkerson also states that KCS's through trains impose only minimal stress on Houston area capacity and there are many opportunities to improve operations through the Houston Terminal. Here, we review the capacity available to support CPKC's modest proposed increases in trains through Houston, which will be no different in character from KCS's existing operations. CPKC will continue to change crews outside of the Houston terminal on CPKC property with no intermediate work.

48. The Houston Terminal has capacity to handle the incremental Transaction-related traffic. As noted above, the Transaction contemplates just over 8 trains per day or four through freight trains in each direction. CPKC will remain a minority user of Houston's rail infrastructure even after the Transaction-related traffic growth.

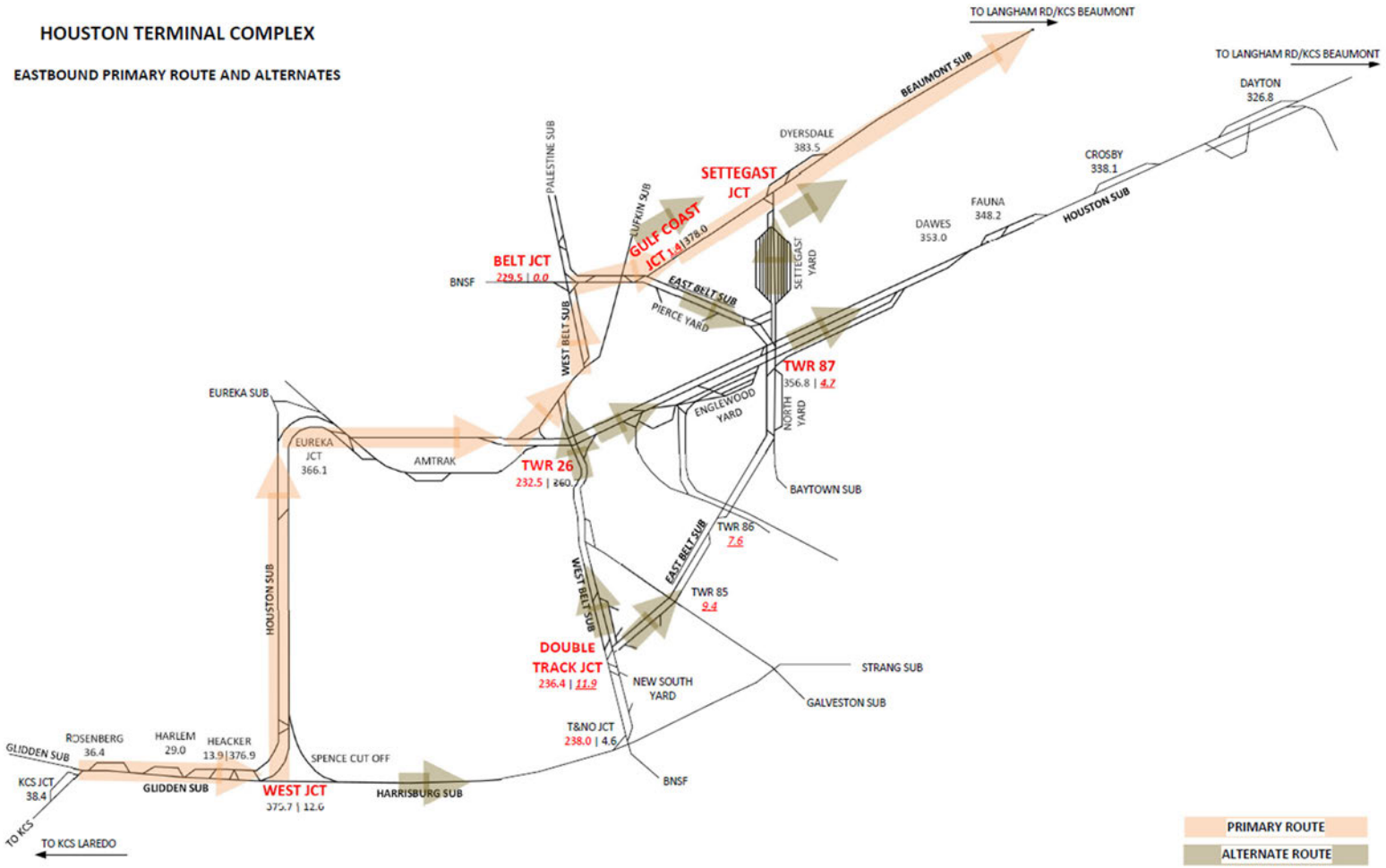
49. Furthermore, on a train-for-train basis, CPKC's through train operations will impose far less burden on the Houston-area infrastructure. While other trains may need to change crews or enter and exit yards, CPKC through trains move across Houston via the multiple tracks, and multiple routes available for those movements. Figure 7 below is a map of the

Houston Terminal. This figure shows that an eastbound train arriving at West Junction normally routes via Eureka Junction and avoids passing the middle of Englewood and Settegast Yards. These trains, however, can take a number of alternative routes through West Junction, Double Track Junction, Tower 26, Belt Junction, Gulf Coast Junction, Settegast Junction and Tower 87. Importantly, it is possible and permitted to run east on the Houston Subdivision.[43] UP's double tracking from Crosby to Dayton can support local operations and trains already running onto the Houston Subdivision towards Dayton. Beyond Dayton, three long sidings exist to Langham Road, a distance of 47.7 miles in total; these sidings provide capacity for eastbound trains for utilization against a predominantly westward train flow.

[43] *See* UP Houston Terminal Playbook, Terminal Discipline, slides 24 and 25.

FIGURE 7

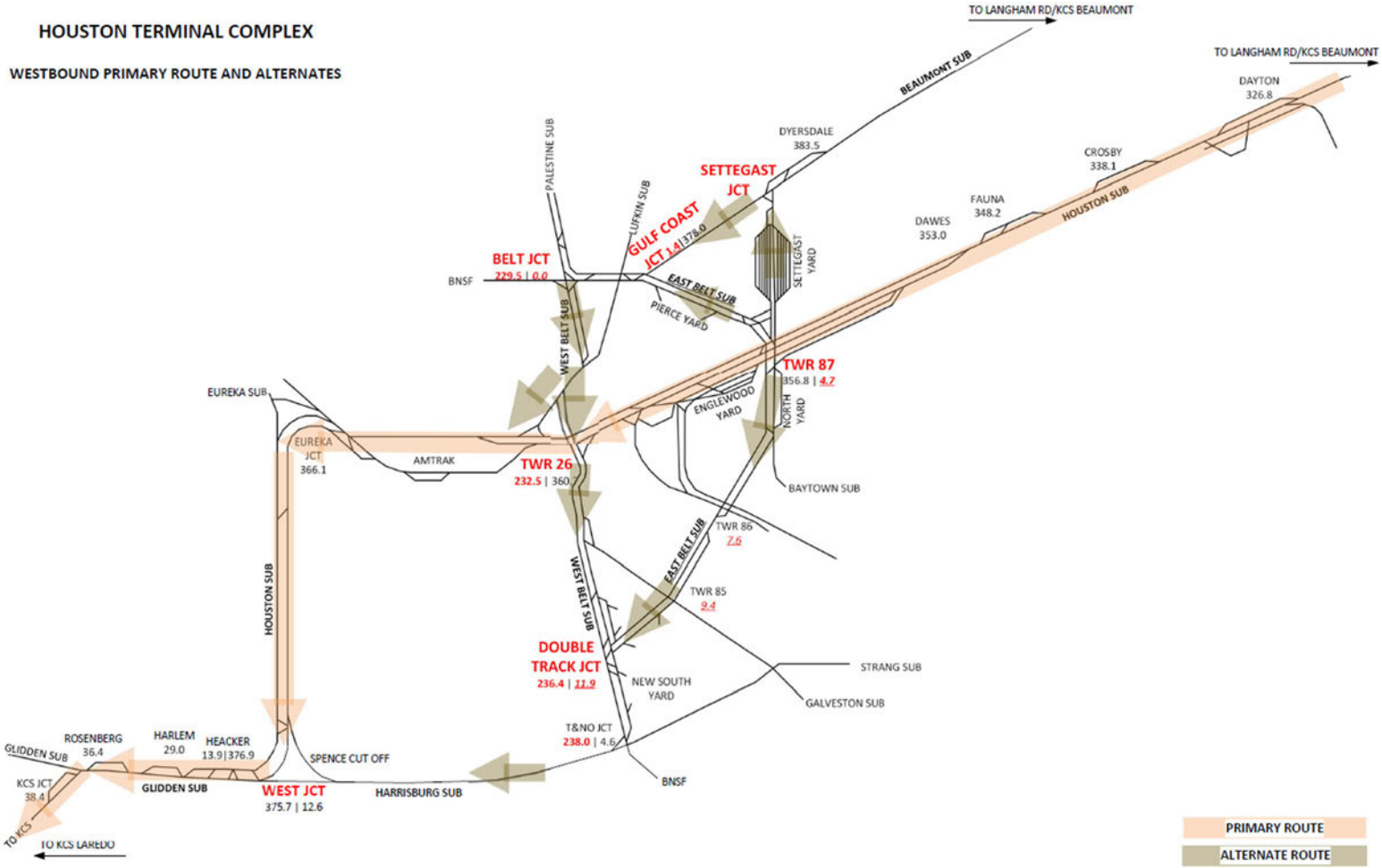
MAP OF KCS ROUTES OVER UP TRACKAGE RIGHTS THROUGH HOUSTON TERMINAL



Elphick/Orr R.V.S. at 36

50. A westbound train also has several routing options beyond Tower 87 and through Houston. Those options include heading towards Settegast Junction, Gulf Coast Junction, Belt Junction, Tower 26 and West Junction. Figure 8 below is a map of the Houston Terminal. This figure shows that a westbound train arriving Tower 87 has a primary and several alternate routes through Houston.

FIGURE 8
MAP OF KCS ROUTES OVER UP TRACKAGE RIGHTS THROUGH HOUSTON TERMINAL



Elphick/Orr R.V.S. at 38

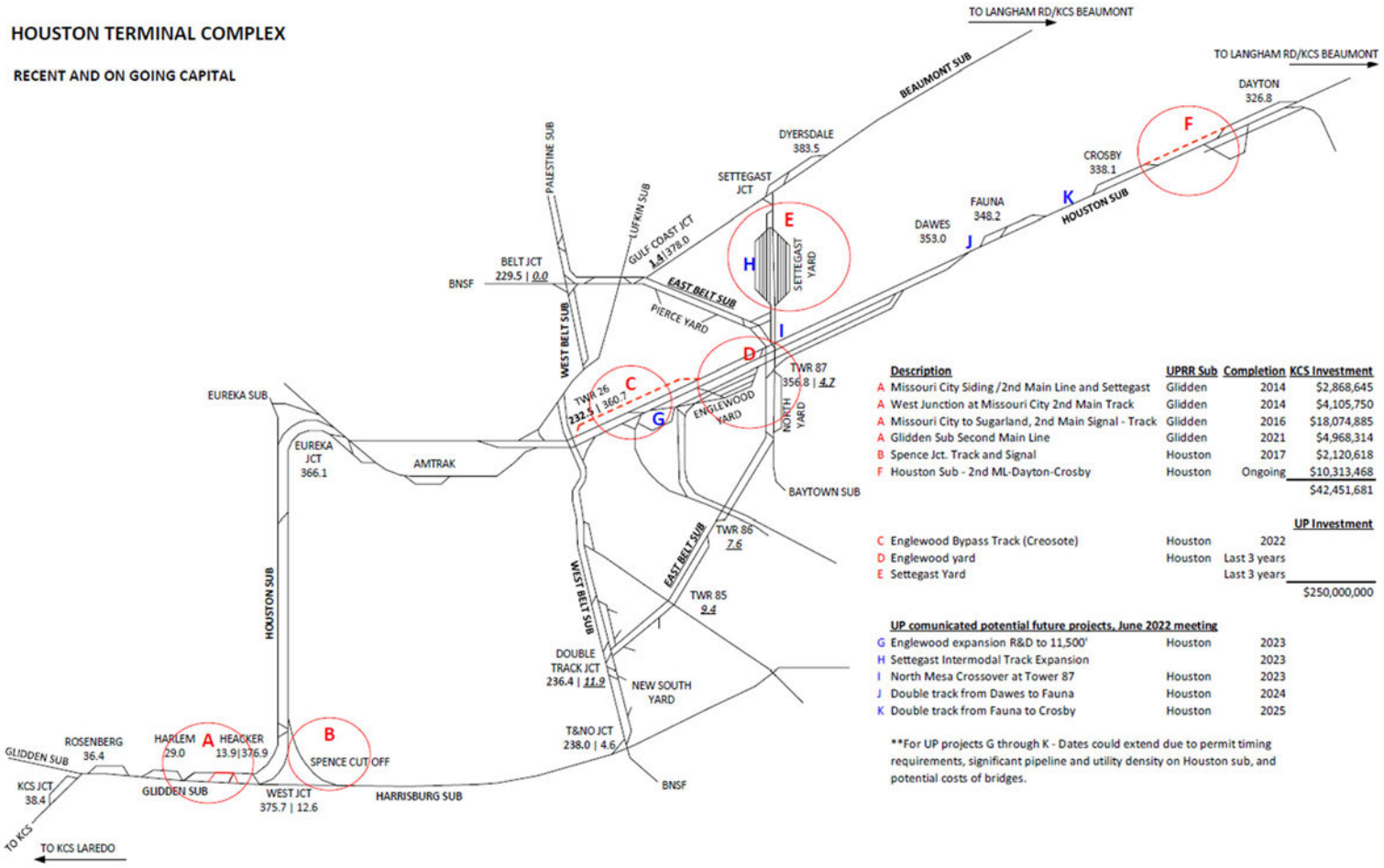
51. UP, supported by KCS and BNSF financially, has heavily invested in Houston in the past and continues to do so, including on the routes used by KCS trains. UP has continued to invest in Houston-area capacity, and has recently made or announced plans of significant investments at and around Englewood Yard, among many other locations. Steve Simmons discusses the considerable capacity improvement projects that have taken place in the Houston area in his Reply Verified Statement. Figure 9 below outlines this significant capacity investment in the Houston Terminal, by showing both KCS's investment and UP's investment, in the recent past. The below figure also includes future capacity investment in the Houston Terminal.

52. To-date, UP has invested significantly to expand operations and classification at Englewood Yard but the footprint for the yard is limited and requires trains to double away on arrival or, to double up two or more tracks on departure. UP's own brand of Precision Scheduled Railroading ("PSR"), which was part of UP's Unified Plan 2020, as discussed in John Orr's individual Reply Verified Statement, has increased train lengths and pushed work into the Houston terminal with classification concentrated at Englewood Yard. With those changes in UP operating practices, Main 1 is not always available for through trains. However, UP's Englewood bypass track (Creosote track), which is scheduled to be completed in 2022, will greatly relieve capacity pressure by reducing the frequent delays KCS experiences today because of UP trains entering and departing Englewood Yard. For this reason, the Englewood bypass track may be the most important piece of infrastructure underway in support of Houston through-freight operations. UP's future plans to increase receiving and departure track lengths would also significantly improve capacity in the Englewood area. Actual timing remains uncertain due to permitting, and a need to understand scope as determined through pre-engineering.

Contending with several pipeline crossings could, for example, extend timelines. Capital projects such as these will reduce the capacity pressures in the Houston Terminal that John Orr describes in his standalone Reply Verified Statement.

FIGURE 9

MAP OF RECENT CAPITAL THROUGH HOUSTON TERMINAL



Description	UPRR Sub	Completion	KCS Investment
A Missouri City Siding /2nd Main Line and Settegast	Glidden	2014	$2,868,645
A West Junction at Missouri City 2nd Main Track	Glidden	2014	$4,105,750
A Missouri City to Sugarland, 2nd Main Signal - Track	Glidden	2016	$18,074,885
A Glidden Sub Second Main Line	Glidden	2021	$4,968,314
B Spence Jct. Track and Signal	Houston	2017	$2,120,618
F Houston Sub - 2nd ML-Dayton-Crosby	Houston	Ongoing	$10,313,468
			$42,451,681

			UP Investment
C Englewood Bypass Track (Creosote)	Houston	2022	
D Englewood yard	Houston	Last 3 years	
E Settegast Yard		Last 3 years	
			$250,000,000

UP comunicated potential future projects, June 2022 meeting

G Englewood expansion R&D to 11,500'	Houston	2023
H Settegast Intermodal Track Expansion		2023
I North Mesa Crossover at Tower 87	Houston	2023
J Double track from Dawes to Fauna	Houston	2024
K Double track from Fauna to Crosby	Houston	2025

**For UP projects G through K - Dates could extend due to permit timing requirements, significant pipeline and utility density on Houston sub, and potential costs of bridges.

53. Additionally, the primary routes themselves are and will be high capacity routes, irrespective of the Clear Route Protocol.[44] On the primary eastbound route that KCS trains traverse, there is 21.8 miles total, of which 14.2 miles is double track, and 6 crossovers between West Junction and Settegast Junction. On the primary westbound route there will be 18.9 miles of double track (by end of 2022) and 12 crossovers between Tower 87 and West Junction. In other words, even if UP does not adhere to the Clear Route Protocol, the primary routes themselves are high capacity routes.

54. As stated earlier, the CPKC transaction proposes just over eight trains per day to run through Houston, or four trains per day in each direction. A train with a relatively clean run eastbound on the primary route as depicted in Figure 10 below, can transit from KCS Junction to Langham Road or Beaumont in 2 hours and 48 minutes.[45] A westbound on a primary route can transit from Beaumont/Langham Road in 2 hours and 34 minutes.[46] While it is possible to transit from Beaumont to the west side of Houston, or vice versa in roughly 2.5 hours, KCS would consider a good run to be four to five hours. However, performance has been significantly worse than 5 hours year to date, primarily due to operational issues, although this number is improving. In his standalone Replied Verified Statement, John Orr discusses various ways to improve the use of existing capacity and to improve this run time. In short, it is critical to get deep into the details on transit and issues driving transit. As John explains, "[a]ll users of these lines need a shared base of information, a common platform to use that information, joint maintenance and

[44] *See UP/SP Houston/Gulf Coast Oversight,* 3 S.T.B. 1030, 1038, STB Finance Docket No. 32760 (Sub-No. 26) (Decision No. 10 served Dec. 21, 1998) (explaining that the clear route condition is "to enhance efficiency and facilitate the smooth movement of traffic through the Houston Terminal," and noting that alternative routes should be used "when customary routings are unavailable or congested.").

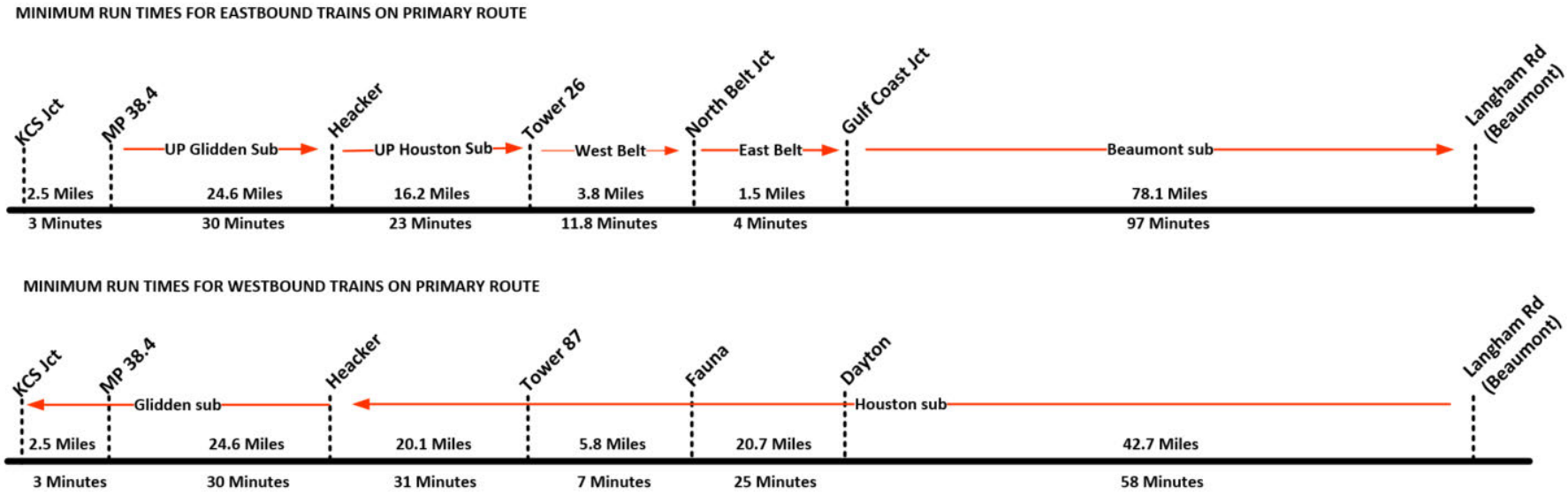
[45] *See* Elphick/Orr Workpaper "Houston-Area-Max-Speed-Table-w-TrainMix-AnalysisV2.xlsx."

[46] *See* Elphick/Orr Workpaper "Houston-Area-Max-Speed-Table-w-TrainMix-AnalysisV2.xlsx."

schedule planning, and an agreed set of standards to measure use of the facilities." Developing standards for transit in every segment is critical to both understanding performance and assessing appropriate actions. There is a need to compare a clean run to today's performance and have all teams aligned on continuously driving performance improvement. This stop-watch approach is fundamental to CPKC's brand of PSR.

FIGURE 10

MINIMUM RUN TIMES FOR HOUSTON TRAINS ON PRIMARY ROUTE



Elphick/Orr R.V.S. at 44

55. As the Reply Verified Statements of John Orr and Jason Wilkerson show, there is adequate capacity to efficiently run today's operation as well the additional trains brought on by the Transaction. Train counts remain lower than the historic highs. UP, BNSF and KCS have significantly invested in Houston, providing greater capacity. We expect the Englewood bypass (Creosote) track to significantly help through train operations, the precise type of train CPKC will run through Houston. This investment is required to deal with UP's operational changes and particularly longer UP trains arriving and departing Englewood. A solid process to set performance standards and measure every detail, cross-functionally and transparently, is the most important requirement, going forward, to make use of the capacity that is already available.

E. The Neches River Bridge Has Ample Capacity

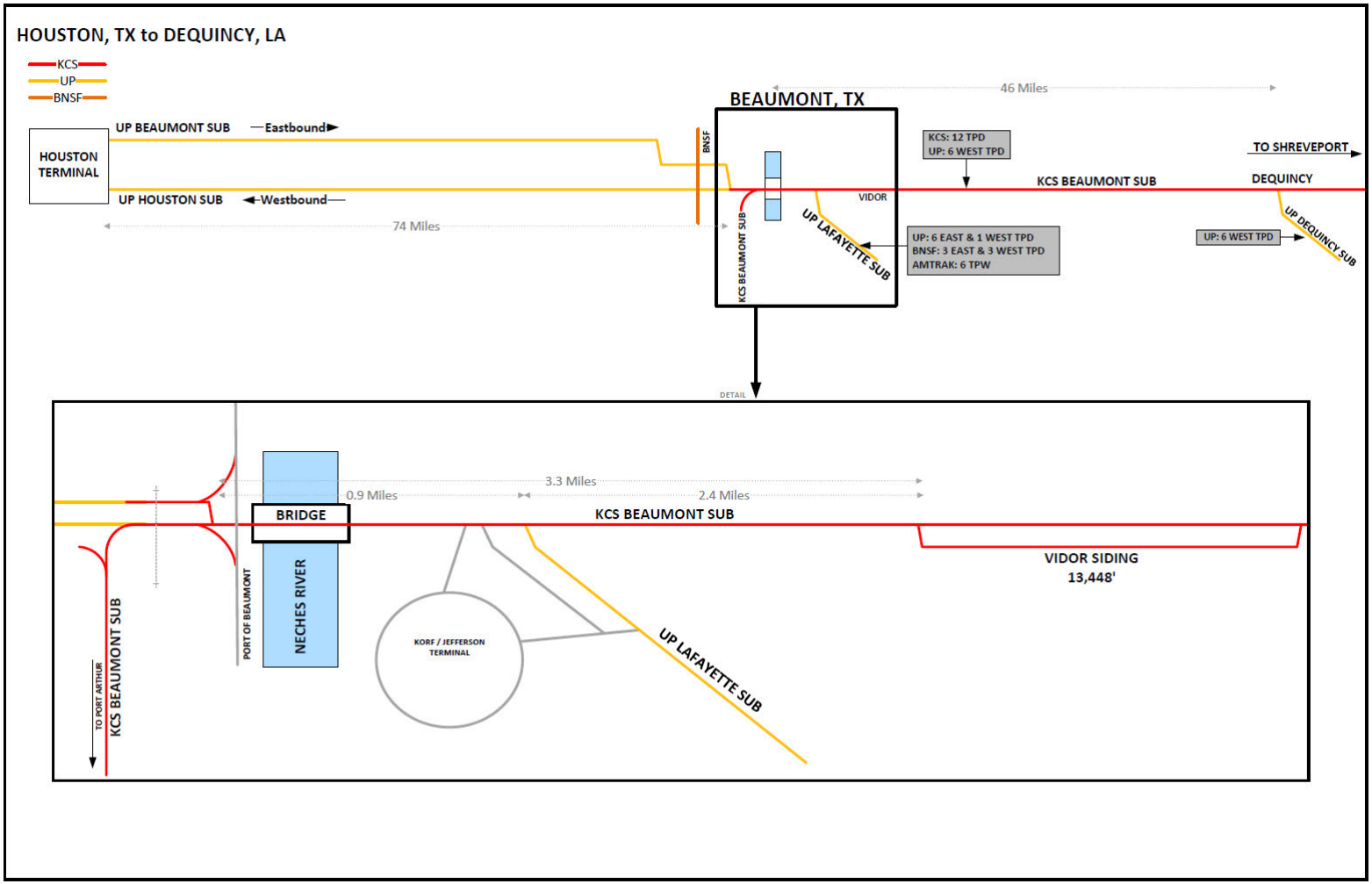
56. We understand that UP and BNSF raise concerns about operations over the Neches River Bridge; these concerns are unwarranted. As Mr. Simmons discusses in depth in his Reply Verified Statement, KCS recently conducted a study, in conjunction with UP and BNSF, which showed that the capacity of the bridge is fully adequate to accommodate the additional CPKC trains projected to result from the Transaction. Additionally, past traffic levels on the bridge show that adding CPKC's 10.97 daily trains (excluding organic growth) here will not overtax capacity, particularly when there is capacity for approximately 20-25 additional trains.[47] Past extensive cooperative work shows that there is enough capacity for fluid operation on the Neches River Bridge.

[47] Simmons R.V.S. Exhibit 9.

57. UP contends that Applicants' capacity modeling did not account for existing UP, BNSF, and Amtrak trains using the Neches River Bridge. We took a closer look at Neches River Bridge capacity, using recent train counts, and did another quantitative analysis, which showed that capacity at the Neches River Bridge is not an issue.[48] As shown in Figure 11 below, to understand capacity over the Neches River Bridge, one must consider run times required to clear the single main track between Beaumont and Vidor, or Beaumont and the UP's Lafayette Sub. The following analysis considers those transits and recent train counts over the bridge, and considers Transaction-related growth layered on top of current traffic levels.

[48] Elphick/Orr Workpaper "Beaumont Occupancy Data FINAL.xlsx."

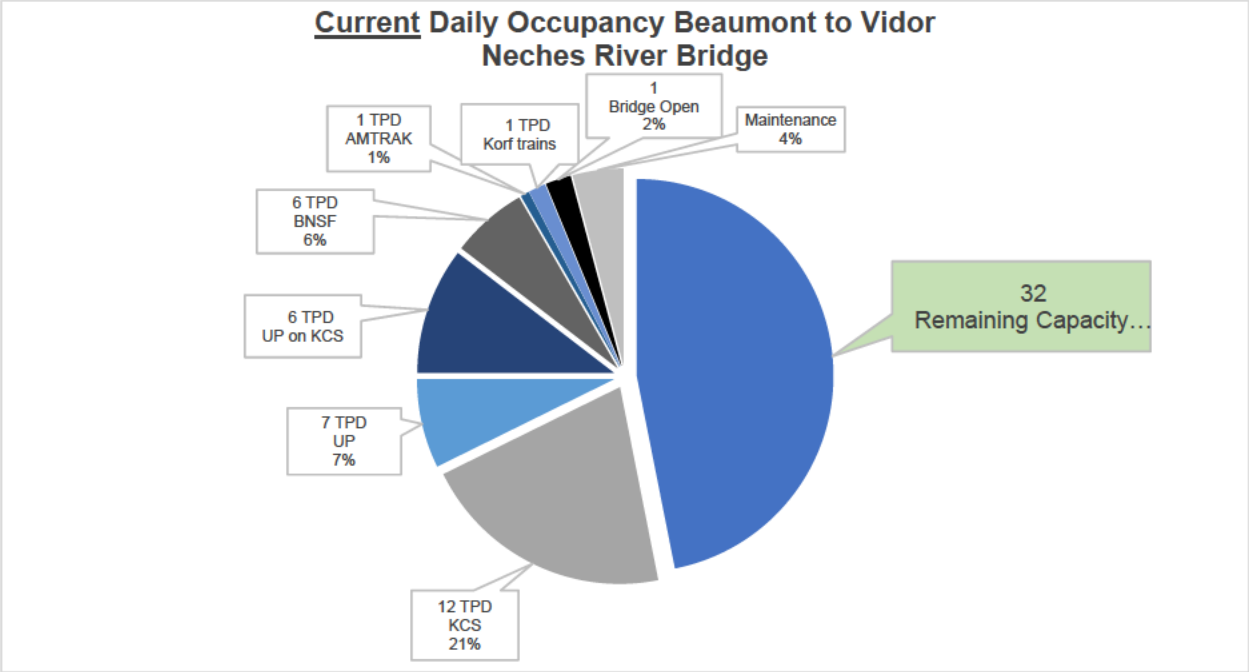
FIGURE 11
MAP OF NECHES RIVER BRIDGE



Elphick/Orr R.V.S. at 47

58. The following pie chart shows the split of train counts between KCS, UP, BNSF, and Amtrak, with the UP trains split between those taking the KCS routing to DeQuincy and those taking the UP-BNSF Lafayette Subdivision. Along with the pie chart (Figure 12), Table 2 below shows the average and total occupancy times calculated for each train category. The bridge openings and the Korf/Jefferson trains are also shown on Table 2. Note, UP trains heading from the West to Korf/Jefferson back into the Korf/Jefferson facility from the Lafayette Sub.

FIGURE 12[49]
CURRENT – DAILY OCCUPANCY BEAUMONT TO VIDOR NECHES RIVER BRIDGE



[49] Elphick/Orr Workpaper "Beaumont Pie Chart FINAL.xlsx."

TABLE 2
CURRENT OCCUPANCY OVER THE NECHES RIVER BRIDGE

Trains	KCS	UP	UP on KCS	BNSF	AMTRAK	Korf trains	Bridge Open	Main-tenance	Total Minutes per Day
Trains Per Day	12	7	6	6	1	1	1		
Average Occupancy time in minutes per	25	15	25	15	10	20	30	60	
Total daily occupancy in minutes	300	105	150	90	10	20	30	60	765

59. Union Pacific and BNSF trains, which run to and from the Lafayette Subdivision, occupy the single track between Beaumont and the junction with the Lafayette to a different extent than either the Amtrak trains on the same routing or the UP and KCS trains on the KCS Beaumont Subdivision route toward DeQuincy, as noted in Figure 11 above.

60. Table 3 and Figure 13 below show available capacity currently on the Neches River Bridge is calculated in contrast against the remaining capacity subsequent to the Transaction. It suggests that, as calculated, there is sufficient remaining capacity each day to allow for growth by any of the parties requiring utility of the Bridge.[50] The numbers presented here align with the study KCS completed in 2019, which was submitted as part of the Application process.[51]

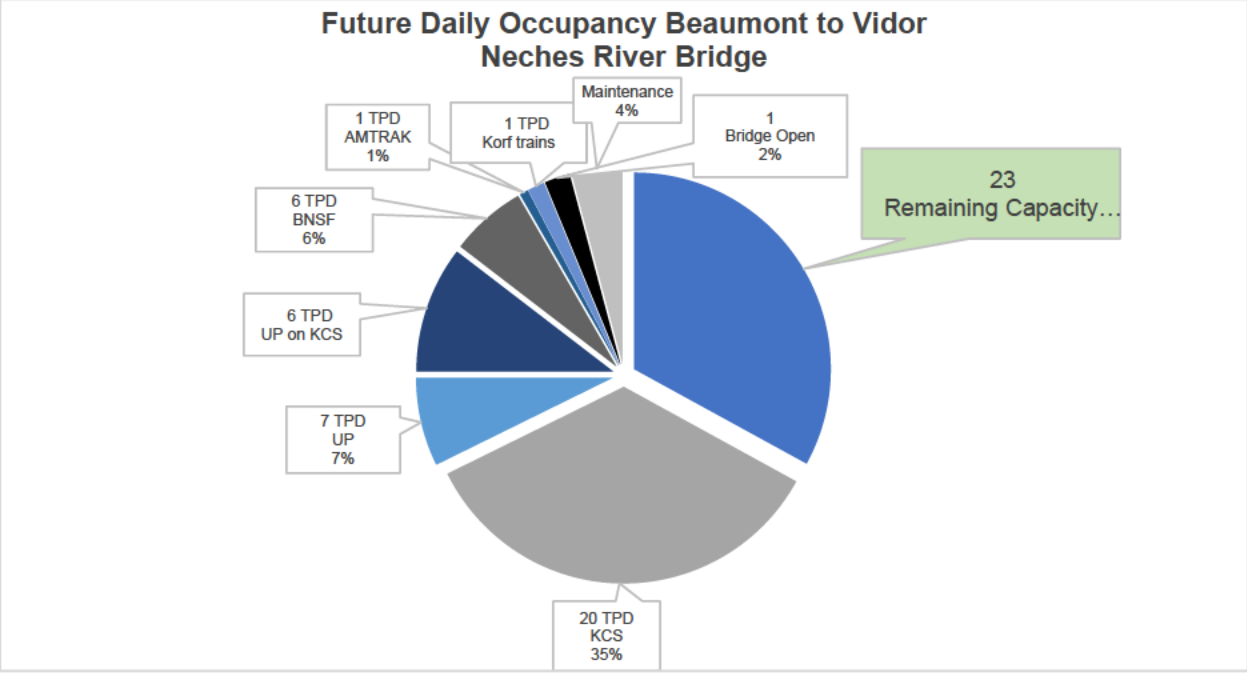
[50] Elphick/Orr Workpaper "Beaumont Pie Chart FINAL.xlsx."

[51] Simmons R.V.S., Exhibit 9.

TABLE 3
FUTURE OCCUPANCY OVER THE NECHES RIVER BRIDGE

Trains	CPKC	UP	UP on KCS	BNSF	AMTRAK	Korf trains	Bridge Open	Main-tenance	Total Minutes per Day
Trains Per Day	20	7	6	6	1	1	1		
Average Occupancy time in minutes per	25	15	25	15	10	20	30	60	
Total daily occupancy in minutes	500	105	150	90	10	20	30	60	965

FIGURE 13[52]
FUTURE – DAILY OCCUPANCY BEAUMONT TO VIDOR NECHES RIVER BRIDGE



61. With this, we reiterate the recommendation of KCS in their 2019 study on the importance of timing and coordination of all of the railroads operating over the Bridge. Additionally, our study's analysis described above, however, takes an overly conservative

[52] Elphick/Orr Workpaper "Beaumont Pie Chart FINAL.xlsx."

approach to train slotting, as it assumes that the full block must be cleared before the next train enters. Under this assumption, a KCS east-bound train must fully clear the west switch at Vidor before an eastbound UP train for the Lafayette Subdivision can occupy the Bridge. This is not how dispatching practices operate in the real world. Real world dispatching practices could allow for more throughput, as for example, cooperative dispatching out of the joint Spring Dispatching Center provides more flexibility for trains to move through the Bridge and optimizes today's capacity in the area studied. Thus, this study conservatively calculates capacity.

62. Should the capacity of the Bridge become a persistent issue due to further significant growth, above that of the CPKC Transaction, and which could be by any of the railroads, the parties will need to work together to consider appropriate solutions.[53] Next level capacity considerations for KCS would include extending Vidor to the West to further reduce run time required between Vidor and the Bridge. Actions like this could further delay well into the future a need for a second bridge.

F. LyondellBasell's Concerns Regarding Westlake and Mossville, LA, Corpus Christi are Unrelated to the Transaction

63. The conditions proposed by LyondellBasell are unrelated to the proposed CP-KCS merger. LyondellBasell seeks to force BNSF access to a recently-built facility at Mossville, Louisiana in which LyondellBasell acquired an interest in the past couple of years. That facility, and Mossville – a separate station from Lake Charles, Westlake and West Lake Charles - was not accessible by UP or SP at the time of the UP-SP merger, and the CP-KCS merger would not change the way that facility is served. LyondellBasell also provides no

[53] *See also* Simmons R.V.S. at ¶ ¶ 88-94.

evidence of the operational impact of BNSF's proposed access. LyondellBasell's request to expand the UP-SP merger conditions is not related to the CP-KCS merger.

64. LyondellBasell's request that the Board set terms for access to all shippers on the Rosebluff Lead in West Lake Charles likewise is not related to the CP-KCS merger. LyondellBasell's comment cites the ongoing terminal trackage rights proceeding before the Board involving the Rosebluff Lead. The Board is resolving the access issues about the Rosebluff Lead in that terminal trackage rights proceeding, which began well before and completely separate from the CP-KCS merger. LyondellBasell's request regarding the Rosebluff Lead is unrelated to the CP-KCS merger.

65. Even if BNSF were granted the rights at West Lake Charles and Mossville that LyondellBasell requests, doing so would not reduce congestion on any line used by CPKC traffic because BNSF already has access by UP haulage, and had been awarded terminal trackage rights as well, to the Rosebluff Lead traffic, and if BNSF gained access to Mossville, BNSF would move that traffic on the 50-50 UP/BNSF Lafayette and Houston Subdivisions, as UP does now.

66. LyondellBasell's request that CPKC be required to provide reciprocal switching to UP at Robstown for LyondellBasell's Corpus Christi plant that does not ship by rail now is difficult to assess. Rather, LyondellBasell's request would likely increase congestion on UP's Brownsville Subdivision and KCS's Laredo Subdivision by forcing interchange where there are no interchange facilities available.

67. The track to LyondellBasell's plant essentially ends just inside the plant fence. Without information on when the plant would begin shipping, how much traffic the plant would ship and where the traffic would go, it is not possible to assess the specific impacts of the plant's potential future traffic.

68. At the very least, the proposed switching would cause congestion at the critical Robstown interchange of KCS's Laredo Subdivision with UP's Brownsville Subdivision. There are no facilities at Robstown for interchange of traffic from KCS to UP. The nearest facilities where interchange would be possible are the sidings at Spear, which provide essential capacity for staging KCS trains moving on and off the Brownsville Sub. UP also has no rights on KCS's line to access Spear.

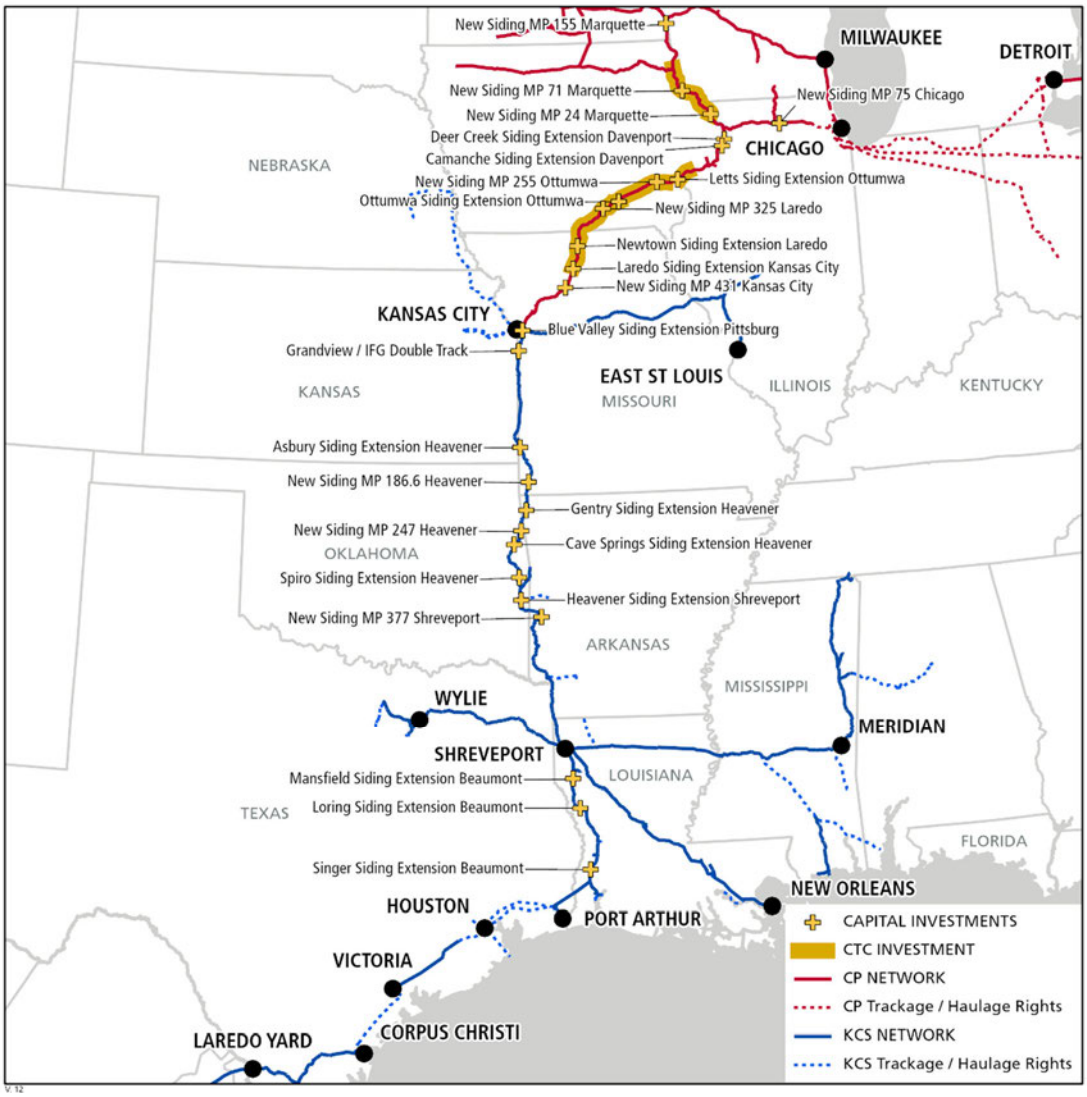
69. Even if interchange were possible, UP almost certainly would have to move any traffic it received at Robstown north over its Brownsville Sub and possibly over the Cuero Sub, the same path KCS trains follow between Victoria and Robstown. Alternatively, UP might handle traffic eastbound from the Brownsville Sub over UP's Angleton Sub, toward the southwest corner of the Houston complex. All of these possibilities would add more potential for congestion, not less as LyondellBasell suggests. In any event, there is no competitive harm to LyondellBasell's Corpus Christi plant from the merger because the plant does not use rail service.

70. Finally, the Transaction will not congest the lines that will be used by CPKC to serve the Lake Charles area. There is limited Transaction-related change in traffic levels on KCS's Lake Charles Subdivision. KCS's Beaumont Subdivision (Between DeQuincy and Beaumont) has sufficient capacity to handle additional Transaction-related traffic, and CPKC will not be a majority user of the UP and UP-BNSF lines between Houston and Beaumont, which have ample capacity as shown elsewhere in this statement, particularly because they are operated directionally.

G. KCS's Lines Between Beaumont and Kansas City Will Have Ample Capacity with the Proposed Capacity Projects

71. Here, we offer an overview of KCS's Lines Between Beaumont and Kansas City and describe the availability capacity on these lines. To facilitate that discussion, Figure 14 below is a map of the KCS lines between Beaumont and Kansas City, noting the capital investments. As we demonstrate below, there are no capacity concerns with these lines.

FIGURE 14
MAP OF KCS LINES BEAUMONT TO KANSAS CITY



1. CN's Assessment of Capacity on these Lines Is Flawed

72. CN witness Mr. Randall incorrectly states that KCS's Beaumont, Shreveport, Heavener, Pittsburg Subdivisions will be very close to capacity. CN's witness understates capacity on this segment by assuming that all trains on the corridor will run up to 10,000 feet long. In fact, only the scheduled services in the growth plan, including the incremental

Elphick/Orr R.V.S. at 55

scheduled trains from the Transaction, will be designed to run up to 10,000 feet.[54] In this corridor, therefore, Applicants assessed 12 trains to run up to 10,000 feet.[55] The remainder of the trains are assumed to be 8,500 feet or less.[56] The CPKC capital plan therefore intentionally lays out a grid separating 10,000 feet or longer sidings by a maximum of 65 minutes run time between those sidings.[57] That separation is within tolerances of practical capacity for trains of that length.[58] Further, capacity tolerances for the remainder of trains is within practical capacity.[59] Finally, CN's witness labels the Shreveport, Heavener and Pittsburg subdivisions as orange (at capacity) with the Shreveport at 87%, the Heavener at 96% and Pittsburg at 80%. However, Applicants remind the Board that these measures are a percentage of 65% (for example, Shreveport is 87% of 65%).

2. Evergy's Concerns About Fluid Operations Between Kansas City and Its La Cygne Plant Are Unwarranted

73. Evergy's concerns about service levels on the KCS lines south of Kansas City are also without merit, particularly given that CPKC plans to add capacity on the 65 miles immediately south of Kansas City.

74. Figure 15 below shows the planned capacity improvements on the lines where KCS trains service the La Cygne Generating Station in Amsterdam, MO.

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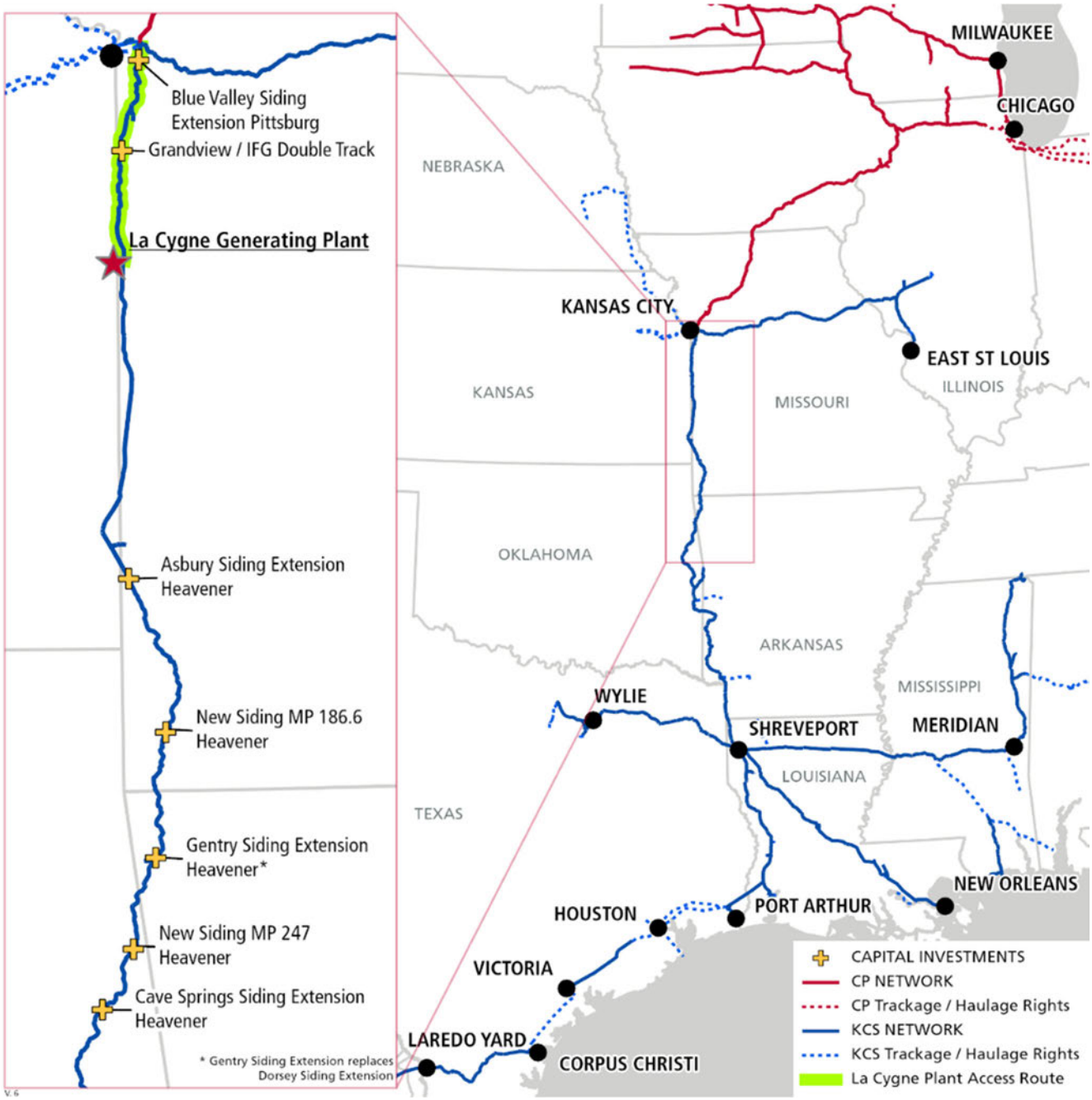
[54] Elphick/Orr Workpaper "Worksheet 4.11 in Capacity - Methodology KCS Segment Calculations.xlsx."
[55] Elphick/Orr Workpaper "Worksheet 4.11 in Capacity - Methodology KCS Segment Calculations.xlsx."
[56] Elphick/Orr Workpaper "Worksheet 4.11 in Capacity - Methodology KCS Segment Calculations.xlsx."
[57] Elphick/Orr Workpaper "Worksheet 4.11 in Capacity - Methodology KCS Segment Calculations.xlsx."
[58] Elphick/Orr Workpaper "Worksheet 4.11 in Capacity - Methodology KCS Segment Calculations.xlsx."
[59] Elphick/Orr Workpaper "Worksheet 4.11 in Capacity - Methodology KCS Segment Calculations.xlsx."

FIGURE 15
MAP SHOWING INFRASTRUCTURE SURROUNDING LA CYGNE



75. As seen above, CPKC plans major investments between where the coal trains interchange at Kansas City and where they terminate at the La Cygne Generating Plant. This includes the addition of new double tracks near Kansas City as well as the extension of the siding at Blue Valley, MO. These infrastructure improvements, together with long sidings already

Elphick/Orr R.V.S. at 57

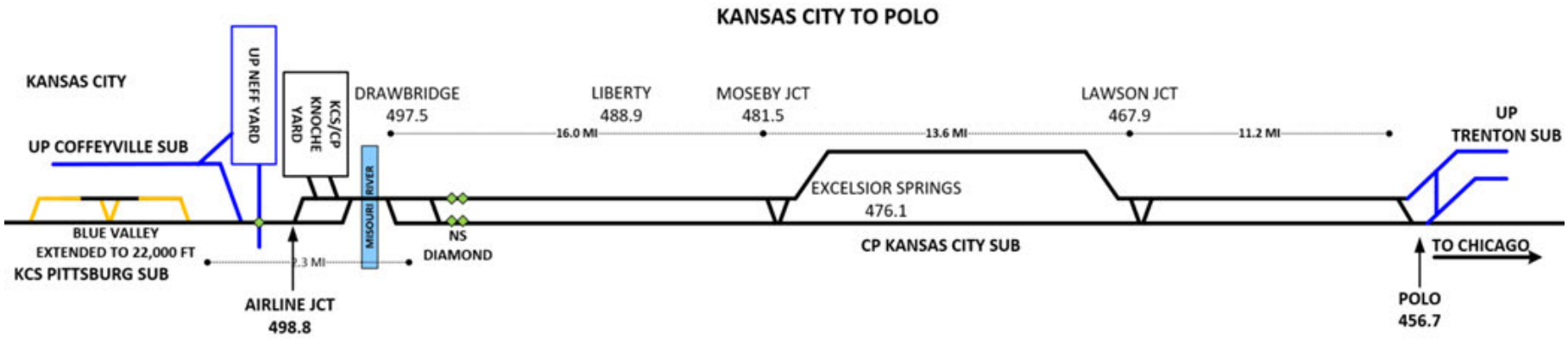
present at Jaudon and Drexel to the north of the La Cygne plant, as well as investments on the Heavener in total, will create a fluid operation overall south of Kansas City.

H. The Joint UP-CP "Polo Line" Between Airline Jct. and Polo, MO Has Ample Capacity

76. UP expresses concerns about the impact of the CP/KCS Transaction on its operations on a 42.1-mile stretch of paired track that it shares with CP just north of Kansas City. That line is known as the "Polo Line" and it extends between Airline Jct. and Polo, MO. To facilitate that discussion, Figure 16 below is a diagram of the Polo Line.

77. As we demonstrate below, this line is operated as double track and has substantial capacity. There will be no adverse impact on UP's operations here.

FIGURE 16
MAP OF CP LINES KANSAS CITY-POLO



Elphick/Orr R.V.S. at 59

78. The trackage between Airline Jct. and Polo, MO (the "Polo Line") will readily accommodate the combined post-Transaction volumes of UP and CPKC. UP witnesses Kenny Rocker and John Turner state that CP currently runs 2.9 trains per day, and UP runs eight trains per day on the Polo Line.[60] UP omits the fact that all eight of UP's trains on the Polo Line operate in the southbound direction (left to right in the diagram above) and proceed progressively onto the line from UP's Trenton subdivision north of Polo. Applicants anticipate that the Transaction will add 14.4 daily trains to this segment, but only half of those trains will operate southbound. CPKC and UP's combined southbound train counts will thus be in the range of 16-17 trains, which is well within the range of fluid capacity on this double-track segment. Even if UP and CPKC were able to run only a single southbound train every hour, there would be room to accommodate the total southbound flows in addition to any required maintenance and other work on the line. In fact, however, trains routinely run much closer together than this, enabling the Line to accommodate even more than 24 trains per day.

79. Supporting this conclusion is the fact that CPKC capacity investments and anticipated operating changes will further expand capacity on this segment. First, CPKC will be investing in additional capacity south of Airline Junction of Polo that will increase chambering capacity for northbound trains changing crews, reducing any need to run northbound in a manner that conflicts with the southbound flow of trains. Second, CPKC will further improve flow through by moving crew changes on its southbound trains off the Polo line IFG.

[60] UP-10, Rocker/Turner V.S. at 34 ("Applicants plan to increase traffic on CP's Kansas City Subdivision from 2.9 trains per day to 16.9 trains per day, an increase of 14 trains per day, or near 500%.").

80. A key misconception underlies UP's contention that the Transaction may overtax the Polo Line. UP contends that the track is not operated like double-track because the two mains geographically spread apart between Moseby Jct. and Lawson Jct.[61] It is true that trains cannot cross between tracks over this 13.6 mile portion of the Line given that the tracks are so far apart (as shown in Figure 16 above), but it is also true, as shown in the diagram, that there are double cross-overs at either end of this segment.[62] In fact, this spacing of crossovers is ideal for double-track operations. Even if UP's operations required the queuing of southbound trains (e.g., awaiting clearance to run into the Kansas City terminal), CPKC's southbound trains would be able to cross over at Moseby Jct. to run around those trains, avoiding any blockage in the Line's fluidity.

81. Finally, CN takes issue with capacity on a short stretch of single-track at the south end of the Polo Line, where CP crosses over the Missouri River on the Harry S Truman bridge. Our capacity analysis shows that this short segment, which trains pass across quickly, will have ample capacity to accommodate total post-Transaction volumes.[63]

I. CP's Line Between Polo, MO and Sabula, IA/Savanna, IL Will Have Ample Capacity with the Proposed Capacity Projects

82. There are no capacity issues on CP's other lines north of Kansas City. CP's lines between Polo, MO and Sabula, IA/Savanna, IL will have ample capacity in consideration of the ongoing CP capacity work, including adding new CTC and sidings to these lines.

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[61] UP-10, Rocker/Turner V.S. at 35. ("Although the Polo Line consists of two tracks, the tracks are not operated like double-track lines. Over a long portion of the joint facility, the two tracks are far apart, so trains cannot cross from one line to the other to maximize efficient use of both lines.").

[62] *See* Figure 16.

[63] Elphick/Orr Workpaper "Worksheet 4.11 in Capacity - Methodology KCS Segment Calculations.xlsx" tab "KCS run times All Trains."

1. Mainline Capacity Will Be Ample

83. CN witness Randall's analysis shows CP's Kansas City Subdivision (between Airline Jct MP 498.8 and Laredo MP 406.0) as green, meaning that train volumes will be within his measure of fluid capacity. This comports with Applicants' analysis, although we note that Mr. Randall's assessment of the line as having capacity of 18 trains per day is incorrect; the correct figure is 20.8 trains per day. It appears that CN erred by using a running speed of 33 miles per hour to derive a capacity of 18 trains per day, whereas Applicants based their calculation on the actual running speeds (approximately 36 miles per hour) observed in the real world – at those higher speeds, trains will clear the distance between sidings more rapidly, and thus unlock additional capacity.[64]

84. CN witness Mr. Randall suggests that CP's Laredo Subdivision (between Laredo North MP 405.1 and Ottumwa MP 302.8) will be "red" with train counts exceeding a practical capacity of 12.2 trains per day.[65] However, CN's analysis omitted the new 2022 siding at Seymour, at milepost 355. With the addition of the siding at Seymour, the Laredo Subdivision's capacity will increase to 20.8 trains per day at existing track speeds, which by itself provides adequate capacity for the Transaction.[66] In addition, Applicants plan to complete CTC installation on the Laredo Subdivision by 2025. With CTC, the timetable track speed is expected

[64] *See* Elphick/Orr Workpaper "CP Capacity Calculations Kansas City to River Jct and Chicago.xlsx" tab "CP run times All Trains."

[65] CN-13, Randall V.S. Appendix B, Exh. B-1.

[66] Elphick/Orr Workpaper "CP Capacity Calculations Kansas City to River Jct and Chicago.xlsx" tab "CP run times All Trains."

to increase from 40 to 60 miles per hour over almost half of the Laredo Subdivision, which will further improve capacity beyond that reflected in Mr. Randall's flawed calculations.[67]

2. New CPKC Trains Will Not Adversely Impact BNSF Operations at Ottumwa

85. CN witness Randall implies that there may be concerns associated with CP's need to cross BNSF's Lincoln, NE-Galesburg, IL mainline at Ottumwa, IA. He notes that there is "[a]n average of 26 BNSF trains and two Amtrak daily trains" that move over the Ottumwa crossing.[68] There is no issue here. There is more than enough operating capacity and flexibility at this location to operate BNSF and CPKC trains without interference, even with the addition of 14.4 CPKC trains here. BNSF's line is double-tracked through the diamond, with double track extending well beyond the diamond on either side. In light of that operating flexibility, CPKC's additional trains will not impinge capacity on BNSF's mainline at this location (where, in any event, BNSF controls the interlocker). Other planned changes will reinforce this conclusion. CPKC will be extending the existing siding at Ottumwa, further ensuring that its trains do not cause conflicts with BNSF trains at this location. And while CP has 5 miles of CTC today from Ottumwa to Rutledge (through the diamond), CPKC plans to add additional CTC by 2025 across the entire corridor between Laredo (MO) and Marquette, providing dispatchers with greater visibility and improving planning and coordination between CPKC and BNSF.

[67] Elphick/Orr Workpaper "CP Capacity Calculations Kansas City to River Jct and Chicago.xlsx" tab "CP run times All Trains."

[68] CN-13, Randall V.S. Appendix C.

86. Further, the Iowa State Rail Plan Final ("Iowa DOT") December 2021[69] and February 2017,[70] which is based on trains per day estimates BNSF and HDR Consulting, LLC, provided, show adequate capacity in the BNSF Ottumwa Subdivision from Galesburg to Creston, particularly between the Creston and Iowa and Illinois state line. This study shows that BNSF had previously operated 40 to 45 trains per day and that the Subdivision has a "practical capacity" of 53 to 80 trains per day.[71] The transaction will add 14.4 trains per day to the 26 trains BNSF is currently running bringing the count to the previous proven range.

87. BNSF raises a different issue about operations in Ottumwa. BNSF witnesses Gabriel and Thowe express concern that CPKC will run longer trains southbound across the diamond at Ottumwa and worry that rear end of these train would block the BNSF Ottumwa Subdivision (and perhaps State Highway 23) while the trains change crews at Ottumwa.[72] There is no reason to worry. CPKC plans to move its crew change location from CP's Ottumwa Yard Office (which is 6,500 feet from the BNSF diamond) to the west end of Ottumwa siding. As shown in Figure 17 below, there is more than 16,000 feet of clearance between this location and the BNSF crossing (as well as State Highway 23), so CPKC's southbound crew changes will cause no interference at the diamond. CPKC also plans to extend Ottumwa southbound by 2,000 feet to 12,000 feet further increasing clearance for southbound trains.

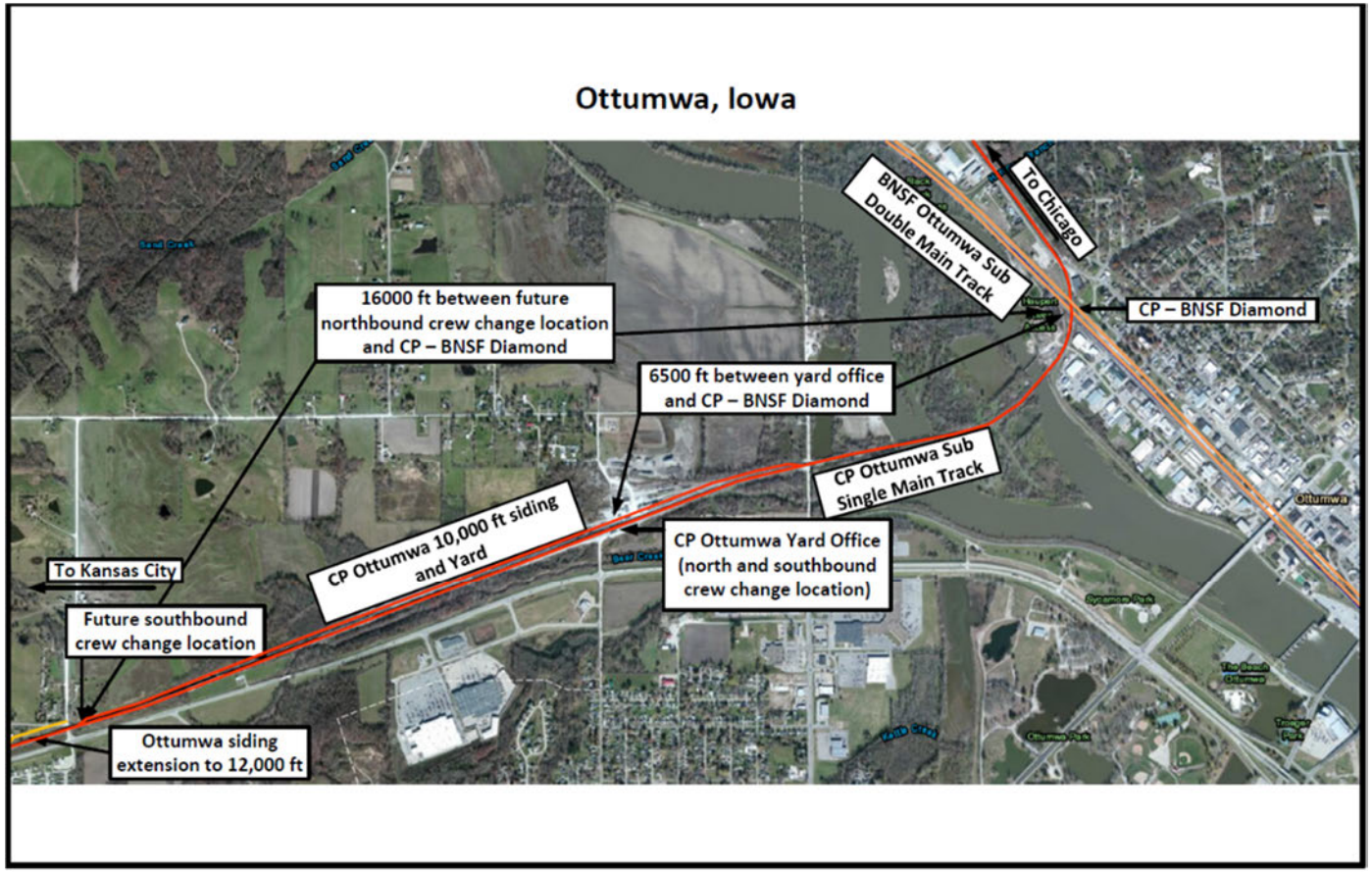
[69] Iowa State Rail Plan Final, Iowa DOT (February 2021).

[70] Iowa State Rail Plan Final, Iowa DOT (February 2017).

[71] Iowa State Rail Plan Final, December 2021, February 2017.

[72] BNSF-9, Gabriel/Thowe V.S. at 64-65.

FIGURE 17
DETAILED MAP OF SIDING EXTENSION AND CREW CHANGE IN OTTUMWA



Elphick/Orr R.V.S. at 65

3. New CPKC Trains Will Not Adversely Affect Operations on the Davenport Subdivision

88. We have studied capacity in CP's Davenport Subdivision, which is between Nahant MP 195.7 and Island MP 140.9, and confirmed that there is no basis for concern. The practical capacity between Camanche and Bettendorf is 18.7.[73] Mr. Randall communicates that the practical capacity between Camanche and Bettendorf is 13.7 trains per day.[74] In reviewing Mr. Randall's segment calculator, we believe he is actually communicating the practical capacity for 10,000-foot trains between Camanche and West Davenport or Nahant.[75] If this interpretation of Mr. Randall's 13.7 rating is correct, CPKC agrees with that practical capacity for up to 10,000-foot trains and notes the anticipated number of trains up to 10,000 feet is 14.[76] However, CP is installing CTC on this segment in 2022, which will increase track speeds to between 50 and 55 miles per hour. In other words, by the end of 2022, CPKC will have the capacity it requires for year 3 volumes between South Camanche and West Davenport.

89. While BNSF states that the line is currently "unsignalized,"[77] as noted above, CP is installing CTC on this segment in 2022. Separately, but related, Camanche siding is planned to be extended to 10,000 feet, and in Deer Creek siding, north of Clinton, will be extended to 12,000 feet.

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[73] The practical capacity between Bettendorf and Nahant is 37.4 and the practical capacity between Camanche and Nahant for trains up to 10,000 feet is 13.4. Elphick/Orr Workpaper "CP Capacity Calculations Kansas City to River Jct and Chicago.xlsx" tab "CP run times All Trains."

[74] CN-13, Randall V.S., Exh. B-1.

[75] CN-13, Randall V.S. Appendix C.

[76] Elphick/Orr Workpaper "CP Capacity Calculations Kansas City to River Jct and Chicago.xlsx" tab "CP run times All Trains."

[77] BNSF-9 at 67.

4. New CPKC Trains Will Not Adversely Impact BNSF Operations Between Davenport and Clinton

90. We understand that in January 2022, BNSF stated that it may file responsive applications requesting that the Board grant BNSF overhead trackage rights between Savanna, Ill. and Clinton, Iowa, but never actually filed such a responsive application. Any grant of trackage rights to BNSF would inject new operational complexity rather than reduce it.[78] BNSF's other trackage rights requests, such as their request between Robstown and Laredo, would also add additional operational complexity.

91. Granting trackage rights between Savanna and Clinton would add BNSF trains to the Clinton-Savanna line without taking away any BNSF operations south of Clinton. This includes the UP crossing, which BNSF's operations do not cross. BNSF's operation with these trackage rights at Clinton would add trains where they do not operate today. In addition, it could add additional traffic over and above that which it uses its existing trackage rights to serve. For example, it could shift to the Savanna-Clinton Segment unit trains destined to the Muscatine area and Fruitland, Iowa that BNSF currently interchanges with CP at Ottumwa. BNSF does not use the UP-controlled interlocking at Clinton through either road today; BNSF serves Clinton area customers from the South. BNSF may have strategic reasons for making this trackage rights request, but granting such a request will only add unnecessary complications.

5. New CPKC Trains Will Not Adversely Affect Operations in Savanna, IL

92. There is no basis for any operational concerns at Savanna, IL, where CP's Chicago Subdivision crosses BNSF at grade. Both lines are double tracked at this location, and even with an additional eight CPKC trains, the total number of trains will not exceed capacity

[78] *See also* Gameiro R.V.S. at ¶ ¶ 28-31.

available. CPKC's new trains will only consume up to a total of 80 additional minutes, calculated as 10 minutes per train with 8 additional trains.

6. New CPKC Trains Will Not Adversely Affect Operations on the Marquette Subdivision

93. The Marquette Subdivision has adequate capacity to handle CPKC trains. CN witness Mr. Randall asserts that the 27 miles between Harpers Ferry and Eckards has a practical capacity of 13.3 trains per day.[79] CP calculates the practical capacity to be 11.7 trains per day in this segment.[80] The difference in the two calculations is a function of CP adding fifteen minutes for crew changes at Marquette. The 11.7 train per day calculation governs the practical capacity north of Marquette where CP anticipates, post transaction, 11.4 total trains.[81] Mr. Randall further assumes that all trains on the Marquette are 10,000 feet. The practical capacity for trains up to 10,000 feet north of Marquette is 8.1 and CP anticipates 4 trains will run up to 10,000 feet.[82] In summary, the Marquette subdivision will be below practical capacity. This result has been tested and verified in an RTC simulation built to address Metra's comments.[83]

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[79] CN-13, Randall V.S. Appendix C.

[80] Elphick/Orr Workpaper "CP Capacity Calculations Kansas City to River Jct and Chicago.xlsx" tab "CP run times All Trains."

[81] Elphick/Orr Workpaper "CP Capacity Calculations Kansas City to River Jct and Chicago.xlsx" tab "CP run times All Trains."

[82] Elphick/Orr Workpaper "CP Capacity Calculations Kansas City to River Jct and Chicago.xlsx" tab "CP run times All Trains."

[83] Elphick R.V.S., Section I.D.

J. New CPKC Trains Will Not Adversely Impact UP or BNSF Operations at St. Paul

94. UP asserts that its concerns about increased train counts at St. Paul might lead it to build a staging track on its own line south of Hoffman Ave., as shown in UP's map reproduced as Figure 19. UP-10 at 64-66. Whether UP would gain an advantage from having such a track is not for us to judge, though it would appear to be quite beneficial for UP regardless of the Transaction. The Transaction, however, will not create the need for such a track, especially given that the additional CPKC trains will result in total trains here being below past levels. Instead, the possible staging track that UP desires is exactly the kind of infrastructure that every carrier considers in order to fine tune their operations in busy terminals like St. Paul, and we encourage UP to go ahead and make that investment (at their own expense) if it would prove beneficial in supporting UP's operations.

FIGURE 18
MAP OF ST. PAUL

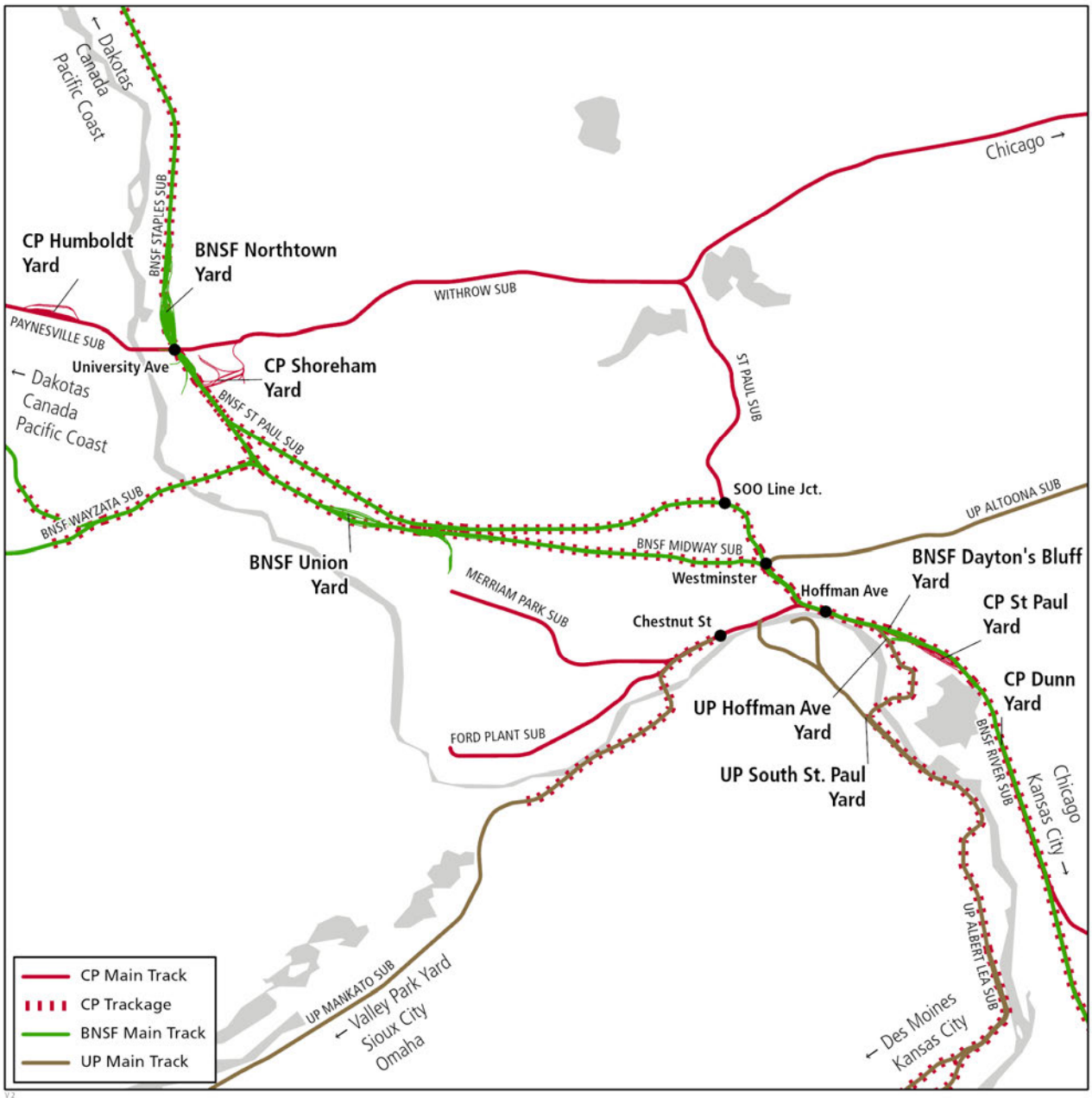
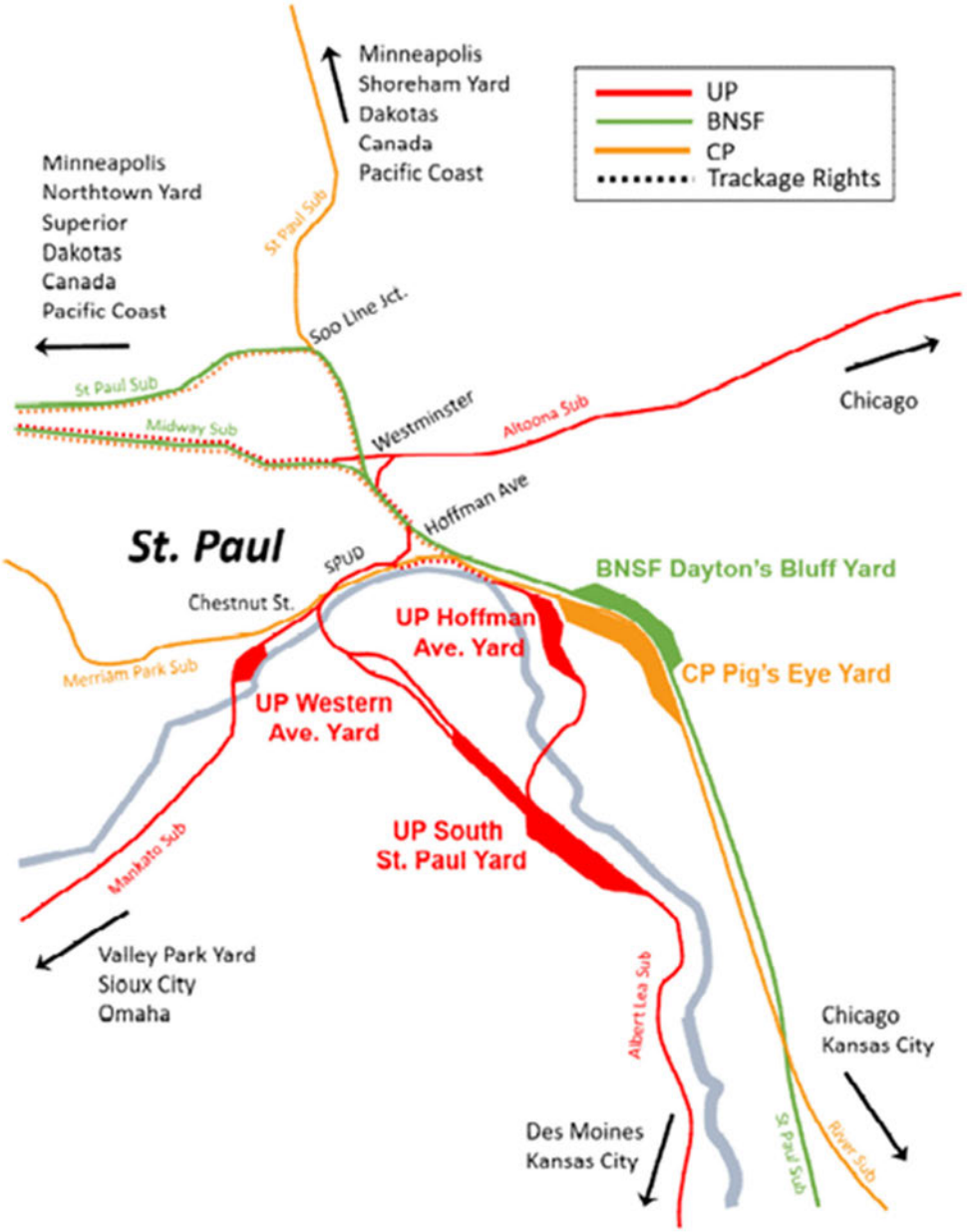


FIGURE 19
UP'S MAP OF ST. PAUL[84]



95. Additionally, with the modest six trains per day increase in this area, CPKC will still not be the majority user of St. Paul rail infrastructure where UP, BNSF, and CP operations

[84] UP-10 at 64-66.

converge north of CP's yard.[85] With a total post-Transaction related train count of 22 trains per day through Hoffman Avenue, CPKC is still below levels previously run through this location.[86]

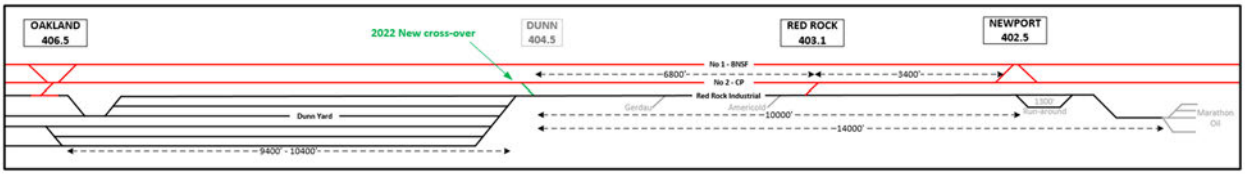
96. Further, since the 2012 East Metro Rail study, CP has executed the following initiatives improving fluidity through the St. Paul area:

- Moved westbound CP trains off the BNSF St. Paul subdivision and onto the CP St. Paul / Withrow subdivisions between Soo Line Jct. and CP University (Shoreham Yard). This initiative has included installing signals and a power switch at Soo Line Jct. This investment pulled all westbound CP trains off of BNSF's track between Soo Line Junction and University Avenue (not shown on UP map).
- Within CP's St. Paul Yard, to avoid doubling and tripling away trains from either side of St. Paul Yard, CP extended tracks at the south end of the yard (which CP calls "Dunn Yard") to 10,000 feet (2015) and added a new cross-over (2022) for receiving trains as shown in Figure 20 below, showing Dunn Yard track capacity. The cross-over will allow for further reduced interference on the paired mains (CP No. 2 track) between Dunn and Newport as trains will not have to pull past Newport and reverse through to the Red Rock Industrial. This amounts to approximately 45 fewer minutes of main track interference per terminating east/southbound train.

[85] Elphick/Orr Workpaper "St. Paul Area Train Counts by Railroad.xlsx."

[86] Amended Operating Plan, Appendix A, Segment 40; 2012 East Metro Rail Study.

FIGURE 20
DUNN YARD TRACK CAPACITY



97. Additionally, BNSF has executed a growth project to streamline access to the BNSF Midway Subdivision off the Paynesville Subdivision for eastbound trains – this allows for progressive move onto the BNSF Midway Subdivision bypassing University Avenue.

98. In addition to the above listed major projects, CP has also made other investments to strengthen the St. Paul terminal. CP has secured dual served electrical sourcing for both the north and south sides of the St. Paul Yard – this creates redundancy in the event of power outages. CP has also added back up power generators for St. Paul Yard to protect operational fluidity in case of power outages. Further, CP has invested in upgrading its hump control software to improve speed and processing capacity in the St. Paul terminal. CP has also changed the service design and terminal clock for trains to arrive directionally in operating windows to improve the speed of connecting to outbound trains.

K. CP's Chicago Subdivision

99. CN incorrectly suggests that CP's Chicago Subdivision (between Lake, Iowa and Randall Road, Illinois) will be at 100 percent of practical capacity.[87] However, this is not true. According to CN, the segment between Kittridge, at mile post 118.5, and the new siding at Monroe, at mile post 75.0, will be 79 minutes. CPKC calculates that this segment takes only 65

[87] *See* CN-13, Randall V.S. Appendix B, Exh. B-1 (providing that "11.1 trains/day = 100% of estimated practical capacity in this Subdivision").

Elphick/Orr R.V.S. at 73

minutes to traverse.[88] Thus, the segment between Kittridge and the new siding at Monroe has a practical capacity of 13.4 trains per day accounting for 10,000-foot trains.[89] CPKC plans to run up to 10 total 10,000-foot trains per day in this corridor by Year 3. Thus, the Chicago Subdivision will not reach 100 percent capacity as Mr. Randall suggests – instead, it will only reach 75 percent of practical capacity or 50 percent of maximum capacity.[90]

V. DIVESTITURE OF KCS'S KANSAS CITY-ST. LOUIS/SPRINGFIELD LINE WOULD LIMIT CPKC'S ABILITY TO OPERATE EFFICIENTLY

100. CN has asked the Board to condition any approval of the proposed CPKC Transaction on divestiture of the St. Louis/Springfield Line to CN, alleging that Applicants will "favor" CP's existing Chicago-Kansas City route and downgrade the Line. This proposed divestiture would limit CPKC's ability to operate efficiently. Applicants have no intention of downgrading the St. Louis/Springfield Line—which has not carried substantial volumes historically—after the transaction. Rather, CPKC intends to maintain the line's capabilities so that it can remain an important part of the CPKC system.

101. It is my understanding that CN proposes to grant back to CPKC haulage rights that will enable CPKC to access customers on the Springfield Line. The haulage rights that CN would have the Board grant back to CPKC would make what are efficient single-line movements into more complicated and less efficient multi-carrier shipments.

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[88] Elphick/Orr Workpaper "CP Capacity Calculations Kansas City to River Jct and Chicago.xlsx" tab "CP run times All Trains."

[89] Elphick/Orr Workpaper "CP Capacity Calculations Kansas City to River Jct and Chicago.xlsx" tab "CP run times All Trains."

[90] Elphick/Orr Workpaper "CP Capacity Calculations Kansas City to River Jct and Chicago.xlsx" tab "CP run times All Trains." *See* Elphick R.V.S. at ¶ ¶ 15-28.

A. CN's Operations in Kansas City and Between Kansas City and IFG Would Complicate Terminal Operations, With Hard-to-Predict Consequences

102. CN's operations in Kansas City and between Kansas City and IFG would complicate terminal operations and result in hard-to-predict consequences.

103. Currently, CN is not using the most efficient routing on their network available to them. This means that with CN's proposed divestiture, even with CPKC haulage rights for traffic on the St. Louis/Springfield Line, CPKC traffic could be subject to additional handlings, out of route miles, and delayed transit. Because the railroad that designs local service would be CN and not CPKC, CPKC would be dependent on CN for its service, and CN would be incentivized to deliver the cars together with other cars without regard to carrier. This would result in operational inefficiencies. For example, KCS currently interchanges cars headed to Mobile, AL in Jackson, MS. There is no incentive for CN to switch KCS interchange traffic in Jackson, so current KCS Mobile traffic is sent 443 miles out of route northward to Memphis for processing and furtherance back through Jackson and south to Mobile. This results in additional car miles and car days that does cause harm to current KCS customers.

B. CN's Proposed Forced Half-Ownership of IFG Facility Would Complicate Operations There and Limit the Facility's Ability to Support Innovative CPKC Offerings

104. CN proposes that the Board force CPKC to give CN a 50% interest in KCS's IFG facility. Such a proposal would complicate operations at the IFG facility and limit the facility's ability to support innovative CPKC offerings. Currently, the IFG terminal is used for loading and unloading intermodal and automotive traffic for the greater Kansas City area. In addition, IFG is also used for connecting East St. Louis and Slater, Missouri area Kansas City destined manifest from train M-VNKC to transfer into Knoche for processing and handling to final destination on KCS and other carriers. With the Growth Plan, IFG will see seven additional

CPKC trains working at IFG daily, reflecting new Kansas City area traffic opportunities extending as far as Vancouver, Saint John and Lazaro Cardenas. IFG will also serve as a key mainline location for connecting overhead traffic including Minneapolis – Wylie intermodal traffic from 160/161 to the new Bensenville - Wylie train service 162/163.[91]

105. The increased number of CN trains and half ownership that CN proposes would increase the complexity with arrival/departure windows and facilities at IFG. In addition to the operational changes described in paragraph 75, CPKC needs IFG for its own future use to develop expanded intermodal and automotive operations, and also to enable expanded through train operations at Kansas City, which will require expanded crew change activity at IFG. If CPKC were required to sell any part of IFG to CN, that would undermine its potential growth, both North-South with CPKC as outlined in the Growth Plan and on the St. Louis/Springfield Line, including interchange with CSX in East St. Louis. CPKC operations at the IFG facility would be subject to CN crew availability. With CPKC proposing seven new trains a day serving IFG and CN proposing a train pair, CN's 50% footprint demand is completely out of proportion to CPKC's IFG utilization.

VI. NORFOLK SOUTHERN'S CONTINGENT TRACKAGE RIGHTS REQUEST IS BASED ON A MISUNDERSTANDING OF CPKC OPERATIONS

A. Applicants' Projected Traffic Growth Will Not Adversely Impact Service Levels Between Wylie and Meridian

106. I understand that NS argues that service levels may be impacted by an increase in bulk traffic on KCS's line from Wylie, Texas to Shreveport, Louisiana (the "Wylie-Shreveport

[91] *See* Appendix I: Growth Plan Train Changes in the Amended Operating Plan.

Section"), which NS asserts will be handled by the addition of one net train pair per day.[92] However, there will be no Transaction-related increase in bulk traffic on the Wylie-Shreveport Section. Any increase in bulk traffic on these segments will consist of organic growth, *i.e.*, growth that would have occurred in the ordinary course even without the Transaction.

107. Moreover, NS is incorrect that the additional traffic on the Wylie-Shreveport Section will be handled by approximately one net train *pair* per day.[93] The number of trains operating per day over the Wylie-Shreveport Section will only increase by roughly one train post-Transaction. This reflects the new CPKC train pair from Bensenville, Illinois to Wylie, Texas, minus consolidations of existing trains as explained in the paragraphs below.[94] There is ample capacity on the Wylie-Shreveport Section to accommodate one additional train and adding one additional daily train to that section poses no threat to existing service levels, contrary to NS's conjecture. To be clear, we explain below how Applicants' Operating Plan will only add one additional daily train to the Wylie-Shreveport Section.

108. In line with the recently announced NS ("TOP/SPG") operating plan, the CPKC Optimized Plan strives for repeatable, daily balanced service plans where possible.[95] This includes handling intermodal and manifest traffic in blended trains rather than select day-of-week specialized services. Mixing intermodal and manifest traffic on the same train is a well-recognized way to improve railroad operations. CP has operated mixed intermodal and manifest

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[92] *See* Amended Comments of Norfolk Southern and Request for Conditions (filed June 9, 2022) ("NS-12") at 23.

[93] *See id*.

[94] *See also* Amended Operating Plan, Appendices H and I.

[95] *See "New Norfolk Southern Operating Plan to Blend Traffic and Build Longer Trains*," Trains (Feb. 12, 2019), *available a*t https://www.trains.com/trn/news-reviews/news-wire/12-new-norfolk-southern-operating-plan-to-blend-traffic-and-build-longer-trains/.

trains efficiently and effectively for years, and there is no reason to doubt it will do so effectively on the Wylie-Shreveport Section as well as the Meridian Speedway. Applicants' Optimized Plan will alter current day operations on the Wylie-Shreveport Section from select day-of-week specialized services to daily balanced service plans, thereby reducing the number of trains operating on that section.

109. Looking first at the Wylie-Shreveport Section, under the Applicants' Base Plan, KCS runs a six day-a-week manifest train pair between Wylie and Shreveport. NS runs one intermodal train pair daily on that same segment and also runs an intermodal train five days-a-week westbound and two days-a-week eastbound. Altogether, KCS and NS run 15 scheduled eastbound trains against 18 scheduled westbound trains over the Wylie-Shreveport Section. Under Applicants' Growth and Optimized plans for scheduled trains, NS's train design will remain unchanged for the seven day-a-week balanced intermodal train pair. However, the imbalanced train pair that NS runs over that segment (*i.e.*, the intermodal train it runs five days-a-week westbound and two days-a-week eastbound) is proposed to move daily in a combined service with KCS's manifest traffic, also moving daily. This proposed change will enhance NS-KCS service because assets, including locomotives, railcars and containers, will move daily with significantly less dwell, higher velocity and improved service.

110. Expanding the discussion to the Meridian Speedway, the concept of mixing intermodal and merchandise traffic extends to Meridian and into Mexico and also produces a balanced seven day-a-week traffic flow to and from Mexico. The Applicants propose retaining current daily Meridian to Mexico service levels while increasing the reverse move from Mexico to Meridian from three days a week to daily. Consequently, instead of a complicated choreography of two trains per week out of Wylie and three trains per week out of Mexico

heading to Meridian, the Applicants' proposal is that the intermodal traffic would flow daily to and from both locations in blended service. To further illustrate, KCS currently operates less-than-daily intermodal service connecting Mexico with Meridian, handling some intermodal traffic interchanged with CN at Jackson and some interchanged with NS at Meridian. CPKC plans to take advantage of the improved traffic density of the broader CPKC system to convert these less-than-daily trains to a daily operation out of Mexico. As with the Wylie-Shreveport Section, this will increase the frequency of service and improve overall transit times for the intermodal traffic combined with manifest traffic to and from Mexico.

111. Note that, at Meridian, KCS currently operates two daily pairs of solid intermodal trains that move to and from Shreveport. The first pair extends through to Wylie and the second pair is interchanged with UP near Shreveport. UP also hands off to KCS one eastbound train daily for delivery to NS at Meridian. CPKC's operating plan does not touch any of these premium trains. They will continue to run intact, with no manifest traffic, as they do today. There will be no service degradation.

112. In short, CPKC will meld certain intermodal and manifest services to build daily trains on which traffic will flow more evenly over the week, with shippers benefitting from more frequent service. At the same time, premium services will remain intact.[96]

113. Finally, as with all locations where one railroad conveys another railroad's traffic, traffic levels will be constantly and jointly reviewed and train designs adjusted to accommodate growth, using the guiding principles of balance and seven day-a-week service.

[96] *See* Amended Operating Plan, Appendix H.

114. NS asserts that Applicants plan to increase traffic by an average of 53% Transaction-specific growth on the Wylie-Shreveport Section and seemingly assumes, without support, that this may cause service issues on that segment.[97] Not only is NS's assertion devoid of any analysis of the service benefits of Applicants consolidating trains or any explanation of how adding only one train per day over the Wylie-Shreveport Section will negatively impact service levels, each of which we address above, but is also simply incorrect. NS vaguely cites to the Amended Operating Plan without specifying which exhibit or explaining how they arrived at transaction-specific growth of 59% and 46%, respectively, for the two segments of the Wylie-Shreveport Section, resulting in an average transaction-specific growth of 53%. We can only assume NS was using Appendix T of the Amended Operating Plan. Despite Applicants clearly stating on page 11 of Appendix T that, for the two segments of the Greenville Subdivision (also known as the Wylie-Shreveport Section), the "Merger Related Growth Percentage" for each segment was 49.9% and 38.7%, respectively, NS apparently deemed its own math more accurate. NS seems to have divided the numbers listed in the "Merger Related Growth" column by numbers listed in the "Base" column to arrive at its transaction-specific growth of 59% and 46%, respectively. However, this completely ignores the effect of organic growth. The proper calculation is to divide the numbers listed in the "Merger Related Growth" column by numbers listed in the "2027 No Merger" column, the result of which is listed in the "Merger Related Growth Percentage" column. Using the correct numbers, the Wylie-Shreveport Section will see an average transaction-specific growth of 44.3%, much lower than what NS claims.

[97] *See*, *e.g.*, NS-12 at 22-23.

B. Applicants' Mixed Trains on the Wylie-Meridian Route Are Not Too Long, Contrary to NS's Assertions[98]

115. NS woefully miscalculates the lengths of the mixed trains that Applicants will operate from Wylie to Meridian.[99] NS's calculations did not take into account the select day-of-week operation in this corridor. With one train running six days-per-week (M-DASH) and the other train running two days-per-week (I-DAAT2), the total footage moved per week should be added and then divided by seven. Instead, NS took the average length of the two day-a-week train, having been divided by two, and the average of the six day-a-week train, having been divided by six, and summed those numbers.[100] In other words, NS treated the train operating six days-per-week and the train operating two days-per-week as if they each operated seven days-per-week, resulting in a significant overstatement of the total footage moved per week. Indeed, to further illustrate, NS simply took the average length of the I-DAAT2 train of 6,878 feet and added it to the average length of the M-DASH of 6,575 feet. The more accurate calculation is to sum the total footage for the trains for the week and divide by seven. Using this correct calculation shows only that the segments between Meridian and Jackson and between Jackson and Shreveport will calculate to slightly above 10,000 feet for one westbound train. However, that will not be an issue because a train service operating between Shreveport and Artesia and returning in the reverse direction will be used to alleviate the Jackson to Shreveport overage. In other words, KCS's traffic will move to the Artesia train. The Meridian to Jackson overage for one train is slight and will be addressed by having the eastbound trains and the other westbound trains fitting within siding capacities on that segment.

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[98] Elphick/Orr Workpaper "NS Train Weight Estimates.xlsx."

[99] *See* NS-12 at 24-25.

[100] *See id*.

C. There Will Be No Capacity Issues at KCS's Wylie Intermodal Terminal

116. NS wrongly assumes static capacity at Wylie.[101] In fact, there are several straightforward options to swiftly expand capacity at the Wylie Intermodal Terminal if needed:

- Performing already-planned track work at the south edge of the property (to add two new pad tracks) will provide capacity for 320,000 additional handlings. This work, which is currently in Phase 3, will allow the terminal to process approximately 960,000 total handlings per year (when combined with the increased working track cycles per day).
- If needed, increasing the working track cycles per day from 1.0 to 1.9—a change that would require no capital investment, only minor operating adjustments and increased switching resources—would enable the terminal to process approximately 640,000 annual handlings.
- If needed, as already stated in the Amended Operating Plan, KCS has the ability to direct traffic destined for Dallas from Mexico to the lightly utilized Kendleton Intermodal Facility.
- If needed, Applicants may invest in new cranes to increase the pace of container handling, and such investments will correspond to demand growth. Each additional crane would add capacity for approximately 90,000 annual handlings.
- If needed, CPKC will be able to expand capacity through planned paving projects. One option is for CPKC to create 285 additional parking stalls that can also be used for stacking based on the needs of the operation, which will create approximately 60,000 additional handlings. Another option, which involves creating 1,500 parking stalls in the Northeast corner of the yard, would create 330,000 additional handlings.

117. On top of all of these options, CPKC will also have the ability (assuming NS does not exercise its option to acquire the Wylie Intermodal Terminal) to greatly expand the physical footprint of the Wylie Intermodal Terminal itself by developing the 220 acres of land that KCS owns adjacent to the intermodal yard. If NS does exercise the purchase option, NS would to be obligated to support CPKC intermodal services there, and CPKC could also augment its capacity by building its own facility on the adjacent land. This 220 acres of available land is shown outlined in yellow in Figure 21 below:

[101] *See* NS-12 at 25-27.

FIGURE 21
OPPORTUNITY FOR EXPANSION OF WYLIE'S PHYSICAL FOOTPRINT

D. In the Event of a "Major Service Failure," a Grant of Trackage Rights Between Wylie and Shreveport Would Be Counterproductive for Service Levels On That Segment

118. The granting of contingent trackage rights to NS will add additional complexity to the existing operation which will inevitably negatively influence existing operations, which over time will result in an adverse impact on the service customers would otherwise benefit from as the result of the Transaction. CPKC will handle some intermodal traffic between Dallas and Meridian in mixed trains, carrying a block of NS intermodal traffic along with other blocks. Were NS to trigger its contingent trackage rights, doing so would disrupt this operation and add more trains to a line which – in NS's hypothetical – would already be suffering service issues. Giving control to an NS engineer instead of a KCS engineer, while forcing CPKC to add an entirely new train for the non-NS traffic, would be counterproductive at best.

119. Operationally, one would see additional complexity dispatching the line as what would today be a single train carrying CPKC and NS traffic in haulage under the Meridian Speedway agreement would now be two individual trains running in the same corridor. With CP

and NS having their own traffic carrying their own trains you would, at the very least, increase the number of scheduled intermodal trains operating on the corridor. With additional trains, there would be additional complexity in establishing integrated operations, including schedules that meet the operational needs of each respective railroad for crew turns, power cycles, asset turns, as well as traffic connectivity on their own networks. With this, NS would be required to establish a crew pool at Shreveport Yard and KCS operations, particularly at the Wylie Intermodal Terminal and Shreveport Yard, would be subject to NS crew availability from Wylie through to Meridian.

120. Looking specifically at traffic to or from the Wylie Intermodal Terminal, ultimately the arrival of two different companies, operating in different service, would force the facility to manage complexities associated with two different roads launching trains at the same location. This all in a corridor where the capital, terminal configurations and associated investments have been developed over time with the expectation that there would be a single company operating in the corridor. For example, Shreveport has not been built to hold NS trains for NS crews. Nor does the Wylie Intermodal Terminal contemplate building two railroad's trains at the same time.

VERIFICATION

I, Raymond A. Elphick, declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this statement.

Executed on this 12 day of July, 2022.

Raymond A. Elphick

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VERIFICATION

I, John F. Orr, declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

Executed this 12 day of July, 2022.

DocuSigned by:
John F. Orr
37E7994A57084ED...

John F. Orr
Executive Vice President - Operations
Kansas City Southern

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36500

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

EXHIBIT I

REPLY VERIFIED STATEMENT OF RAYMOND A. ELPHICK

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EXHIBIT 1: RTC REPORT

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1. My name is Raymond A. Elphick. I am the Assistant Vice President Service and Product Design for Canadian Pacific Railway Company ("CP"). Together with John F. Orr, the Executive Vice President – Operations of Kansas City Southern ("KCS"), I sponsored and verified Applicants' Operating Plan and Amended Operating Plan in this proceeding.

2. This statement addresses certain assertions related to the CP network contained in (1) Metra's Comments and Request for Conditions, and its Supplemental Comments; (2) the Chicago Communities' Opening Comments and Request for Conditions, and Supplemental Opening Comments and Request for Conditions; (3) Hennepin County's Comments and Request for Conditions. As discussed below, the assertions raised by these interested parties reflect a misguided understanding of the CP/KCS Transaction (the "Transaction") and do not raise any serious concern regarding the Transaction's likely impacts. Finally, I explain that the Transaction will not threaten CP/KC's ability to provide high quality service.

I. METRA'S ANALYSIS OF THE IMPACTS OF THE CP/KCS TRANSACTION IS COMPLETELY MISTAKEN

3. I have reviewed Metra's analysis of the impact of the Transaction on the lines it currently shares with CP (referred to by Metra as the "MD-W Line" and "MD-N Line"). As I explain in this part of my testimony, Metra's analysis is fundamentally flawed. Contrary to Metra's assertions, the Transaction will not have any adverse impacts on Metra's operations on either the MD-W Line or the MD-N Line.

4. The only projected effect from the Transaction to any of Metra's lines is that eight daily freight trains will be added to the MD-W Line west of Bensenville Yard: four that travel eastbound towards Bensenville, and four that travel westbound from Bensenville. The current

infrastructure of the MD-W Line, plus a planned reconfiguration at Bensenville Yard itself, which I discuss herein, will provide adequate capacity to handle this increased traffic.

5. Metra's worry that CP's Marquette Subdivision will be over capacity (resulting, according to Metra, in CPKC re-routing trains through Chicago over Metra's MD-W and MD-N Lines) is also inaccurate.[1] As discussed in more detail below, the Marquette Subdivision has ample capacity to handle the projected traffic that Applicants plan to run through it. Applicants corrected the RTC modeling performed by Metra, which confirmed that Metra's fears are unfounded and that there will be no adverse impact to Metra's operations as a result of the Transaction.

A. Metra Ignores the Fact that the CP/KCS Transaction Will Not Increase CPKC Trains East of Bensenville Yard on Metra's MD-W Line or on Metra's MD-N Line

6. When I reviewed Metra's comments, it was immediately clear to me that Metra simply did not understand Applicants' Operating Plan. In particular, I was struck by Metra's confusion over the number of daily freight trains that the Transaction will add to the MD-W and MD-N Lines. To set the record clear, I explain in this section where the Transaction will and will not result in additional freight trains on Metra's lines.

7. Metra asserts that the Transaction will add 7.53 trains per day to the segment of the MD-W Line east of Bensenville Yard.[2] That is plainly incorrect. The Transaction will add *zero* trains per day east of Bensenville.[3]

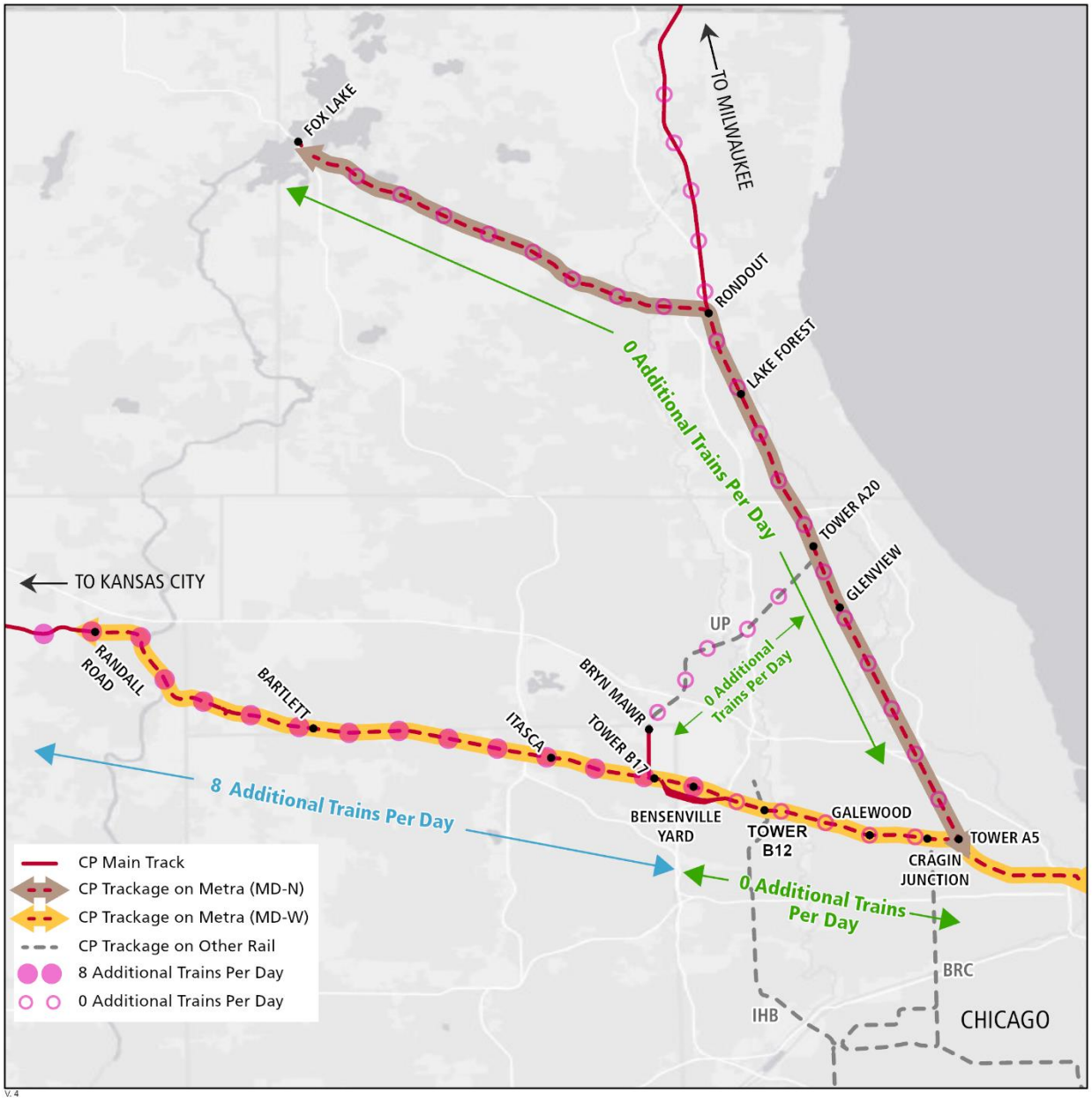
[1] *See* Metra Comments and Request for Conditions (filed March 15, 2022) ("METR-7") at 18.

[2] *See* METR-7, Verified Statement of Thomas D. Crowley and Robert D. Mulholland ("Crowley and Mulholland V.S.") at 19.

[3] *See* Amended Operating Plan, Table 8.

8. Metra's confusion may stem from the fact that Applicants' Operating Plan showed train count increases between Tower B17 and Tower B12. However, this was simply because trains were assigned to that segment if they were entering or departing Bensenville Yard to or from the west. Because Bensenville Yard is geographically situated between Tower B17 and Tower B12, trains moving *within Bensenville Yard itself* show up as moving between those towers, *even though they are not actually operating on the mainline tracks of the MD-W Line east of Tower B17*. To be abundantly clear, Applicants do not project any additional daily freight trains to travel on the mainline tracks of the MD-W Line east of Bensenville Yard. Figure 1 below illustrates this.

FIGURE 1
MAP DETAILING LOCATIONS WHERE FREIGHT TRAINS WILL *AND WILL NOT* INCREASE

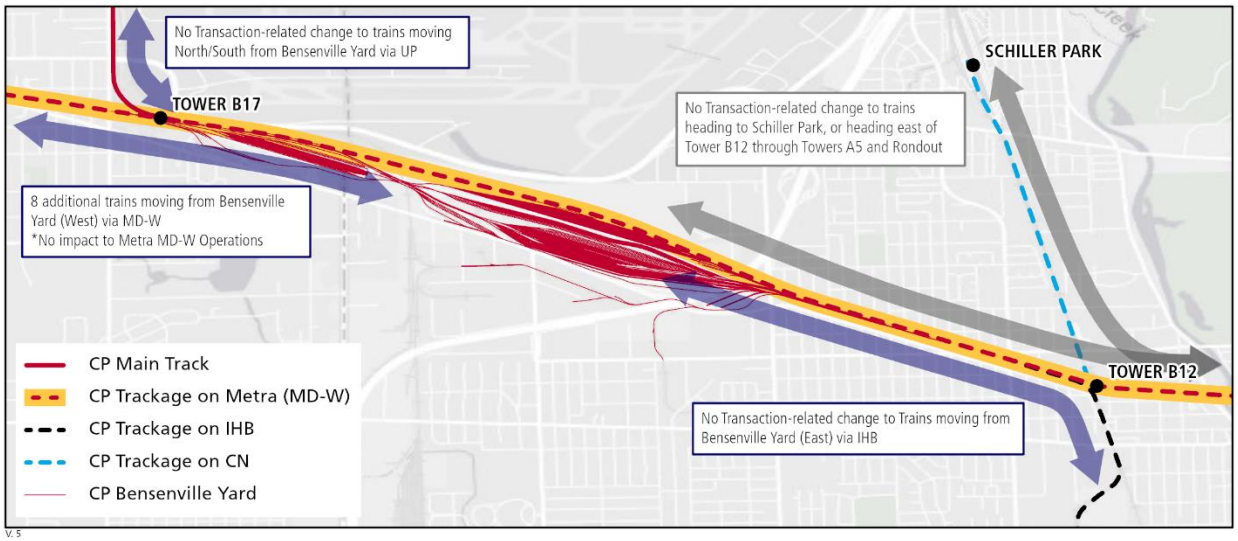


9. Mr. Oppenheim argues in his Verified Statement that Applicants cannot say there is no impact on Metra's operations east of Bensenville Yard just because freight trains are

entering or departing Bensenville Yard from the west.[4] Mr. Oppenheim claims such trains must travel through Chicago.[5] Respectfully, Mr. Oppenheim is incorrect. The additional freight trains Applicants plan to operate on the MD-W Line will travel no further east than Bensenville Yard. They will not, nor must they, travel through Chicago, as Figure 2 below illustrates.

10. Moreover, transfers to or from other railroads will not increase as a result of the Transaction.[6] All other additional CPKC traffic resulting from the Transaction that must travel east of Bensenville Yard (for example, traffic to or from areas east of Chicago, like Detroit or Eastern Canada), is modest and will be handled in existing trains.[7] Because such traffic will be handled in existing trains, there will be no impact on Metra's operations whatsoever.[8]

FIGURE 2
METRA CHICAGO CLOSE-UP



4 METR-7, Verified Statement of Rich Oppenheim ("Oppenheim V.S.") at 22.

5 *Id.*

6 As illustrated above by Figure 2, transfers to or from other railroads require trains to move to or from Bensenville Yard to or from Indiana Harbor Belt's lines south of Tower B12 or east of B12 to Cragin Junction and beyond to the BRC and NS.

7 *See* Amended Operating Plan at ¶ 210.

8 I note that one of the train symbols (170/171) from the east will be re-numbered. *See* Appendices G (at 1) and I (at 3-4) of Amended Operating Plan.

11. In fact, I anticipate that train activity east of Bensenville associated with Schiller Park may be reduced pursuant to the reconfiguration of Bensenville Yard, which I discuss more fully below. Trains 142 and 143 will no longer depart from or arrive at Schiller Park, which requires occupying the diamond at Tower B12, since the automotive and intermodal facilities will be consolidated at Bensenville Yard.

12. Again, to avoid any doubt, Applicants project that the Transaction will only add eight daily freight trains to the MD-W Line, all of which will travel on the portion of that line west of Bensenville Yard, and no more. While Applicants' Amended Operating Plan shows a Transaction-related train count change of 8.00 for the Bensenville Metra, IL – Randall Road, IL segment of the Elgin Subdivision (which is what Metra refers to as the MD-W Line) and a separate transaction-related train count change of 6.43 for the Bensenville, IL – Tower B12, IL segment of the Elgin Subdivision,[9] the former is inclusive of the latter for the reason explained above in paragraph 8.

13. Metra also appears to think the Transaction will result in meaningful increases in traffic to the MD-N Line. Respectfully, Metra is incorrect. The Transaction will do nothing of the sort. We made clear in Appendix A of the Amended Operating Plan that there is no Transaction-related train count increase for the MD-N Line.[10] While the Amended Operating Plan does show small Transaction-related increases in density data for that line,[11] these increases are modest and can be handled in existing trains, with no foreseen impact on Metra operations or Metra schedules.

9 *See* Amended Operating Plan, Appendix A at 4 (MST Seg Nos. 81 and 82).

10 *See id.* at 3 (MS Seg Nos. 69-71).

11 *See* Amended Operating Plan, Appendix T at 7 (Segment Nos. 69-71).

14. Metra also asserts that Applicants understated train counts between Milwaukee and Chicago by at least 6.28 trains per day.[12] Given the source they cite to, it is my understanding that Metra is referring to an additional 6.28 Amtrak trains that will travel on the MD-N Line. First, this is not Transaction-related. Applicants' settlement with Amtrak (which was publicly filed) makes clear that Amtrak was planning to add these trains regardless of the Transaction.[13] Second, the settlement agreement contains clear conditions requiring Amtrak to add capacity to allow for the additional trains to be added.[14]

B. There Is Ample Capacity for Additional CPKC Freight Trains on Metra's MD-W Line

15. Not only does Metra misunderstand the actual scope of the Transaction's impact on the lines it shares with CP, but it also incorrectly claims that the MD-W Line lacks sufficient capacity to accommodate eight additional daily freight trains without adversely impacting its operations.

16. First, I address Metra's numerous claims of errors with Applicants' capacity analysis. To satisfy itself that sufficient capacity existed on the Elgin Subdivision (of which Metra's MD-W Line is a part), CP's Operating Plan Team used its understanding of past history; its intimate knowledge of operations on its network; its understanding of the planned reconfiguration of Bensenville Yard; and ran various analyses *with an assumption that freight trains must be scheduled outside of Metra's peak periods*. CP is confident that its analyses, so informed by its expertise with its own network and wealth of experience, are reliable and accurate. In fact, CP reviewed and modified Metra's RTC simulation of operations starting at

12 *See* Metra Supplemental Comments (filed June 9, 2022) ("METR-8") at 4.

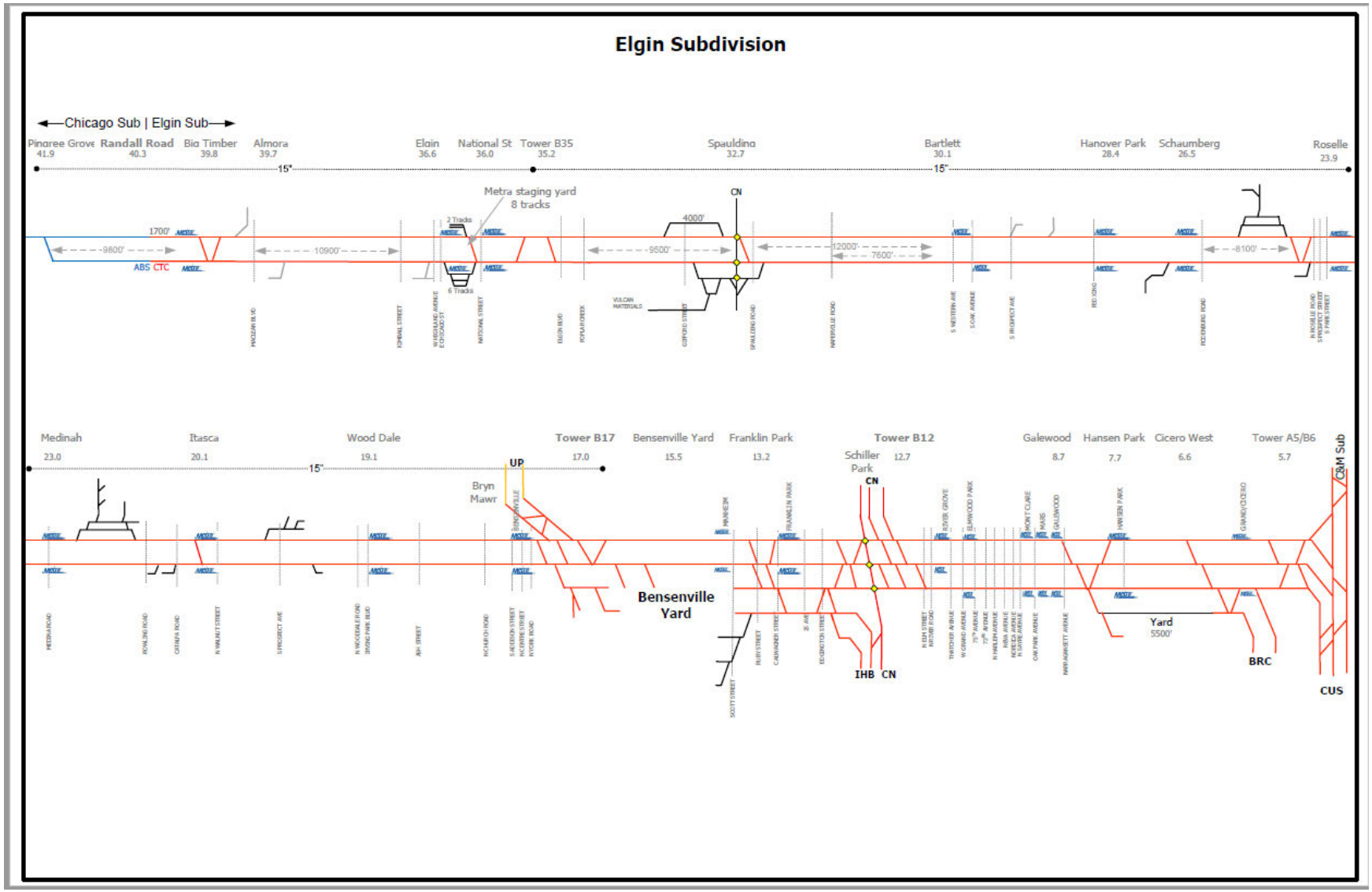
13 *See* Amtrak-Canadian Pacific Agreement (filed February 2, 2022).

14 *See id.*

River Junction through to Chicago and Sabula Junction and, as I explain more fully below in Section E, the RTC simulation, as corrected, confirmed what CP already knew—there is sufficient capacity on CP's Elgin Subdivision and Marquette Subdivision to accommodate Applicants' projected traffic increases without adversely impacting Metra's operations.

17. Second, I illustrate here how the MD-W Line has ample capacity to handle eight additional daily freight trains without adversely impacting Metra's operations. Figure 3 below illustrates the track turnouts and location of Metra stations on CP's Elgin Subdivision.

FIGURE 3
ELGIN SUBDIVISION TRACK SCHEMATIC



18. The Elgin Subdivision west of Bensenville, where Applicants anticipate adding eight daily freight trains, is 23 miles long west of Bensenville, double track, CTC-equipped, and features nine crossovers west of the interlocking at Tower B17. It has track speeds of 40 miles-per-hour for freight trains and 70 miles-per-hour for passenger trains. This leads to a typical run time of about 45 minutes for both freight trains and passenger trains (passenger is inclusive of stops).

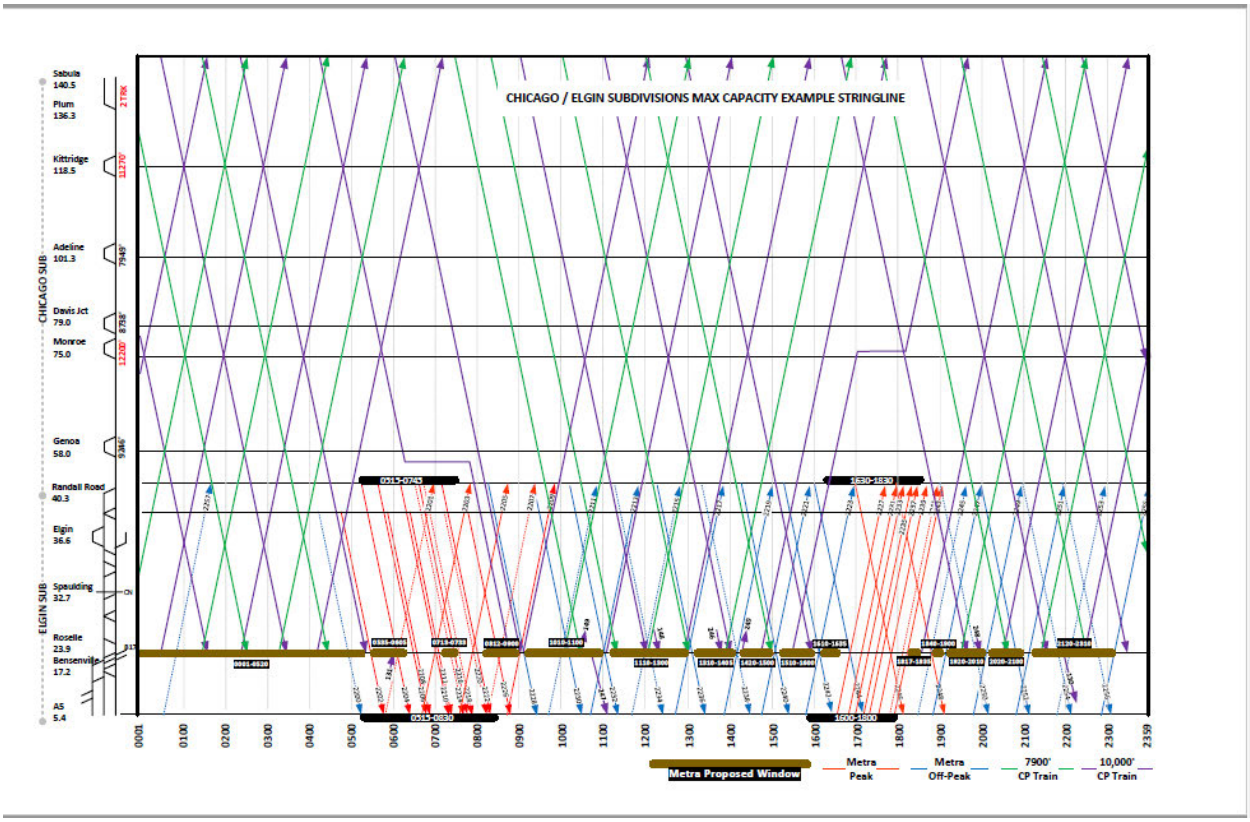
19. Figures 4 and 5 below are string-line graphics intended to help illustrate the available capacity on the MD-W Line and surrounding areas, and contextualize the Transaction. Figure 4 shows the maximum number of slots that are available for freight trains to run on CP's network near the greater Chicago area, while avoiding commuter windows. (To avoid any doubt, Figure 4 is simply hypothetical and is intended to illustrate the maximum available slots as a function of the existing and planned siding (Monroe) on the Chicago Subdivision, not any actual traffic flows foreseen as a result of the Transaction.) As the string-line in Figure 4 below shows, with freight trains running with similar transit times as passenger trains (as described above in paragraph 18), there are several slots available for freight trains in the non-peak windows. In fact, Mr. Oppenheim testified that he had previously analyzed the available windows between scheduled Metra trains.[15] The spreadsheet reflecting Metra's analysis shows that there are several available windows, which Mr. Oppenheim evidently acknowledged, both during peak and non-peak periods trains, in which freight trains can be run.[16] You will note that per the spreadsheet provided by Mr. Oppenheim and shown in brown in Figure 4, the slots we

[15] Oppenheim Dep. Tr. at 175:4-176:20.

[16] *See* "B17 and B12 – Freight windows – A – Referenced in Deposition Held on 06-07-2022.xls" (Exhibit 2).

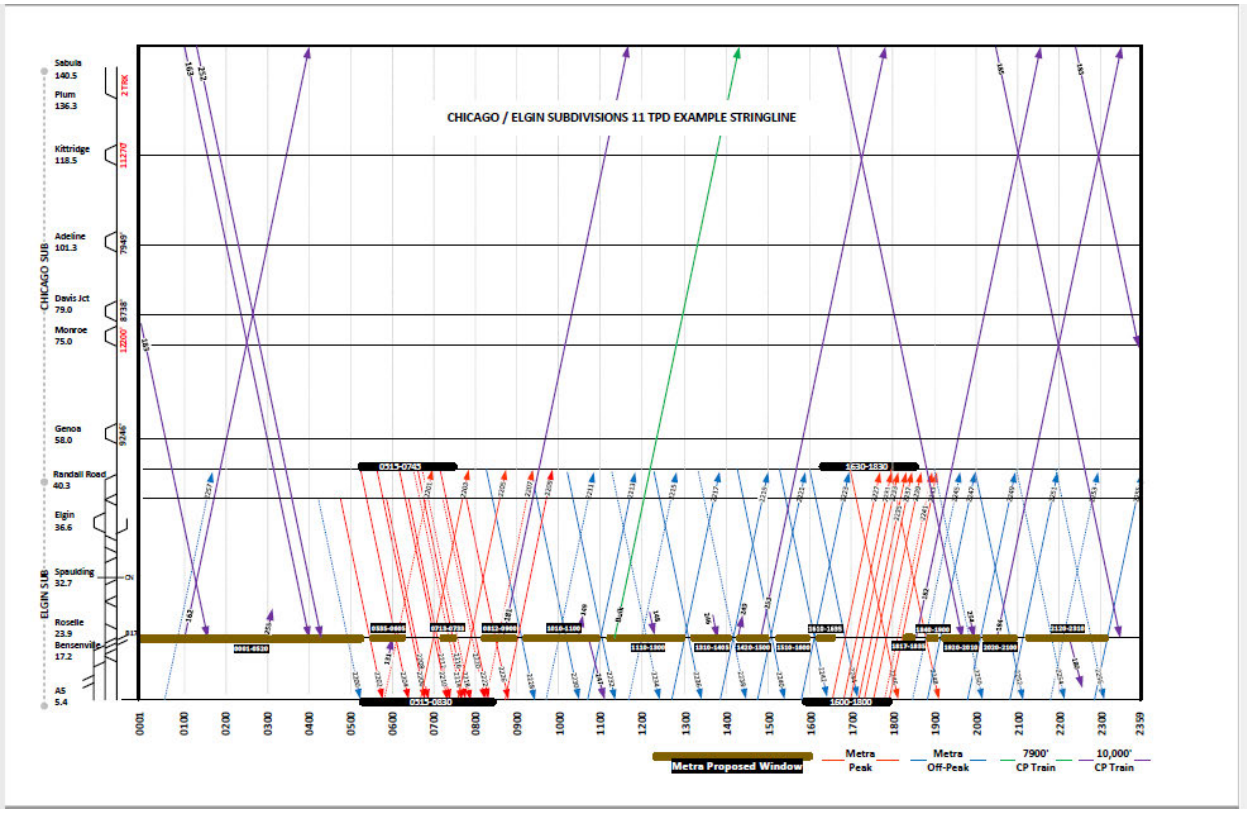
modeled here align with the available slots shown in his spreadsheet, and green lines represent slots where trains will fit in all the sidings and purple indicates slots that are designed to utilize longer sidings.

FIGURE 4
STRING-LINE OF AVAILABLE SLOTS ON CP NETWORK NEAR METRA'S LINES



20. Figure 5 below, meanwhile, is an illustrative graphic provided to demonstrate a potential grid of slots in which Applicants project they could realistically run the eight additional freight trains—again, avoiding commuter windows—by making use of siding capacity on that portion of CP's network. Even with the addition of eight additional daily freight trains owing to the Transaction, there is still capacity to accommodate reasonable requests from Metra to add trains or make schedule changes.

FIGURE 5
ILLUSTRATIVE STRING-LINE OF CP NETWORK SLOTTING EIGHT ADDITIONAL FREIGHT TRAINS



21. Further, as Adolph Gameiro more fully discusses in his Reply Verified Statement, by historic comparisons, there are currently low freight train frequencies on the MD-W Line and thus slots exist between existing peak and non-peak period operating windows in which Applicants' additional freight trains can be scheduled.[17] Our capacity analysis, described in the Application, showed that the MD-W Line has ample room for the anticipated increase in train volumes, in significant part because the additional freight trains would be scheduled to work with Metra's tightly scheduled operations.[18] And again, as discussed more fully below in

[17] *See* Reply Verified Statement of Adolph Gameiro at ¶ 27.

[18] Metra's claim that CP has been bad at complying with existing schedules is addressed by Nick Walker in his Reply Verified Statement. Walker R.V.S., at Section I.B.

Section E, CP's corrected version of Metra's RTC modeling confirmed that adequate slot capacity exists on the Elgin Subdivision without adversely impacting Metra's operations.

22. Metra also takes issue with the length and weight of the trains Applicants will run over the MD-W Line, arguing that the MD-W Line was never meant to accommodate such trains, and that there are no sidings on the MD-W Line, nor on CP's adjoining Chicago Subdivision, long enough to fit these trains. It similarly argues that CP's Chicago Subdivision (which is adjacent to Metra's MD-W Line) reduces from double track to single track two miles west of Metra's Big Timber Road stations, which causes delays toward the end of its MD-W Line.

23. However, Metra's focus is too narrow. As their witness Mr. Godfrey recognizes, it is important to assess the capability and flexibility that the broader network provides for slotting trains through Chicago.[19] Applicants plan to add a new siding at milepost 75, which is situated at Monroe, Illinois and located 33 miles west of the existing double track at Pingree Grove. With another long siding at milepost 118, CP's Chicago Subdivision will have two sidings greater than 10,000 feet and three sidings capable of handling bulk trains or scheduled trains that fit those sidings. The subdivision also has double track at either end. Coupled with investment in the Bensenville Yard reconfiguration and CP's line between River Junction and Davenport to add capacity, CP has designed a network with sufficient capacity, sidings and flexibility to allow for fluid train operations—including the flexibility to have freight trains in slots avoiding the commuter rush.

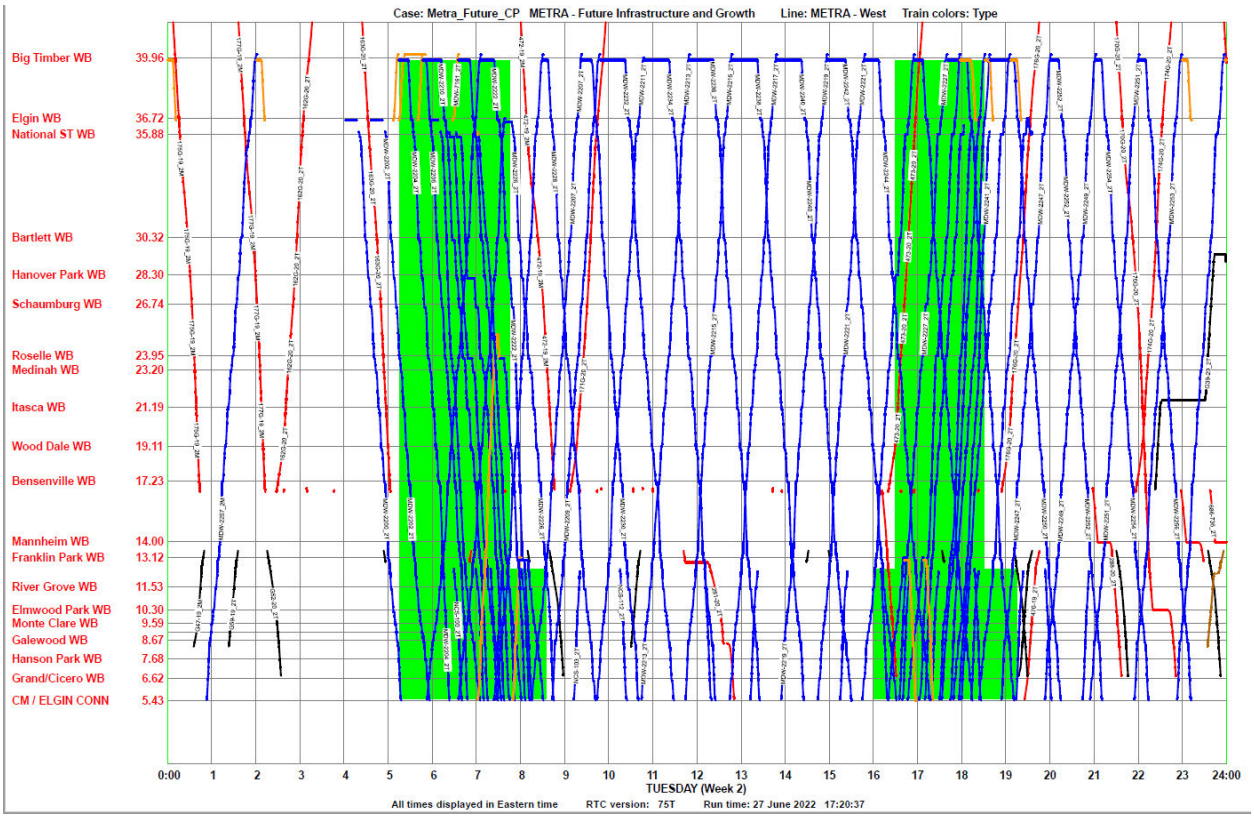
24. Further, Figure 6 below is the string-line graphic produced by CP's corrected version of Metra's RTC simulation that, as discussed in Section E, successfully dispatched the

[19] *See*, e.g., Godfrey Dep Tr. at 83:25-86:10.

St. Paul through to Chicago and Sabula Junction rail segments post-Transaction, which includes the Elgin Subdivision and the proposed additional trains to be dispatched on that subdivision. In Section E, we describe how the additional eight trains on the Elgin Subdivision had no impact on Metra's performance. The string-line below demonstrates what that simulation did to slot Applicants' proposed schedules after calibrating that model to the priorities and appropriate dispatching flexibilities with which CPKC would operate in delivering the additional eight freight trains, with no additional impact to Metra's services. After configuring the RTC model with the priorities and parameters as we operate today, the corrected RTC simulation dispatched the lines as we expected those lines to be dispatched based on our experience and understanding of our network's capacity, including our interactions with Metra.[20]

[20] As noted in the report summarizing the results of CP's review and corrections to Metra' RTC simulation, attached hereto as Exhibit 1, when examining stringline plots an expert can determine whether the operation is being managed in the same manner as a real dispatcher would or whether infrastructure, operating parameters or dispatch settings in the RTC model may not be configured properly. *See* CP RTC Report (Exhibit 1 at 3).

FIGURE 6[21]
RTC SIMULATION STRING-LINE



25. I recognize that CP makes several claims throughout its comments of CP interfering with Metra's trains during so-called "peak periods." However, freight trains are generally not dispatched on the MD-W Line during peak periods, as Nick Walker more fully discusses in his Reply Verified Statement.[22] Indeed, as data shows, this hardly ever actually occurs—between 2019 and 2021, only 17% of all CP freight trains on the MD-W Line operated at any point during peak windows[23] and many of these were active for only a small portion at one end of the window. CP's preference has been, and CPKC's preference will continue to be, that freight trains be dispatched outside of Metra peak periods whenever possible, in compliance with

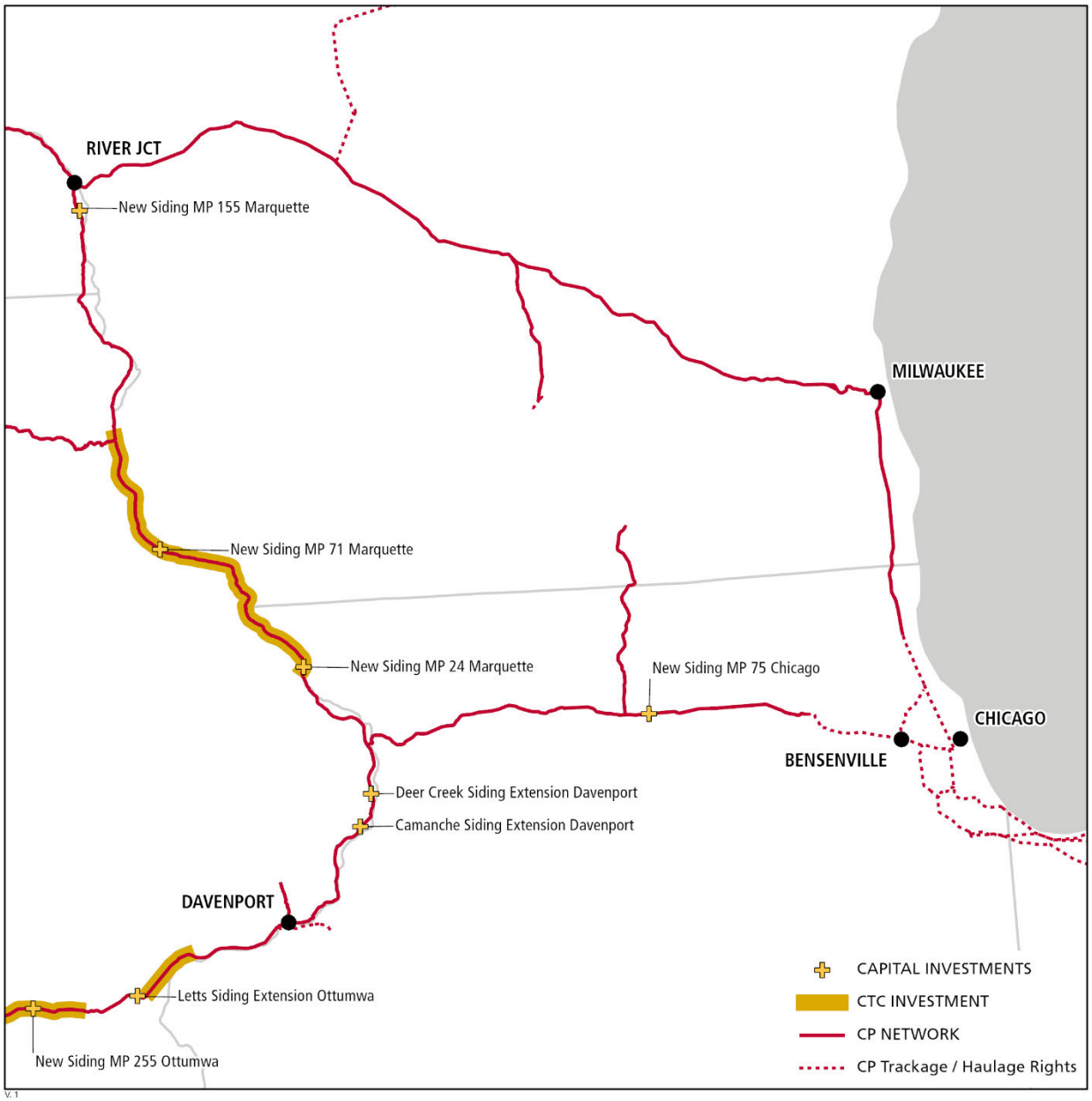
21 Ex. 1, at Ex. A-2.

22 *See* Reply Verified Statement of Nick Walker ("Walker R.V.S.") at ¶¶ 7-12, 38.

23 Workpaper "Train actuals Peak Windows.xlsx" at tab "Window Chart."

CP's contractual commitment to not interfere with Metra's peak period operations. Moreover, this is not a Transaction-related concern because new CPKC trains will be scheduled outside peak windows. Lastly, Metra ignores that Applicants plan to add capacity between Davenport and Chicago to flexibly slot trains to and from Chicago, as shown by Figure 7 below, which will allow CPKC to avoid interfering with Metra trains during these windows.

FIGURE 7
TRANSACTION-RELATED CAPITAL PROXIMAL TO CHICAGO



26. Throughout its comments, Metra incorrectly argues that Applicants understated the volume of trains moving over Metra's lines because the Application does not discuss passenger trains, other classes of freight trains, local trains, yard trains, work trains or foreign trains that traverse Metra's lines. Throughout its supplemental comments, Metra further argues that the Amended Operating Plan understates the volume of traffic because it does not consider organic growth. As I explain below, Metra is incorrect on both fronts.

27. Contrary to Metra's assertions, CP did consider the impact of other types of trains when assessing the impacts of the Transaction. In assessing whether a local train, foreign train, yard train or work train has an impact on capacity, CP anchors itself on methods and measures of capacity utilization. CP then builds on its understanding of local operations, yard and track maintenance activities, foreign train activities and how long it takes to traverse segments or diamonds. CP also enlists local experts to understand the nature and cause of operational interference as well as what can be done to remedy that interference. CP also calls upon its past experience on its own lines. Notably, in the case of the MD-W and MD-N Lines, CP considered the fact that these lines historically had heavier freight operations than there are currently.

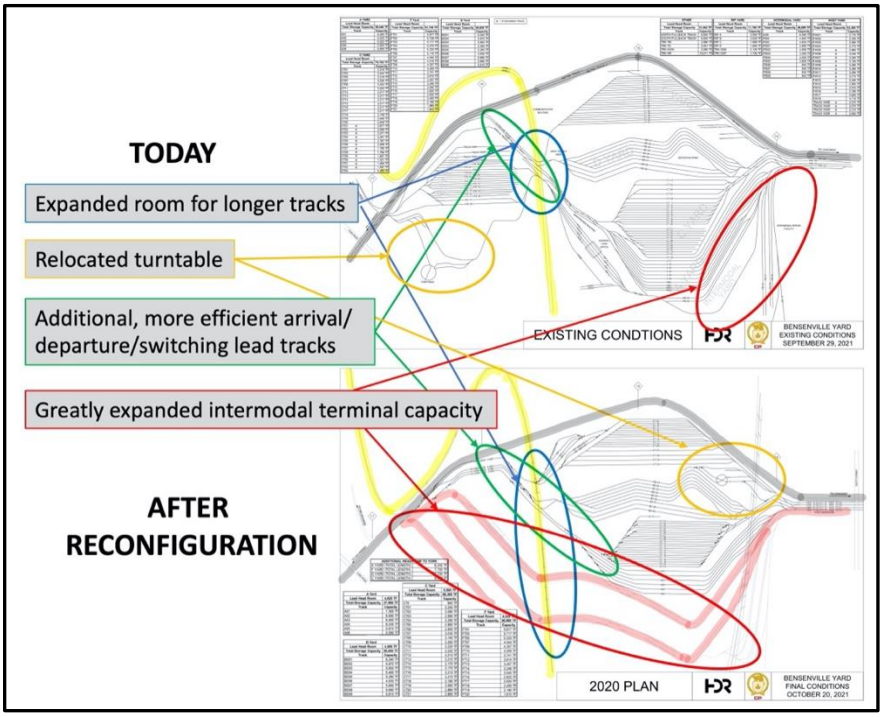
28. Further, as shown on page six under the "Organic Growth" column of Appendix T of the Amended Operating Plan, Applicants did take into account organic growth on the Elgin and C&M Subdivisions (of which Metra's MD-W and MD-N Lines are part).

C. Metra's Analysis Does Not Take Into Account the Benefits of Ongoing Work to Expand and Reconfigure Bensenville Yard

29. Metra's analysis of the Transaction is completely devoid of any consideration of the planned reconfiguration of Bensenville Yard, which is a significant project that will smooth operations on the MD-W Line. Instead, Metra simply pleads ignorance that they do not know the details of the reconfiguration and asserts that Applicants do not adequately explain how this

project will help resolve current operating issues as well as any future issues created by the Transaction.[24] To set the record straight, I explain in this section how the Bensenville Yard reconfiguration will substantially improve operations on the MD-W Line, helping to both resolve current issues and to accommodate the increased traffic from the Transaction. Figure 8 below is a map detailing the before and after conditions at Bensenville Yard, and the accompanying benefits for Metra.

FIGURE 8
MAP SHOWING BEFORE AND AFTER CONDITIONS AT BENSENVILLE AND BENEFITS FOR METRA



30. Nick Walker's Reply Verified Statement includes more detail on the planned reconfiguration of Bensenville Yard and its many benefits on fluid operations on the MD-W and

[24] *See* METR-7 at 12.

MD-N Lines.[25] I provide here additional insight on the Bensenville Yard reconfiguration from an Operating Plan point-of-view.

31. In Bensenville's current configuration, all switching and arrival departure activity is driven through a narrow "waist" in the middle of the yard as captured inside the blue and green circles in Figure 8 above. With all of the growth traffic being processed into trains heading west or arriving from the west, any interference in the "waist" of the yard has the potential to delay trains from clearing Tower B17 efficiently. However, as more fully described in Nick Walker's Reply Verified Statement, the reconfiguration will eliminate this bottleneck issue by removing a UP embankment in favor of a series of bridges that will unlock a wider footprint supporting longer yard tracks.[26]

32. Moreover, under the reconfiguration, CP will be able to yard a 10,000 foot train without delay. The reconfiguration will create longer receiving tracks that can accommodate a 10,000 foot train. CP has designed the additional trains resulting from the Transaction to run up to 10,000 feet with two principal drivers anchoring that assumption. The first being Bensenville Yard's arrival and departure capabilities, and the second being the Mexican train length restrictions with trains held to 3,000 meters (approximately 10,000 feet). With Transaction-related growth primarily anchored by either bulk unit trains of less than 10,000 feet or intermodal spanning the three countries, the design of Bensenville Yard has been further refined to ensure efficiencies associated to the Transaction.

33. The most important refinement of the reconfiguration is the ability of Bensenville Yard to directly receive and depart trains from the new intermodal yard configuration. By

[25] *See* Walker R.V.S. at ¶¶ 54-58.

[26] *See* Walker R.V.S. at ¶ 57.

relieving the "waist" of the yard through independent leads and also by developing the intermodal yard to arrive and depart trains directly, the reconfiguration will create capacity and flexibility within the yard, which will in turn reduce interference at Tower B17, the most critical location as it pertains to Metra's operations, and relieve pressure on Metra's mainline tracks.

34. CP ultimately intends that the reconfiguration of Bensenville Yard will eliminate the need to use Schiller Park for intermodal and automotive traffic. As previously noted, this may actually reduce train activity east of Bensenville associated with Schiller Park. Trains 142 and 143 will no longer depart from or arrive at Schiller Park, which requires occupying the diamond at Tower B12.

35. The Bensenville Yard reconfiguration will also help accommodate the increased traffic from the Transaction. Metra notes that there will be an 11% increase in processing demands and 112 additional daily cars at Bensenville.[27] Importantly, the removal of the UP embankment over Bensenville Yard will allow for the creation of independent leads and thereby remove interference and switching and processing activity between F-Yard, the classification yard, and the arrival/departure yard and support longer yard tracks. With the "waist" of the yard sorted out, CP will be able to focus its different yards on specific tasks or functions. For example, F-Yard will be dedicated to processing blocks for the east while the Class-Yard will be dedicated to processing blocks for the west and the arrival/departure yards will be dedicated to arriving and departing trains. As noted in paragraph 33, the expansion of the intermodal yard will allow for the direct arrival and departure of intermodal train services, which will reduce present day interference attributed to the frequent movement of intermodal traffic between the

[27] *See* METR-7 at 13.

various yards. The processing lift resulting from what is described above will easily surpass the incremental 112 cars per day and 4 new block demand resulting from the Transaction.

36. It is important to note that of the 112 additional daily cars at Bensenville Yard as a result of the Transaction, only 32 will go to Eastern Canadian destinations. This traffic will be handled in existing services as noted in Paragraph 213 in the Amended Operating Plan.[28] As a result, there will be no material impact on transfer operations in the Chicago terminal or yard processing demands at other carriers' facilities across the terminal.

37. I further note that CP's recent land agreement with the Illinois Toll Authority and the UP opens new options for expansion of container handling capacity at Bensenville Yard. As noted in Table 13 of the Amended Operating Plan, the Bensenville Intermodal facility is expected to see an increase of 586 handlings per day, by year three of the Transaction. When combined with 2019 volumes, total intermodal volumes by the end of year three, will be approximately 1273 handles per day, or 460,000 handles annually, as also noted in Table 13 of the Amended Operating Plan.

38. Today, the combination of CP's two Intermodal Facilities in Chicago at Bensenville Yard and Schiller Park provides sustainable capacity of approximately 420,000 handles per year, which is more than sufficient for existing volumes. Bensenville's expanded footprint will support the development of significantly greater intermodal capacity, adding longer intermodal servicing tracks, and increasing ground capacity for parking and storage. This design has the potential to more than double the combined capacity of Bensenville and Schiller Park

[28] Workpapers: "Base to Growth Bensenville Block Compare Including Eastern Canada and North Volumes"; "Optimized to Growth Bensenville Block Compare Including Eastern Canada and North Volumes."

compared to today, providing ample room for further growth, well beyond the current year three projections.

D. Metra's Claim that CPKC Will Route Kansas City – St. Paul Trains Via Chicago is Wrong, and Built on Grievously Flawed Modeling

39. Metra expresses a concern throughout its comments that the Marquette Subdivision is already at capacity and will be unable to handle the additional traffic Applicants plan to send over that subdivision. Metra hypothesizes that, as a result, CPKC will re-route that traffic through Chicago via the MD-W Line and then north towards Milwaukee via the MD-N Line.[29] Metra further claims that its RTC modeling confirmed this concern.[30] For the reasons I explain in this section, Metra's fears are unfounded, and its RTC modeling is grievously flawed and should be entitled no weight in this proceeding, as further explained below in Section E.

40. Metra argues that Applicants will add 6.6 daily freight trains over the Marquette Subdivision, which doubles existing conditions.[31] Metra asserts that the Marquette Subdivision is already near or at capacity under existing conditions, so doubling existing conditions is improbable.[32] Respectfully, Metra is incorrect—the Marquette Subdivision is not already near or at capacity. Today, CP operates on the Marquette Subdivision without issue. Moreover, that subdivision is more than capable of handling an almost 100% increase in traffic because CP is installing three new sidings on the Marquette Subdivision: one at Brownsville at milepost 155 by 2025, one at Turkey River at milepost 72 by 2024, and one at Bellevue at milepost 24 by 2024. When complete, the 159-mile Marquette Subdivision will have five sidings greater than 10,000

29 METR-7 at 18.

30 *Id.*

31 METR-7 at 15.

32 METR-7 at 20.

feet and four other sidings capable of handling expected bulk lengths. CP also plans to install CTC south of Marquette and broken rail protection north of Marquette, further enhancing the efficiency and safety of this subdivision. With a total year 3 demand up to 11.4 trains north of Marquette and 15.4 trains south of Marquette, the Marquette Subdivision is designed to support transaction related growth. Also, as further discussed below in Section E, Applicants' RTC modeling confirmed that Applicants infrastructure plan for the Marquette Subdivision will fluidly accommodate the anticipated traffic growth from the Transaction.

41. Metra also argues that the Marquette Subdivision has a challenging topography, such that Applicants' planned infrastructure improvements will be difficult to actually implement. CP deals with challenging topography throughout its network and CP's investment in the Marquette Subdivision reflects the unique characteristics of the topography of the Marquette Subdivision. CP will make significant investments between $13 million and $16 million for each of the three planned sidings discussed above in paragraph 19, for a total of $42 million, and additionally $30 million for CTC.[33] CP does not anticipate any obstacles to implementing these planned infrastructure improvements.

42. Metra further claims Applicants do not explain what will happen to operations while planned capacity improvements on the Marquette Subdivision are being constructed. Metra theorizes that traffic will be re-routed via Chicago while infrastructure is developed on the Marquette Subdivision. Respectfully, Metra is incorrect again. First, CP does not anticipate that all of the growth from the Transaction will materialize in the first year after the Transaction. In fact, the construction plan and sequencing reflects the currently anticipated timing in volume

[33] *See* Amended Operating Plan at 122 (Table 11).

growth.[34] CP would accelerate construction builds should volume growth materialize sooner. CP constantly monitors the 65% of maximum capacity threshold and adapts its network towards this threshold to allow for engineering track construction and other activities. CP would not so adapt the network by re-routing trains through Chicago, which would be substantially out of route. It would require additional crews, costs, and delays. Not to mention, it would burden CP's other (and Metra's) operations through Chicago, a fact of which we are well aware. Applicants are confident enough in the Marquette Subdivision, and in the impracticability of re-routing traffic through Chicago, to make a commitment that they will not take traffic circuitously 250 miles out of route, except for outages or in emergent conditions.

43. I more fully address the numerous flaws in Metra's RTC simulation in Section E below. Like the rest of its RTC simulation, the portion relating to the Marquette Subdivision was replete with errors and should be given no weight. The inability of Metra's models to dispatch existing CP freight trains should have been a clear indication that there was something wrong with their simulation.[35] Figure 11 referenced in Paragraph 49 below shows many of the infrastructure errors made by Metra in its RTC modeling, including those on the Marquette Subdivision.

44. The most notable errors Metra made in its simulation of the Marquette Subdivision are described in the CP RTC Report attached hereto as Exhibit 1. This included missing and undersized sidings at Harpers Ferry, Eckards and Dubuque, which incorrectly resulted in creating a 149-mile segment of single track with no meet location between Green

[34] *See* Amended Operating Plan at ¶ 298; *see also* "CP-KCS Capacity Projects.xlsx," at tab "CP-KCS Construction Planning."

[35] *See, e.g.*, METR-7 at 19 ("After imposing the restrictions on CP freight trains in the commuter peak periods, the RTC simulation would not run to completion.").

Island and Bluff for trains greater than 8,400 feet.[36] Metra's updated RTC simulation provided in June 2022 added the siding at Harpers Ferry and corrected the length of the Eckards siding but Dubuque and Green Island continued to be modeled at shorter, incorrect lengths.[37]

45. Metra's RTC simulation was so flawed that we corrected many of the major inputs and settings in Metra's RTC modeling, which proved what we know to be true—that the Marquette Subdivision will be able to handle the increased traffic we will run through it. [38] Figure 9 below is a table derived from the corrected RTC simulation, illustrating that the Marquette Subdivision was successfully dispatched with the increased traffic from the Transaction and without removing trains off the subdivision as Metra had done.[39] On a per train basis, the delays per train per day (as shown in the far right hand column) indicate equivalent performance to current operations on the Marquette subdivision.

FIGURE 9[40]
TABLE SHOWING MARQUETTE SUBDIVISION WILL FUNCTION

Line	Train Types	Case Name	Average Speed (MPH)	Delay %	Runtime Train Count (7/days)	Runtime Train Count (per day)	Delay Hours (7 days)	Delay Hours (per day)	Delay Minutes (per train)
Sabula-River Jct.	Bulks	Base	24.8	14.90%	22	3.1	2.4	0.35	6.70
		Future	22.3	27.40%	57	8.1	9.5	1.35	9.96
	Manifest	Base	19.8	13.30%	15	2.1	14.0	2.00	56.13
		Future	18.4	25.80%	15	2.1	26.0	3.72	104.16
	Intermodal	Future	25.6	9.00%	14	2.0	7.1	1.01	30.30
	Local	Base	23.4	9.90%	23	3.3	2.4	0.35	6.37
		Future	22.3	12.50%	23	3.3	4.1	0.59	10.71

36 CP RTC Report (Exhibit 1) at 7.

37 *See id.* at 8.

38 *See id*. at 2 ("The results of the Corrected Future Case simulation proved… CP's infrastructure plan for the Marquette Subdivision is sufficient to handle post-merger volumes).

39 *See* Crowley and Mulholland V.S. at 61-62.

40 *See* "RTC Summary Table.xlsx."

E. Metra's RTC Analysis is Fundamentally Flawed

46. It was clear from reviewing Metra's RTC simulation that it was fatally flawed with numerous errors and consequently it attempted to dispatch the operations of a rail network that does not exist in the real world. For that reason, Metra's RTC simulation should be afforded no weight in assessing the impacts of this Transaction in real world operations. RTC analysis is dependent on user-generated inputs and if even one input is not accurate, the simulation can diverge wildly from what would take place in the real world, rendering any conclusion derived from its results meaningless. CP conducted a review of Metra's RTC simulation and corrected the major errors in it. The results of that review and simulation are set forth in the CP RTC Report. I summarize those results here, noting the various and fatal flaws Metra made in its RTC simulation and illustrating that the corrected RTC simulation proves what CP knew to be true—that Applicants Operating Plan will work and not cause any adverse impacts to Metra's operations. Indeed, as described in the CP RTC Report, the simulation showed even at pre-COVID schedule levels and with the Transaction growth that the train delays to Metra's trains are not material on a train per day basis.[41]

47. I note at the outset that Metra corrected its RTC simulation not once but twice, the second time of which was filed just days before replies to comments and request for conditions were due.[42] As illustrated below in Figure 10, the results of Metra's threefold submissions swing

[41] *See* CP RTC Report (Exhibit 1) at 2 ("According to CP's corrected multiple simulation scenarios, there is no additional delay to Metra's trains between the Corrected Base and Corrected Future cases as a result of rising freight traffic levels.").

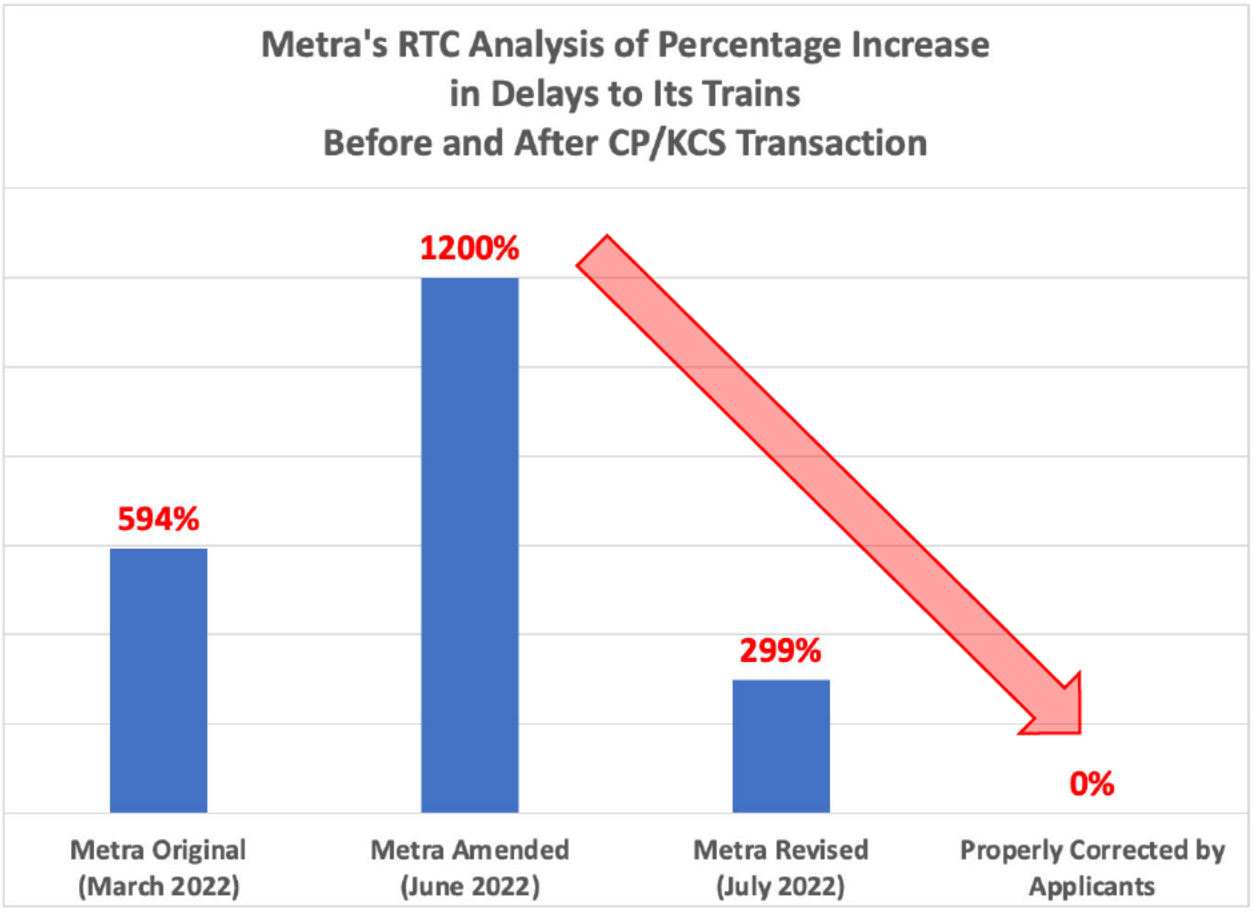
[42] An initial review of this second submission did not appear to change our analysis of Metra's RTC simulation in any material manner because, as noted in the CP RTC Report, our corrected RTC simulation had already corrected the errors Metra identified in this supplemental submission. CP RTC Report (Exhibit 1) at 1. However, because we were not afforded adequate time to do a full review, we

greatly, indicating the unreliability of their simulation. Indeed, Metra's initial submission showed delays to Metra were up approximately 594% as a result of the Transaction, while its corrected submission showed delays were up to approximately 1,200% and its third submission found delays to be around 299%.[43] This in and of itself is indicative of a faulty RTC simulation, as the corrections Metra made as outlined in their various submissions should not have caused such wild swings in results. In any event, for the reasons I explain below, there will be no additional delay to Metra's trains as a result of the Transaction.

reserve the right to supplement or amend our analysis should a more fulsome review warrant any such changes.

[43] *See* METR-7 at 21; METR-8 at 3; Metra Correction and Supplemental Statement (filed July 8, 2022) ("METR-9"), Attachment B.

FIGURE 10[44]
METRA'S EVOLVING RTC ANALYSES



48. First, Metra's RTC analysis was unable to even simulate actual *current-day* operations without reducing the number of trains on the Marquette Subdivision.[45] Metra even assumed the trains could make meets at Marquette, which is the junction at the Mason City Subdivision, by nosing on to the Mason City Subdivision and then backing on to the Marquette Subdivision after the meet. It should be noted there is no evidence in their simulation that any

[44] Sources: METR-7 at 21 (Metra Original, March 2022); METR-8 at 3 (Metra Amended, June 2022); Metra Correction and Supplemental Statement (filed July 8, 2022) ("METR-9"), Attachment B (Metra Revised, July 2022).

[45] Crowley and Mulholland V.S. at 60-61 (explaining that they needed to move existing trains off the Marquette Subdivision to the Mason City Subdivision in the base case).

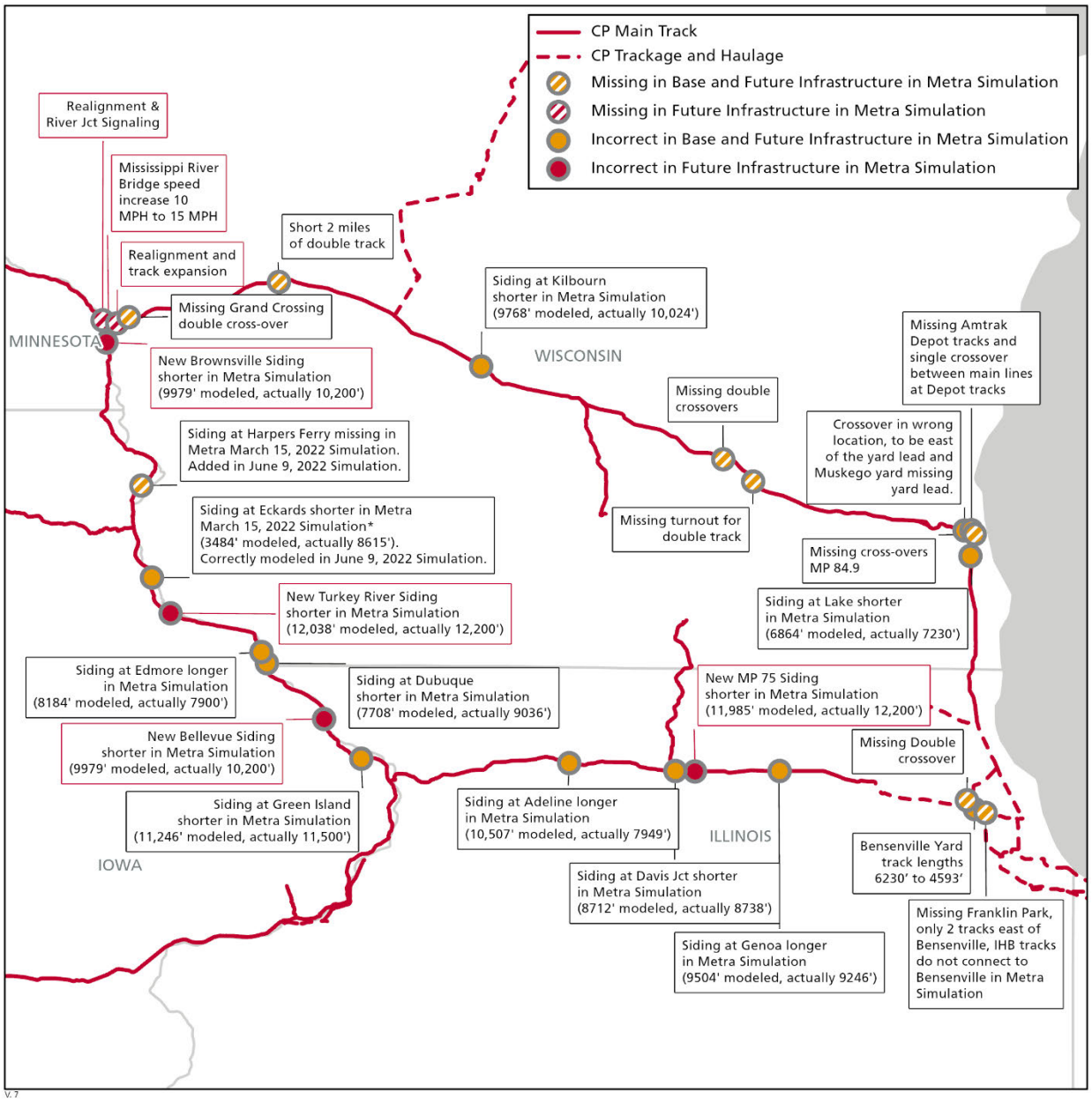
trains met in this way. Regardless, Metra should have been concerned with the quality of its work given that Applicants were running their operation over the Marquette Subdivision in the real world without reducing train starts. For example, Metra hard coded dwell in based on its sample data. Hard coding in this way compounds dwell and forces trains to hold for long periods on the main line, increasing subdivision congestion.[46] Moreover, as explained in the CP RTC Report, there is no evidence that Metra's consultants attempted to validate their base model with Metra personnel, despite standard practice being to validate base case models against known, real-world operating metrics to establish a baseline.[47] This type of basic validation process would have made clear that the model was flawed. Nonetheless, Metra asks the Board to find from its RTC analysis that the Transaction will so significantly impact Metra's operations that Metra should be afforded a long list of conditions and contractual alterations. For reasons explained in this section, the Board should give Metra's RTC analysis no weight.

49. Figure 11 below shows many of the infrastructure errors Metra made in its simulation.

[46] *See* Elphick Workpaper "METRA Simulation Review Final.pdf," at 10.

[47] *See* CP RTC Report (Exhibit 1) at 1, 4.

FIGURE 11
INFRASTRUCTURE FLAWS IN METRA'S RTC SIMULATION



50. Metra made the infrastructure errors noted above but made numerous other modeling errors in its RTC simulation, which are also described throughout the CP RTC Report. This includes, but is not limited to, the following, which are intended to highlight the most notable of these errors:

a. Modeling many siding lengths as shorter than actual dimensions;

b. Modeling the double track on the Tomah Subdivision at Raymore as two miles shorter than actual conditions;

c. Missing three crossovers on the Watertown Subdivision, which incorrectly converted nearly 23 miles of mainline double-track to single track;

d. Missing double crossovers between Tower B17 and Bryn Mawr;

e. Missing tracks within and to the east of Bensenville Yard, as well as the Indiana Harbor Belt Railroad's connecting tracks;

f. Various other missing and improperly constructed infrastructure, set forth in Table 4.1 of the CP RTC Report;

g. Incorrectly modeling CP freight trains by using actual departure times from the week of April 13, 2021, rather than scheduled departure times, which overrides RTC's dispatch logic and eliminates the randomness of real-world operating events;

h. Forcing the model to incur actual delay values from the April 2021 time period, which forced the RTC simulation to add delay over and above that incurred through its natural dispatching logic;

i. Incorrectly modeling Metra's own commuter trains. CP tested Metra's base model with only passenger trains operating to help determine the accuracy of the passenger train inputs and passenger operations. Without freight trains in the model, Metra passenger trains still registered 2.4 hours of delay per week, when it should have operated with 100% on-time performance since it used time-tested, reliable pre-COVID Metra schedules, thereby indicating the base model was

improperly constructed and compromising all results from the base and future models;

j. Incorrectly configuring and applying dispatch settings, including assigning incorrect Rank and Priority settings to different classes of freight trains, which leads to an incorrect meet/pass logic;

k. Not using any signaling system or other attributes related to train authority, leading the RTC simulation to dispatch with fewer operating restrictions and consequently operate trains closer together than current conditions might allow due to real-world signal spacing, which can bunch trains and create ripple delays;

l. Omitting planned infrastructure changes to Bensenville Yard (despite Metra's consultants having received the conceptual design from CP); and

m. Not incorporating randomization, one of RTC's key attributes, which injects typically experienced delays into the model. Consequently, the RTC simulation did not include any variation in freight train performance.

51. Second, a collaborative team of internal and external subject matter professionals endeavored to correct the many errors with Metra's RTC simulation and construct a proper simulation. This resulted in an iterative approach. First, corrective actions were applied to Metra's Base Case Model, then to its Future Model. This involved correcting the errors noted above and all other errors described in the CP RTC Report. After that, three new models were created: a Base Case with corrections to Metra's Base Model but adding Bensenville intermodal tracks, a Future Case with those same tracks included, and a Future Case with additional Amtrak operations and associated infrastructure as planned by Amtrak and contemplated in the agreement by CP to cooperate with those plans. Each model was dispatched twice, once without

freight and once with freight. Each scenario with freight was programmed to run 15 times over the course of seven days. Passenger-only scenarios were not randomized because CP did not discuss with Metra operations personnel which events should be randomized and where the parameters should apply.

52. The results of the simulation resulted in the following key findings[48]:

a. Unlike Metra's improperly built simulation, CP's Base Model was able to successfully dispatch 15 randomized, 7-day runs. Importantly, it did so without any need to move trains off the Marquette Subdivision, in stark contrast to Metra's Base Model;

b. The planned infrastructure improvements to the Marquette Subdivision will accommodate the increased traffic Applicants project from the Transaction. Indeed, without removing any trains from the train file, the updated Future Case successfully dispatched 15 randomized, 7-day runs;

c. Not only did the simulation results show that planned capital infrastructure improvements will prevent any additional delays to Metra's operations from the Transaction, certain simulation results showed there may actually be a *slight but noticeable reduction in delays to Metra trains* compared to the Base Model;

53. Because the corrected RTC simulation showed that there will be no material impact on Metra's operations as a result of the Transaction, one could assume that additional capacity exists to add even more CP and Metra trains to the lines that they share.

54. Finally, I want to emphasize that CP is open to working cooperatively with Metra in using RTC modeling as appropriate.

[48] *See* CP RTC Report (Exhibit 1) at 16.

F. Many of Metra's Concerns are Unrelated to the Transaction

55. Metra makes many claims throughout its comments that are simply unrelated to the Transaction. Nick Walker more fully discusses Metra's numerous claims of existing issues with CP's dispatching and delays to Metra's trains in his reply verified statement.[49] I provide here a few further operational comments on a couple of these issues as well as a response to the claim Metra makes concerning CP's acquisition and subsequent operation of the DM&E lines.

56. For instance, Metra complains that a typical example of CP-caused delays occurs when CP makes a crew change on the mainline tracks outside of Bensenville Yard.[50] This is entirely unrelated to the Transaction. Nonetheless, this occurs mainly for trains coming from Milwaukee on the MD-N Line seeking to enter Bensenville Yard at Tower B17, which cannot enter yard tracks in a fluid manner from that direction. This is partly due to the configuration of Bensenville Yard, which does not currently have an expedient path through Tower B17 into the current arrival tracks. As such, trains entering Bensenville Yard are required to stop and line switches. However, the Bensenville Yard reconfiguration includes power switches on the west-end, independent leads, and additional arrival/departure tracks supporting 10,000 foot trains, which together will allow for seamless entry into the yard for such trains and thus this will support both new and existing CPKC trains once the reconfiguration is completed.

57. Metra also complains throughout its comments that CP often dispatches Metra trains on the "wrong" side of the tracks from where Metra's passengers are normally picked up. Nick Walker more fully explains why this is occasionally necessary, that there is nothing unsafe about it and that Metra itself advocates for *more* cross-overs,[51] but I add that the Bensenville

49 *See* Walker R.V.S. at ¶¶ 6-53.

50 METR-7 at 40.

51 *See* Walker R.V.S. at ¶¶ 46-53.

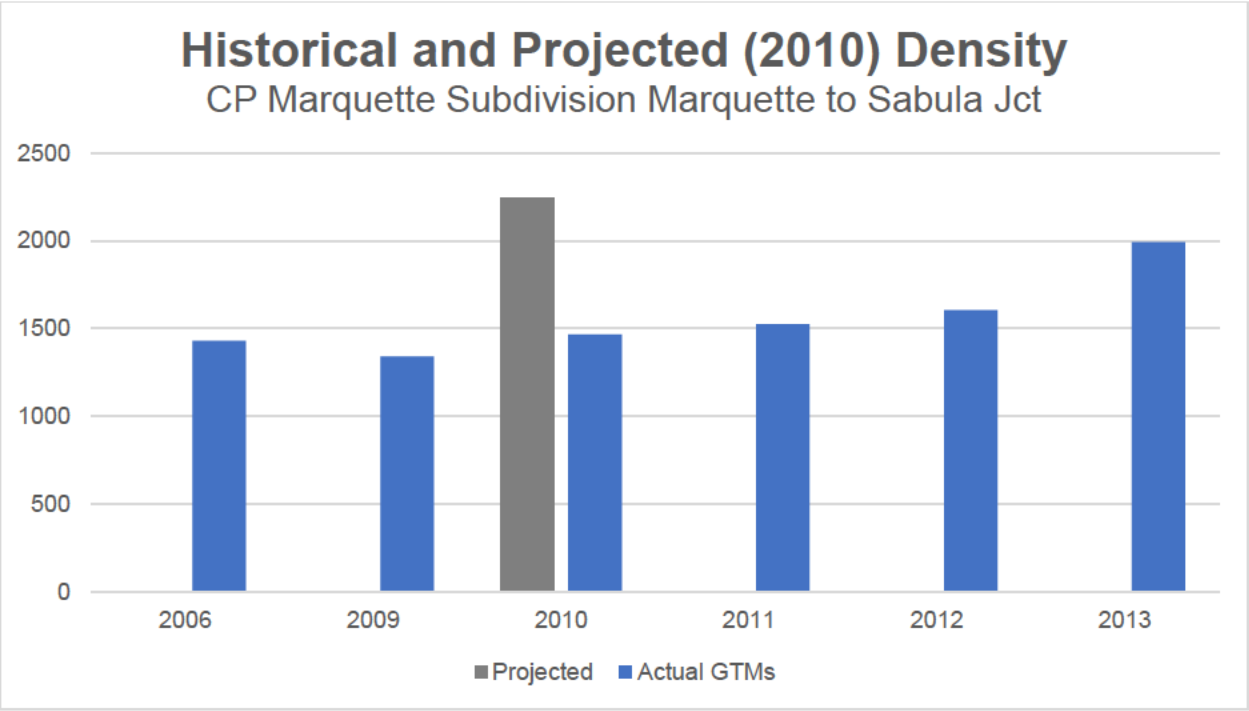
Yard reconfiguration, discussed above in Section C, combined with potential new cross-overs on the Elgin Subdivision aid in allowing for trains to either hold or revert to the normal platform side. Moreover, this issue will also not be exacerbated by the Transaction because new CPKC trains will be scheduled outside peak hours.

58. Metra also complains that CP's acquisition of the DM&E actually resulted in significant additional traffic that CP had not projected in its application at that time, seemingly with the desire that the Board will infer the same will occur with this Transaction.[52] Metra is not only incorrect on the facts of the DM&E implementation, as I explain, but its concern is entirely unrelated to this Transaction and lacks any explanation of how the DM&E implementation has any bearing on what will unfold with this Transaction. As Figure 12 below shows, traffic growth on CP's Marquette Subdivision from Marquette to Sabula Junction was actually significantly less than CP had projected in its Application at that time.[53]

[52] *See* Oppenheim V.S. at 23.

[53] Note that CP had only projected density data for 2010 in its Control Application for DM&E, which is why projections for other years are not included in Figure 12. CP takes a conservative approach when making projections due to the difficulty inherent in making projections. That CP's projection for 2010 was not met even in 2013 is a prime example

FIGURE 12[54]
ACTUAL V. PROJECTED DENSITY DATA FROM DM&E TRANSACTION



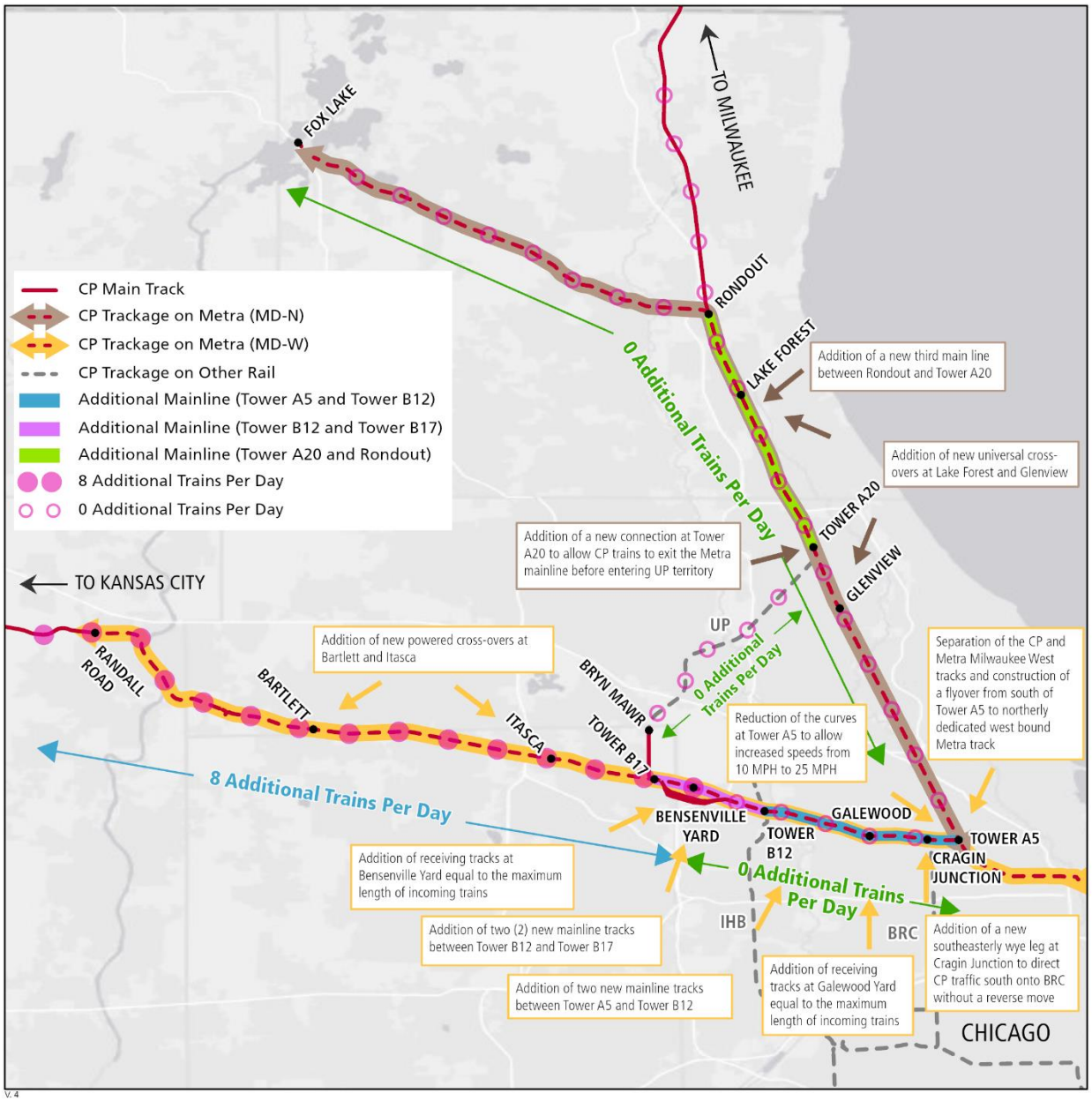
G. The Vast Majority of Metra's Infrastructure Demands Address Areas That Are Not Impacted At All By The Transaction

59. Metra requests that the Board order, as conditions to this Transaction, that CPKC pay for eleven different capacity improvements to the MD-W and MD-N Lines. For reasons I explain in this section, most of these capacity improvements are unnecessary, excessively costly, and would torpedo the Transaction.

60. *First*, most of Metra's requested capacity improvements are completely unnecessary considering that they address areas that are not impacted at all by the Transaction. Indeed, as illustrated in Figure 13 below, nine of its requested improvements are to areas of the MD-W and MD-N Lines where the Transaction will not increase train counts.

54 *See* "DME GTM Calculation.xlsx".

FIGURE 13
THE LOCATION OF METRA'S INFRASTRUCTURE DEMANDS



61. *Second*, the capital projects that Metra demands would render the Transaction uneconomical. Appendix A to this statement is a rough, tabletop cost estimate of all eleven capital improvements that Metra requests. The table below is intended to indicate that, on a conservative basis, Metra's requested infrastructure improvements could cost in the hundreds of millions of dollars in total.

62. *Third*, even if Metra's infrastructure demands were relevant to the Transaction and economically viable (to be clear, they are not), many of Metra's proposed infrastructure projects are simply impossible to construct. Indeed, as Appendix A notes, many of these requests have feasibility issues.

63. *Fourth*, as already discussed in Section C above, the Bensenville Yard reconfiguration will address Metra's request for longer receiving tracks at Bensenville Yard.

64. Lastly, I note again that CP has always been, and will remain, committed to working cooperatively with Metra. This includes working with Metra to evaluate operations and adjustment to support the coexistence of freight and passenger train operations on the MD-W and MD-N Lines.

II. THE CHICAGO COMMUNITIES' CONCERNS ABOUT INCREASED FREIGHT TRAFFIC ON CP'S ELGIN SUBDIVISION ARE MISGUIDED, AS ARE THEIR REQUESTS FOR "RELIEF"

65. I have reviewed the Chicago Communities' Comments and Supplemental Comments in this matter. I understand that they assert that the Transaction will nearly triple freight traffic through their communities, and then in their Supplemental Comments assert that the Transaction will nearly quadruple freight traffic through their communities based on a revised analysis. I understand they conclude that this supposed increase will shut down their communities and cause other serious issues. However, the Chicago Communities' assertions are untrue, and their requests are operationally untenable.

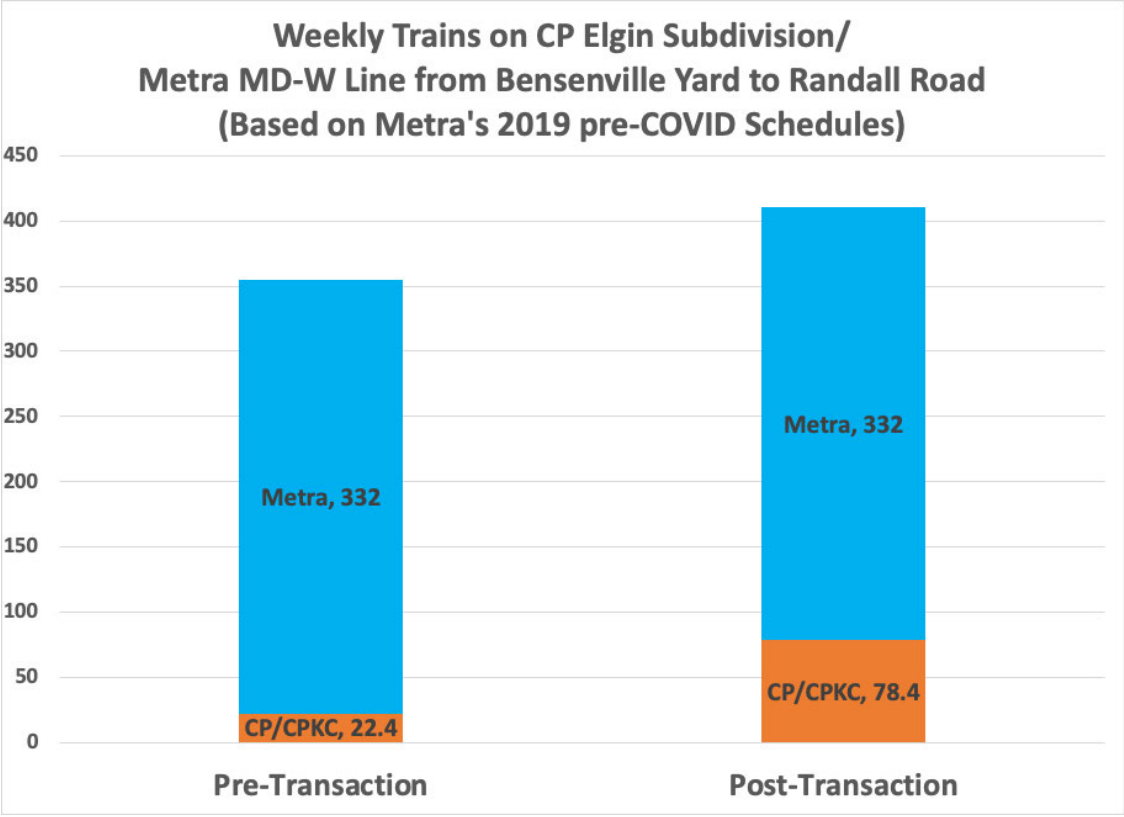
A. The Chicago Communities Do Not Accurately Characterize the Impact of the Transaction

66. The first serious problem with the Chicago Communities' assertions is that they appear to have understated the amount of traffic that presently flows through their communities. They suggest that 38 Metra trains operate per day during the week on the MD-W line, but in fact,

Metra has tended to operate 55 trains every weekday,[55] and while these traffic levels are down somewhat due to the COVID-19 pandemic, Metra anticipates a return to pre-pandemic levels.[56]

67. The second problem is that the Chicago Communities do not accurately characterize the impact of the Transaction on their communities. As set forth in Applicants' Amended Operating Plan,[57] Applicants only project an increase of eight trains per day on the MD-W line west of Bensenville as a result of the Transaction. Given the Metra traffic through these communities, CPKC traffic will remain only a small percentage of rail traffic through the Chicago Communities even after the Transaction, as shown in Figure 14 below.

FIGURE 14[58]



55 Metra MD-W Schedule (Nov. 4, 2019) (Exhibit 3).

56 METR-7, at 6.

57 Amended Operating Plan, Appendix V.

58 Metra Data Workpaper, at "All Trains."

68. Third, the Chicago Communities' assertion that this modest projected increase in freight traffic will shut their communities down is puzzling. The Chicago Communities have seen similar levels of freight traffic in the past, without issue. During the 1980s and 1990s, there were approximately 12 scheduled freight trains on the MD-W line west of Bensenville Yard daily, plus locals. Gameiro R.V.S., at ¶ 27. Further, the Village of Bartlett – one of the Chicago Communities – noted in 2016 that it receives about 10 freight trains (in addition to 58 Metra trains) per day.[59]

B. The Chicago Communities' Requests for "Relief" are Unworkable

1. The Requested Investment of $5.5 - $9.5 Billion is Wildly Out of Proportion

69. I understand that the Chicago Communities have requested $5.5 to 9.5 billion dollars in infrastructure mitigation to remediate the modest traffic increases I discussed above. Even if some amount of mitigation were justified (and I do not concede that it is), putting the request in context shows that it is wildly out of proportion for several reasons.

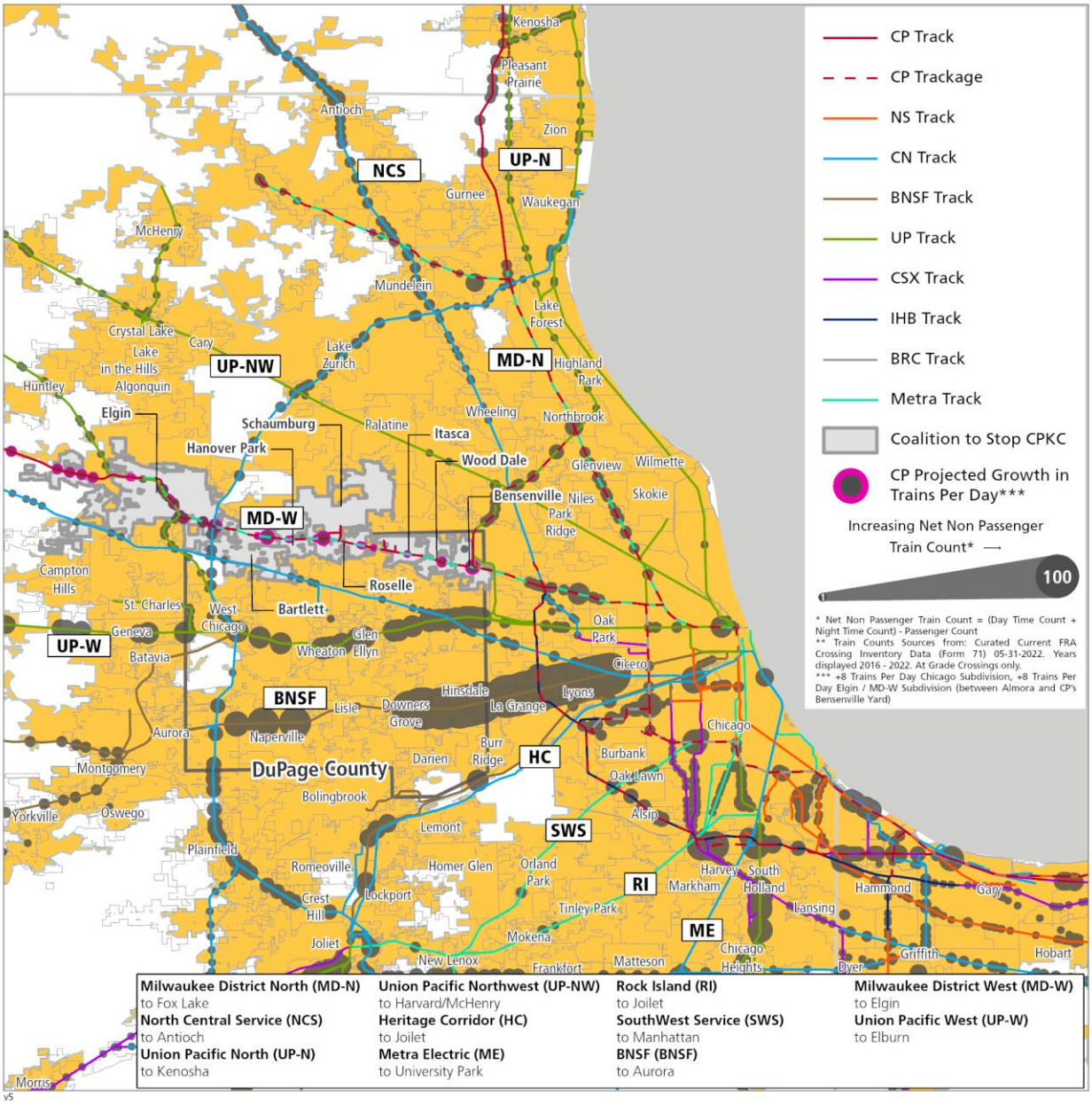
70. *First*, this proposed investment is more than is spent across the entire CREATE Program—a public-private partnership that is investing $4.6 billion dollars in approximately 70 different vital projects across the entire Chicago railroad network.

71. *Second*, the MD-W line, which is the line that extends through the Chicago Communities, is projected to receive relatively light traffic even after the Transaction by comparison to many nearby communities. However, other communities have not asked for or received the kinds of overreaching remedies that these particular Chicago Communities are demanding. For example, I understand that the Chicago Communities have asked for tens of

[59] Village of Bartlett, Downtown TOD Plan (Oct. 18, 2016) (Exhibit 4), available at https://rtams.org/sites/default/files/digital_documents/4099_Bartlett_TODPlan_2016.pdf.

millions of dollars to be invested in tunnel projects, but communities like Wheaton, LaGrange and Hinsdale get a lot more traffic than the Chicago Communities, and do not have such tunnels. Figure 15 below puts the Chicago Communities' arguments in context by showing comparative train frequency for key lines radiating from Chicago.

FIGURE 15
MAP SHOWING COMPARATIVE CROSSING OCCUPANCY FREQUENCY FOR KEY LINES RADIATING FROM CHICAGO



2. The Chicago Communities' "Anywhere But Here" Proposals, Which Seek to Prevent *Any* Increase in Freight Traffic Through Their Communities, are Unfair and Impractical

72. I understand that the Chicago Communities have also asked the Board to ensure that there is no increase in freight traffic through their communities. Considering this request from an operational standpoint reveals that the request is impractical and unfair.

73. As noted above, many nearby communities experience much *more* traffic than the select group of Chicago Communities that submitted filings in this proceeding. If the Board were to order that the Chicago Communities should be protected from *any* increase in freight traffic, this traffic would have to travel circuitous routes through other communities instead.

74. Further, prohibiting CPKC from sending more freight traffic through the Chicago Communities would cut the CPKC network off from the rail network at and beyond Chicago. This would preclude CPKC from competing for traffic moving to Detroit, eastern Canada and the eastern United States. It would make CPKC offerings non-competitive in the marketplace. And it would generate an increase in net emissions as the freight traffic traveled through longer, more circuitous routes instead. I address some of the Chicago Communities' specific proposals below.

75. ***Rerouting CPKC Trains Via LaCrosse and Milwaukee, WI.*** This would require the CPKC trains to traverse hundreds of unnecessary miles through dozens of other communities when a much more direct route through the Chicago Communities is available. Specifically, routing CPKC trains from Kansas City via LaCrosse to Chicago or Bensenville would add either 312 additional miles via Tower A-20 or 324 additional miles via Tower A-5 and two extra crew changes. Routing CPKC trains from St. Paul via LaCrosse and Milwaukee to Bensenville via Tower A-5 to Kansas City would add 252 additional miles and one extra crew change. These more circuitous routes would result in additional costs, crew resources, heightened emissions and

would strain infrastructure along the route. The extra freight traffic would adversely affect the MD-N lines and Amtrak. It would also have the potential to constrain Metra between Rondout, A20, A5, B12, and B17. And this less competitive offering would hurt CPKC in the marketplace and undermine the value of the Transaction.

76. ***Halting CPKC Trains West of Randall Road Through New Intermodal Facility.*** This would not allow connectivity with the rail network east of Chicago. It would require the costly construction of a new intermodal facility. Bensenville Yard is situated in the Northwest corner of Chicago, which reduces truck traffic in Chicago. This new intermodal facility would result in a huge number of additional trucks on I-20 between Chicago and there, just to get the traffic to the new facility. Finally, it is unclear how this proposed solution even alleviates the Chicago Communities' concerns because at the very least existing intermodal trains from eastern and western Canada would route via Bensenville and west. The non-intermodal portions from KCS and KCSM would also have to proceed through Chicago and beyond.

77. ***Trackage or Haulage on CN Chicago to Kansas City***. This request is simply not practical, because CP does not have rights over CN. In any event, it is illogical because it would deprive the CP network of density that supports investment and better train services. On trackage rights, this routing would not connect with Bensenville facilities without routing through the Chicago terminal to the southside or through the very Chicago Communities protesting to connect with the EJ&E. And on haulage rights, traffic would interchange to the CN at Spaulding or under the present ruling force significantly more traffic to be routed to the BRC. This routing would require a massive investment along the Springfield Line and Gilman Subdivision and likely on CN routes in between Chicago and the Springfield Line.

3. Turning Any Projection Regarding Train Lengths Into a Mandate Would Not Make Operational Sense

78. I understand that the Chicago Communities have asked the Board to freeze a projection that average train lengths will decrease on the Chicago and Elgin Subdivision into a condition of approving the Transaction. Respectfully, this would be unworkable. This would deprive CPKC of the operational efficiency and flexibility it needs to unlock public benefits from the Transaction. At present west of Bensenville, there are only two scheduled trains per day, and they do not meet between Bensenville and Savanna. Naturally, as train counts increase, CPKC's schedules, execution and train lengths would increasingly migrate to siding standard. On any given day however, conditions may be present to allow a train to move out onto the network and set off traffic downstream. For example, work activities or service interruptions may stem the flow in one direction allowing the other direction to run longer than siding standard. To restrict train length would take away the flexibility to provide service and recovery, and to match the conditions of the network.

79. Further, I understand that the Chicago Communities have also asked for a condition that the decrease in train length not be accompanied by an increase in the number of freight trains. This request is at odds with existing business/service and with our projection of a decrease in train length, as that projection is directly tied to a modest increase in the number of freight trains.

C. The Chicago Communities' Assertion that Projected Traffic Through Their Communities Changed as a Part of the Amended Operating Plan is Untrue.

80. I understand that the Chicago Communities have asserted that the projected increase of trains resulting from the Transaction west of Bensenville increased from 7.1 trains to 8.0 trains per day in our Amended Operating Plan, and that our Amended Operating Plan

attempted to conceal this fact. However, that is not true. Both the original Operating Plan and Amended Operating Plan projected an increase of 8.0 trains as a result of the Transaction.

81. The Chicago Communities appear to have zeroed in on two paragraphs in the original Operating Plan (App., Vol. II, ¶¶ 153, 185) that referred to an increase of 7.1 trains per day. However, this was a reference to a particular segment not the whole line west of Bensenville that appeared in two paragraphs of the original Operating Plan. The original Operating Plan itself, like the Amended Operating Plan, relied on projections of 8.0 additional trains on the Elgin Subdivision west of Bensenville.

82. I understand that the Chicago Communities have asked that the Board direct Applicants to provide details concerning the 8.0 trains' size and expected commodities. However, there is already substantial information on this topic available in the Application and accompanying Workpapers.[60]

III. HENNEPIN COUNTY'S CONCERNS ARE MISGUIDED

83. I have also reviewed the comments of Hennepin County ("Hennepin"), which assert various environmental and safety concerns. For the reasons described below, such concerns are misguided.

A. Hennepin's Concerns about Increase in Truck Traffic at CP's Minneapolis Intermodal Facility Are Unfounded

84. Hennepin has raised environmental concerns regarding a small projected increase in truck traffic at CP's Minneapolis Intermodal Facility at Shoreham Yard. Applicants project an increase in 53 trucks per day, and the OEA's review threshold is 50 trucks per day. Thus, this projected increase just barely triggers the OEA's review procedures. I understand that OEA is

[60] *See, e.g.,* Amended Operating Plan, ¶¶ 109-13, 159-61, Appendix I, Appendix T; Workpaper "Trains Per Day and Gross Ton Miles."

reviewing this issue and will make recommendations to the Board, meaning that Hennepin's concerns are not properly directed at this forum. Regardless, I make the following comments from an operational perspective.

85. *First*, the projected traffic increases are very modest. They amount to an increase of 86 container handlings per day – from a daily average of 373 in 2019 to a projected daily average of 459 per day.[61] This is very similar to the volume these facilities saw in 2012-14, when the facility averaged 438, 435 and 428 containers per day respectively.[62]

86. *Second*, the anticipated additional daily volume at the facility will amount to significantly less than one trainload per day (in the range of 39 containers originating and 47 containers terminating – amounting to approximately 53 additional drayage moves).[63]

87. *Third*, even after the Transaction, the majority of rail traffic through the Hennepin County rail network will not be CP traffic.

B. Hennepin's Other Concerns Are Similarly Unfounded

88. Outside of intermodal traffic increases as the Minneapolis Intermodal Facility, none of the other projected traffic increases Hennepin discusses are large enough even to trigger OEA's review. Regardless, I make the following points from an operational perspective.

89. Hennepin expresses concerns that recent "industry trends" towards increased train lengths may result in "longer delays at crossings."[64] Because this concern is based on "recent trends" that Hennepin perceives, this concern does not seem to actually be about the Transaction.

61 Amended Operating Plan, Table 13.

62 Minneapolis IMS Terminal Handlings 2002 – 2021 Workpaper.

63 Workpaper "IMS Trucks Final."

64 Hennepin Comments, at 13.

Hennepin calls the Board's attention to 14 crossings in particular that it is most concerned about being impacted by the Transaction. Hennepin also expresses concerns about impact on Humboldt Yard from the Transaction, and how this will affect crossings.[65] As I noted, projected traffic increases through Hennepin resulting from the Transaction are exceedingly modest. As illustrated in Hennepin County Crossings (attached as exhibit 5 hereto), Hennepin's concerns are unfounded.

- Two of the crossings Hennepin identifies are actually grade separated, meaning rail traffic and vehicle traffic will not intersect.

- A total of 10 crossings will only see four additional bulk trains as a result of the Transaction. However, these trains are not expected to depend on Humboldt Yard because they do not serve any of the relevant industries that use that facility.

- Further none of these 14 crossings have any notable problems with blocked crossings today. Only 2 of the 14 crossings have received complaints in the FRA Blocked Crossing Incident Reporting the past 2 years. The two crossing are Central Avenue NE and Humboldt Avenue. At Humboldt there were seven total reports in the last two years, and at Central Avenue NE there were three total reported incidents.[66] Humboldt activity will not change with the exception of the four added bulk trains. The impact of the change in containers as it pertains to Central Ave NE will be reviewed through the OEA analysis.

90. Hennepin also expresses concerns about increases in hazardous materials shipments through Hennepin County. Hennepin misunderstands the additional hazardous traffic that will pass through Hennepin County, as it is counting empty tank cars returning for another load of the same commodity in its hazardous shipment volumes. It is important to note that the volume of hazardous commodities routed through Hennepin will not be large, and is only slightly more than the hazardous materials that traversed Hennepin in 2018 and 2019.[67]

[65] Hennepin Comments, at 14-15.

[66] FRA Blocked Crossings Report, https://www.fra.dot.gov/blockedcrossings/ (last accessed July 11, 2022).

[67] *See* Workpaper "Hennepin County Hazmats – historical and projected volumes."

IV. TRANSACTION IMPLEMENTATION WILL FACILITATE, NOT THREATEN, CPKC'S ABILITY TO PROVIDE HIGH QUALITY SERVICE

91. Finally, I understand that certain commenters have raised concerns about whether Transaction implementation will have an impact on CPKC service levels. My close involvement in Applicants' Transaction implementation planning (which is already well under way) gives me confidence that CPKC will be in a position to hit the ground running and provide safe, reliable and competitive service to customers from day one and without disruption.

92. Applicants' Operating Plan was designed in the way the Operating Plan Team would design a railroad in the ordinary course of business, and Applicants' post-Transaction planning and systems development has been consistent with this approach. During the integration phase following the Transaction, CP's ordinary course operational approach and expectations will guide CPKC's commitment to its customers and its implementation of the Operating Plan outlined in the Application. CP's operating philosophy, which will guide CPKC after the Transaction, empowers on-the-ground operating team managers (at the trainmaster level) to meet customer needs. At CP, the trainmaster is expected to understand the train density and traffic patterns of every single customer not just in the local area, but over the entire run. The trainmaster is also given the responsibility to ensure that CP delivers on what it promised. CP's culture of accountability will facilitate meeting these plans.

93. The proposal of some commenters that there be rigid requirements not to make changes without advance notice, or a regime of monetary penalties, ignores the fundamentals of railroading. There will be external events that require adjustment and flexibility; railroading is an outdoor sport. Any rigid approach, or incentives to invent controversy, would be counterproductive. As just one example, every manifest train serves more than forty customers. The inability to make any quick changes in response to heavy traffic in one area could prevent

operations from being improved for thirty-five of those customers to serve the parochial interests of a small handful.

Appendix A
The Cost of Metra's Infrastructure Demands

Metra's Request	Feasibility	Number of additional merger-related trains	Potential cost in $USD (if even feasible)
Require construction of a new third mainline track from Rondout to A-20.	12 miles of new track This would impact 4 Metra stations that would need to be rebuilt. 4 grade separations that are only built for 2 tracks and would need to be rebuilt. Does not appear feasible.	0	$400,000,000
Require construction of new universal cross-overs at Lake Forest and Glenview.	Both of these locations are receiving universal cross-overs as part of the Amtrak Hiawatha agreement.	0	Part of Amtrak agreement
Require construction of new connection at A-20 to allow parallel moves to new extended connecting tracks to allow CP trains to exit Metra mainline tracks before entering UP territory.	This was looked at before as part of the Hiawatha expansion and citizens of Glenview were vocal in opposition to the construction of any additional track at this location.	0	$20,000,000
MD-W, Tower B-12 to B-17: Require construction of two new mainline tracks.	10 Miles of new track Impossible east of B-17 because of the Illinois Tollway, UP Trackage and O'Hare Airport, but also unnecessary because CREATE work has already made this triple track and train counts will not increase east of Bensenville from the Transaction	0	$50,000,000
Require construction of new powered cross-overs at Bartlett and Itasca.	Bartlett cross-overs with north platform would have to be relocated to accommodate	8	$10,000,000
At Bensenville Yard, require CP to construct receiving tracks equal to the length of incoming trains or equal to	Bensenville yard expansion in progress by CP	8	Currently under construction

Metra's Request	Feasibility	Number of additional merger-related trains	Potential cost in $USD (if even feasible)
the maximum length possible.			
MD-W Tower A-5 to B-12: Require construction of two new mainline tracks.	14 miles of new track Currently 3 mains between A5 and B12, there does not appear to be room to add any more track as there are 6 Metra stations between A5 and B12. As well as a number of road crossings and grade separations that do not appear to have room to construct any more tracks.	0	$250,000,000
Require CP to pay for new southeasterly wye leg at Cragin Junction to direct CP traffic south to BRC without a reverse move.	Does not appear feasible as there are a number of warehouses/buildings and businesses in the way	0	$100,000,000
At Galewood Yard, require CP to construct receiving tracks equal to the length of incoming trains or equal to the maximum length possible.	Potential to extend ~1500' to the west and ~500' to the east. This would appear to take out a Metra parking lot at the West end.	0	$15,000,000
MD-W, Tower A 5: Require reduction in curves to increase speeds from 10 MPH to 25 MPH for moves to the MD-W. ii. Require CP to separate CP and Metra MD-W tracks and construct fly-over from south of A-5 to MD-W dedicated Metra tracks and dedicated freight connection in NW quadrant interlocking to facilitate freight movements to and from MD-N to MD-W without a reverse move	Unable to determine if feasible	0	$250,000,000
Total			**$1,095,000,000**

VERIFICATION

I, Raymond A. Elphick, declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this statement.

Executed on this 12 day of July, 2022.

Raymond A. Elphick

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36500

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

ELPHICK R.V.S. EXHIBIT 1

HIGHLY CONFIDENTIAL - CP RTC REPORT

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36500

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

ELPHICK R.V.S. EXHIBIT 2

B17 AND B12 – FREIGHT WINDOWS – A – REFERENCED IN DEPOSITION HELD ON 06-07-2022.XLS

TOWER B17 - WEEKDAYS

REDACTED PUBLIC REDACTED VERSION

	MILW-E		MILW-W				WINDOWS		
		0113	**2725 (Mon only)**				**0001-0520**	**(Clear 0110 MON)**	
	2202	0528							
	2204	0611					**0535-0605**		
	2206	0628							
	2208	0636							
	2210	0656							
		0659	**2203**						
	2212	0709					**0713-0733**		
	2216	0737							
	2222	0756							
		0806	**2205**						
	2226	0809					**0812-0900**		
	2228	0905							
		0906	**2209**				**0910-1000**		
	2230	1005					**1010-1100**		
		1103	**2213**						
	2232	1105					**1110-1300**		
		1303	**2217**						
	2236	1305					**1310-1405**		
		1413	**2219**				**1420-1500**		
		1503	**2221**						
	2240	1505					**1510-1600**		
	2242	1605							
		1607	**2223**				**1610-1635**		
		1638	**2225**						
	2244	1705							
		1707	**2227**						
		1723	**2233**						
		1737	**2235**						
		1750	**2237**						
	2246	1805							
		1815	**2239**				**1817-1835**		
		1838	**2243**						
	2248	1905					**1840-1900**		
		1915	**2247**				**1920-2010**		
		2015	**2249**				**2020-2100**		
	2252	2105							
		2115	**2251**				**2120-2310**		
		2313	**2255**				**2320-0520**	clear 0110 MON	

TOWER B17 - WEEKDAYS

PUBLIC VERSION

MILW-E		MILW-W	B12-GW			WINDOWS		
	0108	**2725 (Mon only)**				**0001-0530**	**(Clear 0105 MON)**	
2202	0535		**#3 MT**					
2204	0616							
NC-100	***0629***							
2206	0635					**0540-0630**		
2208	0643		**#3 MT**					
NC-102	***0708***							
	0652	**2203**						
2210	0701							
2212	0716		**#3 MT**			***0720-0735***	*(15 min)*	
NC-108	***0738***							
2216	0743							
	0800	**2205**						
2222	0801							
NC-110	***0812***							
2226	0816		**#3 MT**			**0820-0855**		
	0900	**2209**						
2228	0911		**#3 MT**			**0915-1005**		
2230	1011		**#3 MT**			**1015-1050**		
	1057	**2213**						
2232	1111		**#3 MT**			**1115-1250**		
	1258	**2217**				**1315-1405**		
2236	1311		**#3 MT**					
	1408	**2219**				**1410-1450**		
	1458	**2221**						
2240	1511		**#3 MT**					
	1600	**2223**						
2242	1605		**#3 MT**			**1610-1630**		
	1632	**2225**						
NC-116	***1644***							
	1649	***NC-109***						
	1652	**2227**						
2244	1705		**#3 MT**					
	1709	***2229***						
	1717	**2233**						
2404	1723							
	1724	***NC-113***						
	1732	**2235**						
	1744	**2237**						
	1757	***NC-115***				**1835-1905**		
	1810	**2239**						
2246	1811		**#3 MT**			**1915-2005**		
	1822	***NC-117***				**2015-2105**		
	1837	**2243**						
	1910	**2247**				**2115-2305**		
2248	1912		**#3 MT**			**2300-0530**	clear 0105 MON	
	2010	**2249**						
	2110	**2251**						

TOWER B17 - WEEKDAYS

REDACTED PUBLIC RECORD VERSION

	2252	2112		#3 MT						
		2308	**2255**							

TOWER B17 - WEEKDAYS

REDACTED PUBLIC RECORD VERSION

	MILW-E		MILW-W				WINDOWS		
		0113	***Sun-Mon only***				**0001-0625**	**(Clear 0110 SUN)**	
	2700	0632							
	2704	0832					**0635-0825**		
		0903	**2703**				**0835-0855**		
	2708	1032					**0905-1025**		
		1103	**2707**				**1035-1055**		
	2714	1232					**1105-1225**		
		1303	**2709**				**1235-1255**		
	2716	1432					**1305-1425**		
		1503	**2711**				**1435-1455**		
	2718	1632					**1635-1655**		
		1703	**2715**				**1705-1825**		
	2720	1832					**1835-1910**		
		1913	**2719**				**1915-2040**		
	2722	2047					**2050-2105**		
		2113	**2721**				**2115-2240**		
	2724	2247					**2250-2310**		
		2313	**2723**				**2315-0110**		
Sun-Mon only		**0113**	**2725**				**0115-0525**	**0625 SUN, 0525 MON**	
							1817-1835		
							1840-1900		
							1920-2010		
							2020-2100		
							2120-2310		
							2320-0520	clear 0110 MON	

TOWER B17 - WEEKDAYS

REDACTED PUBLIC RECORD VERSION

	MILW-E		MILW-W				WINDOWS		
		0108	*Sun-Mon only*				0001-0635	(Clear 0110 SUN)	
	2700	0639							
	2704	0839					0645-0830		
		0858	2703				*0840-0855*	*15 min*	
	2708	1039					0900-1030		
		1058	2707				*1040-1055*	*15 min*	
	2714	1239					1100-1230		
		1258	2709				*1240-1255*	*15 min*	
	2716	1439					1300-1430		
		1458	2711				*1440-1455*	*15 min*	
	2718	1639					1500-1630		
		1658	2715				*1640-1655*	*15 min*	
	2720	1839					1700-1830		
		1908	2719				1840-1905		
	2722	2049					1910-2040		
		2108	2721				*2040-2055*	*15 min*	
	2724	2249					2110-2240		
		2308	2723				*2240-2255*	*15 min*	
Sun-Mon only		0108	2725				2310-0105		
							0110-0525	0625 SUN, 0525 MON	
							1510-1600		

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36500

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

ELPHICK R.V.S. EXHIBIT 3

HIGHLY CONFIDENTIAL - METRA MD-W SCHEDULE (NOV. 4, 2019)

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36500

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

ELPHICK R.V.S. EXHIBIT 4

VILLAGE OF BARTLETT, DOWNTOWN TOD PLAN (OCT. 18, 2016) (EXCERPT)

REDACTED PUBLIC RECORD VERSION

Village of Bartlett

Downtown TOD Plan

ADOPTED 10.18.2016

Legend

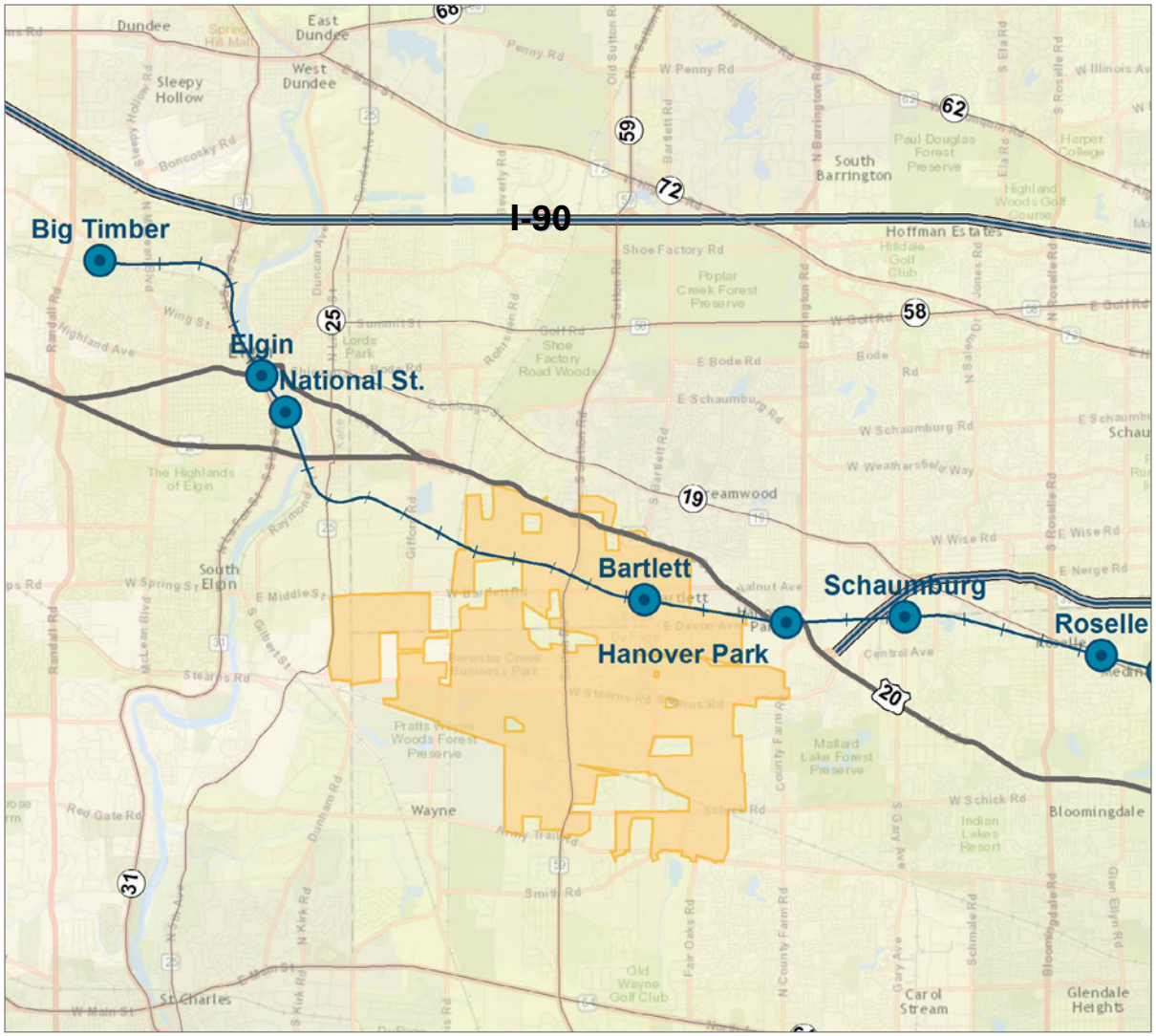
1. Senior Flexonics
2. Bartlett Plaza Shopping Center
3. US Post Office
4. CVS
5. BMO Harris Bank
6. American Charter Bank
7. V&V Paesano Pizzeria
8. Main Street Plaza Shopping Center
9. Village Hall
10. Police Department
11. Hanover Township Emergency Services
12. At&T Data Center
13. Platform 18
14. Banbury Fair
15. Dance Motions Inc.
16. Bartlett Smiles
17. Spin Doctor Cyclewerks
18. Associated Bank
19. JC's Mexican Restaurant
20. TI's Four Seasons
21. Town Center Shopping Center
22. Bartlett Elementary School
23. St. Peter Damian Catholic School

Study Area Overview

The study area for the TOD Plan is focused on the walkable district surrounding the Metra station which includes Bartlett's core Downtown retail and residential zone, as well as schools, professional offices, major employers, and park spaces. The TOD study area covers roughly 240 acres of land, and is bounded by Western Avenue, North Avenue, South Prospect Avenue and West Devon Avenue (shown on the facing page).

The Village of Bartlett is located roughly 35 miles northwest of Downtown Chicago, and includes portions of the Lake Street / Illinois Route 20 and Illinois Route-59 corridors. The Village is split between Cook, DuPage, and Kane Counties, and shares boundaries with the neighboring communities of Elgin, South Elgin, Streamwood, Hanover Park, Carol Stream, West Chicago, and Wayne.

Bartlett's Metra station is located on the Metra Milwaukee District West Line, that provides service from downtown Chicago – Union Station to Big Timber Road in Elgin. There are approximately 68 trains per day through Downtown Bartlett, of which 58 are Metra commuter trains (weekday trains) and about 10 are freight trains.



Metra Milwaukee District West Line Context Map
Source: ESRI

Study Area Overview

Demographics

The population of Bartlett in 2015 is estimated to be 41,299. It has grown by 12.5% in the past fifteen years, with the majority of this growth seen between 2000 and 2010. Since 2010, the population has remained steady, and is only projected to increase slightly by 2020.

An estimated 76.1% of the population in Bartlett identifies as White. Asians make up the largest minority, comprising 15% of the population. The Hispanic population of Bartlett has increased significantly since 2000. It now is estimated as 11% of the population.

Age Distribution

The median age of residents in the community has increased 15.9% since the 2000 Census, from 33.4 to 38.7 years. CMAP estimates the median age in the seven-county region is 36.0. As the population continues to age, the municipality will have to plan accordingly for these growing populations.

Three segments of the population in Bartlett are increasing:

- Individuals in their young 20's
- Those aged 45 – 54, who are typically in their peak earning years
- Seniors, both 55 -74 and 75+

Historic retail buildings along Bartlett Avenue

Existing condominiums in the Town Center

Housing Characteristics

Bartlett's housing stock, which has a total of 14,187 units, is predominantly made up of owner-occupied units (a total of 88.1%). The housing vacancy rate is only 2.9%, which is considered very low and a positive indicator by most standards.

More than 90% of homes within Bartlett were constructed in the decades spanning 1970 to 2009. The 1990s were the most significant decade for housing construction within the Village, with 5,327 homes built during this ten year period (37% of the housing stock).

As measured by the issuance of residential building permits, annual new home construction volumes over the last 10 years peaked in 2005 with 511 single family and 238 multi-family permits issued – then tumbled into a deep hole as the housing and financial market crises hit and the regional and national economies fell into recession. Construction volumes within the Village have yet to recover, having hovered near zero since 2008.

During the past few years, Bartlett has only permitted 20 single family residential units and no multifamily units. Streamwood has permitted a total of 150 single family and multifamily units during the same time frame.

Study Area Overview

The Downtown Bartlett Study Area encompasses a wide variety of housing types, including detached single family homes and multi-family rental apartments, townhomes, and condominiums.

Downtown Employment

Senior Flexonics, located on Devon Avenue, is Downtown's largest employer with 400 employees. They manufacture flexible mechanisms for exhaust, cooling, and fuel distribution systems. According to the Human Resources Manager for Senior Flexonics, most employees travel from neighboring suburbs to work at the location and the overwhelming majority commutes via personal vehicle.

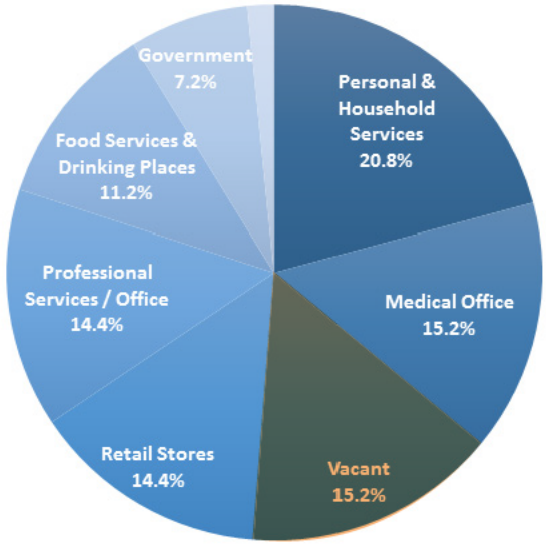
Many other Downtown employees work in Village Hall, the Fire Department, or Bartlett Elementary School. Together with the manufacturing jobs at Senior Flexonics, these industries comprise nearly two-thirds of the Downtown employment. Fourteen restaurants and 18 retail stores are located Downtown, employing 150 people.

Downtown Commercial

Nineteen storefronts in Downtown Bartlett are vacant, a relatively high percentage. Retail and Restaurants comprise of 25.6% of total establishments. Professional and medical offices and other service businesses together comprise 50.4% of the total businesses in Downtown Bartlett.

Bartlett does not have as much retail as its neighboring communities as measured by annual retail sales tax. It collected just over $2 million in retail sales tax in 2014 as compared to $7.9 million in Bloomingdale.

Downtown Business Inventory



Source: Goodman Williams Group

Town Center mixed-use building along Main St

Older vacant commercial along Main St

Study Area Overview

Metra Rail Ridership

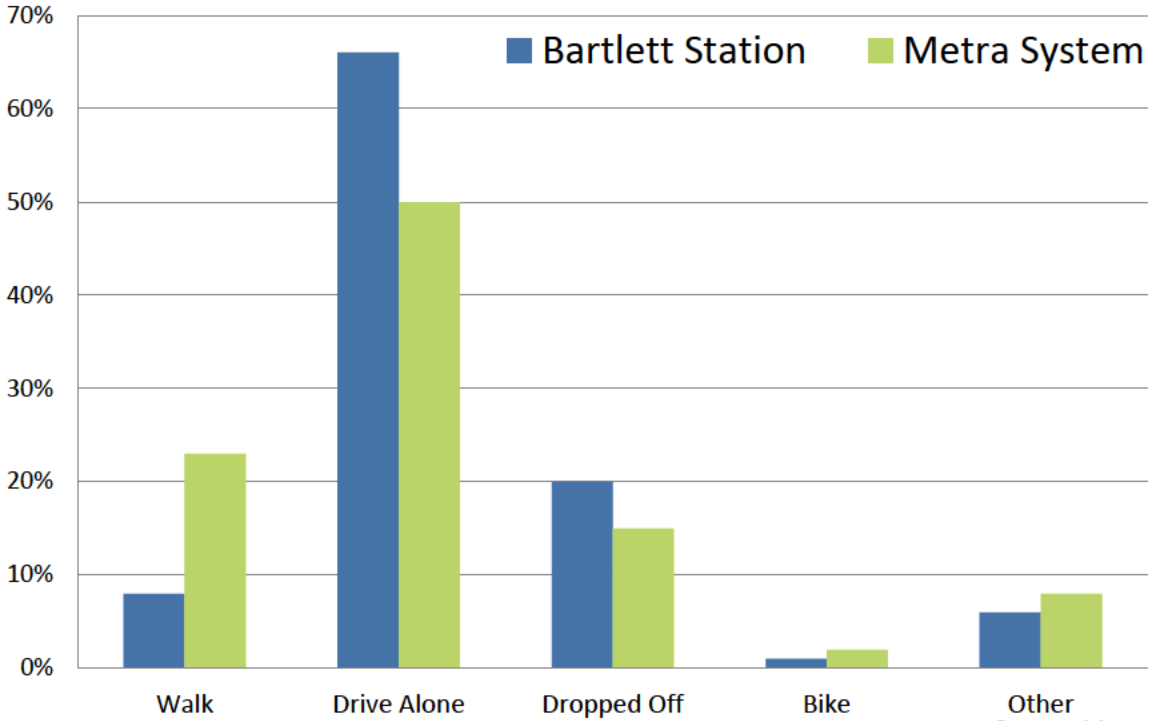
Per Metra's most recent ridership surveys (2014), there are 1,081 typical weekday boardings at the Bartlett station. Ridership at this station grew considerably in the 1980s and has been relatively stable since. Bartlett is appealing to commuters because it is the last station in Metra's Zone F, which is two fare zones lower than the next closest station to the west (Elgin, National Street).

Getting to the Station

Mode of access to the station is predominantly by driving alone/parking, followed by being dropped off as shown to the right. Bartlett has a higher drive alone access to the station and a much lower number of riders who walk compared to both the MD-W line and the Metra system as a whole.

The Bartlett Metra station attracts riders from a fairly wide area, drawing as far west as South Elgin, as far north as Schaumburg, and as far south as Army Trail Road. This could be attributable to the fare zone location and availability of daily fee parking spaces. Drawing from this large of an area also contributes to the higher percentage of drive alone access to the station.

How Commuters Get to the Metra Station



Source: Metra

Key Metra Commuter Considerations

Commuter parking: Existing parking is 85% utilized. This is the level at which additional parking resources may need to be considered.

Access to Metra station: The highest percentage of commuters who access the Bartlett station drive alone and park, while the walk access is very low. Improvements to the pedestrian/bicycle network should be a focus of future work to make walking and biking to the station more attractive.

Commuter Lot 11: The Village purchased this commuter lot, located north of the tracks and east of Western Avenue, in April 2009 with interest in redeveloping the parcel. As part of the sale of this property, the Village agreed that when the parcel is redeveloped, it will

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36500

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

ELPHICK R.V.S. EXHIBIT 5

HIGHLY CONFIDENTIAL - HENNEPIN COUNTY CROSSINGS

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36500

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

EXHIBIT J

REPLY VERIFIED STATEMENT OF STEPHEN D. SIMMONS

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36500

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

REPLY VERIFIED STATEMENT OF STEPHEN D. SIMMONS

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1. My name is Steve Simmons. I have been the Director of Border and Interline Operations for The Kansas City Southern Railway Company (KCS) since 2013. Prior to that, I served as Senior Manager of Network Planning for KCS from when I joined the company in 2010 until I assumed my current position. I report to Mike Walczak, the Vice President of Network Planning, who reports to John Orr, Executive Vice President - Operations.

2. My job entails being familiar with the various interline operating agreements that are most important to KCS's daily operations. Those include the trackage rights agreements for use of track owned by Union Pacific Railroad Company (UP), by Houston Belt & Terminal Railway Company (HBT),[1] or jointly by UP and BNSF Railway Company (BNSF)[2] between Beaumont and Robstown, Texas, and the Meridian Speedway, LLC (MSLLC) agreements with Norfolk Southern Railway Company and its subsidiary The Alabama Great Southern Railroad Company (together, NS).

3. I interface daily with personnel at other carriers on interline service and operations matters. Since 2011 I have attended and taken part in meetings of the MSLLC Management Committee, the executive committee that oversees MSLLC, and the MSLLC Joint Operations Committee, which handles more routine issues for MSLLC and serves as the day-to-day interface between KCS and NS on MSLLC matters.

4. At KCS, I also lead a team that manages all aspects of import/export compliance through the Laredo/Nuevo Laredo Gateway, the largest rail crossing between the United States and Mexico.

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[1] HBT is jointly owned by UP and BNSF, and its lines are operated by them under trackage rights.

[2] This includes the Beaumont – Houston portion of the Dawes, TX to Avondale, LA track owned jointly by UP and BNSF.

5. In addition to my work at KCS, I serve as an appointed member of the 16th Commercial Operations Advisory Committee (COAC) of U.S. Customs and Border Protection (CBP). COAC advises the Secretary of the Treasury and the Department of Homeland Security on all matters involving the commercial operations of CBP, including advising with respect to significant changes that are proposed concerning regulations, policies, or practices of CBP. I am the Co-Chair of COAC's Secure Trade Lanes Subcommittee. I co-created the Secure Corridor Initiative with CBP and Mexican customs which included implementing the first Unified Processing Center for rail.

6. Prior to joining KCS, I held various transportation supply chain and operations management positions with Consolidated Freightways, Con-Way and Yellow Roadway Corp. I also served in the U.S. Army, and am a veteran of Operations Desert Shield and Desert Storm. I hold a Bachelor of Business Administration from the University of Missouri – Kansas City and am a member of the Council of Supply Chain Management Professionals.

7. The purpose of my statement is to provide context and clarity regarding KCS's operations, specifically relating to the rights and obligations of KCS and other railroads under various agreements. This statement provides further detail and context addressing –

- Assertions by UP and BNSF concerning the adequacy of rail infrastructure owned by UP or jointly owned by UP and BNSF between Beaumont and Robstown, TX that is utilized by KCS under existing trackage rights agreements;
- Comments by UP and BNSF about the capacity and operations of the KCS-owned Neches River Bridge in Beaumont, Texas;
- NS's request for springing trackage rights over 200 miles of KCS track between Shreveport, Louisiana and Wylie, Texas, as well as BNSF's request to reserve the right to seek trackage rights over the same tracks;
- CSX's comments concerning interchange with KCS at New Orleans; and
- LyondellBasell's comments on access issues that are unrelated to the merger.

I. CAPACITY FOR CPKC TRAINS ON THE BEAUMONT-ROBSTOWN TRACKAGE RIGHTS ALREADY EXISTS, AND THERE ARE AGREEMENTS ALREADY IN PLACE FOR CREATION OF NEW CAPACITY IF NEEDED

8. Both UP and BNSF complain that there is not sufficient capacity to handle the anticipated growth of CPKC over lines between Robstown and Beaumont, Texas. Yet, neither of them provide capacity information or any detail about the affected areas by which to judge their claims.

9. Adequate capacity for CPKC trains already exists. As addressed in greater detail by John Orr in his accompanying verified statement, there is sufficient infrastructure capacity over these routes, but operational behaviors by both UP and BNSF prevent efficient and full use of that capacity. Further, if additional capacity is needed, for CPKC growth or that of UP and BNSF, there are Board-approved contractual agreements already in place on how to meet the needs of all parties.

10. ***Sufficient Capacity Already Exists.*** There is already sufficient capacity on the UP, UP-BNSF and HBT lines that KCS operates between Houston and Beaumont to support the additional eight trains per day projected in the Applicants' operating plan. History shows this.

11. Below is a graph taken from a presentation delivered by the Spring Center director at the June 29, 2022 joint meeting among UP, BNSF and KCS regarding Houston area operations.[3] The bottom line of the graph shows Houston complex average daily train counts for the first 6 months of 2022. They average 97.7 trains per day.

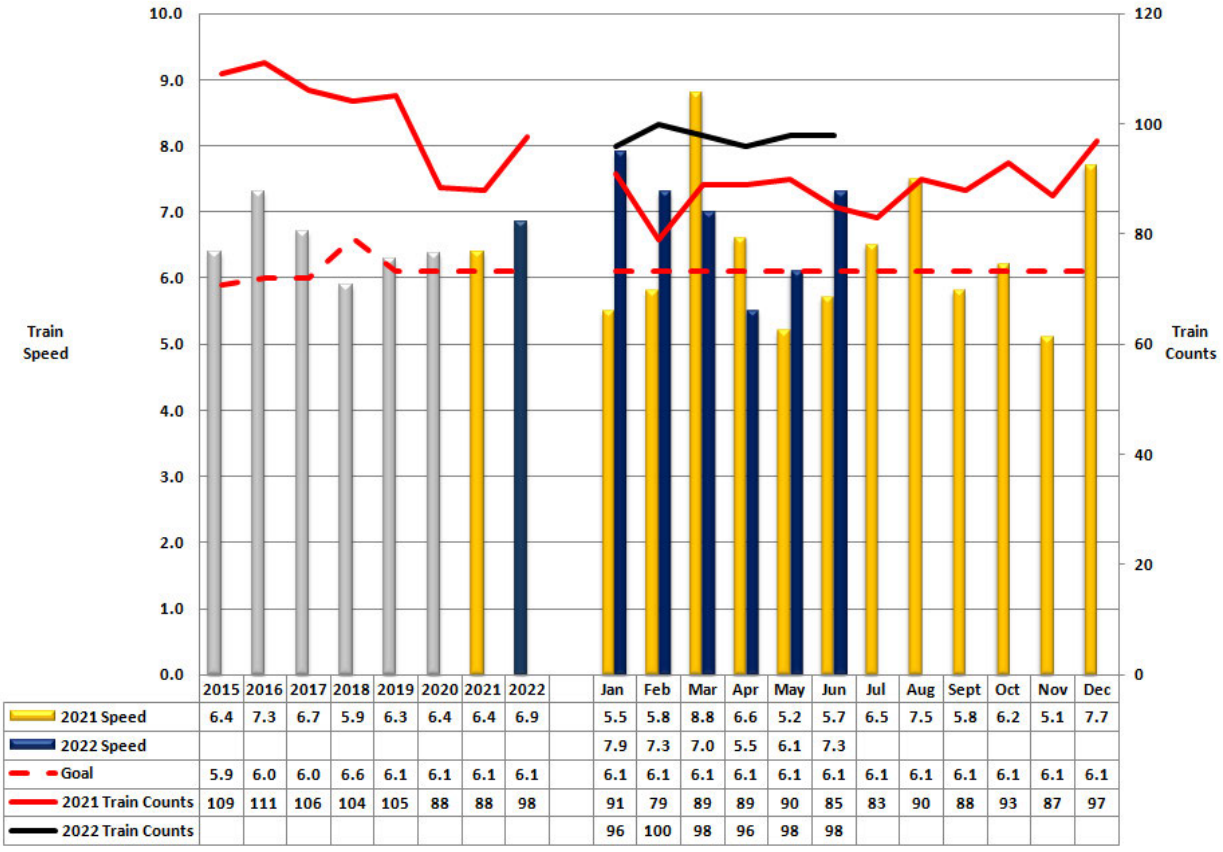
12. By contrast, the next to the bottom row in the left shows average daily trains in the Houston complex from 2015 through 2022. For the pre-pandemic years of 2015-2019, train counts averaged 107 per day, almost 10 more trains per day than current counts. The graph also

[3] A copy of this presentation is Exhibit 1 hereto.

shows that the train speeds during those five years were for the most part similar to what they are today. This graph, produced by the Spring Center directors, who are employees of UP and BNSF, clearly shows that Houston has previously accommodated more trains than the projected additional eight projected CPKC trains above current levels. It should also be noted that the projected CPKC trains present less burden to the Houston operation than most of the trains in the Houston complex because CPKC trains are through trains – they don't need to stop on the tracks to switch customers. So, history shows that the Houston complex has adequate capacity now to handle the projected eight additional CPKC trains.

13. As John Orr explains in his separate statement, current operating difficulties in the Houston complex now are a result of operating decisions which, when remedied, will free up the capacity to meet the CPKC trains projected for Year 3 post-merger.

FIGURE 1
HOUSTON COMPLEX PERFORMANCE
JOINT MEETING, JUNE 29, 2022



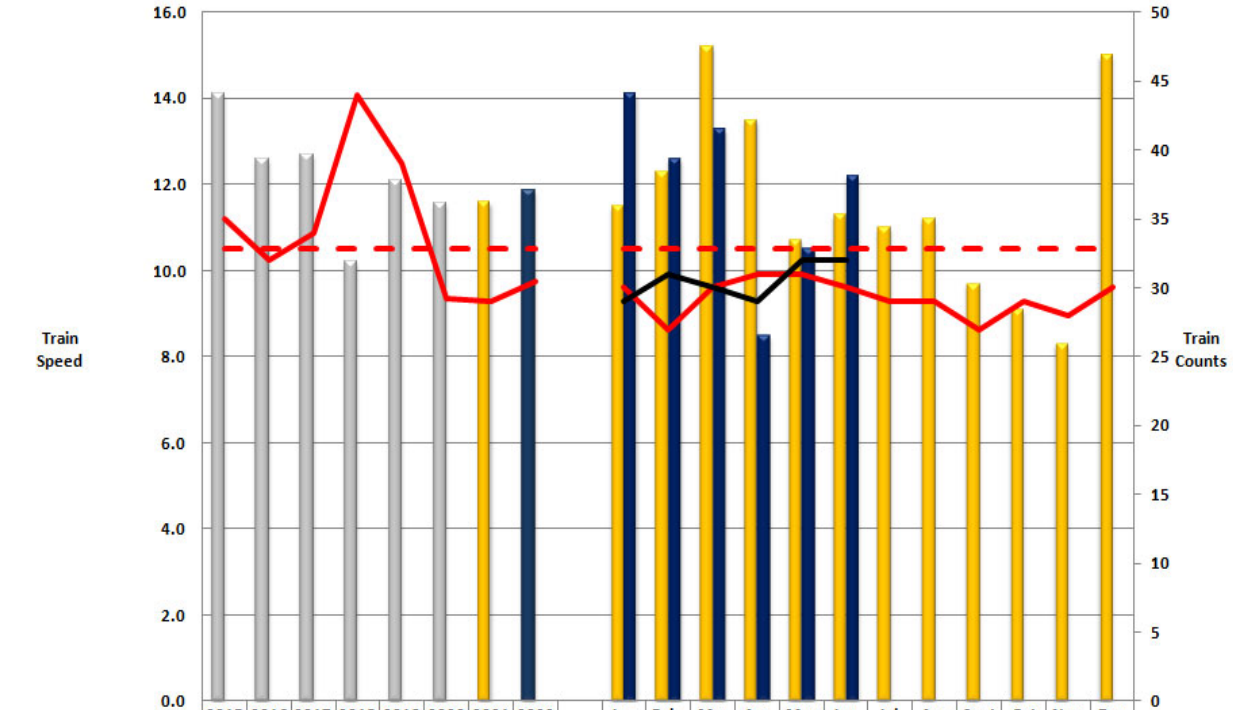
	2015	2016	2017	2018	2019	2020	2021	2022		Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec
2021 Speed	6.4	7.3	6.7	5.9	6.3	6.4	6.4	6.9		5.5	5.8	8.8	6.6	5.2	5.7	6.5	7.5	5.8	6.2	5.1	7.7
2022 Speed										7.9	7.3	7.0	5.5	6.1	7.3						
Goal	5.9	6.0	6.0	6.6	6.1	6.1	6.1	6.1		6.1	6.1	6.1	6.1	6.1	6.1	6.1	6.1	6.1	6.1	6.1	6.1
2021 Train Counts	109	111	106	104	105	88	88	98		91	79	89	89	90	85	83	90	88	93	87	97
2022 Train Counts										96	100	98	96	98	98						

14. A similar conclusion can be reached for the UP-BNSF jointly-owned Lafayette Subdivision and the portion of the Houston Subdivision to Dawes. Attached below is a chart from the same June 29 presentation, showing the performance of the UP-BNSF joint line between Avondale, LA and Dawes, TX (essentially New Orleans to Houston). The most recent six months show an average train count of 30.5 trains per day. The five pre-pandemic years show an average daily train count of 36.8 trains per day, with a high annual average of 44 trains per day in 2018. While the difference between the 6-month and 5-year figures is 6.3 trains, not 8, the data is less of an apples-to-apples comparison than the Houston data above, since the UP-BNSF joint line extends all the way to New Orleans, making it unclear how many trains actually

Simmons R.V.S. at 7

operate on the Beaumont-Houston portion of the line. But either way, there is ample capacity for the four westbound trains a day CPKC will add to this line, which is directionally operated. (CPKC's eastbound trains will use UP's Beaumont Subdivision, not the portion of the Houston Subdivision from Beaumont to Dawes.). In any event, this data shows that there is additional capacity on the Houston Subdivision to accommodate additional CPKC trains. And, as discussed below, to the extent that additional capacity is needed, the STB-approved trackage rights agreements provide for it to be built.

FIGURE 2
JOINT LINE PERFORMANCE
JOINT MEETING JUNE 29, 2022



	2015	2016	2017	2018	2019	2020	2021	2022		Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec
2021 Speed	14.1	12.6	12.7	10.2	12.1	11.6	11.6	11.9		11.5	12.3	15.2	13.5	10.7	11.3	11.0	11.2	9.7	9.1	8.3	15.0
2022 Speed										14.1	12.6	13.3	8.5	10.5	12.2						
Goal	10.5	10.5	10.5	10.5	10.5	10.5	10.5	10.5		10.5	10.5	10.5	10.5	10.5	10.5	10.5	10.5	10.5	10.5	10.5	10.5
2021 Train Counts	35	32	34	44	39	29	29	31		30	27	30	31	31	30	29	29	27	29	28	30
2022 Train Counts										29	31	30	29	32	32						

Simmons R.V.S. at 8

15. ***Existing, STB-Approved Trackage Rights Agreements Provide for Adding Capacity.*** KCS operates between Beaumont and Robstown, TX over a combination of track owned by UP and BNSF, HBT, and KCS. As a condition of the merger of UP with Southern Pacific Transportation Company (SP) in 1996, the STB granted The Texas Mexican Railway Company (Tex Mex) trackage rights between Beaumont and Robstown over track of UP (including Missouri Pacific Railroad Company (MP)[4]), SP and HBT to connect to KCS in order to supply a competitive alternative to the merged UP-SP.[5] Initially those trackage rights were embodied in two agreements, one granting Tex Mex access over certain SP and MP lines and the other granting Tex Mex rights on specified HBT tracks.[6] As directed by the STB, Tex Mex, UP and HBT submitted the agreements to the agency to settle certain disputes over the terms. In Finance Docket No. 32760, Decision No. 47, the STB resolved the disputes and approved the agreements.

16. Generally stated, the agreements allowed Tex Mex to operate over a combination of MP and SP tracks between the Neches River Bridge and GCL Junction in Beaumont and to the connection with HBT at Quitman Street in Houston; over the HBT East Belt and a series of SP and MP tracks to West Junction in the southwest corner of the Houston area; over SP's line

[4] MP was, at the time immediately prior to the UP-SP merger, a wholly-owned subsidiary of Union Pacific Corporation.

[5] Finance Docket No. 32760, Sub Nos. 13 and 14.

[6] Terms for Texas Mexican Railway Company Trackage Rights, executed Dec. 12, 1996 (MP/SP-TM) (excerpts are Exhibit 2 hereto), and Terms for Texas Mexican Railway Company Trackage Rights, executed Jan. 28, 1997 (HBT-TM) (excerpts are Exhibit 3 hereto) ("GLC Junction" corrected to "GCL Junction" per UP System Timetable No. 2, effective 0001 Sunday October 29, 1995, page 41 (Beaumont Subdivision).

from West Junction to Flatonia, Texas and from Flatonia to Placedo, Texas via Victoria, Texas; and via MP lines from Placedo, Texas to Robstown and from Odem to Corpus Christi, Texas.[7]

17. Subsequently, UP chose to implement directional running on its two lines between Houston and Beaumont, and SP granted Tex Mex rights on what is now UP's Beaumont Subdivision.[8] Together with the MP/SP-Tex Mex agreement, this allowed Tex Mex to operate with UP's directional flow, using UP's Lafayette Subdivision for traffic westbound from Beaumont to Houston, while using the Beaumont Subdivision for traffic from Houston to Beaumont.

18. In late 1997, UP, SP, and BNSF sought exemptions from the STB to operate under trackage rights on specified portions of HBT's lines, supplanting HBT's operation of those lines. Those exemptions were affirmed by the STB a year later.

19. Also in 1997, UP operations in the Houston area were severely crippled by congestion that spread through much of the western U.S. rail network. After a series of hearings, written submissions and decisions, in December 1998 the Board, despite concluding that Houston was again "fluid," imposed a so-called "clear route" condition, saying,

[7] In November 2007, KCS and UP clarified that the Odem-Corpus Christi trackage rights allowed KCS to connect from its yard in Corpus Christi and the Port of Corpus Christi's (POCC's) Savage Lane to POCC's Joe Fulton Corridor via UP's line, following POCC's removal of the Tule Lake Lift Bridge access from Savage Lane to POCC's track.

[8] Houston to Beaumont, Texas Trackage Rights Agreement, dated June 16, 1997 (SP-TM) Exhibit 4 hereto.

> "Among other things, we have decided to adopt a so-called "clear route" condition to enhance efficiency and facilitate the smooth movement of railcars through the Houston Terminal. Under the "clear route" condition, the neutral and highly efficient joint Union Pacific Railroad Company (UP)/Burlington Northern Santa Fe Railway Company (BNSF) dispatching center at Spring, TX, will have the authority through its Joint Director to route traffic through Houston over any available route, even a route over which the owner of the train does not have operating authority. Thus, as a result of the Board's decision, a BNSF train may be permitted to operate over track of UP; a UP train may be permitted to operate over track of BNSF; and a Texas Mexican Railway Company (Tex Mex) train may be permitted to operate over track of either UP or BNSF….
>
> "We will impose a "clear route through Houston" condition to enhance efficiency and facilitate the smooth movement of traffic through the Houston Terminal, a condition that was sought by both BNSF and the Consensus Plan Parties. We believe that the Joint Dispatching Center in Spring, Texas, has the authority to exercise discretion in choosing the most efficient routing for traffic moving through the Houston Terminal. To ensure, however, that the Joint Center staff do not feel constrained from making decisions necessary to efficient operations in the Houston Terminal due to trackage rights or other operational limitations, we are imposing a condition directing the Joint Center carrier-participants to authorize the Joint Director to use the best judgment in selecting alternative routings for train operations by UP, BNSF, and Tex Mex through the terminal, particularly when customary routings are unavailable or congested.[9]

20. In 1998, the STB approved UP and BNSF joint ownership of UP's Lafayette Subdivision from Dawes, TX, on the east side of Houston, to Iowa Junction, LA, and BNSF's line from Iowa Junction to Avondale, LA. Together with UP and BNSF's access over approximately 1.8 miles of KCS track between KCS MPs 764.9 and 766.7, including the Neches River Bridge, brought the line from Houston to New Orleans under UP-BNSF joint ownership.

[9] *Union Pacific Corporation, Union Pacific Railroad Company and Missouri Pacific Railroad Company--Control and Merger--Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railway Company [Houston/Gulf Coast Oversight],* STB Finance Docket No. 32760 (Sub-No. 26), 3 S.T.B. 1030, 1038 (1998) at *1 and *6.

21. In 1999, Tex Mex reached agreement with UP to acquire 84.5 miles of the former SP Wharton Branch, along with trackage rights over the adjoining UP-owned 2.5 miles on the north end at Rosenberg and over the adjoining 3.8 miles at Victoria to connect to the lines over which Tex Mex was granted trackage rights in 1996. The STB approved the transaction in December 2000.[10]

22. In March 2001, Tex Mex and UP modified their trackage rights agreements to provide that when Tex Mex or KCS rebuilt the Rosenberg-Victoria line, traffic moving to or from shipper facilities on the line could also move over Tex Mex's trackage rights on UP. Also, the parties agreed that within three months after the Rosenberg-Victoria line was put in service, Tex Mex would stop using the 157-mile portion of UP's trackage rights from Rosenberg to Victoria via Flatonia, except on an emergency or detour basis subject to UP's approval.

23. In 2006, following KCS's acquisition of control of Tex Mex, Tex Mex assigned its trackage rights for operation between Beaumont and Robstown to KCS.[11]

24. In 2008-2009, despite the advent of the Great Recession, KCS rebuilt the Rosenberg-Victoria line at a cost of approximately $173.5 million and put it back in service. As a result, KCS shortly thereafter ceased operating between Rosenberg and Victoria via Flatonia, removing KCS traffic from UP's busy Glidden Subdivision.

25. As stated in the accompanying verified statement of John Orr, current Houston area rail infrastructure is capable of supporting not only current traffic levels but also growth in

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[10] *Texas Mexican Railway Company – Purchase Exemption – Union Pacific Railroad Company,* STB Finance Docket No. 33914 (served Dec. 11, 2000)

[11] *Kansas City Southern, The Kansas City Southern Railway Company, and The Texas Mexican Railway Company – Exemption for Transactions Within a Corporate Family*, Finance Docket No. 34849, 71 Fed. Reg. 19784-85 (Apr. 17, 2006).

traffic, if that infrastructure is well managed. Currently, management of that infrastructure needs improvement.

26. If additional capacity were needed, however, the STB-approved trackage rights agreements covering KCS's operations on lines owned by UP and jointly by UP and BNSF assign responsibility and provide procedures for providing the capacity needed to accommodate traffic of CPKC, UP and BNSF.

27. Each of the STB-approved trackage rights agreements by which KCS operates over UP and UP-BNSF track between Beaumont and Robstown contain a rate stated in mills per gross ton-mile, known as the GTM Rate. The GTM Rate was established by the STB in its Decision No. 47 in the UP/SP merger, along with resolution of other disputed terms of the trackage rights agreements. KCS currently pays UP approximately $39 million in trackage rights fees under this GTM Rate for the Beaumont-Rosenberg and Victoria-Robstown segments each year, in addition to sharing in the cost of infrastructure projects on track where KCS operates.

28. The STB-approved trackage rights agreements setting the GTM rate that KCS pays for the trackage rights from Beaumont through Houston to Robstown call for UP to use the GTM Rate to maintain adequate capacity to handle the CPKC traffic on those lines. Both the MP/SP-TM and the HBT-TM agreement state in Section 3(a) of the Terms (that is, the portion of the agreement prior to the exhibits) that the GTM Rate "shall be deemed to include ordinary and programmed maintenance of the Joint Trackage, Changes in and/or Additions to the Joint

Trackage (to the extent required by the first sentence of Section 2.2 of the General Conditions), operating expenses, interest rental, depreciation and taxes."[12, 13] (Underlining added.)

29. The first sentence of Section 2.2 of the General Conditions, Exhibit B to the agreements, provides that "Unless otherwise mutually agreed to by the parties in writing, Owner shall … (iii) be responsible for any Changes in and/or Additions to the Joint Trackage as shall be necessary to accommodate the traffic of Owner and User while maintaining existing service standards (including transit times) in effect on the date of the Terms."[14]

30. Section 1.3 of the General Conditions identifies "Changes in and/or Additions to" as being capital projects: "'Changes in and/or Additions to' shall mean work projects and retirements, the cost of which is chargeable in whole or in part to Property Accounts during the term of the Terms."[15]

31. UP's position that CPKC should enter agreements to improve UP's lines before being allowed to move new traffic is part of a pattern of resistance by UP to meeting its obligations under the provisions of the STB-approved trackage rights agreements quoted above. Historically, UP has refused to acknowledge its responsibilities under Section 3(a) of the Terms to maintain adequate capacity of the trackage rights lines to accommodate traffic of KCS. Accompanying this statement as Exhibit 6 is a letter from one of our attorneys to an attorney at

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[12] *See* Exhibit 2, pages 5-6.

[13] Section 3(a) of the June 16, 1997, SP-TM agreement for Tex Mex use of UP's Beaumont Sub under directional running, Exhibit 4 hereto, in describing what is included in the GTM Rate, does not include the phrase "Changes in and/or Additions to the Joint Trackage (to the extent required by the first sentence of Section 2.2 of the General Conditions)", indicating that inclusion in, or exclusion of, those costs in the GTM Rate was deliberate. *See* Exhibit 4 hereto, page 3.

[14] *See* Exhibit 2, page 16.

[15] *See* Exhibit 2, page 15.

UP, replying to UP's assertion that UP is not obligated to maintain adequate capacity of the trackage rights lines to accommodate KCS traffic except at additional cost to KCS above the GTM Rate. From the letter, it appears that UP's position is that because it and BNSF agreed that capital projects were not included in the GTM rate, that interpretation also applied to the MP/SP-TM and HBT-TM agreements.

32. I am aware that BNSF has a trackage rights agreement with UP dated June 1, 1996 for access between Houston and Beaumont that provides that "Changes in and/or Additions to" are covered in the GTM rate that BNSF was to pay UP under the agreement. But there are differences between BNSF's agreement and ours. As discussed in UP-SP Decision No. 47, BNSF pays a lower GTM rate than KCS pays. Also, Section 2.2 of both Exhibit B to BNSF's agreement and our MP/SP-TM and HBT-TM agreements begin with the phrase "Unless otherwise mutually agreed to by the parties in writing, Owner shall…" be responsible for capital projects needed to maintain capacity. In Section 9(c) of their Restated and Amended Settlement Agreement, filed with the STB March 4, 2002, UP and BNSF did just that – agreed in writing that the GTM rate would not cover capital projects other than those necessary to implement the UP-SP merger:

> "(c) Capital expenditures on the Trackage Rights Lines and on lines over which BNSF is granted Overhead Trackage Rights will be handled as follows:
>
> (i) UP/SP shall bear the cost of all capacity improvements that are necessary to achieve the benefits of its merger as outlined in the application filed with the ICC for authority for UP to control SP. The operating plan filed by UP/SP in support of the application shall be given presumptive weight in determining what capacity improvements are necessary to achieve these benefits.
>
> (ii) **Any capacity improvements other than those covered by subparagraph (i) above shall be shared by the parties based upon their respective usage of the line in question, except as otherwise provided in subparagraph (iii) below.** That respective usage shall be determined by the 12 month period prior to the making of the improvement on a gross ton mile basis.
>
> (iii) For 18 months following UP's acquisition of control of SP, BNSF shall not be required to share in the cost of any capital improvements under the provision of subparagraph (ii) above.

(Emphasis added.)[16]

33. KCS does not have any such agreement with UP waiving UP's responsibility to perform capital projects needed to maintain adequate capacity on the lines covered by the MP/SP-TM and HBT-TM agreements. Accordingly, under the MP/SP-TM and HBT-TM agreements with KCS, UP is required to perform capital projects on the trackage rights lines needed to maintain capacity without added payment by KCS. If UP cannot operate the Beaumont-Robstown infrastructure properly to maintain capacity for CPKC trains, UP is required to add capacity. It is not CPKC's responsibility to add capacity for UP or BNSF, as they contend.

[16] *See* excerpts of Joint Submission of Restated and Amended BNSF Settlement Agreement, UP/SP-393; BNSF-100, filed March 4, 2001 in STB Finance Docket No. 32760, Section 9(c) (Exhibit 5, page 17).

34. KCS also has the contractual right under the trackage rights agreements to require UP to add needed infrastructure on the trackage rights lines. In addition to UP's responsibility under the MP/SP-TM and HBT-TM agreements with KCS to perform capital projects on the trackage rights lines needed to maintain capacity, the trackage rights agreements require KCS and UP to share the cost of mutually-beneficial upgrades to the UP-owned trackage rights track beyond those for which UP is responsible under paragraph 3(a) of those agreements, and require UP to add infrastructure requested by KCS at KCS's sole cost if the project is for KCS's sole benefit.[17] As an example of mutually-beneficial upgrades, KCS contributed several million dollars to the cost of UP's installation of Positive Train Control infrastructure on portions of the trackage rights lines. As an example of KCS's ability to require infrastructure upgrades deemed by the parties to be for KCS's sole benefit, KCS paid approximately $7 million to upgrade two bridges at Mileposts 184.8 and 207.0 on UP's Brownsville Sub from 263,000 pound load rating to 286,000 pound load rating so KCS could move fully-loaded grain cars, and other traffic, over those bridges. After those upgrades were completed, UP exercised the right under the agreements[18] to pay 50% of the cost of those upgrades in order to be able to move UP and BNSF cars loaded to 286,000 pounds over those bridges.

35. In summary, the STB-approved trackage rights agreements under which KCS operates between Beaumont and Robstown, Texas provide for UP to make the capital investments needed to maintain the capacity to accommodate traffic growth of CPKC. Any

[17] Section 5(b) of the MP/SP-TM and HBT-TM agreements; Section 4(a) of the SP-TM agreement. *See* Exhibit 2, page 8, Exhibit 3, page 5 and Exhibit 4, page 4. Under these provisions, use of the joint track by BNSF is attributed to UP for purposes of cost allocation.

[18] Section 5(b) of the MP/SP-TM and HBT-TM agreements; Section 4(b) of the SP-TM agreement. *See* Exhibit 2, page 8, Exhibit 3, page 5 and Exhibit 4, page 4.

shortage of infrastructure capacity now or in the future is UP's responsibility to remedy as part of what KCS has paid UP tens of millions of dollars in trackage rights fees for each year. In addition, KCS has the ability to compel UP to add infrastructure if that infrastructure is for CPKC's sole benefit.

36. Despite disagreement with UP over its responsibility to maintain sufficient capacity to keep pace with traffic growth, KCS and UP have worked together successfully to spend well over $100 million on improvements to UP lines over which KCS has trackage rights. For instance, under agreements executed in 2012 and 2015, KCS and UP agreed on funding and installation of a number of important upgrades to improve capacity and traffic fluidity, including:

- Installing Centralized Traffic Control between Inari and Sinton on UP's Brownsville Subdivision;
- Building a new 10,000 foot siding with #15 power-operated turnouts at Cranell on UP's Brownsville Subdivision;
- Upgrading to power-operated #15 turnouts on the Placedo Siding on UP's Angleton Subdivision;
- Building a new 10,100-foot siding at Placedo (Benavides) on UP's Cuero Subdivision where the Cuero Subdivision joins the Angleton Subdivision;
- Installing Centralized Traffic Control between Victoria and Placedo on UP's Cuero Subdivision;
- Powering the switch to the Victoria Industrial Lead from UP's Brownsville Subdivision at Bloomington;
- Installing a crossing diamond at the intersection of the Victoria Industrial Lead, the Cuero Subdivision and the south end of UP's Rosenberg Subdivision connection to KCS's Rosenberg Subdivision;
- Installing Centralized Traffic Control between South Odem and Robstown on UP's Brownsville Subdivision;
- Building a runaround track at Sinton on UP's Brownsville Subdivision;
- Extending the siding at Greta on UP's Brownsville Subdivision to 14,044 feet;

- Extending the siding at Inari on UP's Brownsville Subdivision to 10,000 feet; and
- Building a 10,037-foot siding near Rosenberg, TX on UP's Rosenberg Subdivision.

37. For each of these projects, KCS and UP were able to develop an approach to funding that recognized both carriers' use of the facilities. Together, these and other improvements that KCS and UP have cooperated to install have significantly improved the efficiency and capacity of operations over the portions of UP's Brownsville and Angleton Subdivisions and elsewhere southwest of Houston where KCS has trackage rights on UP lines. A map indicating these projects is attached as Exhibit 7.

38. Unfortunately, since 2018-2019, UP's willingness to cooperate with KCS's efforts to increase capacity have faded. The 2015 agreement mentioned above called for UP and KCS to consider implementation of a set of additional projects after the first set. These included additional CTC installation; powering and providing remote control for certain switches; another runaround track and realignment of a section of main line to improve operational fluidity. UP has not engaged with KCS on moving forward with these projects. Perhaps that is due to UP's general withdrawal from providing KCS information about UP's capacity plans in the Beaumont-Robstown area. Obviously KCS is not well positioned to plan for capacity modifications on UP track without UP's information and input. UP's having gone quiet on that information in the past few years has stymied further efficiency improvements on some of the trackage rights lines. Nonetheless, KCS and, I expect, the future CPKC will be willing to pursue capacity work according to these established agreements at such time that additional capacity becomes necessary.

39. As can be seen from the list above, almost all of these cooperative projects occurred on UP's Brownsville Subdivision, the south end of KCS's trackage rights. UP has

engaged in considerable capacity expansion work on its lines closer to Houston (between Rosenberg and Houston, in the Houston terminal, and east of Houston to Beaumont), but UP almost never involves KCS in planning or advises KCS significantly in advance of those capacity projects. Instead, KCS generally just gets a bill for a project and has to investigate what the bill is for. KCS has asked to be more involved and more informed, but UP chooses not to share information, particularly since beginning implementation of UP's version of Precision Scheduled Railroading, UP's Unified Plan 2020, in 2018. To the extent that UP is critical of CP and KCS not providing in the Operating Plan a specific analysis of recent infrastructure upgrades in and north of Houston, UP has itself to blame due to its refusal to share capacity planning information, despite KCS's repeated requests.

40. With respect to BNSF's implication that the addition of CPKC's projected growth would cause problems similar to the conditions that disrupted Houston in 1997-1998,[19] nothing could be further from the truth. First, neither KCS nor CPKC would have any desire or incentive to create operating problems that contributed to congestion in Houston. Unlike UP and BNSF, KCS does not have any way to get from Mexico to the rest of the KCS network unless Houston is fluid.[20]

41. Second, there are many crucial differences between now and the situation in 1997-1998, as reflected in the various STB decisions. For one thing, substantial infrastructure

[19] BNSF-9 at 51-57.

[20] BNSF, unlike KCS, has access to routes that can bypass Houston. UP's and BNSF's routes from Mexico to Chicago bypass Houston completely. And for other traffic, if BNSF were concerned about congestion on the lines that CPKC will use between Houston and Beaumont, it already has trackage rights over UP from Houston on UP's line to Fair Oaks, AR via Shreveport, LA and Pine Bluff, AR, and UP's line between Houston and Valley Junction, IL via Palestine, TX.

has been added. KCS alone has spent over $100 million on capital investments in the trackage rights lines just since 2014. UP's Executive Vice President Operations testified on April 27 at the STB's recent Ex Parte 770 that UP had invested a quarter billion dollars in Englewood and Settegast Yards during just the last 3 years.[21] So the inadequate infrastructure referenced in STB decisions of 1997-1998 is no longer the case. There also have been operational changes like the clear route protocol imposed by the STB as a permanent relief measure as a result of the 1997-1998 service crisis; the Spring Center was established and KCS, BNSF and UP all participate, providing greater opportunities for operational coordination than before the service meltdown; UP promised as the 1997-1998 service crisis abated to invest $1.4 billion in Houston area infrastructure; and directional running was implemented on UP's lines between Houston and Beaumont.[22]

42. Furthermore, current KCS trains and future CPKC trains do not provide local service on UP and UP-BNSF track in Houston – the trackage rights agreements prohibit that except for traffic destined to Mexico (and other points on Tex Mex's original Corpus Christi-Laredo line). So KCS and future CPKC trains can be added to Houston infrastructure with much less operational impact than either UP or BNSF who maintain major yards and provide local service in the Houston complex.

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[21] Testimony of Eric Gehringer, Executive Vice President, Operations, Union Pacific Railroad Company at Ex Parte No. 770, Apr. 27, 2022 Public Hearing, Transcript STB Document ID 304765, posted June 15, 2022, page 906, line 13 through page 907, line 9.

[22] *See UP/SP [Houston/Gulf Coast Oversight]*, STB Finance Docket No. 32760 (Sub-No. 26) (served Dec. 21, 1998) (explaining why structural changes during the service crisis remedied the conditions that brought on the service problems in 1997).

43. In summary, the UP and UP-BNSF-owned lines to and through Houston have ample capacity, if operated efficiently, to handle the growth in CPKC traffic projected in the operating plan. Indeed, those lines have previously handled more additional trains per day than CPKC projects adding. But if added infrastructure is needed, the trackage rights agreements already in place enable KCS to require that capacity to be added, and KCS has been successful, despite UP's limited cooperation, in improving capacity to keep more trains running over the trackage rights.

II. THERE IS AMPLE CAPACITY FOR ADDITIONAL CPKC TRAINS ON THE NECHES RIVER BRIDGE

44. Another complaint voiced by UP and BNSF is that KCS's Neches River bridge in Beaumont has inadequate capacity to handle CPKC's projected additional trains, and that KCS needs to build a new bridge to handle the traffic. That assertion is contrary to the results of a recent and comprehensive KCS-led study conducted in conjunction with UP and BNSF. The fact that UP and BNSF did not get behind the Texas Department of Transportation's (TxDOT's) efforts in 2013 and 2016 to construct a new rail bridge over the Neches River belies their alleged concerns here.

45. Figure 3 below is a picture of the area surrounding the Neches River bridge, taken from a 2013 TxDOT final report on possible alternatives to the existing Neches River bridge.[23]

[23] Neches River Bridge Feasibility Study, Final Report – June 2013, Rail Division, Texas Department of Transportation. The study did not recommend a preferred alternative to the existing bridge. Study, page ES-1 (excerpts are Exhibit 8 hereto).

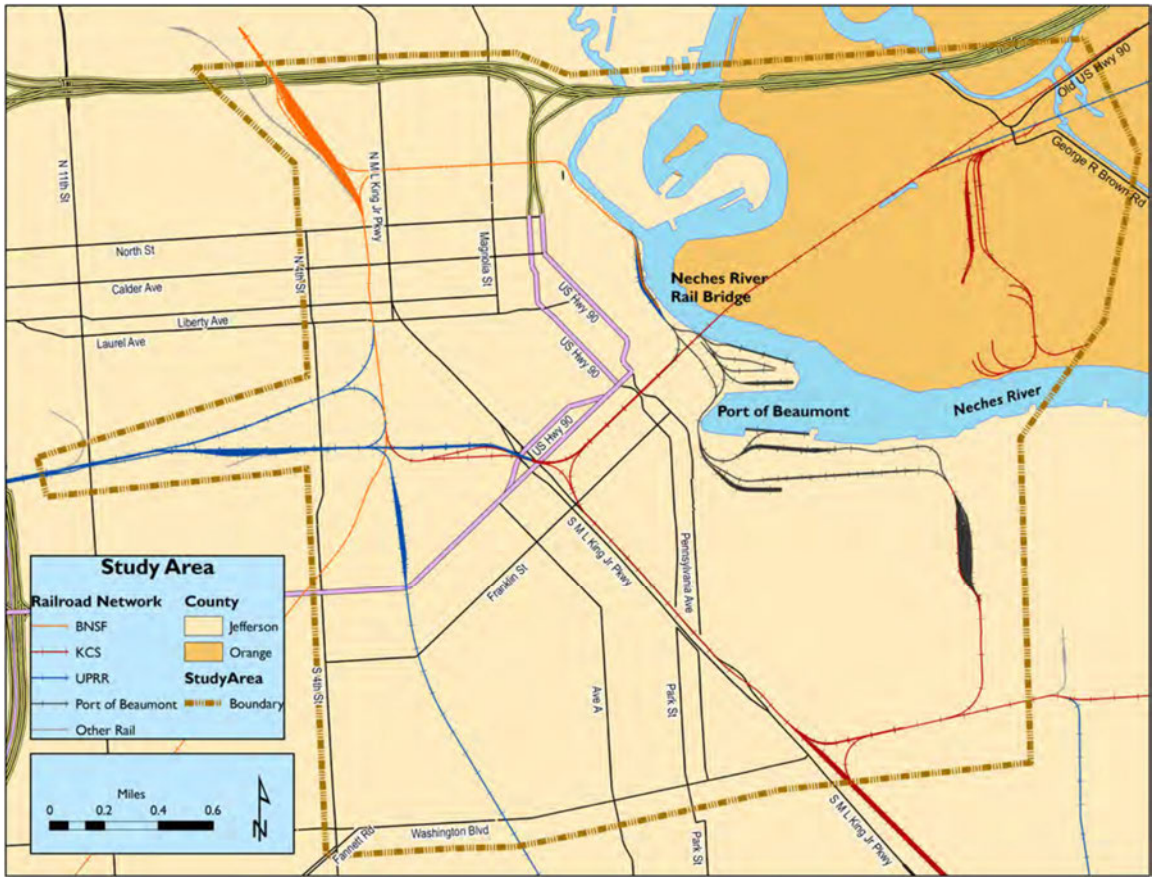
FIGURE 3
BEAUMONT, TEXAS, WITH PORT OF BEAUMONT IN FOREGROUND, KCS NECHES RIVER BRIDGE IN MID-GROUND AND INTERSTATE 10 BRIDGE IN BACKGROUND

46. In addition to the features noted in the caption, the site of the Jefferson Energy Terminal is the triangular-shaped graded area to the right of and below the Neches River bridge.

47. A second figure taken from that same TxDOT study (Figure 4 portion of the blue track west of the river and the blue track east of the river are actually the joint UP-BNSF Dawes, TX to Avondale, LA line), BNSF in orange and KCS in red:

Simmons R.V.S. at 23

FIGURE 4
NECHES RIVER RAIL BRIDGE FEASIBILITY STUDY AREA



48. As shown in the figure above, KCS's line ends a short distance west of the bridge where it connects to UP's line and is crossed by BNSF's line. UP and BNSF have trackage rights from that point over KCS's tracks leading to and from the bridge on both sides of the river.[24] The UP-BNSF joint line to Avondale breaks off from the KCS line immediately east the Jefferson Energy Terminal (which began operations just before the TxDOT study was completed and was not reflected on the graphic above).

[24] UP has had access over the bridge for decades, in conjunction with UP's removal of its own bridge across the Neches River. UP admitted Amtrak to use the bridge in conjunction with Amtrak's Sunset Limited operation over UP between New Orleans and Los Angeles. BNSF gained access over the bridge as part of the UP/SP merger.

Simmons R.V.S. at 24

49. In 2018-2019, KCS led a joint study of use of the bridge with its tenants UP and BNSF. The final report of that study is Exhibit 9(C) hereto, and includes the speaker notes associated with the presentation of the study's conclusions to UP and BNSF. (I understand that UP or BNSF produced a version of the presentation in response to Applicants' discovery requests.).

50. Among the study's findings were that:

A. The operational capacity of the bridge is 70 trains per day, while the average train count during the last 11 months of 2018 was 36 trains per day. Exhibit 9(C), Slide 10. The highest weekly average train count during 2018 was 41 trains per day, and the most trains crossed in a day was 49. Exhibit 9(C), Slide 11.

B. The study determined that the bridge itself is not the primary capacity constraint. Exhibit 9(C), Slide 11. Rather, it was the operations around the bridge that were the primary constraint.[25]

C. The study identified a need for improved communication between KCS and UP dispatchers. In response, KCS located dispatching of its Beaumont Subdivision, which includes the Neches River Bridge, to the Spring Center in Houston, where UP and BNSF dispatchers also work. Another issue identified as

[25] Bridge openings are not a primary constraint. As stated in TxDOT's 2013 feasibility study, "Data from KCS in 2012 indicates 7 lifts in a six day period which is consistent with the USCG's annual lifts. While requests for bridge openings can occur at any time, most occur during daylight hours. The bridge raising can result in some train delays. The delays are more pronounced when trains are traveling in the same direction across the bridge as adjacent trains must be separated by two signals in order to prevent a train from stopping on the bridge. Typically the bridge stays open to river traffic between 15 and 30 minutes. The daily train count across the Neches River bridge ranges between 40 to 50 trains based upon daily train movements in the FRA's crossing inventory." Study, page ES-3 (Exhibit 8).

impeding fluidity at the bridge was BNSF changing crews on the main line. BNSF has since remedied that practice.

D. While the 2018-2019 study shows that the capacity of the Neches River bridge is more than adequate to handle the projected additional CPKC trains, as in 2018 there currently are issues affecting the fluidity of operations over the bridge, including:

(1) UP and BNSF trains serving the Jefferson Energy facility adjacent to the east end of the bridge slow down as they are crossing the bridge in order to be able to stop on the UP-BNSF joint line just after leaving KCS track and to shove back into the Jefferson Energy facility. This slows crossing times for those trains.

(2) UP changes crews on its main line adjacent to its yard about 3 miles west of the bridge. That main line is the west end of the Lafayette Subdivision, operated with westbound directional running to Houston. Blocking the movement of trains on that main line backs up traffic moving west over the bridge seeking to reach Houston.

(3) BNSF accesses the Port of Beaumont south of the bridge via a crossover in the KCS main line near the bridge. Each time BNSF uses that crossover, it blocks access to and from the bridge. There is an existing connection that BNSF could use which would not block the KCS main near the bridge, but BNSF refuses to use it to avoid sharing in the cost of its construction and operation.

51. In summary, the Neches River bridge study shows that the capacity of the bridge is fully adequate to accommodate the additional CPKC trains projected to result from the merger. While expanded bridge capacity eventually may be needed,[26] new bridge capacity is not needed for the 8 trains per day that CPKC's operating plan projects in Year 3. And if more capacity is needed, operational changes such as reversing BNSF's refusal to use the new connection to the Port of Beaumont should be made to remedy it.

III. NS AND BNSF REQUESTS FOR TRACKAGE RIGHTS FROM THE DALLAS AREA TO SHREVEPORT ARE UNRELATED TO THE MERGER AND ARE INSTEAD ATTEMPTS TO GET COMMERCIAL RIGHTS FOR WHICH THEY HAVE NOT NEGOTIATED OR PAID.

52. In asking the Board to grant them contingent trackage rights over KCS's line from Dallas to Shreveport, both BNSF and NS seek a gift of rights that both chose not to acquire when Meridian Speedway, LLC (MSLLC) was created. In addition, in its settlement with UP in the UP/SP merger, BNSF deliberately gave up the right to connect at Shreveport to "eastern carriers" via the UP trackage rights over which it operates to reach Shreveport. BNSF offers no evidence supporting reversal of that STB-approved decision.

53. MSLLC is a joint venture created by KCS and Norfolk Southern in 2006 to improve the operation of the "Meridian Speedway" from Shreveport, LA to Meridian, MS. The basics of the joint venture as shown in the joint venture agreement were that KCS would contribute its Shreveport to Meridian line to MSLLC in exchange for MSLLC stock and NS would, over a period of time, contribute $300 million of capital (also in exchange for a minority

[26] The Draft Houston-Beaumont Region Freight Study dated August 2021 listed a double track rail bridge across the Neches River as having a long-range implementation timeframe for planning purposes. *See* BNSF-9, Verified Statement of Jon Gabriel and Travis Thowe, Exh. 1 at 5-67 ("The second track across the Neches River on the Beaumont Subdivision has a varied range of potential costs depending on the implementation strategy chosen. This project may be considered a long-range implementation timeframe for planning purposes.").

interest in MSLLC) to improve the infrastructure of the Meridian Speedway to bolster the line's competitive position as the most direct rail route for freight moving between western U.S. points (including West Coast ports) and Southeast points such as Atlanta. MSLLC was designed to be pro-growth and growth is inherent in those agreements.[27]

54. In exchange for its capital contribution, NS received – in addition to MSLLC stock – certain commercial rights. The principal commercial right was the exclusive right, in place of KCS, to move certain intermodal traffic from points west of Dallas/Fort Worth to points east of Meridian via the Speedway. This was called "NS Traffic." NS could receive NS Traffic at Shreveport from UP or KCS. NS Traffic would move over the Speedway in haulage operated by KCS on behalf of MSLLC for a fee set by agreement.[28]

55. For certain traffic handled by KCS from Dallas to Shreveport, NS and KCS entered into the Dallas Terminal Marketing Agreement (DTMA).[29] The DTMA provided, among other things, that the parties would {{[redacted]}}

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[27] *See*, *e.g.*, Exhibit 15(HC), The Kansas City Southern Railway Company - Meridian Speedway, LLC, Joint Use Agreement (KCS Joint Use Agreement), § 6(b); Exhibit 10(HC), Dallas Terminal Marketing Agreement, as amended, § 2(a).

[28] *See* Exhibit 12(HC), Norfolk Southern Railway Company - Meridian Speedway, LLC, Joint Use Agreement (NS Joint Use Agreement).

[29] *See* Exhibit 10(HC), Dallas Terminal Marketing Agreement, as amended.

[30] The DTMA {{[redacted]}} DTMA, Section 1(b) (Exhibit 10(HC), 27th page), definition of Dallas Intermodal Terminal Traffic.

56. The DTMA also provided NS an {{ [redacted] }}

57. The Western Haulage Agreement[35] {{ [redacted] }}

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31 DTMA, Section 3 (Exhibit 10(HC), 29th page).

32 In 2006, {{ [redacted] }}

33 DTMA, Section 1(b) (Exhibit 10HC, 27th page), definition of Notice Trigger Period.

34 DTMA, Section 5(a)(i) (Exhibit 10(HC), 32nd page).

35 *See* Exhibit 11(HC), Norfolk Southern Railway Company, The Kansas City Southern Railway Company Western Haulage Agreement.

36 Exhibit 12(HC).

[redacted]

[redacted]}}

58. Importantly, not since the Major Service Standards Failure provisions of the NS Joint Use Agreement took effect, {{[redacted]}} has KCS service quality ever come close to triggering the "Major Service Standard Failure" provision defined in that agreement.

59. Section 3(b)(ii) of the Western Haulage Agreement simply specifies that:

{[redacted]}}[37]

60. This different treatment of KCS lines west of Shreveport as compared to the Meridian Speedway lines east of Shreveport makes sense. Unlike for the Speedway, NS did not agree to provide any capital contribution to maintain and upgrade KCS's Dallas-Shreveport track as it did for Meridian Speedway. That capital contribution was fundamental to the MSLLC agreement on the Meridian Speedway, yet NS now asks for rights like its MSLLC rights without any capital contribution.

61. Providing for NS to receive, in the event of its {{[redacted]}}, and not granting NS trackage rights, obviously was a deliberate departure from the structure of the Shreveport to Meridian rights that the parties carefully crafted. Given the prolonged negotiation of the MSLLC agreements, and the specificity with which the agreements

[37] Exhibit 11(HC), 6th page.

provide for NS to obtain trackage rights east of Shreveport under certain circumstances, there is no doubt in my mind that providing {{ }} was deliberate on the part of both KCS and NS. In other words, by incorporating the provisions of the {{ }}

62. NS's Responsive Application also expands the types of traffic that NS could handle on the Wylie-Shreveport trackage beyond what NS and KCS agreed to {{ }} Exhibit 10(HC) at 32nd page (emphasis added).

63. NS's proposed trackage rights, however, are not limited to {{ }} but rather are broader, applying to "the movement of intermodal traffic, the rail movement of which originates or terminates at the Wylie Intermodal Terminal in Wylie, Texas." *See* NS-13, Exhibit 2, Article 3, Restrictions on Use. This broader language deletes limitations in the definition of {{ }} In other words, the traffic that NS seeks

trackage rights to haul is more expansive than {{ }}, contradicting NS's claim that, "[T]he contingent trackage rights, if exercised, *would merely maintain the same traffic* moving between the same origins and destinations. The *only effect* would be to change the nature of the movement from haulage to trackage rights."[38]

64. NS's statement that, "NS does not anticipate any increase in … revenues … or net earnings as a result of the Proposed Transaction"[39] also likely is not accurate. Indeed, the trackage rights NS seeks could transfer {{ }} of dollars in revenue from KCS to NS each year. As shown below, NS's attempt to pay a trackage rights fee in lieu of haulage would thus vastly change current economics of KCS's handling of Dallas Intermodal Terminal Traffic between Wylie and Shreveport, {{ }}

65. KCS and NS have not yet determined what the haulage fees called for by {{ }}[40] would be, and cannot do so until {{ }} The

[38] Norfolk Southern Railway Company's Reply to CSX Transportation, Inc.'s Motion to Reject Responsive Application of Norfolk Southern Railway Company as Incomplete, NS-11 at 8 (emphasis added).

[39] NS-11, Norfolk Southern Railway Company's Reply to CSX Transportation, Inc.'s Motion to Reject Responsive Application of Norfolk Southern Railway Company as Incomplete, page 8.

[40] As noted above, {{ }}

best comparison currently available, therefore, is the revenue per container that KCS currently earns on the Wylie to Shreveport move compared to NS's proposed trackage rights fee of {{ }}.

66. NS's proposed trackage rights cover about 207 miles – approximately 9 miles on the Shreveport Terminal Subdivision from approximately Texas Avenue, near the west end of MSLLC's ownership, to Texas Junction, and about 198 miles from Texas Junction to Wylie Yard. The distance from Texas Avenue in Shreveport to Meridian on MSLLC's line is about 310.5 miles; that is, 8.2 miles on the Shreveport Terminal Subdivision, 161.7 miles on the Vicksburg Subdivision, and 140.6 miles on the Meridian Subdivision. Combined with the trackage rights that NS seeks, the overall distance from Wylie to Meridian is about 517.5 miles.

67. In 2021, KCS earned line-haul revenue of {{ }} per container that KCS moves from Wylie to Meridian for interchange with NS. That's slightly over {{ }} per container per mile or, for the approximately 207-mile portion of the route where NS seeks trackage rights, {{ }}.

68. NS's proposed trackage rights agreement would transfer over {{ }} of that revenue to NS. At NS's proposed trackage rights fee of {{ }}, and with {{ }}, KCS revenue for the 207 miles from Wylie to Shreveport for that car would drop from {{ }} to {{ }}, for a loss

[41] Article {{ }} of NS's proposed trackage rights agreement, Exhibit 2 to NS-13. Article {{ }} of NS's proposed trackage rights agreement says that, for purposes of calculating its trackage rights fee, { } Almost all intermodal cars currently operated by KCS between Wylie and Shreveport {{ }}.

Simmons R.V.S. at 33

to KCS of {{ }}. If the traffic moved in {{ }}, the calculation might be slightly different, but for the approximately {{ }} containers that KCS moved over the Wylie-Shreveport line in 2021, that equates to a revenue loss of {{ }} per year. This calculation is not perfectly precise – for example, this is only gross revenue – but the point is clear: there would be a revenue transfer from KCS to NS of {{ }} of dollars per year if NS had trackage rights from Wylie to Shreveport for intermodal traffic as it proposes, rather than using the haulage rights NS and KCS agreed to in the Dallas Terminal Marketing Agreement. NS's statement that, "NS does not anticipate any increase in traffic, revenues, earnings available for fixed charges, or net earnings as a result of the Proposed Contingent Trackage Rights Transaction," *see* Amended Responsive Application of Norfolk Southern Railway Company, NS-13 at 12, likely is not accurate.

69. NS's request for contingent trackage rights is nothing more than an attempt to get for free rights that it chose not to bargain for or pay for in the MSLLC agreement. The STB should not order such a giveaway to NS.[42] NS had the opportunity to negotiate for more or different rights from Dallas to Shreveport and did not. The MSLLC agreements were extensively negotiated. The original Memorandum of Understanding for MSLLC is dated July

[42] NS's assertions that there is insufficient capacity on MSLLC are likewise ill-founded. Under Section 6(b)(ii) of the NS Joint Use Agreement, NS is entitled, based on the infrastructure completed in the first four years of MSLLC to 13 daily overhead trains, but NS provides only five per day. KCS's Wylie to Shreveport segment has capacity for 14 trains per day, but hosts only seven now. Thus, capacity exists to host additional NS trains, but NS has not generated that much business, a fact that hurts MSLLC's profitability. What NS is really complaining about is that it wants to move 13,000-foot intermodal trains on the Speedway, but { } *See* Exhibit 14(HC), MSLLC Meeting Presentation by NS Regarding Siding Lengths Dallas to Atlanta (including MSLLC) and Desired Siding Extensions on MSLLC (with cost estimates) at pages 1 and 3.

5, 2005, indicating that negotiations for the joint venture likely began well before that date. The Transaction Agreement itself is dated December 1, 2005, indicating five months of additional negotiation *after* the MOU negotiations were completed. In a negotiation of that length, the parties undoubtedly made efforts to consider almost every possible future fact situation. Indeed, the 50+-page MSLLC Transaction Agreement alone contains provisions showing that the parties contemplated all of the aspects of the transaction that NS complains of – a change of control of KCS,[43] service failures,[44] and capacity constraints.[45] The MSLLC agreements provide ample protection against these risks, including remedies in the event of a change of control and specific provisions triggered in the event of a carefully-defined major service failure. NS does not need additional protection beyond what it extensively bargained for.

70. BNSF's request for contingent track rights from Dallas to Shreveport is even more clearly undeserved than NS's. BNSF says that it "considered … filing a responsive application for trackage rights on a KCS line that would have allowed BNSF to shift its interchange location with Eastern railroads further north to Shreveport, La. [but] BNSF now believes that it would be more appropriate for the Board to reserve jurisdiction to address this issue…"

71. The MSLLC agreements indicate that BNSF likely was negotiating with KCS in 2005-2006 (or at least had the opportunity to do so) for trackage rights from Dallas to Shreveport. The recitals of the Western Haulage Agreement include the statement that,

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[43] Exhibit 13(HC), Limited Liability Company Agreement, Section 9; Exhibit 12(HC), Section 7(g).

[44] Exhibit 12(HC), Section 2(a).

[45] Exhibit 13(HC), Limited Liability Company Agreement, Section 5.12; Exhibit 12(HC), Section 6(b).

{{[redacted]}}. Also, Section 2(a)(ii) of the Western Haulage Agreement says:

{{[redacted]}}

72. Obviously, KCS was in commercial discussions with BNSF concurrently with negotiating the MSLLC agreements with NS. Obviously, NS knew that from this language. Just as obviously, BNSF never reached such an agreement. NS's and BNSF's awareness of the fact that rights between Dallas and Shreveport were up for negotiation in 2006 is yet another reason why the demands of both NS and BNSF for new rights west of Shreveport that they declined to negotiate and pay for is so overreaching.

73. Because the BNSF Shreveport Agreement fell through, KCS has made the investments in the Dallas-Shreveport line to support intermodal growth, including the Wylie intermodal terminal. NS benefits from these investments, which led to doubling of Dallas Intermodal Terminal Traffic since 2012.

74. BNSF does not even attempt to offer any substantial justification related to the merger for being granted trackage rights on KCS to Shreveport. Furthermore, according to the Board's website, BNSF did not submit any filings at all in the proceedings authorizing the creation of MSLLC, making no attempt to show a need to connect to "eastern carriers" at

Shreveport.[46] With BNSF having passed on entering an MSLLC-type of trackage or haulage rights with KCS in 2005-2006 and providing no justification for such a grant in the MSLLC proceeding or now, the STB should not grant BNSF any such rights, contingent or otherwise.

75. In the UP/SP merger, BNSF deliberately surrendered the right to connect to "eastern carriers" at Shreveport. On March 1, 2002, UP and BNSF filed their "Joint Submission of Restated and Amended BNSF Settlement Agreement" with the Board. Section 6.d of that agreement limited BNSF's right to connect to other carriers at Shreveport as follows:

> "BNSF shall also have the right to handle traffic of shippers open to all of UP, SP and KCS at Texarkana, TX/AR, and Shreveport, LA, to and from the Memphis BEA (BEA 73), but not including proportional, combination or Rule 11 rates via Memphis or other points in the Memphis BEA. . . . BNSF shall also have the right to interchange: with . . . KCS at Shreveport, LA and Texarkana, TX/AR, for movements of traffic originated by KCS at or delivered by KCS to shippers or receivers at Lake Charles, West Lake, or West Lake Charles, LA; with KCS (y) at Shreveport, LA for movements of loaded and empty coal trains moving to and from Texas Utilities Electric Company's Martin Lake generating station, and…"[47]

By this Board-approved settlement, BNSF surrendered any right to connect to KCS for traffic moving from Shreveport to Meridian and to "eastern carriers" beyond. Likewise, BNSF does not

[46] Despite BNSF's claimed desire to gain rights to connect to "eastern carriers" at Shreveport, there are no such carriers there. KCS, MSLLC, and UP have track in Shreveport. BNSF has limited rights to use KCS and UP track in Shreveport as a result of the UP/SP merger. Neither CSX nor NS owns track in Shreveport. NS has the right to interchange "NS Traffic" with UP in Shreveport under the MSLLC agreements. BNSF could route traffic over the Meridian Speedway via interchange with KCS at Dallas, but BNSF has opted not to do so, instead interchanging traffic with CSX at Memphis.

[47] *See* excerpts of Joint Submission of Restated and Amended BNSF Settlement Agreement, UP/SP-393; BNSF-100, filed March 4, 2001 in STB Finance Docket No. 32760, Section 6(d) (Exhibit 5, page 15). BNSF and KCS do interchange coal trains at Shreveport for the Martin Lake power plant. BNSF has not, to the best of my knowledge, ever utilized its trackage rights on UP's line through Shreveport to interchange traffic to or from Westlake or West Lake Charles, LA with KCS, likely because UP switches traffic from those locations to/from BNSF in Lake Charles.

submit any evidence in this case justifying a need to connect with "eastern carriers" at Shreveport.[48]

76. KCS currently interchanges traffic with BNSF in the Alliance Yard area north of Fort Worth. If BNSF wants to move intermodal traffic to NS, it can interchange that traffic to KCS at Alliance for movement east. In fact, however, BNSF does not do so because it interchanges its eastbound intermodal traffic to CSX in Memphis.

77. Granting BNSF trackage rights over KCS track from Dallas to Shreveport could be a large monetary gift to BNSF. Currently BNSF and KCS interchange a number of loaded coal trains each month in Kansas City, destined for Luminant's Martin Lake plant served by BNSF in Rusk County, Texas. KCS interchanges these trains back to BNSF at Shreveport for BNSF to deliver them to Martin Lake (using BNSF's trackage rights over UP). This routing saves probably hundreds of miles as opposed to an all-BNSF routing via the Houston area. BNSF interchanges the empty trains back to KCS at Texarkana, from which KCS moves them north to Kansas City for interchange back to BNSF. Allowing BNSF trackage rights on KCS between Dallas to Shreveport might allow BNSF to cut KCS out of the Martin Lake moves (by running these trains over those trackage rights over KCS between Dallas and BNSF's trackage rights lines used to reach the Martin Lake plant), diverting substantial revenue from KCS to BNSF. Not only that, but without a commitment to capital investment in the line by BNSF – a commitment BNSF avoided in 2005-2006 – addition of the Martin Lake trains to the Dallas-

[48] Even though BNSF was granted trackage rights to Brownsville, TX in the UP-SP merger to interchange with KCSM (*see* excerpts of Joint Submission of Restated and Amended BNSF Settlement Agreement, UP/SP-393; BNSF-100, filed March 4, 2001 in STB Finance Docket No. 32760, Section 4(a) (Exhibit 5, pages 9 – 11)), it has yet to use them over 25 years later.

Shreveport line would create substantial added wear to the track and add substantial congestion without funding the investments needed to compensate.

78. In making their requests, BNSF and NS seek a gift of rights that neither was willing to pay for and that both passed on in 2005. BNSF also passed on opportunities to connect to KCS at Shreveport for traffic moving to/from Meridian in the UP-SP merger and the MSLLC proceedings, and doesn't even attempt to present evidence justifying such a connection here.[49] The agency should not gift NS or BNSF such rights based on speculation unsupported by any evidence.

IV. THE NEW ORLEANS INTERCHANGE AGREEMENT WAS ALWAYS MEANT TO BE TEMPORARY AND CSX'S REQUEST TO MAKE IT PERMANENT IS AN ATTEMPT TO HAVE THE BOARD IMPOSE COMMERCIAL RIGHTS THAT CSX HAS NOT NEGOTIATED OR PAID FOR AT THE EXPENSE OF CPKC

79. CSX seeks to have the Board force KCS to incur most of the interchange costs between KCS and CSX at New Orleans in perpetuity by preventing KCS from exercising cancellation rights that KCS and CSX agreed to at the beginning of 2021.[50] There is no reason that the Board should undo CSX's recent contractual commitment to allow renegotiation of its agreement with KCS about allocation of interchange costs if either party desires a change.

80. As background for its complaint, CSX recited abandonments of small sections of KCS track in New Orleans in 1985 and 2006. I am not aware of CSX objecting in those proceedings that the abandonments would prevent continuation of competitive rail service at New Orleans, as CSX now claims. Indeed, CSX's predecessor Seaboard System Railroad, Inc., was one of several signatories to an agreement including KCS's predecessor Louisiana &

[49] Among other evidence that would be needed, BNSF's failure to present evidence of the impact of congestion its operation would cause on CPKC's service to customers is a glaring gap.

[50] *See* Exhibit 15(HC).

Arkansas Railway Company (L&A), the New Orleans Terminal Company, and others that allowed L&A trackage rights on a few hundred feet of the Back Belt to connect from CN's track back to L&A's track to reach what is now KCS's New Orleans Yard.

81. KCS and CSX do not have a direct physical connection in New Orleans for interchange of traffic, and have not since approximately 1985. It is my understanding that prior to 1985, the Louisville & Nashville Railroad (now CSX) used trackage rights over the New Orleans Terminal Railroad's (NOT's) Back Belt to reach the interchange tracks with Louisiana & Arkansas Railway Company (L&A, since merged into KCS) located around Airline Drive.

82. In the early 1980's, KCS and Illinois Central Gulf Railroad Company (ICG) and the NOT entered a series of agreements with the State of Louisiana and Jefferson Parish to facilitate elimination of highway grade crossings on L&A's line by relocating L&A's operation to ICG's line and removing a corresponding section of L&A's. The agreement called for L&A to be allowed to operate over ICG's line from Orleans Junction (later changed to Frellsen Junction) to ICG's junction with the Back Belt at East Bridge Junction. The agreement allowed L&A to traverse ICG's line and then to traverse a short section of the Back Belt back to return to the remainder of L&A's line near the L&A yard. The agreements also called for construction of a new NOT interchange track on ICG property. However, that interchange track apparently was not constructed. In any case, CSX's implication that this change was a commercial decision on KCS's part is incorrect; rather, the move to ICG's line was necessary for the State to complete its highway project for the benefit of the public.

83. Because the new NOT interchange track was not built, L&A lost the ability to interchange with NOT near East Bridge Junction. Furthermore, NS acquired NOT's Back Belt, essentially nullifying use of the Back Belt by L&N (CSX). As a consequence, L&N (CSX) and

L&A (KCS) no longer had direct interchange in New Orleans, and were forced to use the New Orleans Public Belt Railroad (NOPB) to handle their interchange.

84. During the past few years, NOPB has undergone a number of changes. One of those was a significant increase in switch costs for intermediate switches by NOPB between linehaul carriers. In response, KCS and CSX discussed each being responsible for delivering interchange from themselves to the other carrier. Having no rights on track that connected to CSX, KCS planned to have NOPB handle KCS's interchange to CSX, and have CSX be responsible for handling its interchange to KCS. However, when CSX discovered that it did not have direct access to interchange with KCS, CSX balked at paying NOPB's charges. Instead, CSX threatened to tender traffic previously interchanged to KCS at New Orleans – largely for customers on KCS's line between New Orleans and Baton Rouge – to KCS at Gulfport, MS or Birmingham, AL.

85. Neither Gulfport nor Birmingham would have been a suitable interchange. KCS receives only local traffic for interchange from CSX at Gulfport. For KCS to route traffic to a customer between Baton Rouge and New Orleans from Gulfport would have required KCS moving the traffic north to Hattiesburg, CN providing KCS haulage from Hattiesburg to Jackson, KCS moving the traffic west from Jackson to Shreveport, and then KCS moving the traffic south from Shreveport to destination. This would have added hundreds of miles to the move and been wasteful and costly. Similarly, interchange of New Orleans area traffic at Birmingham would have involved a third railroad – Watco's Alabama Southern from Tuscaloosa to Artesia, and then KCS from Artesia south to Meridian, across the Speedway from Meridian to Shreveport, and south from Shreveport to the destination. Depending on the traffic's origin on CSX, this routing also might have added hundreds of miles and been wasteful and inefficient.

86. To avoid all of these problems from CSX's refusal to be responsible for handling its interchange to KCS, KCS agreed reluctantly to {{ }}[51] It certainly is not the case that CSX unwittingly agreed to the termination provision. Now, CSX wants the STB to take away that termination right, saddling CPKC perpetually with the majority of the cost of interchanging with CSX serving New Orleans area customers. There is no justification for freezing this uneven allocation of interchange costs as CSX requests.

87. Another alternate interchange between KCS and CSX for some traffic would be via the Meridian & Bigbee Railroad, L.L.C. (MNBR), which connects to KCS in Meridian, MS and to CSX at Montgomery, AL. CSX and KCS do not have an interchange at Meridian. CSX previously had a haulage agreement with MNBR between Meridian and Montgomery, but CSX cancelled that agreement in 2007. {{ }}

V. LYONDELLBASELL'S PROPOSED RECIPROCAL SWITCHING AT LAKE CHARLES HAS NO NEXUS TO ITS STATED SERVICE CONCERNS.

88. Finally and briefly, LyondellBasell (LYB) asks the STB to grant BNSF immediate access to a facility LYB owns on the Rosebluff Lead and to a facility that LYB partly

[51] Exhibit 15(HC), page 2, paragraph 6.

owns and manages at Mossville, LA; that the Board establish conditions for BNSF access to all shippers on the Rosebluff Lead; and that the Board order KCS to provide UP reciprocal switching between LYB's plant in Corpus Christi to interchange with UP at Robstown. None of these requests are justified.

89. First, the Rosebluff Lead and Mossville facilities addressed by LYB's comments are already served by both KCS and UP.[52] Both have direct rail competition. LYB has not shown that the Transaction has any effect at all on service to these facilities.

90. Further, as to facilities on the Rosebluff Lead, the Board is well aware of its ongoing and complex proceedings involving BNSF's terminal trackage rights application for the Rosebluff Lead.[53] The extensive proceedings before the Board and the complex factual decisions the Board has made thus far show that granting LYB's sweeping request, untethered to any presentation of relevant facts, would be entirely contrary to everything the Board has done to date in its pending proceeding.

91. LYB's further request that that UP be granted access via reciprocal switching to all shippers on KCS track in Corpus Christi does not solve any supposed competitive problem arising from the merger. LYB's Corpus Christi facility is not rail-served now – the CP-KC merger does not harm competition for rail traffic there because there is no rail traffic there.

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[52] Mossville is a separate station from Westlake and West Lake Charles, as shown by UP, BNSF and KCS all listing it in their listings in the Open and Prepay Station List. LYB says that KCS "recognizes that the [recently-built Mossville facility in which LYB even more recently purchase an interest] is open to Union Pacific. But KCS refuses to recognize BNSF's access…" LYB ignores the fact that KCS provides UP reciprocal switching to the facility under KCS Tariff 8100-E, Item 345 {{ }} and that switching to locations in Westlake and West Lake Charles to which LYB tries to compare the Mossville facility are not covered by the tariff, but by a longstanding contract with UP that does not include Mossville.

[53] Finance Docket No. 32760 (Sub-No. 46).

92. Even if LYB's requests for BNSF access in the West Lake Charles and Mossville areas, or UP's access at Corpus Christi, were granted, those railroads would be handling any traffic they garnered on the same lines that LYB raises concerns over being too congested. For example, UP routing traffic to/from Corpus Christi would traverse the same UP lines between Robstown and Placedo and probably between Houston and Beaumont, and BNSF would use the same UP-BNSF joint line between Houston and New Orleans and the Neches River bridge to handle traffic that UP currently moves. Accordingly, the reciprocal switch access would not solve but could exacerbate any congestion issues.

93. LYB's request is a purely commercial preference and an attempt to have the Board grant BNSF access where BNSF does not have the commercial rights, has made no investments, threatens to increase congestion and has been unable thus far to justify even limited rights, let alone the sweeping, factually-unsupported access that LYB requests.

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VERIFICATION

I, Stephen D. Simmons, declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

Executed this 12 day of July, 2022.

DocuSigned by:
Stephen Simmons
CD09926AE2CC489...

Stephen D. Simmons
Director of Border and Interline Operations
The Kansas City Southern Railway Company

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36500

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

SIMMONS R.V.S. EXHIBIT 1

JUNE 29, 2022 HOUSTON AREA JOINT MEETING REPORT

JOINT MEETING
JUNE 29, 2022

JUNE DISCUSSION

Complex Workshop Success

YH387J: On Duty Change Working

YH185J: Round Tripping

Relief Crews (Complex/Joint Line)

Re-crews on downward trend

KCS GTB Automation

Timeline for Completion?

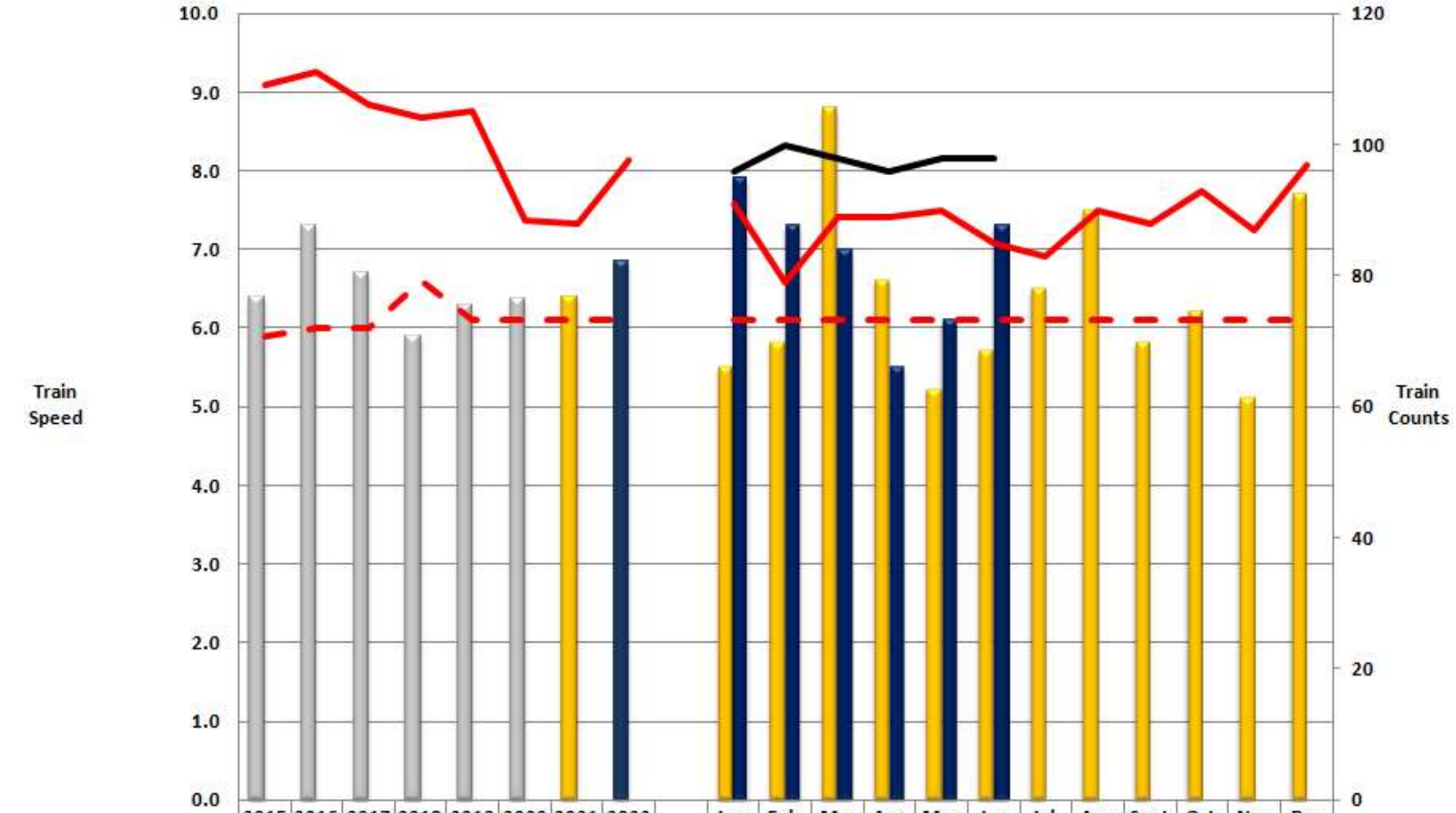
KCS

Kendleton Local Mon, Wed, Fri to discuss today

UP Beaumont

MLKBT/MBTLK time change to 0400

HOUSTON COMPLEX PERFORMANCE

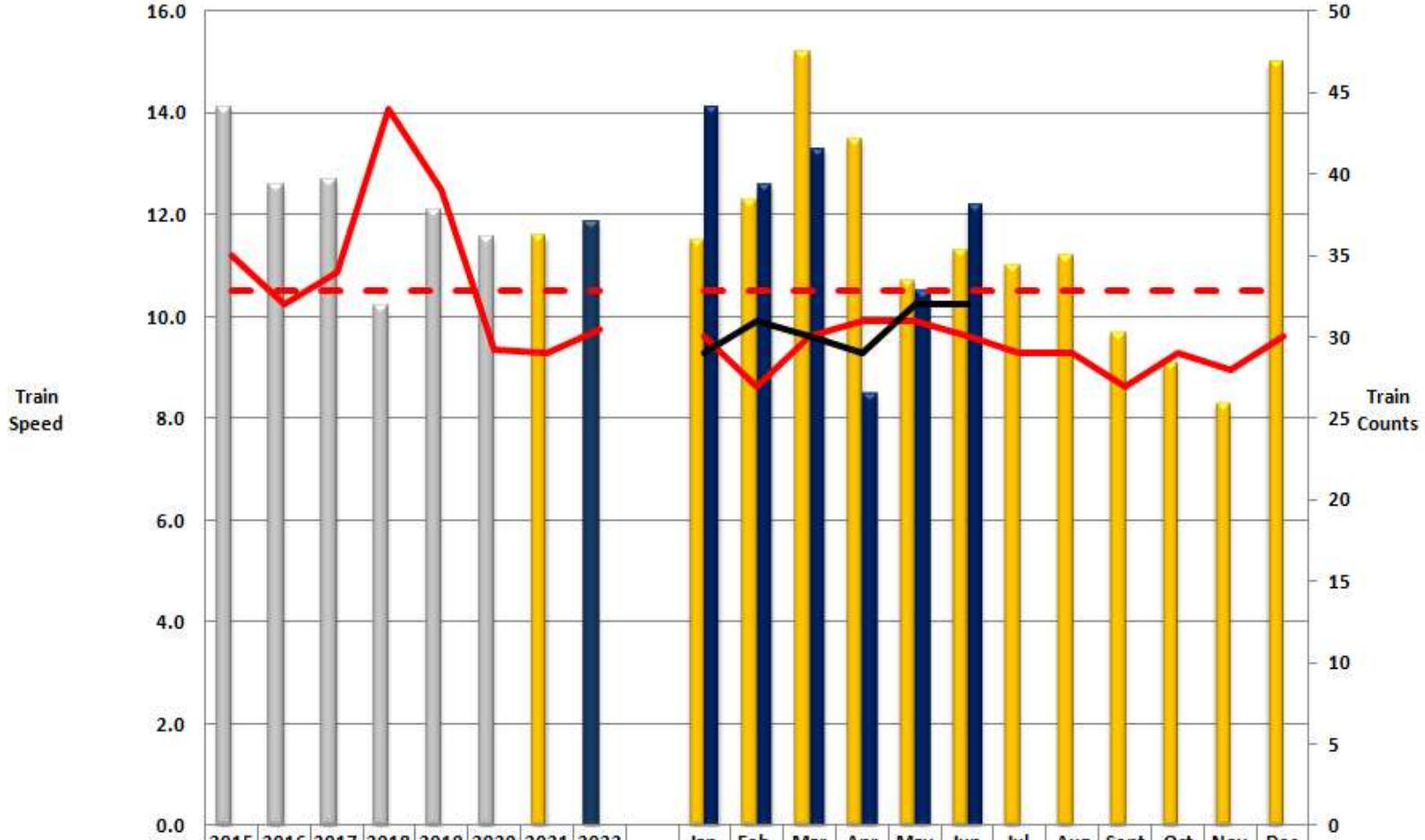


	2015	2016	2017	2018	2019	2020	2021	2022		Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec
2021 Speed	6.4	7.3	6.7	5.9	6.3	6.4	6.4	6.9		5.5	5.8	8.8	6.6	5.2	5.7	6.5	7.5	5.8	6.2	5.1	7.7
2022 Speed										7.9	7.3	7.0	5.5	6.1	7.3						
Goal	5.9	6.0	6.0	6.6	6.1	6.1	6.1	6.1		6.1	6.1	6.1	6.1	6.1	6.1	6.1	6.1	6.1	6.1	6.1	6.1
2021 Train Counts	109	111	106	104	105	88	88	98		91	79	89	89	90	85	83	90	88	93	87	97
2022 Train Counts										96	100	98	96	98	98						

HOUSTON COMPLEX MOW ACTIVITIES 2ND QUARTER 2022

- Glidden Road Crossing
  - Replacements in progress
    - Completion Date 07/28
- Englewood Bypass Track
  - In progress. ETO 4th Quarter 2022
- Glidden Tie Gang
  - ETA Sept. 28th, 2022

JOINT LINE PERFORMANCE



	2015	2016	2017	2018	2019	2020	2021	2022		Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec
2021 Speed	14.1	12.6	12.7	10.2	12.1	11.6	11.6	11.9		11.5	12.3	15.2	13.5	10.7	11.3	11.0	11.2	9.7	9.1	8.3	15.0
2022 Speed										14.1	12.6	13.3	8.5	10.5	12.2						
Goal	10.5	10.5	10.5	10.5	10.5	10.5	10.5	10.5		10.5	10.5	10.5	10.5	10.5	10.5	10.5	10.5	10.5	10.5	10.5	10.5
2021 Train Counts	35	32	34	44	39	29	29	31		30	27	30	31	31	30	29	29	27	29	28	30
2022 Train Counts										29	31	30	29	32	32						

JOINT LINE INFRASTRUCTURE ENHANCEMENTS 2ND QUARTER, 2022

- July 7th
  - 24’ Liberty Bridge Replacement “Final”
- July 28th
  - 12’ Double Bridge Replacement at West Lake
- Joint Elimination
  - UP Houston Sub
    - Weld out new Double Track

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36500

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

SIMMONS R.V.S. EXHIBIT 2

TERMS FOR TEXAS MEXICAN RAILWAY COMPANY TRACKAGE RIGHTS, EXECUTED DEC. 12, 1996 (MP/SP-TM),

45

TERMS FOR TEXAS MEXICAN RAILWAY COMPANY TRACKAGE RIGHTS

The following terms (hereinafter referred to as the "Terms") shall govern rights provided by MISSOURI PACIFIC RAILROAD COMPANY, a Delaware corporation ("MP"), and SOUTHERN PACIFIC TRANSPORTATION COMPANY, a Delaware corporation ("SP"), with MP and SP jointly and severally referred to as "MP/SP" or "Owner," on the one hand, to THE TEXAS MEXICAN RAILWAY COMPANY ("Tex Mex" or "User"), on the other hand, with MP/SP and Tex Mex sometimes referred to collectively as "Parties," pursuant to the decision of the Surface Transportation Board ("STB") in Finance Docket No. 32760 served August 12, 1996 (the "Decision").

RECITALS

A. MP/SP owns lines of railroad consisting of track structure extending between Robstown, Texas and Odem, Texas, and between Corpus Christi, Texas, and Beaumont, Texas, by way of Odem, Texas, identified as follows:

> MP's line between Robstown, Texas, in the vicinity of MP Milepost 141.48 and Placedo, Texas, in the vicinity of MP Milepost 224.2;
>
> MP's line between Corpus Christi, Texas, in the vicinity of MP Milepost 145.59, and Odem, Texas, in the vicinity of MP Milepost 132.2, via Savage Lane to MP's Viola Yard;
>
> SP's line between Placedo, Texas, in the vicinity of SP Milepost 14.2, and West Junction, Texas, in the vicinity of SP Milepost 12.6, via Victoria, Texas, and Flatonia, Texas;
>
> SP's line between West Junction, Texas, in the vicinity of SP Milepost 12.6, and T&NO Junction, Texas, in the vicinity of SP Milepost 4.6;
>
> SP's line from West Junction through Bellaire Junction to Chaney Junction, in the vicinity of SP Milepost 2.8;
>
> SP's line from Chaney Junction, in the vicinity of SP Milepost 2.8, to Tower 26, in the vicinity of SP Milepost 360.7, via the Houston Passenger station;

SP's line from Chaney Junction, in the vicinity of SP Milepost 2.8, to Tower 26, in the vicinity of SP Milepost 360.7, via the Hardy Street yard;

MP's line from Settegast Junction, in the vicinity of MP Milepost 381.61, to the connection with HB&T at Interstate Junction, in the vicinity of MP Milepost 7.60;

SP's line from T&NO Junction, in the vicinity of SP Milepost 4.6, to the connection with PTRA, in the vicinity of Katy Neck (GH&H Junction), in the vicinity of SP Milepost 1.3;

SP's line from SP Milepost 360.7 near Tower 26 to the connection with HB&T at Quitman Street, in the vicinity of SP Milepost 1.45;

MP's line between Gulf Coast Junction, Texas, in the vicinity of MP Milepost 377.98, and Amelia, Texas, in the vicinity of MP Milepost 451.4;

MP's line between Amelia, Texas, in the vicinity of MP Milepost 451.4, and the connection with SP at Langham Road, Texas, in the vicinity of MP Milepost 456.7;

SP's line between Langham Road, Texas, in the vicinity of MP Milepost 456.7, and Tower 74, in the vicinity of MP Milepost 458.8;

MP's line between Tower 74, in the vicinity of MP Milepost 458.8, and (1) the connection with The Kansas City Southern Railway Company ("KCS") at GLC Jct., Texas, in the vicinity of MP Milepost 460.36 (KCS Milepost 766.7), and (2) the connection with KCS at the Neches River Draw Bridge in Beaumont, Texas, in the vicinity of KCS Milepost 766.0;

as shown by bold line on the attached prints dated September 23, 1996 (and identified as Exhibit "A") and further described in Section 1.7 of Exhibit "B," which shall be referred to herein as the "Joint Trackage."

B. The STB in Finance Docket No. 32760 approved the common control and merger of the rail carriers controlled by Union Pacific Corporation ("UPC"), including MP and Union Pacific Railroad Company ("UPRR") (UPC, UPRR and MP are referred to collectively as "UP"), and the rail carriers controlled by Southern Pacific Rail Corporation ("SPR"), including SP, conditioned on, among other things, partial grant of the Responsive Application of Tex Mex, dated March 29, 1996.

C. In order to exercise its authority to acquire control of SPR as granted by the STB in Finance Docket No. 32760, MP/SP is willing to provide Tex Mex with the rights specified in the Decision.

D. Tex Mex desires to receive said rights and desires to conduct operations over said rights. Tex Mex and MP/SP now wish to assist the STB in specifically defining the terms and conditions under which said rights shall be exercised.

E. It is the position of Tex Mex and MP/SP that these Terms do not constitute the acquiescence by either of them in the Decision and shall not preclude either of them from seeking any reopening, reconsideration or judicial review of the Decision.

TERMS

1. General Conditions:

The General Conditions set forth in Exhibit "B" attached hereto are hereby made a part of these Terms. All capitalized Terms used and not otherwise defined in these Terms shall have the meaning ascribed to them in the General Conditions. If any conflict between the General Conditions and these Terms shall arise, the provisions of these Terms shall prevail.

2. Rights of Tex Mex:

(a) Subject to the terms and conditions contained herein, MP/SP shall grant to Tex Mex the nonexclusive right to use the Joint Trackage for the limited operation of Equipment in Tex Mex's account over the Joint Trackage in common with MP/SP and such other railroad company or companies as MP/SP has heretofore admitted or may hereafter at any time in the future admit to the joint use of all or part of the Joint Trackage (provided that such future admittance shall not materially hinder or obstruct the fair and reasonable exercise of the rights granted in these Terms), such other railroad company or companies to be considered MP/SP for the purposes of these Terms, it being understood and agreed that Tex Mex shall not have the right to:

(i) Switch industries upon the Joint Trackage, except as otherwise provided in Section 2(g);

(ii) Set out, pick up or store Equipment upon the Joint Trackage, or any part thereof, except as otherwise provided in Sections 2.11, 2.12 and 2.13 of Exhibit B;

(iii) Serve any industry, team or house track, intermodal or auto facility now existing or hereafter located along the Joint Trackage, except as otherwise provided in Section 2(g);

(iv) Permit or admit any third party to the use of all or any portion of the Joint Trackage, nor, under the guise of doing its own business, contract or make any agreement to handle as its own Equipment over or upon the Joint Trackage, or any portion thereof, the Equipment of any such third party which in the normal course of business would not be considered the Equipment of Tex Mex; provided, however, that the foregoing shall not prevent Tex Mex, pursuant to a run-through agreement with any railroad, from using the locomotives and cabooses of another railroad as its own under these terms;

(v) Connect with or interchange with any other railroad, except as otherwise provided in Section 4; or

(vi) Establish any transload facilities on the Joint Trackage or build into or out from any facility from/to the Joint Trackage.

(b) The rights granted in Section 2 shall be only for rail traffic of all kinds and commodities, both carload and intermodal, in Equipment that meets all applicable specifications established by the Association of American Railroads and the Federal Railroad Administration, provided that all freight handled by Tex Mex pursuant to such rights must have a prior or subsequent movement on Tex Mex's Laredo-Robstown-Corpus Christi Line.

(c) User shall have the right to establish crew change points at points on the Joint Trackage as from time to time may be mutually agreed to in writing by Owner and User. However, User agrees that if sufficient trackage is not available at such locations(s) to facilitate crew changes of User, Owner may require User to construct additional trackage ("Crew Change Facilities") in the vicinity of such location as may be required, in the reasonable judgment of Owner, the cost and expense of which shall be borne solely by User. If User does not agree that such Crew Change Facilities are necessary, the Owner may nevertheless insist that they be constructed, with the question of their necessity, and the User's obligation to bear their cost and expense, to be determined by arbitration pursuant to Section 6 of the General Conditions. In the event such Crew Change Facilities are constructed at the cost and expense of User, and Owner shall choose to use such Crew Change Facilities, Owner shall pay User fifty percent (50%) of the cost of constructing such Crew Change Facilities. Should Owner decline to participate, Owner shall be denied access to such Crew Change Facilities. However, should Owner elect at a later date to use such Crew Change Facilities, such right shall be granted to Owner by User upon payment of fifty percent (50%) of User's initial costs plus per annum interest thereon at a rate equal to the average paid on 90-day Treasury Bills of the United States Government as of the date of completion until the date of use by User commences. Per annum interest shall be adjusted annually on the first day of the twelfth (12th) month following the date of completion and every year thereafter on such date, based on the percentage increase or decrease, in the average yield of 30-year U.S. Treasury Notes for the prior year compared to their average yield in first year of completion of the Improvements. Each annual adjustment shall be subject, however, to a "cap" (up or down) of two percentage points of the prior year's

interest rate (i.e. the adjustment may not exceed an amount equal to two percentage points of the immediately preceding year's interest rate).

In addition, Owner shall lease to User, by separate written agreement at reasonable and customary charges, existing facilities for office, locker, change and lunchroom purposes by User's personnel upon request of User to Owner, and as reasonably available, or property of Owner as reasonably available for User to establish its own facilities.

(d) User agrees that when entering or exiting the Joint Trackage or using the Joint Trackage to set out or pick up ("User's Operations"), it shall do so without unreasonable interference or impairment of the Joint Trackage. However, User agrees that if sufficient trackage is not available at such location(s) to facilitate User's Operations, Owner may require User to construct additional trackage in the vicinity of such location(s) as may be required, in the reasonable judgment of Owner, the cost and expense of which shall be borne solely by User. If User does not agree that such additional trackage is necessary, the Owner may nevertheless insist that it be constructed, with the question of its necessity, and the User's obligation to bear its cost and expense, to be determined by arbitration pursuant to Section 6 of the General Conditions. In the event such trackage is constructed at the cost and expense of User, and Owner shall choose to use such trackage, Owner shall pay User fifty percent (50%) of the cost of constructing such trackage plus interest as calculated pursuant to Section 2(c) above.

(e) User shall have the right to such use of SP's Glidden Yard at Glidden, Texas, as is reasonably necessary to effectuate the rights granted by these Terms and on such terms and conditions (including reasonable compensation terms) as may be agreed to in writing by the parties or determined by arbitration pursuant to Section 6 of the General Conditions if the parties fail to agree; provided, however, that such use by User shall not unreasonably interfere with Owner's operations. Any dispute between User and Owner regarding the reasonableness of User's use of Glidden Yard shall be submitted to arbitration pursuant to Section 6 of the General Conditions.

(f) If Owner implements a directional flow of operations between Houston, Texas, and Beaumont, Texas, Owner will assure that User's operations are not adversely affected thereby.

(g) User shall have the right to serve all shippers that, as of September 10, 1996, were capable of receiving service from both MP and SP and no other railroad, directly or through reciprocal switching.

3. GTM Rate:

(a) In addition to other payments to be made under these Terms, User shall remit to Owner monthly for the use of the Joint Trackage in the operation of its Equipment therealong and thereover, the total amount of 3.84 mills per GTM for all Equipment, which sum per GTM ("GTM Rate") shall be deemed to include ordinary and programmed maintenance of the Joint

Trackage, Changes in and/or Additions to the Joint Trackage (to the extent required by the first sentence of Section 2.2 of the General Conditions), operating expenses, interest rental, depreciation and taxes.

(b) For the purpose of computing the GTM Rate under this Section 3, the distance between the designated points of the Joint Trackage shall be determined by reference to MPRR's EPMS Engineering Mileage Master or SP's Station Pair Master File, whichever is applicable, both of which shall be subject to verification by User.

(c) The GTM Rate set forth in Section 3(a) of these Terms shall be subject to adjustment annually, commencing as of July 1, 1997, as follows:

All trackage rights charges under this Section 3 shall be subject to adjustment annually beginning as of the effective date of these Terms to reflect seventy percent (70%) of increases or decreases in Rail Cost Adjustment Factor, not adjusted for changes in productivity ("RCAF-U") published by the ICC or successor agency or other organizations. In the event the RCAF-U is no longer maintained, the parties shall select a substantially similar index and failing to agree on such an index, the matter shall be referred to binding arbitration.

4. Interchange:

In exercising the rights granted by these Terms, Tex Mex shall have the right to interchange traffic (a) with carriers other than MP/SP at the existing interchange points with those carriers on the Joint Trackage, i.e., (i) at Houston, Texas, with the Port Terminal Railroad Association ("PTRA"), the Houston Belt Terminal Railway Company ("HBT"), The Atchison, Topeka & Santa Fe Railway Company ("ATSF") and Burlington Northern Railroad Company ("BN") (ATSF and BN are referred to collectively as "BNSF"), and (ii) at Beaumont, Texas, with BNSF and The Kansas City Southern Railway Company ("KCS"); (b) with BNSF at Robstown and Corpus Christi and at any new interchange point on the Joint Trackage that may hereafter be established between MP/SP and BNSF; and (c) with MP/SP at Houston, Beaumont and such other points as may mutually be agreed. Any interchange between Tex Mex and PTRA or between Tex Mex and HBT at Houston, Texas, shall be governed by agreements entered into between those parties or terms imposed by the STB.

5. Additions:

(a) Owner and User shall conduct a joint inspection to determine what connections ("Connections") and sidings or siding extensions associated with Connections ("Sidings") are necessary in the reasonable judgment of Owner to implement the rights granted under Section 2 of these Terms. User, at its sole cost and expense, shall pay the cost of such Connections and Sidings. If User does not agree that such Connections and Sidings (other than those described in subsections (i) and (ii), the necessity for which is not in dispute, and to which this sentence does not apply) are necessary, Owner may nevertheless insist that they be constructed, with the question of their necessity, and the User's obligation to bear their cost and expense, to be

determined by arbitration pursuant to Section 6 of the General Conditions. In the event that the User bears the sole cost and expense of any such Connections and Sidings, no other railroad shall have the right to use them except upon terms agreed to by User and such other railroad. In the event Owner shall elect to use such Connections and Sidings, Owner shall pay to User fifty percent (50%) of the cost to User of constructing the Connections and Sidings, plus interest as calculated pursuant to Section 2(c) above, and, having made such payment, Owner may also admit other railroads to the use of such Connections and Sidings. Owner shall maintain the part of any Connection or Siding on its property at its sole cost and expense, and User, at its sole cost and expense, shall maintain the part of any Connection or Siding on its property or property of others. Such necessary Connections and Sidings shall include, but are not necessarily limited to, those described in subsections (i) and (ii) below:

(i) User shall construct a connection to access MP at Robstown, Texas, to include track 8500 feet in length to permit Tex Mex trains to clear the MP main line (the "Robstown Connection"). The design for the Robstown Connection shall be submitted to Owner for its written approval within forty-five (45) days following the effective date of these Terms, which approval shall not be unreasonably withheld, and User's operation thereover shall be subject to Owner's prior written acceptance of the Robstown Connection. User agrees that the Robstown Connection shall be constructed within one hundred eighty (180) days of acquisition of the required property and approval by Owner of its design. Owner grants User the right to use, as daily dispatching conditions reasonably permit, the existing connection between Tex Mex and Owner at Robstown and 8500 feet of Owner's main line south of that connection, for a period of six (6) months following the date of Owner's approval of the design of the Robstown Connection, which connection and trackage shall be deemed part of the Joint Trackage during the period of Tex Mex's usage thereof, including any extensions of the period as provided below. Owner will extend the period of User's use of the existing connection for an additional six (6) months in the event (a) User is unable to complete the Robstown Connection within the time frame specified in the preceding sentence and User is making a bona fide effort to complete the construction of the new connection, and (b) User's continued operations over the existing connection will not, in Owner's judgment, unreasonably interfere with Owner's operations. If BNSF constructs the Robstown Connection, Tex Mex shall have the right to use the Robstown Connection on terms agreed to by Tex Mex and BNSF. If the Robstown Connection is not constructed by BNSF, Tex Mex shall construct the Robstown Connection as provided above.

(ii) User shall also construct a connection to access SP at Flatonia, Texas, to include track parallel to SP's Victoria Subdivision, Port LaVaca Branch, 8500 feet in length to permit Tex Mex trains to clear the SP main line (the "Flatonia Connection"). The design for the Flatonia Connection shall be submitted to Owner for its written approval within forty-five (45) days following the effective date of these Terms, which approval shall not be unreasonably withheld, and

User's operation thereover shall be subject to Owner's prior written acceptance of the Flatonia Connection. User agrees that the Flatonia Connection shall be constructed within one hundred eighty (180) days of acquisition of the required property and approval by Owner of its design. Owner grants User the right to use the existing connection between SP's Victoria Subdivision, Port LaVaca Branch, and SP's Glidden Subdivision at Flatonia and siding south of Owner's main line West of that connection for a period of six (6) months following the date of Owner's approval of the design of the Flatonia Connection, which existing connection and trackage shall be deemed part of the Joint Trackage during the period of Tex Mex's usage thereof.

(b) Except as provided in Section 5(a) above, expenditures for any future Changes in and/or Additions to the Joint Trackage, such as, but not limited to, sidings, Centralized Traffic Control, grade separations, and future connections, shall be handled as follows: (i) if the Change in and/or Addition to the Joint Trackage is for the sole benefit of one party, that party shall be solely responsible for the entire cost and expense thereof; (ii) all other Changes in and/or Additions to the Joint Trackage shall be shared by MP/SP and Tex Mex on the basis that the parties' respective GTM's operated over the Joint Trackage bear to total GTM's operated over the Joint Trackage for the twelve (12) month period immediately prior to the month work on the project is commenced. The use of Joint Trackage by any third party shall be attributed to MP/SP for purposes of computing respective GTM's for purposes of this Section 5(b).

(c) In the event such Changes in and/or Additions to the Joint Trackage are constructed at the sole cost and expense of one party (party of the first part), the other party (party of the second part) shall be denied access to such Change in and/or Addition to the Joint Trackage. If the party of the second part at some future date shall choose to use such Changes in and/or Additions to the Joint Trackage, such right shall be granted to party of the second part by party of the first part upon payment of fifty percent (50%) of party of the first part's initial costs plus per annum interest calculated pursuant to Section 2(c).

6. Notices:

All notices, demands, requests, submissions and other communications which are required or permitted to be given pursuant to these Terms shall be given by either party to the other in writing and shall be deemed properly served if delivered by hand, or mailed by overnight courier or by registered or certified mail, return receipt requested, with postage prepaid, to such other party at the address listed below:

If intended for MP/SP:

Executive Vice President-Operation
Room 1206
1416 Dodge Street
Omaha, Nebraska 68179

With a copy to:

Director Joint Facilities
Room 1200
1416 Dodge Street
Omaha, Nebraska 68179

If intended for Tex Mex:

The Texas Mexican Railway Company
1200 Washington Street
P.O. Box 419
Laredo, Texas 78042

Notice of address change may be given any time pursuant to the provisions of this Section 6.

7. Term:

These Terms shall be effective upon consummation of the control authority granted in the Decision for a term of ninety-nine (99) years. These Terms shall terminate, and all rights conferred pursuant thereto shall be canceled and deemed void ab initio, if, in a Final Order, the application for authority for UP to control SPC has been denied or has been approved on terms unacceptable to the applicants or has been granted on terms that do not require the rights provided herein, provided, however, that if these Terms become effective and are later terminated, any liabilities arising from the exercise of rights under Sections 1 through 5 during the period of its effectiveness shall survive such termination. For purposes of this Section 7, "Final Order" shall mean an order of the Surface Transportation Board, any successor agency, or a court with lawful jurisdiction over the matter which is no longer subject to any further direct judicial review (including a petition for writ of certiorari) and has not been stayed or enjoined.

Approved:

For MP/SP: James V. Dolan

Position: Vice President - Law

Date: DEC 12 1996

For Tex Mex: Jerry W. Fields

Position: President

Date: Nov 20, 1996

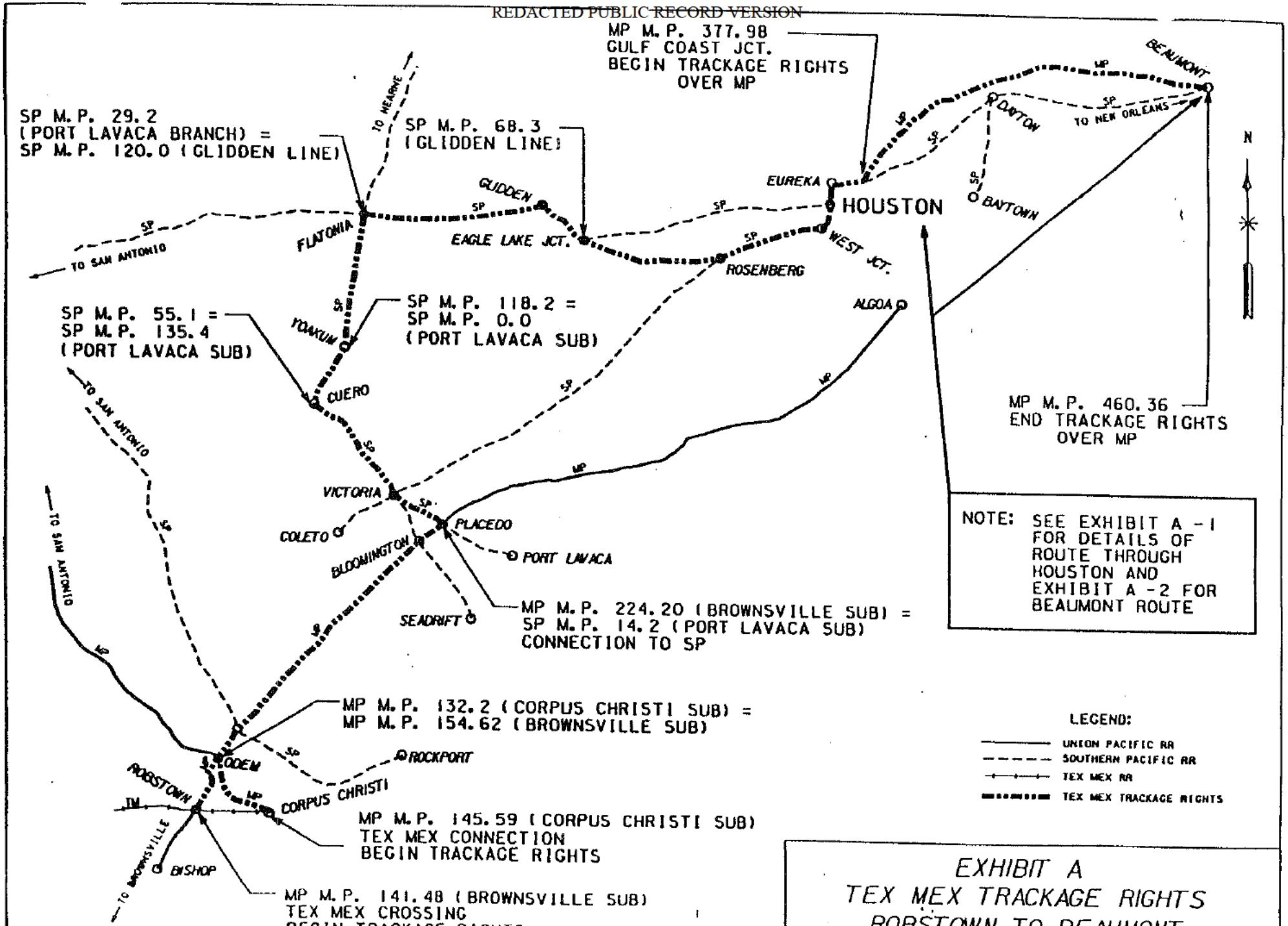


EXHIBIT A
TEX MEX TRACKAGE RIGHTS
ROBSTOWN TO BEAUMONT
09/23/96

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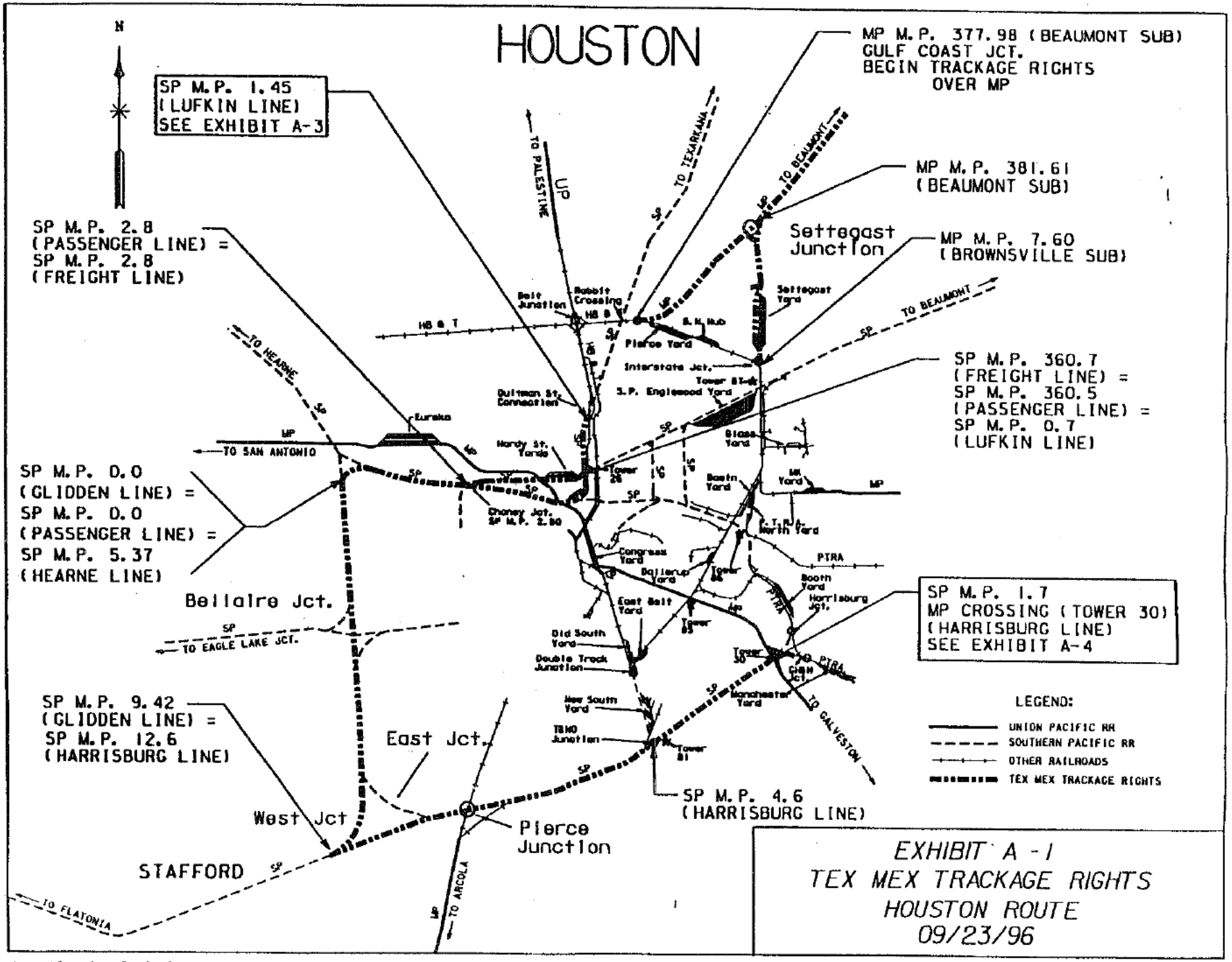

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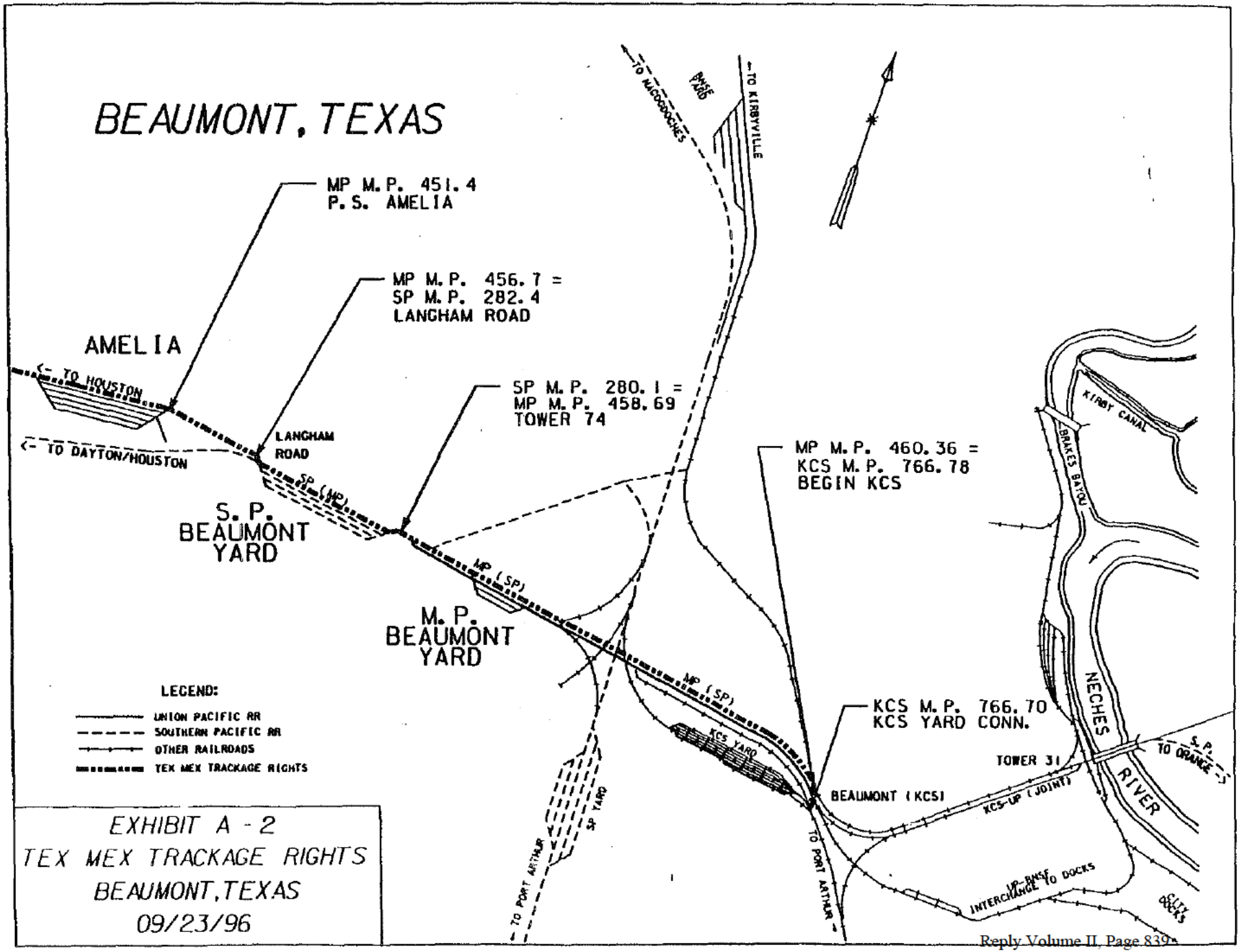
BEAUMONT, TEXAS
MP M. P. 451.4
P. S. AMELIA
MP M. P. 456.7 =
SP M. P. 282.4
LANGHAM ROAD
SP M. P. 280.1 =
MP M. P. 458.69
TOWER 74
MP M. P. 460.36 =
KCS M. P. 766.78
BEGIN KCS
KCS M. P. 766.70
KCS YARD CONN.
AMELIA
<- TO HOUSTON
<- TO DAYTON/HOUSTON
LANGHAM ROAD
S. P. BEAUMONT YARD
M. P. BEAUMONT YARD
MP (SP)
SP (MP)
KCS YARD
SP YARD
TO PORT ARTHUR
TO PORT ARTHUR
TO MACGORDICHES
BASE YARD
TO KIRBYVILLE
KIRBY CANAL
BRAKES BAYOU
NECHES RIVER
TOWER 31
BEAUMONT (KCS)
KCS-UP (JOINT)
UP-BASF INTERCHANGE
TO DOCKS
S.P. TO ORANGE
LEGEND:
UNION PACIFIC RR
SOUTHERN PACIFIC RR
OTHER RAILROADS
TEX MEX TRACKAGE RIGHTS
EXHIBIT A - 2
TEX MEX TRACKAGE RIGHTS
BEAUMONT, TEXAS
09/23/96

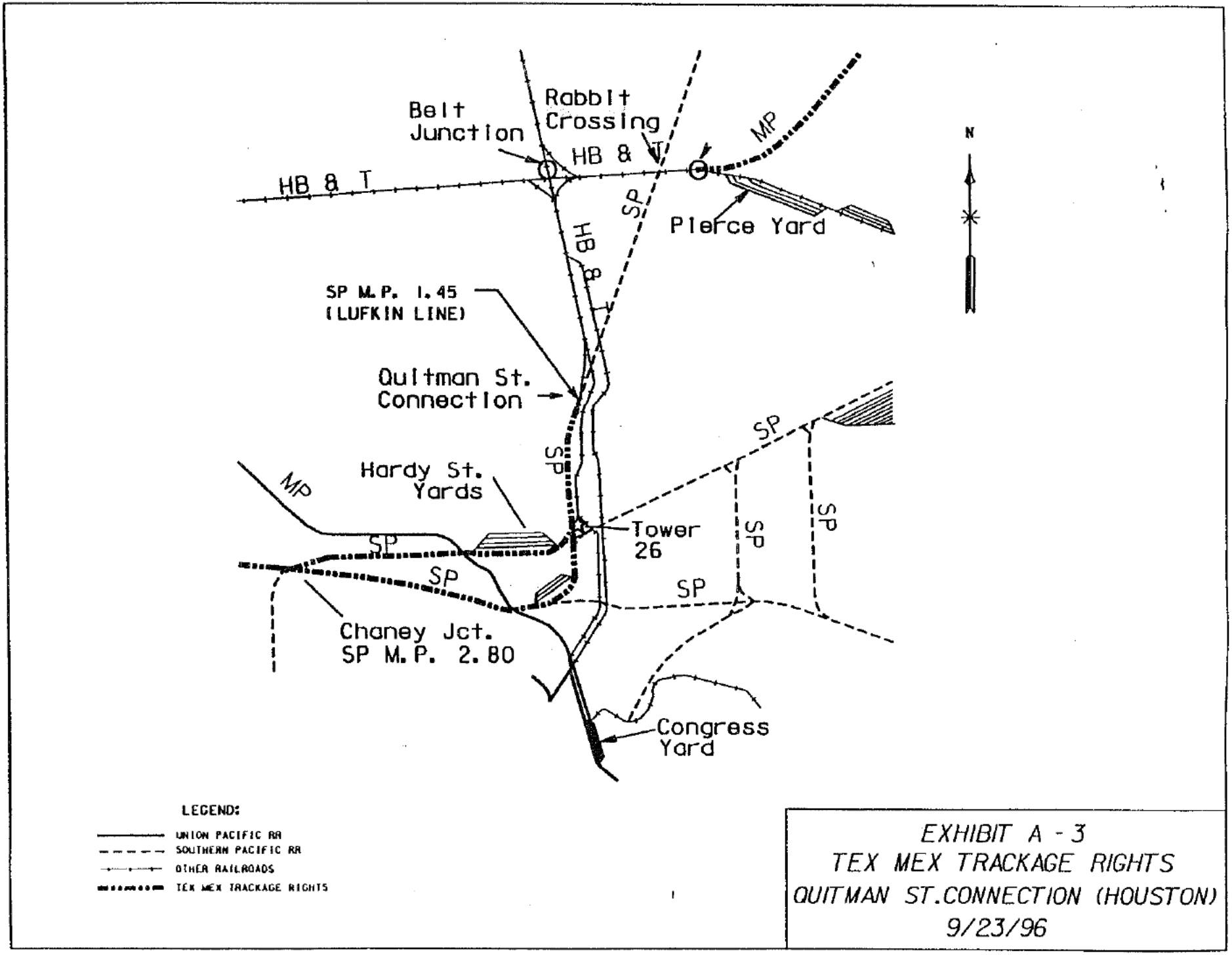

EXHIBIT A - 3
TEX MEX TRACKAGE RIGHTS
QUITMAN ST.CONNECTION (HOUSTON)
9/23/96

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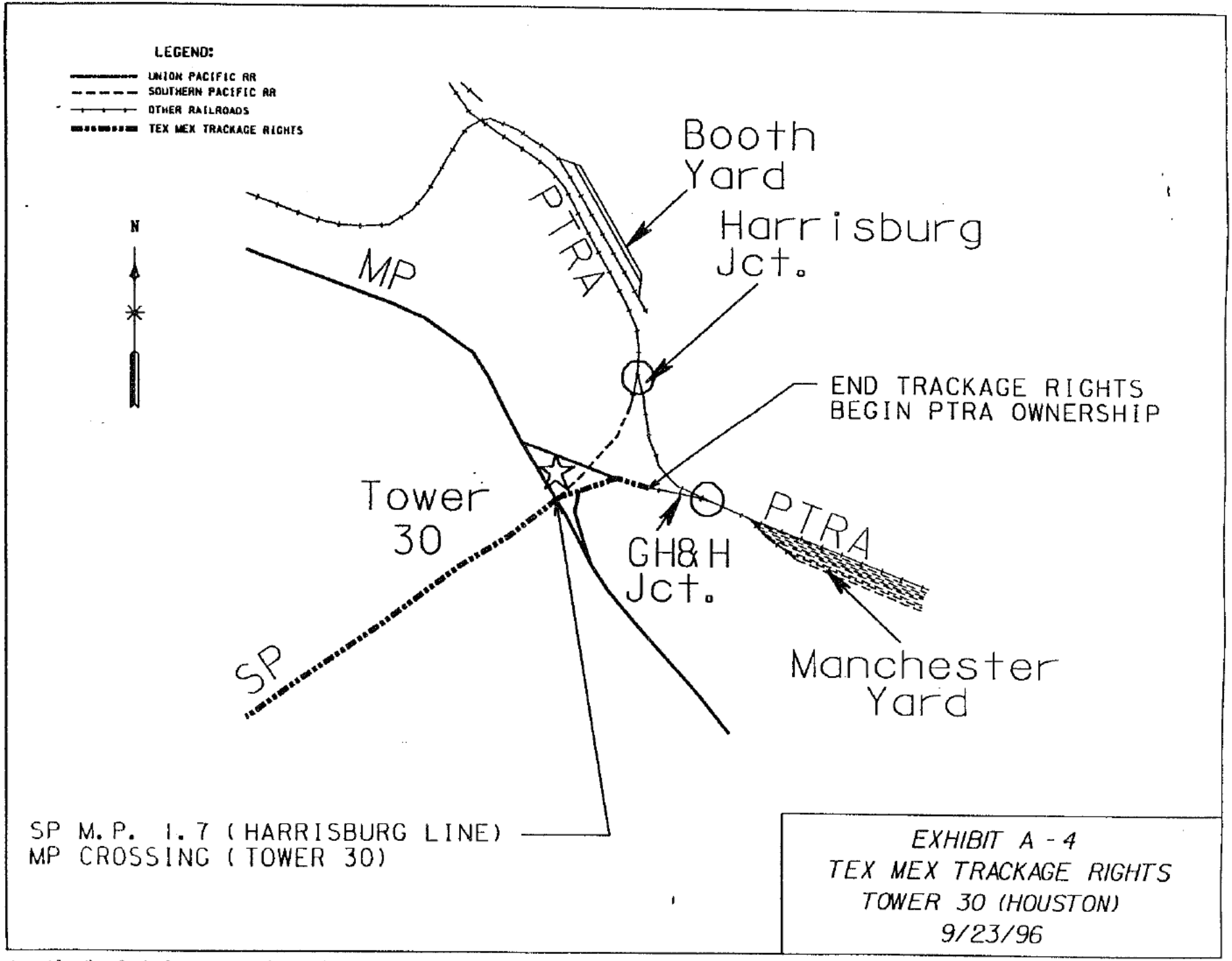

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EXHIBIT "B"

GENERAL CONDITIONS

Section 1. DEFINITIONS

1.1 "Annual" shall mean a calendar year.

1.2 "Car" shall mean one (1) rail car; provided, however, that each platform in an articulated rail car of two (2) or more platforms shall be counted as one (1) rail car, subject to modification by mutual agreement of the parties based upon changes in railroad technology.

1.3 "Changes in and/or Additions to" shall mean work projects and retirements, the cost of which is chargeable in whole or in part to Property Accounts during the term of the Terms.

1.4 "Equipment" shall mean trains, locomotives, rail cars (loaded or empty), intermodal units (loaded or empty), cabooses, vehicles, and machinery which are capable of being operated on railroad tracks or on right-of-way for purposes of the maintenance or repair of such railroad tracks.

1.5 "GTM" shall mean gross ton mile which is the weight in tons for Equipment and lading transported over one (1) mile of track included in the Joint Trackage.

1.6 "GTM Handled Proportion" shall mean the GTMs handled over the Joint Trackage by or for a party divided by the total number of GTMs handled by or for all parties using the Joint Trackage, during the same period. For the purpose of computing such GTM's Handled Proportion, Equipment engaged in work service pertaining to construction, maintenance or operation of the Joint Trackage or Changes in and/or Additions to the Joint Trackage shall not be counted and GTMs of third parties shall be attributed to the Owner.

1.7 "Joint Trackage" shall mean the track structure of Owner as described in the Terms including necessary right-of-way and all appurtenances, signals, communications, and facilities of Owner and all Changes in and/or Additions to said track structure now or in the future located as are required or desirable for the operation of the Equipment of the parties hereto.

1.8 "Mill" shall mean one-tenth of a cent ($0.001 US).

1.9 "Owner" shall have the meaning given to it in the Terms.

1.10 "Property Accounts" shall mean accounts so designated under the Uniform System of Accounts for Railroad Companies prescribed by the Interstate Commerce Commission, or any replacement of such system prescribed by the applicable federal regulatory agency, if any, and used by the parties hereto.

1.11 "STB" shall mean the Surface Transportation Board of the United States Department of Transportation or any successor agency.

1.12 "Terms" shall mean those certain Terms for Texas Mexican Railway Company Trackage Rights to which this Exhibit "B" is attached.

1.13 "User" shall have the meaning given to it in the Terms.

Section 2. MAINTENANCE, ADDITIONS, OPERATION, AND CONTROL

2.1 Owner shall have sole charge of the maintenance and repair of the Joint Trackage with its own supervisors, labor, materials and equipment. Owner, from time to time, may make such Changes in and/or Additions to the Joint Trackage as shall be required by any law, rule, regulation or ordinance promulgated by any government body having jurisdiction, or as Owner, in its sole discretion, shall deem necessary, subject to Section 2.2. Such Changes in and/or Additions to the Joint Trackage shall become a part of the Joint Trackage or in the case of retirements shall be excluded from the Joint Trackage.

2.2 Unless otherwise mutually agreed to by the parties in writing, Owner shall, (i) keep and maintain the Joint Trackage on a consistent basis at no less than the track standard designated in the timetable in effect on the date of the Terms, including special instructions for the Joint Trackage as of the date of the Terms, (ii) maintain at least the physical capacity of the Joint Trackage as of the date of the Terms (i.e., number of main tracks, support tracks, signal systems, rail weight, line clearances, etc.), and (iii) be responsible for any Changes in and/or Additions to the Joint Trackage as shall be necessary to accommodate the traffic of Owner and User while maintaining existing service standards (including transit times) in effect on the date of the Terms. In the event that User desires that the Joint Trackage be improved to a condition in excess of the standard set forth in this Section 2.2, or desires that other Changes in and/or Additions to be made to the Joint Trackage, Owner agrees to make such Changes in and/or Additions to the Joint Trackage if funded in advance by User. Thereafter, such Changes in and/or Additions to the Joint Trackage shall become part of the Joint Trackage and shall be maintained by Owner in such improved condition.

2.3 Owner shall employ all persons necessary to construct, operate, maintain, repair and renew the Joint Trackage. Owner shall be bound to use reasonable and customary care, skill and diligence in the construction, operation, maintenance, repair and renewal of the Joint Trackage and in managing of the same. Owner shall make its best effort to ensure that User is given the same advance notice of maintenance plans and schedules as is provided to Owner's personnel.

2.4 The trackage rights granted hereunder shall give User access to and joint use of the Joint Trackage, for such use as is permitted by Section 2 of the Terms, equal to that of Owner. The management, operation (including dispatching) and maintenance of the Joint Trackage shall, at all times, be under the exclusive direction and control of Owner, the movement

of Equipment over and along the Joint Trackage shall at all times be subject to the exclusive direction and control of Owner's authorized representatives and in accordance with such reasonable operating rules as Owner shall from time to time institute, but in the management, operation (including dispatching) and maintenance of the Joint Trackage, Owner and User shall be treated equally. All operating, dispatching and maintenance decisions by Owner affecting the movement of Equipment on the Joint Trackage shall be made pursuant to the Tex Mex-UP/SP Dispatching Protocols attached hereto as Attachment 1. User shall, at User's sole cost and expense, obtain, install and maintain necessary communication equipment to allow User's Equipment to communicate with Owner's dispatching and signaling facilities the same as Owner's trains so utilize. Owner shall consult with User prior to the adoption of new communication or signaling systems to be employed on the Joint Trackage, which have not theretofore been generally adopted in the railroad industry.

2.5 A Joint Service Committee ("Committee"), comprised of the chief transportation officers of Owner and User (or their designees) shall be established, and shall be responsible for establishing rules and standards as appropriate to ensure equitable and non-discriminatory treatment, appropriate maintenance and efficient joint use of the Joint Trackage. The Committee shall meet on a regular basis, but not less often than every three (3) months during the first year of operation under the Agreement, and thereafter when any party serves upon the other party thirty (30) days' written notice of its desire to meet to review the overall performance of equipment on the Joint Trackage, conflicts, if any, experienced between Equipment of Owner and Equipment of User, grievances over the handling of particular Equipment or operational events, maintenance of the Joint Trackage, ways in which future conflicts may be minimized, ways of improving operations and maintenance of the Joint Trackage and such other relevant matters as the Committee may decide to consider. The Committee may issue standards or rules to prevent unnecessary interference or impairment of use of the Joint Trackage by either party or otherwise insure fair and equal treatment as between Owner and User. Either party may request a special meeting of the Committee on reasonable notice to the other. Informal telephonic conferences shall be held by the Committee where appropriate to address immediate concerns of either party. It is expected that the work of the Committee shall be undertaken in a spirit of mutual cooperation consistent with the principles expressed in the Terms.

2.6 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 caused by or resulting solely from such interruption or delay.

2.7 Owner may from time to time provide any track or tracks on the Joint Trackage other than those delineated in Exhibit A to the Terms for use by User provided there shall at all times be afforded User a continuous route of equal utility and quality for the operations of its Equipment between the termini of the Joint Trackage. When such tracks which are not part of the Joint Trackage are used as provided herein, the Terms shall govern for purposes of direction and control and liability as if all movement had been made over the Joint Trackage.

2.8 Each party shall be responsible for furnishing, at its sole cost and expense, all labor, fuel and train and other supplies necessary for the operation of its own Equipment over the Joint Trackage. In the event a party does furnish such labor, fuel or train and other supplies to another party, the party receiving the same shall promptly, upon receipt of billing therefor, reimburse the party furnishing the same for its reasonable costs thereof, including customary additives.

2.9 User shall be responsible for the reporting and payment of any mileage, per diem, use or rental charges accruing on Equipment in User's account on the Joint Trackage. Except as may be specifically provided for in the Terms, 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.

2.10 Except as otherwise may be provided in the Terms, User shall operate its Equipment over the Joint Trackage with its own employees, but before said employees are assigned or permitted to operate Equipment over the Joint Trackage as herein provided, and from time to time thereafter as and when reasonably requested by Owner, they shall be required to pass the applicable rules examinations required by Owner of its own employees. Owner shall delegate to specified User's officers the conduct of such examinations in the event User chooses to conduct such examinations. If an Owner officer conducts such examinations of employees of User, User shall pay Owner a reasonable fee for each employee so examined, such fee to be mutually agreed upon by the parties from time to time in a separate agreement. Notwithstanding any such examination, User shall be responsible for ensuring that its employees are qualified and have taken all such rules examinations. Upon request of User, Owner shall qualify one or more of User's supervisory officers as pilots and such supervisory officer or officers so qualified shall qualify employees of User engaged in or connected with User's operations on or along the Joint Trackage. At User's request, Owner shall furnish a pilot or pilots, at the expense of User, to assist in operating trains of User over the Joint Trackage.

2.11 If any employee of User shall neglect, refuse or fail to abide by Owner's rules, instructions and restrictions governing the operation on or along the Joint Trackage, such employee shall, upon written request of Owner, be suspended by User from working on the Joint Trackage unless and until requalified to return to work and approved to do so by Owner. 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 the parties concerned shall participate and bear the expense for their respective officers, counsel, witnesses and employees. Notice of such investigations to User's employees shall be given by User's officers, and such investigation shall be conducted in accordance with the 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 by 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 arising from such withdrawal.

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 disciplinary action.

2.12 If any Equipment of User is bad ordered enroute on the Joint Trackage and (i) it is necessary that it be set out, and (ii) only light repairs to the Equipment are required, such bad ordered Equipment shall be promptly repaired, and, thereafter, be promptly removed from the Joint Trackage by User. Owner may, upon request of User and at User's sole cost and 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 enroute to or returning to Owner's terminal from such an assignment shall be considered Sole Employees (as hereinafter defined) of User and Sole Property (as hereinafter defined) of User. However, should Owner's employees after repairing such bad ordered 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 ("AAR"), hereinafter called "Interchange Rules", in effect on the date of performance of the repairs. Owner shall then prepare and submit billing directly to and collect from the car owner for car owner responsibility items as determined under said Interchange Rules, and Owner shall prepare and submit billing directly to and collect from User for handling line responsibility items as determined under said Interchange Rules. Owner also shall submit billing to and collect from User any charges for repair to freight cars that are User's car owner responsibility items as determined under said Interchange Rules, should said car owner refuse or otherwise fail to make payment therefor. Repairs to locomotives shall be billed as provided for in Section 3 of these General Conditions.

2.13 If Equipment of User shall become derailed, wrecked, or otherwise disabled while upon the Joint Trackage, it shall be rerailed or cleared by Owner, except that employees of User may rerail User's derailed Equipment on the Joint Trackage whenever use of motorized on or off track equipment is not required; however, in any such case, employees of User shall consult with and be governed by the directions of Owner. Owner reserves the right to rerail Equipment of User when, in the judgment of Owner, Owner deems it advisable to do so to minimize delays and interruptions to train movement. The reasonable costs and expenses of rerailing or clearing derailed, wrecked or disabled Equipment shall be borne by the parties in accordance with Section 5 of these General Conditions. Services provided under this section shall be billed in accordance with Section 3 of these General Conditions.

2.14 In the event Equipment of User shall be forced to stop on the 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 (other than bad ordered Equipment subject to light repairs pursuant to Section 2.12), or to any other cause not resulting from an accident or

derailment (including the failure of User to promptly repair and clear bad ordered Equipment pursuant to Section 2.12), 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, disabled 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 recrew 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 reasonable costs and expenses of rendering such assistance shall be borne by User. Services provided under this section shall be billed in accordance with Section 3 of these General Conditions.

2.15 User shall pay to Owner reasonable expenses incurred by Owner in the issuance of timetables made necessary solely by changes in the running time of the trains of User over the Joint Trackage. If changes in running time of trains of Owner or third parties, as well as those of User, require the issuance of timetables, then User shall pay to Owner that proportion of the expenses incurred that one bears to the total number of parties changing the running time of their trains. If changes in running time of trains of Owner or third parties, but not those of User, require the issuance of timetables, then User shall not be required to pay a proportion of the expenses incurred in connection therewith.

2.16 User, at Owner's request, shall be responsible for reporting to Owner the statistical data called for in the Terms, which may include, but is not limited to, the number and type of Equipment and GTMs operated on the Joint Trackage.

Section 3. BILLING

3.1 Billing shall be accomplished on the basis of data contained in a billing form mutually agreed to between the parties. Such billing forms shall contain sufficient detail to permit computation of payments to be made hereunder. Billing shall be prepared according to the rules, additives, and equipment rental rates as published by the 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 in writing, all the compensation and charges of every name and nature which in and by the Terms User is required to pay in lawful money of the United States within sixty (60) days after the rendition of bills therefor. Bills shall contain a statement of the amount due on account of the expenses incurred, properties and facilities provided 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, but shall be paid subject to subsequent adjustment; provided, 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 and 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 is established. This provision shall not limit the retroactive

adjustment of billing made pursuant to exception taken to original accounting by or under authority of the STB or 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 Terms 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 any applicable laws or regulations.

3.4 Should any payment become payable by Owner to User under the Terms, the provisions of Sections 3.1 and 3.2 of these General Conditions shall apply with User as the billing party and Owner as the paying party.

3.5 Either party hereto may assign any receivables due it under the Terms; provided, however, that such assignments shall not relieve the assignor of any rights or obligations under the Terms.

Section 4. COMPLIANCE WITH LAWS

4.1 With respect to operation of Equipment on the Joint Trackage, each party shall comply with all applicable federal, state and local laws, rules, regulations, orders, decisions and ordinances ("Standards"), and if any failure on the part of any party to so comply shall result in a fine, penalty, cost or charge being imposed or assessed on or against another party, such other party shall give prompt notice to the failing party and the failing party shall promptly reimburse and indemnify the other party for such fine, penalty, cost or charge and all expenses and reasonable attorneys' fees incurred in connection therewith, and shall upon request of the other party defend such action free of cost, charge and expense to the other party.

4.2 User agrees to comply fully with all applicable Standards concerning "hazardous waste" and "hazardous substances" ("Hazardous Materials"). Except with Owner's prior consent, User covenants that it shall not treat or dispose of Hazardous Materials on the Joint Trackage. User further agrees to furnish Owner (if requested) with proof, satisfactory to Owner, that User is in such compliance.

In the event any accident, bad ordered Equipment, derailment, vandalism or wreck (for purposes of this Section 4.2 and Section 4.3 hereinafter called collectively "Derailment") involving Equipment of or a train operated by User carrying 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.

In the event of a Derailment, Owner shall assume responsibility for cleaning up any release of Hazardous Materials from User's Equipment 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 5 of these General Conditions.

If a Hazardous Materials release caused by a derailment involving Equipment of User, or on a train operated by User, results in contamination of real property or water on the Joint Trackage or on real property or water adjacent to the Joint Trackage (whether such real property or water is owned by Owner or a third party), Owner shall assume responsibility for emergency cleanup conducted to prevent further damage. User shall be responsible for performing cleanup efforts thereafter. Any costs associated with cleaning up real property or water on or adjacent to the Joint Trackage contaminated by Hazardous Materials shall be borne in accordance with Section 5 of these General Conditions.

If Hazardous Materials must be transferred to undamaged Equipment or trucks as a result of a release caused by a derailment involving Equipment of User, or on a train operated by User, User shall perform the transfer; PROVIDED, HOWEVER, that if the Hazardous Materials are in damaged Equipment that is blocking the Joint Trackage, Owner, at its option, may transfer the Hazardous Materials with any costs associated with such transfer borne in accordance with Section 5 of these General Conditions. Transfers of Hazardous Materials by User shall only be conducted after being authorized by Owner.

4.3 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 5 of these General Conditions.

4.4 In the event of release of Hazardous Materials caused by faulty Equipment or third parties, cleanup will be conducted as stated in Sections 4.2 and 4.3 of these General Conditions.

Section 5. LIABILITY

5.1 General. The provisions of this Section 5 shall apply only as between the parties hereto and are solely for their benefit. Nothing herein is intended to be for the benefit of any person or entity other than the parties hereto. It is the explicit intention of the parties hereto that no person or entity other than the parties hereto is or shall be entitled to bring any action to enforce any provision hereof against any of the partes hereto, and the assumptions, indemnities, covenants, undertakings and agreements set forth herein shall be solely for the benefit of, and shall be enforceable only by, the parties hereto. Notwithstanding anything contained in this Section 5, no provisions hereof shall be deemed to deprive Owner or User of the right to enforce or shall otherwise restrict any remedies to which they would otherwise be entitled under other provisions of the Terms as a result of the other party's failure to perform or observe any other obligation or duty created by the Terms. The provisions of this Section 5 shall apply as between the parties hereto irrespective of the terms of any other agreements between the parties hereto and

other railroads using the Joint Trackage, and the allocation of liabilities provided for herein shall control as between the parties hereto.

5.2 Definitions and Covenants. The parties agree that for the purposes of this Section 5:

(a) The term "Employee(s)" of a party shall mean all officers, agents, employees and contractors of that party. Such Employees shall be treated either as "Sole Employees" or "Joint Employees", as hereinafter specified;

(b) "Sole Employees" and "Sole Property" shall mean one or more Employees, Equipment, tools and other equipment and machinery while engaged in, en route to or from, or otherwise on duty incident to performing service for the exclusive benefit of one party. Pilots furnished by Owner to assist in operating Equipment of User shall be considered the Sole Employees of User while engaged in such operations. Equipment shall be deemed to be the Sole Property of the party receiving the same at such time as deemed interchanged under AAR rules or applicable interchange agreements, or when such party is responsible for the car hire or per diem for the Equipment under agreement between the parties;

(c) "Joint Employee" shall mean one or more Employees while engaged in maintaining, repairing, constructing, renewing, removing, inspecting or managing the Joint Trackage or making Changes in and/or Additions to the Joint Trackage for the benefit of both of the parties hereto, or while preparing to engage in, en route to or from, or otherwise on duty incident to performing such service for the benefit of both parties;

(d) "Joint Property" shall mean the Joint Trackage and all appurtenances thereto, and all Equipment, tools and other equipment and machinery while engaged in maintaining, repairing, constructing, renewing, removing, inspecting, managing or making Changes in and/or Additions to the Joint Trackage for the benefit of both of the parties hereto, or while being prepared to engage in, en route to or from, or otherwise incident to performing such service;

(e) "Loss and/or Damage" shall mean injury to or death of any person, including Employees of the parties hereto, and loss or damage to any property, including property of the partes hereto and property being transported by the parties, which arises out of an incident occurring on, the Joint Trackage and shall include liability for any and all claims, suits, demands, judgments and damages resulting from or arising out of such injury, death, loss or damage, except liability for punitive and exemplary damages. Loss and/or Damage shall include all costs and expenses incidental to any claims, suits, demands and judgments, including attorneys' fees, court costs and other costs of investigation and litigation. Loss and/or Damage shall further include the expense of clearing wrecked or derailed Equipment and the costs of environmental protection, mitigation or clean up necessitated by such wreck or derailment and shall include any liabilities for any third-party claims for personal injury or death, property damage, natural

resource damage, or any penalties, judgments or fines associated with a release of any contaminants resulting from such wreck or derailment;

(f) Operating Employees of Owner whose service may be jointly used by the parties hereto for the movement of trains over the Joint Trackage, including, but not limited to, train dispatchers, train order operators, operator clerks and watchmen shall at the time of performing their services be deemed to be Sole Employees of the party hereto for whose benefit said services may be separately rendered (during the time they are so separately rendered) and be deemed to be Joint Employees of the parties hereto at such time as their services may be rendered for the parties' joint benefit;

(g) All Employees, Equipment, tools and other equipment and machinery other than as described in (b), (c), (d) or (f) above or in Section 5.4, shall be deemed the Sole Employees of the employing party and the Sole Property of the using party;

(h) Any railroad not a party to the Terms heretofore or hereafter admitted to the use of any portion of the Joint Trackage, shall, as between the parties hereto, be regarded in the same light as a third party. Without limiting the generality of the foregoing, neither of the parties hereto assumes any responsibility to the other under the provisions of the Terms for any Loss and/or Damage occasioned by the acts or omissions of any employees of any such other railroad, or for any Loss and/or Damage which such other railroad shall be obligated to assume in whole or in part pursuant to law or any agreement relating to such other railroad's use of any portion of the Joint Trackage;

(i) For the purpose of this Section 5, Equipment of foreign lines being detoured over the Joint Trackage, and all persons other than Joint Employees engaged in moving such Equipment, shall be considered the Equipment and Employees of the party hereto under whose detour agreement or other auspices such movement is being made.

5.3 Reimbursement and Defense. The parties agree that:

(a) Each party hereto shall pay promptly Loss and/or Damage for which such party shall be liable under the provisions of this Section 5, and shall indemnify the other party against such Loss and/or Damage, including reasonable attorneys' fees and costs. If any suit or suits shall be brought against either of the parties hereto and any judgment or judgment shall be recovered which said party is compelled to pay, and the other party shall under the provisions of the Terms be solely liable therefor, then the party which is so liable shall promptly repay on demand to the other party paying the same any monies which it may have been required to pay, whether in the way of Loss and/or Damage, costs, fees or other expenses; and if the Loss and/or Damage in such case or cases is joint or allocated between the parties to the Terms, the party defendant paying the same or any costs, fees or other expenses shall be reimbursed by the other party as allocated pursuant to the Terms;

(b) Each party covenants and agrees with the other party that it will pay for all Loss and/or Damage, both as to persons and property, and related costs which it has herein assumed, or agreed to pay, the judgment of any court in a suit by third party or parties to the contrary notwithstanding, and will forever indemnify and save harmless the other party, its successors and assigns, from and against all liability and claims therefor, or by reason thereof, and will pay, satisfy and discharge all judgments that may be rendered by reason thereof, and all costs, charges and expenses incident thereto;

(c) Each party hereto shall have the sole right to settle, or cause to be settled for it, all claims for Loss and/or Damage for which such party shall be solely liable under the provisions of this Section 5, and the sole right to defend or cause to be defended all suits for the recovery of any such Loss and/or Damage for which such party shall be solely liable under the provisions of this Section 5;

(d) User shall provide written notice to Owner of any accidents or events resulting in Loss and/or Damage within seven (7) days of its discovery or receipt of notification of such occurrence;

(e) In the event both parties hereto may be liable for any Loss and/or Damage under the provisions of this Section 5 ("Co-Liable"), and the same shall be settled by a voluntary payment of money or other valuable consideration by one of the parties Co-Liable therefor, release from liability shall be taken to and in the name of all the parties so liable; however, no such settlement in excess of the sum of One Hundred Thousand Dollars ($100,000) shall be made by or for any party Co-Liable therefor without the written consent of the other parties so liable, but any settlement made by any party in consideration of One Hundred Thousand Dollars ($100,000) or a lesser sum shall be binding upon the other parties and allocated in accordance with Section 5.5; and no party shall unreasonably withhold its consent to a settlement proposed by the other party; provided, however, that failure by a party to secure consent from the other shall not release such other party to the extent the party who failed to obtain such consent demonstrates that the other party was not prejudiced by such failure.

(f) In case a claim or suit shall be commenced against any party hereto for or on account of Loss and/or Damage for which another party hereto is or may be solely liable or Co-Liable under the provisions of this Section 5, the party against whom such claim or suit is commenced shall give to such other party prompt notice in writing of the pendency of such claim or suit, and thereupon such other party shall assume or join in the defense of such claim or suit as follows: If the claim or suit involves Loss and/or Damage to the Sole Employees or Sole Property of a party or its invitee or property in its care, custody or control, that party shall assume and control the investigation and defense of such claim or suit;

if the claim or suit involves Loss and/or Damage to third parties, Joint Employees or the Joint Trackage, the party whose Sole Employees or Equipment were involved in the incident shall investigate and defend such claim or suit; and if such claim or suit involves Loss and/or Damage to third parties, Joint Employees or the Joint Trackage and neither or both party's Equipment and Sole Employees were involved in the incident, Owner shall investigate and defend such claim or suit; provided that the other party also may participate in the defense of any of the foregoing if it may have liability as a result of such incident;

(g) No party hereto shall be conclusively bound by any judgments against the other party, unless the former party shall have had reasonable notice requiring or permitting it to investigate and defend and reasonable opportunity to make such defense. When such notice and opportunity shall have been given, the party so notified and the other party shall be conclusively bound by the judgment as to all matters which could have been litigated in such suit, including without limitation a determination of the relative or comparative fault of each.

5.4 Wrecks and Derailment. The cost and expense of repairing bad ordered Equipment, clearing wrecks or otherwise disabled Equipment or rerailing Equipment (and the costs of repair or renewal of damaged Joint Trackage or adjacent properties) shall be borne by the party whose Equipment was wrecked, disabled, or derailed or caused such damage. All Employees or Equipment, while engaged in, en route to or from, or otherwise incident to operating wrecker or work trains clearing wrecks, disabled Equipment or Derailments or engaged in repair or renewal of the Joint Trackage subsequent to any such wreck, disability or Derailment, shall be deemed to be Sole Employees and/or Sole Property of the party whose Equipment was wrecked, disabled or derailed. However, such Employees or Equipment, while en route from performing such clearing of wrecks, disabled Equipment or Derailments or repairing or renewing the Joint Trackage to perform another type of service, shall not be deemed to be performing service incident to the instant wreck, disability or Derailment.

5.5 Allocation.

(a) Each party shall bear all costs of Loss and/or Damage to its Sole Employees or its Sole Property, or property in its care, custody or control or its invitees without regard to which party was at fault.

(b) Loss and/or Damage to third parties (i.e., any person or entity other than a party hereto, a Sole Employee of either party, a Joint Employee or an invitee of either party) or their property, to Joint Employees or their property or to Joint Property shall be borne by the parties hereto as follows:

(i) If the Loss and/or Damage is attributable to the acts or omissions of only one party hereto, that party shall bear and pay all of such Loss and/or Damage.

(ii) If such Loss and/or Damage is attributable to the acts or omissions of more than one party hereto, such Loss and/or Damage shall be borne and paid by those parties in accordance with a comparative negligence standard, whereby each such party shall bear and pay a portion of the Loss and/or Damage equal to the degree of causative fault or percentage of responsibility for the Loss and/or Damage attributable to that party without regard to laws limiting recovery if one party is more than fifty percent (50%) at fault.

(iii) Loss and/or Damage to third parties or Joint Employees occurring in such a way that it cannot be determined how such Loss and/or Damage came about shall be apportioned between Owner, User and any other party(ies) authorized to use the Joint Trackage as a trackage rights tenant, on a usage basis considering each party's gross ton miles over the Joint Trackage for the preceding twelve (12) months or, if such Loss and/or Damage occurs during the first twelve (12) months following the effective date of the Terms, the usage of each party between the occurrence of such Loss and/or Damage and the effective date of the Terms, provided that, without limitation, User shall not bear or incur any liability for claims, suits, demands, judgments, losses or damages resulting from environmental contamination of or hazardous material on or released from the Joint Trackage, except contamination or a release of hazardous materials from User's own Equipment or caused by or arising from the actions or omissions of User or User's Employees, and then only in accordance with the other provisions hereof.

(c) The parties agree that the characterization herein of certain Employees as "Sole Employees" or "Joint Employees" is only for the purpose of allocating Loss and/or Damage suffered by those Employees. Except as specified in subsection (a) of this Section 5.5. (which provides for the allocation of certain Loss and/or Damage between the parties without regard to fault), no party shall be liable for the acts or omissions (negligent or otherwise) of any other party's Employee.

5.6 OWNER AND USER EXPRESSLY INTEND THAT WHERE ONE PARTY IS TO INDEMNIFY THE OTHER PURSUANT TO THE TERMS, SUCH INDEMNITY SHALL INCLUDE (1) INDEMNITY FOR THE NEGLIGENCE OR ALLEGED NEGLIGENCE, WHETHER ACTIVE OR PASSIVE, OF THE INDEMNIFIED PARTY WHERE THAT NEGLIGENCE IS A CAUSE OF THE LOSS OR DAMAGE; (2) INDEMNITY FOR STRICT LIABILITY OF THE INDEMNIFIED PARTY RESULTING FROM A VIOLATION OR ALLEGED VIOLATION OF ANY FEDERAL, STATE OR LOCAL LAW OR REGULATION BY THE INDEMNIFIED PARTY, INCLUDING BUT NOT LIMITED TO THE FEDERAL EMPLOYERS LIABILITY ACT ("FELA"), THE SAFETY APPLIANCE ACT, THE BOILER

INSPECTION ACT, THE OCCUPATIONAL SAFETY AND HEALTH ACT ("OSHA"), THE RESOURCE CONSERVATION AND RECOVERY ACT ("RCRA"), THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT ("CERCLA"), THE CLEAN WATER ACT ("CWA"), THE OIL POLLUTION ACT ("OPA"), AND ANY SIMILAR STATE STATUTE IMPOSING OR IMPLEMENTING SIMILAR STANDARDS; AND (3) INDEMNITY FOR ACTS OR ALLEGED ACTS OF GROSS NEGLIGENCE OF THE INDEMNIFIED PARTY, OR OTHER CONDUCT ON THE PART OF THE INDEMNIFIED PARTY FOR WHICH PUNITIVE DAMAGES MIGHT BE SOUGHT.

Section 6. ARBITRATION

6.1 If at any time a question or controversy shall arise between the parties hereto in connection with the Terms upon which the parties cannot agree, such question or controversy shall be submitted to and settled by arbitration. Unless other procedures are agreed to by the parties, arbitration between the parties pursuant to this Section 6 shall be governed by the rules and procedures set forth in this Section 6.

6.2 If the parties to the dispute are able to agree upon a single competent and disinterested arbitrator within twenty (20) days after written notice by one party of its desire for arbitration to the other party, then the question or controversy shall be submitted to and settled by that single arbitrator. Otherwise, any party (the notifying party) may notify the other party (the noticed party) in writing of its request for arbitration and nominating one arbitrator. Within twenty (20) days after receipt of said notice, the noticed party shall appoint an arbitrator and notify the notifying party in writing of such appointment. Should the noticed party fail within twenty (20) days after receipt of such notice to name its arbitrator, said arbitrator may be appointed by the Chief Judge (or acting Chief Judge) of the United States District Court for the District of Columbia upon application by either party after ten (10) days' written notice to the other party. The two arbitrators so chosen shall select one additional arbitrator to complete the board. If the arbitrators so chosen fail to agree upon an additional arbitrator, the same shall, upon application of a party, be appointed by said judge in the manner heretofore stated.

6.3 Upon selection of the arbitrator(s), said arbitrator(s) shall, with reasonable diligence, determine the questions as disclosed in said notice of arbitration, shall give both parties reasonable notice of the time and place (of which the arbitrator(s) shall be the judge) of hearing evidence and argument, may take such evidence as the arbitrator(s) shall deem reasonable or as either party may submit with witnesses required to be sworn, and hear arguments of counsel or others. If an arbitrator declines or fails to act, the party (or parties in the case of a single arbitrator) by whom the arbitrator was chosen or said judge shall appoint another to act in the arbitrator's place.

6.4 After considering all evidence, testimony and arguments, said single arbitrator or the majority of said board of arbitrators shall promptly state such decision or award and the reasoning for such decision or award in writing which shall be final, binding, and conclusive on all parties to the arbitration when delivered to them. The award rendered by the arbitrator(s) may

be entered as a judgment in any court having jurisdiction thereof and enforced as between the parties without further evidentiary proceeding, the same as entered by the court at the conclusion of a judicial proceeding in which no appeal was taken. Until the arbitrator(s) shall issue the first decision or award upon any question submitted for arbitration, performance under the Terms 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.

6.5 Each party to the arbitration shall pay all 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, cost, and expenses of the single arbitrator or the additional arbitrator in the board of arbitrators shall be paid in equal shares by all partes to the arbitration.

6.6 The parties may obtain discovery and offer evidence in accordance with the Federal Rules of Civil Procedure Rules 26 - 37, and Federal Rules of Evidence, as each may be amended from time to time.

6.7 Interest computed annually, at a rate equal to the Prime Rate plus two (2) percentage points, shall be applied to any and all arbitrator's awards requiring the payment of money and shall be calculated from thirty (30) days following the date of the applicable arbitration decision. The term "Prime Rate" shall mean the minimum commercial lending rate charged by banks to their most credit-worthy customers for short-term loans, as published daily in the Wall Street Journal.

Section 7. GOVERNMENTAL APPROVAL AND ABANDONMENT

7.1 Owner and User shall, at their respective cost and expense, initiate by appropriate application or petition and thereafter diligently prosecute proceedings for the procurement of all necessary consent, approval or authority from any governmental agency for the sanction of the Terms and the operations to be carried on or conducted by User thereunder. User and Owner agree to cooperate fully to procure all such necessary consent, approval or authority.

7.2 In the event Owner shall be involuntarily dispossessed, including by threat of condemnation by competent public authority, of the right to operate upon and maintain any portion of its Joint Trackage and Owner fails or declines to replace said Joint Trackage, Owner shall have no obligation hereunder to provide tracks in replacement of such Joint Trackage for User's use, and User shall have and shall make no claim of any kind, legal or otherwise, against Owner for failure to provide such Joint Trackage for User's use.

7.3 To the extent that Owner may lawfully do so, Owner reserves to itself the exclusive right, exercisable at any time during the life of the Terms without concurrence of User, to elect to abandon all or any part of the Joint Trackage by giving six (6) months' prior written notice to User of its intention so to do ("Notice of Abandonment").

Owner shall, concurrent with its Notice of Abandonment, if legally able to do so, give to User the option to purchase the part or parts of the Joint Trackage thereof to be abandoned at the Net Liquidation Value thereof, on the date of said notice; provided, however, it is understood that Burlington Northern Railroad Company and The Atchison, Topeka & Santa Fe Railway Company (collectively, "BNSF") shall be given an option upon the Terms set forth in this Section 7.3, prior to that given User, to purchase the Placedo, Texas to Robstown, Texas segment of the Joint Trackage, subject to User's trackage rights, if BNSF is operating over that segment at the time of its proposed abandonment. "Net Liquidation Value" shall mean fair market value of land and salvage value of track components and other facilities less estimated cost of removal. User shall have three (3) months from the date of receipt of Owner's notice to exercise its option and shall evidence the exercise of its option by giving Owner written notice thereof. Thereafter User shall immediately make appropriate application to secure all necessary governmental authority for such transaction. Within thirty (30) days following the effective date of all requisite governmental approval of the transaction, User shall pay to Owner the amount of money required to purchase said Joint Trackage to be abandoned at the aforesaid Net Liquidation Value. Upon the receipt of payment of such sum, the Terms shall terminate as to the part of the Joint Trackage so purchased by User. Contemporaneously with such payment, by instrument or instruments, Owner shall convey and assign by good and sufficient quit claim deed or deeds, bills of sale or other instruments, all of Owner's right, title, interest and equity, in and to the Joint Trackage so purchased. Owner agrees that it shall promptly take all necessary action to obtain from the trustees of its mortgages all releases or satisfactions covering the same and shall deliver to User such instruments.

If User fails to exercise the option herein granted within the time and in the manner above specified, Owner may forthwith proceed free of all obligation to User to abandon the portion of Joint Trackage or make appropriate application, if necessary, to secure all necessary governmental authority for such abandonment. User agrees that at such time it shall concurrently make application for all necessary governmental authority for abandonment of its right to operate over such Joint Trackage. The Terms shall terminate as to the section of Joint Trackage so abandoned upon the effective date of such approval by governmental authority.

7.4 Owner and User each shall be responsible for and shall bear labor claims, and employee protection payable to, its own respective employees (and employees of its respective affiliated companies) including any amounts that either Owner or User may be required to pay to its own respective employees pursuant to labor protective conditions imposed by the STB.

Section 8. CATASTROPHIC EXPENSE

Catastrophic expense to the Joint Trackage, such as, but not limited to, that arising from flood, earthquake or acts of God, etc., in excess of One Hundred Thousand Dollars ($100,000) for each occurrence shall be billed in addition to the GTM Rates and apportioned on the basis of the parties' GTMs operated over the Joint Trackage for the twelve (12) month period ending immediately prior to the first day of the month of occurrence.

Section 9. TERM

9.1 User shall have the right to terminate the Terms upon twelve (12) months' prior written notice to Owner. Liabilities created under the Terms, if it becomes effective and is later terminated, shall survive such termination.

9.2 Upon termination of the Terms, or any partial termination, as the applicable case may be, however the same may occur, User shall be released from any and all manner of obligations and shall be deemed to have forever relinquished, abandoned, surrendered and renounced any and all right possessed by User to operate over that part of the Joint Trackage to which such termination applied, and as to such part, User shall forever release and discharge Owner of and from any and all manner of obligations, claims, demands, causes of action, or suits which User might have, or which might subsequently accrue to User growing out of or in any manner connected with, directly or indirectly, the contractual obligations of Owner under the Terms, in all events provided, however, the aforesaid relinquishment, abandonment, surrender, renunciation, release and discharge by User shall not in any case affect any of the rights and obligations of either Owner or User which may have accrued, or liabilities accrued or otherwise, which may have arisen prior to such termination or partial termination. Upon any termination, Owner shall remove from Owner's right of way any connecting track, and any exclusive facility of User, at User's expense with salvage to be delivered to and retained by User. Upon any partial termination of the Terms, however the same may occur, the terms and conditions hereof shall continue and remain in full force and effect for the balance of the Joint Trackage.

Section 10. ASSIGNMENT

The Terms and any rights granted hereunder may not be assigned in whole or in part by User without the prior written consent of Owner except (i) as provided in Section 3.5, and (ii) to the purchaser of substantially all of User's rail properties. The Terms may be assigned by Owner without restriction. In the event of an authorized assignment, the Terms and the operating rights hereunder shall be binding upon the successors and assigns of the parties.

Section 11. DEFAULT

11.1 Notwithstanding the provisions of Section 3 of these General Conditions, either party hereto claiming default of any of the provisions of the Terms (including these General Conditions) shall furnish notice and written demand to the other party for performance or compliance with the covenant or condition of the Terms claimed to be in default, which notice shall specify wherein and in what respect such default is claimed to exist and shall specify the particular Section or Sections of the Terms under which such claim of default is made.

11.2 If the default shall continue for an additional period of thirty (30) days after receipt of such written notice and demand, and such default has not been remedied within said thirty (30) day period, or reasonable steps have not been nor continue to be taken to remedy a failure or default which cannot reasonably be remedied within said thirty (30) day period, and such default

relates to the provisions and terms of the Terms, either party shall resort to binding arbitration provided that the arbitrator shall not have the authority to amend, modify or terminate the Terms.

11.3 Failure of a party to claim a default shall not constitute a waiver of such default. Either party hereto entitled to claim default may waive any such default, but no action by such party in waiving such default shall extend to or be taken to affect any subsequent defaults or impair the rights of either party hereto resulting therefrom.

Section 12. OTHER CONSIDERATIONS

12.1 The Terms 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.

12.2 If any covenant or provision of the Terms 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 Terms be adjudged void, the parties shall make such other arrangements as will effect the purposes and intent of the Terms.

12.3 In the event there shall be any conflict between the provisions of these General Conditions and the Terms, the provisions of the Terms shall prevail, except that the definition of Joint Trackage set forth in Section 1.7 of these General Conditions shall prevail.

12.4 All section headings are inserted for convenience only and shall not affect any construction or interpretation of the Terms.

12.5 Reference to any agency or other organization shall include any successor agency or organization, and reference to any index or methodology (e.g., RCAF-U, URCS, etc.), if such index or methodology ceases to exist or is no longer available, shall include any substantially similar index or methodology selected by the parties or, if the parties fail to agree on such, one determined by binding arbitration under Section 6 of these General Conditions.

END OF EXHIBIT "B"

TEX MEX - MP/SP DISPATCHING PROTOCOLS

1. Scope: These protocols apply on all segments of the Joint Trackage.

2. Purpose: To ensure that Tex Mex and MP/SP trains operating on Joint Trackage are given equal dispatch without any discrimination in promptness, quality of service or efficiently and that the competitiveness of Tex Mex operations on the Joint Trackage is not adversely affected by the fact that MP/SP owns the track.

3. General Instructions: MP/SP will issue written instructions to all personnel (including supervisors) responsible for train dispatching on the Joint Trackage that Tex Mex trains are to be dispatched exactly as if they were trains of the same class of MP/SP and given equal treatment with trains of MP/SP. These instructions will be issued at agreed intervals or at the request of Tex Mex.

4. Monitoring Systems: MP/SP will provide Tex Mex with timely and accurate information about the status of Tex Mex trains operating over the Joint Trackage.

5. Train Information: Tex Mex will provide the MP/SP, and regularly update, information about its expected train operations and schedules (including priorities, time commitments, horsepower per trailing ton, etc.) over the Joint Trackage, preferably using electronic data interchange. Tex Mex and MP/SP will establish run time standards by train category based on expected train volumes for Tex Mex. If train volumes are different than expected then adjustments to run time standards will be made by mutual agreement. Tex Mex will provide reliable and current information about trains approaching the Joint Trackage, including train arrival time and train characteristics, preferably by providing at its expense computer terminals, facilities or capabilities showing trains approaching the Joint Trackage, sufficiently in advance to allow dispatchers to plan for them. MP/SP will provide to Tex Mex advance notice of planned maintenance-of-way projects, line closures and train or equipment restrictions. Tex Mex and MP/SP will consult in advance about maintenance-of-way windows resulting from planned maintenance projects so as to minimize disruptions to the operations of both carriers.

6. Specific Instructions: MP/SP will permit Tex Mex to transmit instructions regarding the requirements of specific trains and shipments to designated dispatching center employees responsible for handling those trains.

7. Train Priorities/Run Time Standards: MP/SP will provide to Tex Mex current procedures for assigning dispatching priorities or rankings to trains and information sufficient to show how those procedures are applied to their own trains. Tex Mex will assign priorities or rankings to its trains operating on the Joint Trackage using MP/SP's procedures, and MP/SP will dispatch Tex Mex trains in accordance with those priorities or rankings. It is understood that

technological advances in computer aided dispatching might result in changes to priority assignment methodologies. The parties agree to discuss technological changes which might affect priority assignment methodologies prior to implementation. The Joint Service Committee will be responsible for reviewing these assignments to ensure that they are applied equitably by both railroads.

8. Entry to Joint Trackage: At points where Tex Mex trains enter the Joint Trackage, entry will be provided by MP/SP on a first-come first-served basis, taking into consideration the relative priorities of affected trains and the specific needs and operating characteristics of individual trains of both railroads. If operating circumstances make strict application of this principle difficult or uncertain, Tex Mex and MP/SP may jointly establish standards for determining sequence of entry to Joint Trackage. The parties will communicate daily on any conflicts concerning entry to the Joint Trackage to gain resolution.

9. Communication: MP/SP will provide to Tex Mex, and keep current, lists of dispatching personnel responsible for dispatching the Joint Trackage and contact numbers. Tex Mex and MP/SP will designate more supervisory employees to serve as the day-to-day contacts for communications about operating changes, service requests and concerns. Where feasible and economical, dedicated phone lines or computer links will be established for these communications.

10. Access to Dispatching Center: Appropriate officials of Tex Mex will be admitted at any time to dispatching facilities and personnel responsible for dispatching the Joint Trackage to review the handling of trains on the Joint Trackage (although both railroads will take reasonable steps to prevent disclosure of proprietary information not relevant to the review). It is understood that management and supervision of dispatching operations is the responsibility of MP/SP.

11. Performance Measurement: Tex Mex and MP/SP will cooperate to develop train performance evaluation methods under which train performance of Tex Mex trains on the Joint Trackage can be compared to train performance of MP/SP's trains on the Joint Trackage for the same train category and priority.

12. Personnel Incentives and Evaluation: In evaluating the performance of employees and supervisors responsible for dispatching the Joint Trackage, MP/SP will consider train performance of Tex Mex trains and effectiveness in cooperating with Tex Mex personnel and meeting Tex Mex service requirements in the same manner as such factors are considered with respect to MP/SP's trains, personnel and requirements. If bonuses, raises or salaries of those persons are affected by performance of MP/SP's trains, performance of Tex Mex's trains shall be considered on the same basis to the extent feasible.

13. Disagreements: The designated contact supervisors are expected to raise questions, disagreements, concerns or disputes about compliance with these protocols promptly as and when any such matters arise and to use their best efforts to resolve them. If a matter is not resolved to the satisfaction of both parties, it will be presented to the Joint Service Committee. If a satisfactory resolution cannot be achieved by the Joint Service Committee the matter will be submitted to binding summary arbitration before a neutral experienced railroad operating official within fourteen days. The parties will agree in advance on the sanctions available to the arbitrator to address failures to comply with these protocols.

14. Modifications: As the ultimate objective of these protocols is the equal, flexible and efficient handling of all trains of Tex Mex and MP/SP on the Joint Trackage, these protocols may be modified at any time by mutual agreement, consistent with that objective.

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36500

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

SIMMONS R.V.S. EXHIBIT 3

TERMS FOR TEXAS MEXICAN RAILWAY COMPANY TRACKAGE RIGHTS, EXECUTED JAN. 28, 1997 (HBT-TM)

TERMS FOR TEXAS MEXICAN RAILWAY COMPANY TRACKAGE RIGHTS

The following terms (hereinafter referred to as the "Terms") shall govern rights provided by HOUSTON BELT & TERMINAL RAILWAY COMPANY, a Texas corporation, referred to as "HB&T" or "Owner," on the one hand, to THE TEXAS MEXICAN RAILWAY COMPANY ("Tex Mex" or "User"), on the other hand, with HB&T and Tex Mex sometimes referred to collectively as "Parties," pursuant to the decisions of the Surface Transportation Board ("STB") in Finance Docket No. 32760 (Sub-No. 14) served August 12, 1996 ("Decision No. 44") and September 10, 1996 ("Decision No. 47").

RECITALS

A. HB&T owns lines of railroad consisting of track structure extending in and through Houston, Texas, identified as follows:

> HB&T line from Quitman Street in the vicinity of HB&T Milepost 4.7 (West Belt Subdivision) to the HB&T's connection with UP at Gulf Coast Junction in the vicinity of HB&T Milepost 4.6 (East Belt Subdivision), a distance of 3.6 miles;
>
> HB&T line from its connection with the SP line at T. & N.O. Junction, TX (Tower 81) in the vicinity of HB&T Milepost 11.0 (West Belt Subdivision) to HB&T's connection with UP at Interstate Junction in the vicinity of HB&T Milepost 7.5 (East Belt Subdivision), a distance of 8.2 miles;

as shown by bold line on the attached print dated September 11, 1996 (and identified as Exhibit "A") and further described in Section 1.7 of Exhibit "B," which shall be referred to herein as the "Joint Trackage."

B. The STB in Finance Docket No. 32760 (Sub-No. 14) approved the common control and merger of the rail carriers controlled by Union Pacific Corporation ("UPC"), including Missouri Pacific Railroad Company ("MP") and Union Pacific Railroad Company ("UPRR") (UPC, UPRR and MP are referred to collectively as "UP"), and the rail carriers controlled by Southern Pacific Rail Corporation ("SPR"), including Southern Pacific Transportation Company ("SP"), conditioned on, among other things, partial grant of the Tex Mex's Terminal Trackage Rights Application, dated March 29, 1996, including trackage rights over the HB&T as specified therein.

C. Tex Mex desires to receive said trackage rights and to conduct operations pursuant thereto. Tex Mex and HB&T now wish to define the terms and conditions under which said rights shall be exercised.

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D. It is the position of Tex Mex and HB&T that these Terms do not constitute the acquiescence by either of them in the Decision and shall not preclude either of them from seeking any reopening, reconsideration or judicial review of Decision No. 44 or Decision No. 47.

TERMS

1. General Conditions:

The General Conditions set forth in Exhibit "B" attached hereto are hereby made a part of these Terms. All capitalized Terms used and not otherwise defined in these Terms shall have the meaning ascribed to them in the General Conditions. If any conflict between the General Conditions and these Terms shall arise, the provisions of these Terms shall prevail.

2. Rights of Tex Mex:

(a) Subject to the terms and conditions contained herein, HB&T shall grant to Tex Mex the nonexclusive right to use the Joint Trackage for the limited operation of Equipment in Tex Mex's account over the Joint Trackage in common with HB&T and such other railroad company or companies as HB&T has heretofore admitted or may hereafter at any time in the future admit to the joint use of all or part of the Joint Trackage (provided that such future admittance shall not materially hinder or obstruct the fair and reasonable exercise of the rights granted in these Terms), such other railroad company or companies to be considered HB&T for the purposes of these Terms, it being understood and agreed that Tex Mex shall not have the right to:

(i) Switch industries upon the Joint Trackage;

(ii) Set out, pick up or store Equipment upon the Joint Trackage, or any part thereof, except as otherwise provided in Sections 2.11, 2.12 and 2.13 of Exhibit B;

(iii) Serve any industry, team or house track, intermodal or auto facility now existing or hereafter located along the Joint Trackage;

(iv) Permit or admit any third party to the use of all or any portion of the Joint Trackage, nor, under the guise of doing its own business, contract or make any agreement to handle as its own Equipment over or upon the Joint Trackage, or any portion thereof, the Equipment of any such third party which in the normal course of business would not be considered the Equipment of Tex Mex; provided, however, that the foregoing shall not prevent Tex Mex, pursuant to a run-through agreement with any railroad, from using the locomotives and cabooses of another railroad as its own under these terms;

(v) Connect with or interchange with any other railroad, except as otherwise provided in Section 4; or

(vi) Establish any transload facilities on the Joint Trackage or build into or out from any facility from/to the Joint Trackage.

(b) The rights granted in Section 2 shall be only for rail traffic of all kinds and commodities, both carload and intermodal, in Equipment that meets all applicable specifications established by the Association of American Railroads and the Federal Railroad Administration, provided that all freight handled by Tex Mex pursuant to such rights must have a prior or subsequent movement on Tex Mex's Laredo-Robstown-Corpus Christi Line.

(c) User shall have the right to establish crew change points at points on the Joint Trackage as from time to time may be mutually agreed to in writing by Owner and User. However, User agrees that if sufficient trackage is not available at such locations(s) to facilitate crew changes of User, Owner may require User to construct additional trackage ("Crew Change Facilities") in the vicinity of such location as may be required, in the reasonable judgment of Owner, the cost and expense of which shall be borne solely by User. If User does not agree that such Crew Change Facilities are necessary, the Owner may nevertheless insist that they be constructed, with the question of their necessity, and the User's obligation to bear their cost and expense, to be determined by arbitration pursuant to Section 6 of the General Conditions. In the event such Crew Change Facilities are constructed at the cost and expense of User, and Owner shall choose to use such Crew Change Facilities, Owner shall pay User fifty percent (50%) of the cost of constructing such Crew Change Facilities. Should Owner decline to participate, Owner shall be denied access to such Crew Change Facilities. However, should Owner elect at a later date to use such Crew Change Facilities, such right shall be granted to Owner by User upon payment of fifty percent (50%) of User's initial costs plus per annum interest thereon at a rate equal to the average paid on 90-day Treasury Bills of the United States Government as of the date of completion until the date of use by User commences. Per annum interest shall be adjusted annually on the first day of the twelfth (12th) month following the date of completion and every year thereafter on such date, based on the percentage increase or decrease, in the average yield of 30-year U.S. Treasury Notes for the prior year compared to their average yield in first year of completion of the Improvements. Each annual adjustment shall be subject, however, to a "cap" (up or down) of two percentage points of the prior year's interest rate (i.e. the adjustment may not exceed an amount equal to two percentage points of the immediately preceding year's interest rate).

In addition, Owner shall lease to User, by separate written agreement at reasonable and customary charges, existing facilities for office, locker, change and lunchroom purposes by User's personnel upon request of User to Owner, and as reasonably available, or property of Owner as reasonably available for User to establish its own facilities.

(d) User agrees that when entering or exiting the Joint Trackage or using the Joint Trackage to set out or pick up ("User's Operations"), it shall do so without unreasonable interference or impairment of the Joint Trackage. However, User agrees that if sufficient trackage is not available at such location(s) to facilitate User's Operations, Owner may require User to construct additional trackage in the vicinity of such location(s) as may be required, in the reasonable judgment of Owner,

the cost and expense of which shall be borne solely by User. If User does not agree that such additional trackage is necessary, the Owner may nevertheless insist that it be constructed, with the question of its necessity, and the User's obligation to bear its cost and expense, to be determined by arbitration pursuant to Section 6 of the General Conditions. In the event such trackage is constructed at the cost and expense of User, and Owner shall choose to use such trackage, Owner shall pay User fifty percent (50%) of the cost of constructing such trackage plus interest as calculated pursuant to Section 2(c) above.

3. GTM Rate:

(a) In addition to other payments to be made under these Terms, User shall remit to Owner monthly for the use of the Joint Trackage in the operation of its Equipment therealong and thereover, the total amount of 3.84 mills per GTM for all Equipment, which sum per GTM ("GTM Rate") shall be deemed to include ordinary and programmed maintenance of the Joint Trackage, Changes in and/or Additions to the Joint Trackage (to the extent required by the first sentence of Section 2.2 of the General Conditions), operating expenses, interest rental, depreciation and taxes.

(b) For the purpose of computing the GTM Rate under this Section 3, the distance between the designated points of the Joint Trackage shall be determined by reference to HB&T's then current timetable.

(c) The GTM Rate set forth in Section 3(a) of these Terms shall be subject to adjustment annually, commencing as of July 1, 1997, as follows:

All trackage rights charges under this Section 3 shall be subject to adjustment annually beginning as of the effective date of these Terms to reflect seventy percent (70%) of increases or decreases in Rail Cost Adjustment Factor, not adjusted for changes in productivity ("RCAF-U") published by the ICC or successor agency or other organizations. In the event the RCAF-U is no longer maintained, the parties shall select a substantially similar index and failing to agree on such an index, the matter shall be referred to binding arbitration.

4. Interchange:

In exercising the rights granted by these Terms, Tex Mex shall have the right, pursuant to separate agreements entered into between the parties or terms imposed by the STB, to interchange traffic with (a) HB&T at Houston, Texas, (b) The Atchison, Topeka & Santa Fe Railway Company ("ATSF") and Burlington Northern Railroad Company ("BN") (ATSF and BN are referred to collectively as "BNSF") at New South Yard and at any new interchange point that HB&T may hereafter establish with BNSF on the Joint Trackage, and (c) PTRA at Basin Yard and at any new interchange point that HB&T may hereafter establish with PTRA on the Joint Trackage.

5. Additions:

(a) Owner and User shall conduct a joint inspection to determine what connections ("Connections") and sidings or siding extensions associated with Connections ("Sidings") are necessary in the reasonable judgment of Owner to implement the rights granted under Section 2 of these Terms. User, at its sole cost and expense, shall pay the cost of such Connections and Sidings. If User does not agree that such Connections and Sidings are necessary, Owner may nevertheless insist that they be constructed, with the question of their necessity, and the User's obligation to bear their cost and expense, to be determined by arbitration pursuant to Section 6 of the General Conditions. In that event that the User bears the sole cost and expense of any such Connections and Sidings, no other railroad shall have the right to use them except upon terms agreed to by User and such other railroad. In the event Owner shall elect to use such Connections and Sidings, Owner shall pay to User fifty percent (50%) of the cost to User of constructing the Connections and Sidings, plus interest as calculated pursuant to Section 2(c) above, and, having made such payment, Owner may also admit other railroads to the use of such Connections and Sidings. Owner shall maintain the part of any Connection or Siding on its property at its sole cost and expense, and User, at its sole cost and expense, shall maintain the part of any Connection or Siding on its property or property of others.

(b) Except as provided in Section 5(a) above, expenditures for any future Changes in and/or Additions to the Joint Trackage, such as, but not limited to, sidings, Centralized Traffic Control, grade separations, and future connections, shall be handled as follows: (i) if the Change in and/or Addition to the Joint Trackage is for the sole benefit of one party, that party shall be solely responsible for the entire cost and expense thereof; (ii) all other Changes in and/or Additions to the Joint Trackage shall be shared by HB&T and Tex Mex on the basis that the parties' respective GTM's operated over the Joint Trackage bear to total GTM's operated over the Joint Trackage for the twelve (12) month period immediately prior to the month work on the project is commenced. The use of Joint Trackage by any third party shall be attributed to HB&T for purposes of computing respective GTM's for purposes of this Section 5(b).

(c) In the event such Changes in and/or Additions to the Joint Trackage are constructed at the sole cost and expense of one party (party of the first part), the other party (party of the second part) shall be denied access to such Change in and/or Addition to the Joint Trackage. If the party of the second part at some future date shall choose to use such Changes in and/or Additions to the Joint Trackage, such right shall be granted to party of the second part by party of the first part upon payment of fifty percent (50%) of party of the first part's initial costs plus per annum interest calculated pursuant to Section 2(c).

6. Notices:

All notices, demands, requests, submissions and other communications which are required or permitted to be given pursuant to these Terms shall be given by either party to the other in writing and shall be deemed properly served if delivered by hand, or mailed by overnight courier or by

registered or certified mail, return receipt requested, with postage prepaid, to such other party at the address listed below:

If intended for HB&T:

General Manager
Houston Belt & Terminal
Railway Company
501 Crawford Street
Houston, Texas 77002

If intended for Tex Mex:

The Texas Mexican Railway Company
1200 Washington Street
P.O. Box 419
Laredo, Texas 78042

Notice of address change may be given any time pursuant to the provisions of this Section 6.

7. Term:

These Terms shall be effective upon consummation of the control authority granted in the Decision for a term of ninety-nine (99) years; provided, however, that the User shall have the right to terminate these Terms upon twelve (12) months' prior written notice to Owner. These Terms shall terminate, and all rights conferred pursuant thereto shall be canceled and deemed void ab initio, if, in a Final Order, the application for authority for UP to control SPC has been denied or has been approved on terms unacceptable to the applicants or has been granted on terms that do not require the rights provided herein, provided, however, that if these Terms become effective and are later terminated, any liabilities arising from the exercise of rights under Sections 1 through 5 during the period of its effectiveness shall survive such termination. For purposes of this Section 7, "Final Order" shall mean an order of the Surface Transportation Board, any successor agency, or a court with lawful jurisdiction over the matter which is no longer subject to any further direct judicial review (including a petition for writ of certiorari) and has not been stayed or enjoined.

Approved:

For HB&T:
By: [signature]
Position: General Manager
Date: 1-10-97

For Tex Mex:
By: [signature]
Position: President
Date: 1-28-97

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EXHIBIT A

PRINT DATE 09-11-96

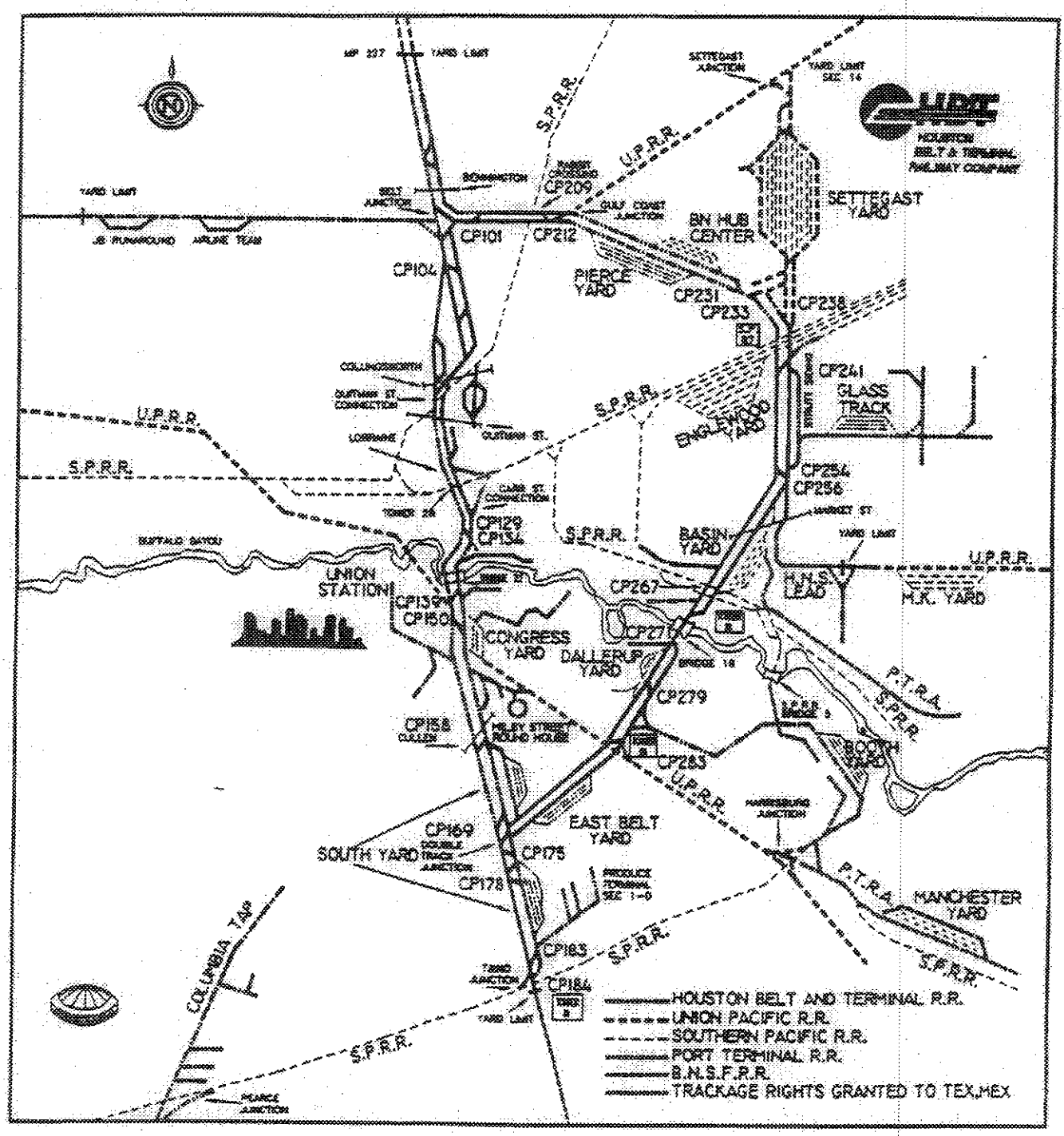

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EXHIBIT "B"

GENERAL CONDITIONS

Section 1. DEFINITIONS

1.1 "Annual" shall mean a calendar year.

1.2 "Car" shall mean one (1) rail car; provided, however, that each platform in an articulated rail car of two (2) or more platforms shall be counted as one (1) rail car, subject to modification by mutual agreement of the parties based upon changes in railroad technology.

1.3 "Changes in and/or Additions to" shall mean work projects and retirements, the cost of which is chargeable in whole or in part to Property Accounts during the term of the Terms.

1.4 "Equipment" shall mean trains, locomotives, rail cars (loaded or empty), intermodal units (loaded or empty), cabooses, vehicles, and machinery which are capable of being operated on railroad tracks or on right-of-way for purposes of the maintenance or repair of such railroad tracks.

1.5 "GTM" shall mean gross ton mile which is the weight in tons for Equipment and lading transported over one (1) mile of track included in the Joint Trackage.

1.6 "GTM Handled Proportion" shall mean the GTMs handled over the Joint Trackage by or for a party divided by the total number of GTMs handled by or for all parties using the Joint Trackage, during the same period. For the purpose of computing such GTM's Handled Proportion, Equipment engaged in work service pertaining to construction, maintenance or operation of the Joint Trackage or Changes in and/or Additions to the Joint Trackage shall not be counted and GTMs of third parties shall be attributed to the Owner.

1.7 "Joint Trackage" shall mean the track structure of Owner as described in the Terms including necessary right-of-way and all appurtenances, signals, communications, and facilities of Owner and all Changes in and/or Additions to said track structure now or in the future located as are required or desirable for the operation of the Equipment of the parties hereto.

1.8 "Mill" shall mean one-tenth of a cent ($0.001 US).

1.9 "Owner" shall have the meaning given to it in the Terms.

1.10 "Property Accounts" shall mean accounts so designated under the Uniform System of Accounts for Railroad Companies prescribed by the Interstate Commerce Commission, or any replacement of such system prescribed by the applicable federal regulatory agency, if any, and used by the parties hereto.

1.11 "STB" shall mean the Surface Transportation Board of the United States Department of Transportation or any successor agency.

1.12 "Terms" shall mean those certain Terms for Texas Mexican Railway Company Trackage Rights to which this Exhibit "B" is attached.

1.13 "User" shall have the meaning given to it in the Terms.

Section 2. MAINTENANCE, ADDITIONS, OPERATION, AND CONTROL

2.1 Owner shall have sole charge of the maintenance and repair of the Joint Trackage with its own supervisors, labor, materials and equipment. Owner, from time to time, may make such Changes in and/or Additions to the Joint Trackage as shall be required by any law, rule, regulation or ordinance promulgated by any government body having jurisdiction, or as Owner, in its sole discretion, shall deem necessary, subject to Section 2.2. Such Changes in and/or Additions to the Joint Trackage shall become a part of the Joint Trackage or in the case of retirements shall be excluded from the Joint Trackage.

2.2 Unless otherwise mutually agreed to by the parties in writing, Owner shall, (i) keep and maintain the Joint Trackage on a consistent basis at no less than the track standard designated in the timetable in effect on the date of the Terms, including special instructions for the Joint Trackage as of the date of the Terms, (ii) maintain at least the physical capacity of the Joint Trackage as of the date of the Terms (i.e., number of main tracks, support tracks, signal systems, rail weight, line clearances, etc.), and (iii) be responsible for any Changes in and/or Additions to the Joint Trackage as shall be necessary to accommodate the traffic of Owner and User while maintaining existing service standards (including transit times) in effect on the date of the Terms. In the event that User desires that the Joint Trackage be improved to a condition in excess of the standard set forth in this Section 2.2, or desires that other Changes in and/or Additions to be made to the Joint Trackage, Owner agrees to make such Changes in and/or Additions to the Joint Trackage if funded in advance by User. Thereafter, such Changes in and/or Additions to the Joint Trackage shall become part of the Joint Trackage and shall be maintained by Owner in such improved condition.

2.3 Owner shall employ all persons necessary to construct, operate, maintain, repair and renew the Joint Trackage. Owner shall be bound to use reasonable and customary care, skill and diligence in the construction, operation, maintenance, repair and renewal of the Joint Trackage and in managing of the same. Owner shall make its best effort to ensure that User is given the same advance notice of maintenance plans and schedules as is provided to Owner's personnel.

2.4 The trackage rights granted hereunder shall give User access to and joint use of the Joint Trackage, for such use as is permitted by Section 2 of the Terms, equal to that of Owner. The management, operation (including dispatching) and maintenance of the Joint Trackage shall, at all times, be under the exclusive direction and control of Owner, the movement of Equipment over and along the Joint Trackage shall at all times be subject to the exclusive direction and control of Owner's authorized representatives and in accordance with such reasonable operating rules as Owner shall from time to time institute, but in the management, operation (including dispatching) and maintenance of the Joint Trackage, Owner, User and any other users of the Joint Trackage shall be treated in a

non-discriminatory manner. User shall, at User's sole cost and expense, obtain, install and maintain necessary communication equipment to allow User's Equipment to communicate with Owner's dispatching and signaling facilities the same as Owner's trains so utilize. Owner shall consult with User prior to the adoption of new communication or signaling systems to be employed on the Joint Trackage, which have not theretofore been generally adopted in the railroad industry.

2.5 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 caused by or resulting solely from such interruption or delay.

2.6 Owner may from time to time provide any track or tracks on the Joint Trackage other than those delineated in Exhibit A to the Terms for use by User provided there shall at all times be afforded User a continuous route of equal utility and quality for the operations of its Equipment between the termini of the Joint Trackage. When such tracks which are not part of the Joint Trackage are used as provided herein, the Terms shall govern for purposes of direction and control and liability as if all movement had been made over the Joint Trackage.

2.7 Each party shall be responsible for furnishing, at its sole cost and expense, all labor, fuel and train and other supplies necessary for the operation of its own Equipment over the Joint Trackage. In the event a party does furnish such labor, fuel or train and other supplies to another party, the party receiving the same shall promptly, upon receipt of billing therefor, reimburse the party furnishing the same for its reasonable costs thereof, including customary additives.

2.8 User shall be responsible for the reporting and payment of any mileage, per diem, use or rental charges accruing on Equipment in User's account on the Joint Trackage. Except as may be specifically provided for in the Terms, 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 Except as otherwise may be provided in the Terms, User shall operate its Equipment over the Joint Trackage with its own employees, but before said employees are assigned or permitted to operate Equipment over the Joint Trackage as herein provided, and from time to time thereafter as and when reasonably requested by Owner, they shall be required to pass the applicable rules examinations required by Owner of its own employees. Owner shall delegate to specified User's officers the conduct of such examinations in the event User chooses to conduct such examinations. If an Owner officer conducts such examinations of employees of User, User shall pay Owner a reasonable fee for each employee so examined, such fee to be mutually agreed upon by the parties from time to time in a separate agreement. Notwithstanding any such examination, User shall be responsible for ensuring that its employees are qualified and have taken all such rules examinations. Upon request of User, Owner shall qualify one or more of User's supervisory officers as pilots and such supervisory officer or officers so qualified shall qualify employees of User engaged in or connected with User's operations on or along the Joint Trackage. At User's request, Owner shall

furnish a pilot or pilots, at the expense of User, to assist in operating trains of User over the Joint Trackage.

2.10 If any employee of User shall neglect, refuse or fail to abide by Owner's rules, instructions and restrictions governing the operation on or along the Joint Trackage, such employee shall, upon written request of Owner, be suspended by User from working on the Joint Trackage unless and until requalified to return to work and approved to do so by Owner. 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 the parties concerned shall participate and bear the expense for their respective officers, counsel, witnesses and employees. Notice of such investigations to User's employees shall be given by User's officers, and such investigation shall be conducted in accordance with the 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 by 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 arising from such withdrawal.

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 disciplinary action.

2.11 If any Equipment of User is bad ordered enroute on the Joint Trackage and (i) it is necessary that it be set out, and (ii) only light repairs to the Equipment are required, such bad ordered Equipment shall be promptly repaired, and, thereafter, be promptly removed from the Joint Trackage by User. Owner may, upon request of User and at User's sole cost and 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 enroute to or returning to Owner's terminal from such an assignment shall be considered Sole Employees (as hereinafter defined) of User and Sole Property (as hereinafter defined) of User. However, should Owner's employees after repairing such bad ordered 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 ("AAR"), hereinafter called "Interchange Rules", in effect on the date of performance of the repairs. Owner shall then prepare and submit billing directly to and collect from the car owner for car owner responsibility items as determined under said Interchange Rules, and Owner shall prepare and submit billing directly to and collect from User for handling line responsibility items as determined under said Interchange Rules. Owner also shall submit billing to and collect from User any charges for repair to freight cars that are User's car owner responsibility items as determined under said Interchange Rules, should said car owner refuse or otherwise fail to

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make payment therefor. Repairs to locomotives shall be billed as provided for in Section 3 of these General Conditions.

2.12 If Equipment of User shall become derailed, wrecked, or otherwise disabled while upon the Joint Trackage, it shall be rerailed or cleared by Owner, except that employees of User may rerail User's derailed Equipment on the Joint Trackage whenever use of motorized on or off track equipment is not required; however, in any such case, employees of User shall consult with and be governed by the directions of Owner. Owner reserves the right to rerail Equipment of User when, in the judgment of Owner, Owner deems it advisable to do so to minimize delays and interruptions to train movement. The reasonable costs and expenses of rerailing or clearing derailed, wrecked or disabled Equipment shall be borne by the parties in accordance with Section 5 of these General Conditions. Services provided under this section shall be billed in accordance with Section 3 of these General Conditions.

2.13 In the event Equipment of User shall be forced to stop on the 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 (other than bad ordered Equipment subject to light repairs pursuant to Section 2.11), or to any other cause not resulting from an accident or derailment (including the failure of User to promptly repair and clear bad ordered Equipment pursuant to Section 2.11), 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, disabled 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 recrew 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 reasonable costs and expenses of rendering such assistance shall be borne by User. Services provided under this section shall be billed in accordance with Section 3 of these General Conditions.

2.14 User shall pay to Owner reasonable expenses incurred by Owner in the issuance of timetables made necessary solely by changes in the running time of the trains of User over the Joint Trackage. If changes in running time of trains of Owner or third parties, as well as those of User, require the issuance of timetables, then User shall pay to Owner that proportion of the expenses incurred that one bears to the total number of parties changing the running time of their trains. If changes in running time of trains of Owner or third parties, but not those of User, require the issuance of timetables, then User shall not be required to pay a proportion of the expenses incurred in connection therewith.

2.15 User, at Owner's request, shall be responsible for reporting to Owner the statistical data called for in the Terms, which may include, but is not limited to, the number and type of Equipment and GTMs operated on the Joint Trackage.

Section 3. BILLING

3.1 Billing shall be accomplished on the basis of data contained in a billing form mutually agreed to between the parties. Such billing forms shall contain sufficient detail to permit computation of payments to be made hereunder. Billing shall be prepared according to the rules, additives, and equipment rental rates as published by the 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 in writing, all the compensation and charges of every name and nature which in and by the Terms User is required to pay in lawful money of the United States within sixty (60) days after the rendition of bills therefor. Bills shall contain a statement of the amount due on account of the expenses incurred, properties and facilities provided 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, but shall be paid subject to subsequent adjustment; provided, 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 and 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 is established. This provision shall not limit the retroactive adjustment of billing made pursuant to exception taken to original accounting by or under authority of the STB or 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 Terms 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 any applicable laws or regulations.

3.4 Should any payment become payable by Owner to User under the Terms, the provisions of Sections 3.1 and 3.2 of these General Conditions shall apply with User as the billing party and Owner as the paying party.

3.5 Either party hereto may assign any receivables due it under the Terms; provided, however, that such assignments shall not relieve the assignor of any rights or obligations under the Terms.

Section 4. COMPLIANCE WITH LAWS

4.1 With respect to operation of Equipment on the Joint Trackage, each party shall comply with all applicable federal, state and local laws, rules, regulations, orders, decisions and ordinances ("Standards"), and if any failure on the part of any party to so comply shall result in a fine, penalty, cost or charge being imposed or assessed on or against another party, such other party shall give prompt notice to the failing party and the failing party shall promptly reimburse and indemnify the other party for such fine, penalty, cost or charge and all expenses and reasonable attorneys' fees

incurred in connection therewith, and shall upon request of the other party defend such action free of cost, charge and expense to the other party.

4.2 User agrees to comply fully with all applicable Standards concerning "hazardous waste" and "hazardous substances" ("Hazardous Materials"). Except with Owner's prior consent, User covenants that it shall not treat or dispose of Hazardous Materials on the Joint Trackage. User further agrees to furnish Owner (if requested) with proof, satisfactory to Owner, that User is in such compliance.

In the event any accident, bad ordered Equipment, derailment, vandalism or wreck (for purposes of this Section 4.2 and Section 4.3 hereinafter called collectively "Derailment") involving Equipment of or a train operated by User carrying 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.

In the event of a Derailment, Owner shall assume responsibility for cleaning up any release of Hazardous Materials from User's Equipment 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 5 of these General Conditions.

If a Hazardous Materials release caused by a derailment involving Equipment of User, or on a train operated by User, results in contamination of real property or water on the Joint Trackage or on real property or water adjacent to the Joint Trackage (whether such real property or water is owned by Owner or a third party), Owner shall assume responsibility for emergency cleanup conducted to prevent further damage. User shall be responsible for performing cleanup efforts thereafter. Any costs associated with cleaning up real property or water on or adjacent to the Joint Trackage contaminated by Hazardous Materials shall be borne in accordance with Section 5 of these General Conditions.

If Hazardous Materials must be transferred to undamaged Equipment or trucks as a result of a release caused by a derailment involving Equipment of User, or on a train operated by User, User shall perform the transfer; PROVIDED, HOWEVER, that if the Hazardous Materials are in damaged Equipment that is blocking the Joint Trackage, Owner, at its option, may transfer the Hazardous Materials with any costs associated with such transfer borne in accordance with Section 5 of these General Conditions. Transfers of Hazardous Materials by User shall only be conducted after being authorized by Owner.

4.3 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 5 of these General Conditions.

4.4 In the event of release of Hazardous Materials caused by faulty Equipment or third parties, cleanup will be conducted as stated in Sections 4.2 and 4.3 of these General Conditions.

Section 5. LIABILITY.

5.1 General. The provisions of this Section 5 shall apply only as between the parties hereto and are solely for their benefit. Nothing herein is intended to be for the benefit of any person or entity other than the parties hereto. It is the explicit intention of the parties hereto that no person or entity other than the parties hereto is or shall be entitled to bring any action to enforce any provision hereof against any of the parties hereto, and the assumptions, indemnities, covenants, undertakings and agreements set forth herein shall be solely for the benefit of, and shall be enforceable only by, the parties hereto. Notwithstanding anything contained in this Section 5, no provisions hereof shall be deemed to deprive Owner or User of the right to enforce or shall otherwise restrict any remedies to which they would otherwise be entitled under other provisions of the Terms as a result of the other party's failure to perform or observe any other obligation or duty created by the Terms. The provisions of this Section 5 shall apply as between the parties hereto irrespective of the terms of any other agreements between the parties hereto and other railroads using the Joint Trackage, and the allocation of liabilities provided for herein shall control as between the parties hereto.

5.2 Definitions and Covenants. The parties agree that for the purposes of this Section 5:

(a) The term "Employee(s)" of a party shall mean all officers, agents, employees and contractors of that party. Such Employees shall be treated either as "Sole Employees" or "Joint Employees", as hereinafter specified:

(b) "Sole Employees" and "Sole Property" shall mean one or more Employees, Equipment, tools and other equipment and machinery while engaged in, en route to or from, or otherwise on duty incident to performing service for the exclusive benefit of one party. Pilots furnished by Owner to assist in operating Equipment of User shall be considered the Sole Employees of User while engaged in such operations. Equipment shall be deemed to be the Sole Property of the party receiving the same at such time as deemed interchanged under AAR rules or applicable interchange agreements, or when such party is responsible for the car hire or per diem for the Equipment under agreement between the parties;

(c) "Joint Employee" shall mean one or more Employees while engaged in maintaining, repairing, constructing, renewing, removing, inspecting or managing the Joint Trackage or making Changes in and/or Additions to the Joint Trackage for the benefit of both of the parties hereto, or while preparing to engage in, en route to or from, or otherwise on duty incident to performing such service for the benefit of both parties;

(d) "Joint Property" shall mean the Joint Trackage and all appurtenances thereto, and all Equipment, tools and other equipment and machinery while engaged in maintaining, repairing, constructing, renewing, removing, inspecting, managing or making Changes in and/or Additions to the Joint Trackage for the benefit of both of the parties hereto, or while being prepared to engage in, en route to or from, or otherwise incident to performing such service;

(e) "Loss and/or Damage" shall mean injury to or death of any person, including Employees of the parties hereto, and loss or damage to any property, including property of the parties hereto and property being transported by the parties, which arises out of an incident occurring on, the Joint Trackage and shall include liability for any and all claims, suits, demands, judgments and damages resulting from or arising out of such injury, death, loss or damage, except liability for punitive and exemplary damages. Loss and/or Damage shall include all costs and expenses incidental to any claims, suits, demands and judgments, including attorneys' fees, court costs and other costs of investigation and litigation. Loss and/or Damage shall further include the expense of clearing wrecked or derailed Equipment and the costs of environmental protection, mitigation or clean up necessitated by such wreck or derailment and shall include any liabilities for any third-party claims for personal injury or death, property damage, natural resource damage, or any penalties, judgments or fines associated with a release of any contaminants resulting from such wreck or derailment;

(f) Operating Employees of Owner whose service may be jointly used by the parties hereto for the movement of trains over the Joint Trackage, including, but not limited to, train dispatchers, train order operators, operator clerks and watchmen shall at the time of performing their services be deemed to be Sole Employees of the party hereto for whose benefit said services may be separately rendered (during the time they are so separately rendered) and be deemed to be Joint Employees of the parties hereto at such time as their services may be rendered for the parties' joint benefit;

(g) All Employees, Equipment, tools and other equipment and machinery other than as described in (b), (c), (d) or (f) above or in Section 5.4. shall be deemed the Sole Employees of the employing party and the Sole Property of the using party;

(h) Any railroad not a party to the Terms heretofore or hereafter admitted to the use of any portion of the Joint Trackage, shall, as between the parties hereto, be regarded in the same light as a third party. Without limiting the generality of the foregoing, neither of the parties hereto assumes any responsibility to the other under the provisions of the Terms for any Loss and/or Damage occasioned by the acts or omissions of any employees of any such other railroad, or for any Loss and/or Damage which such other railroad shall be obligated to assume in whole or in part pursuant to law or any agreement relating to such other railroad's use of any portion of the Joint Trackage;

(i) For the purpose of this Section 5, Equipment of foreign lines being detoured over the Joint Trackage, and all persons other than Joint Employees engaged in moving such Equipment, shall be considered the Equipment and Employees of the party hereto under whose detour agreement or other auspices such movement is being made.

5.3 Reimbursement and Defense. The parties agree that:

(a) Each party hereto shall pay promptly Loss and/or Damage for which such party shall be liable under the provisions of this Section 5, and shall indemnify the other party against such Loss and/or Damage, including reasonable attorneys' fees and costs. If any suit or suits shall be brought against either of the parties hereto and any judgment or judgment shall be recovered which said party is compelled to pay, and the other party shall under the provisions of the Terms be solely liable therefor, then the party which is so liable shall promptly repay on demand to the other party paying the same any monies which it may have been required to pay, whether in the way of Loss and/or Damage, costs, fees or other expenses; and if the Loss and/or Damage in such case or cases is joint or allocated between the parties to the Terms, the party defendant paying the same or any costs, fees or other expenses shall be reimbursed by the other party as allocated pursuant to the Terms;

(b) Each party covenants and agrees with the other party that it will pay for all Loss and/or Damage, both as to persons and property, and related costs which it has herein assumed, or agreed to pay, the judgment of any court in a suit by third party or parties to the contrary notwithstanding, and will forever indemnify and save harmless the other party, its successors and assigns, from and against all liability and claims therefor, or by reason thereof, and will pay, satisfy and discharge all judgments that may be rendered by reason thereof, and all costs, charges and expenses incident thereto;

(c) Each party hereto shall have the sole right to settle, or cause to be settled for it, all claims for Loss and/or Damage for which such party shall be solely liable under the provisions of this Section 5, and the sole right to defend or cause to be defended all suits for the recovery of any such Loss and/or Damage for which such party shall be solely liable under the provisions of this Section 5;

(d) User shall provide written notice to Owner of any accidents or events resulting in Loss and/or Damage within seven (7) days of its discovery or receipt of notification of such occurrence;

(e) In the event both parties hereto may be liable for any Loss and/or Damage under the provisions of this Section 5 ("Co-Liable"), and the same shall be settled by a voluntary payment of money or other valuable consideration by one of the parties Co-Liable therefor, release from liability shall be taken to and in the name

of all the parties so liable; however, no such settlement in excess of the sum of One Hundred Thousand Dollars ($100,000) shall be made by or for any party Co-Liable therefor without the written consent of the other parties so liable, but any settlement made by any party in consideration of One Hundred Thousand Dollars ($100,000) or a lesser sum shall be binding upon the other parties and allocated in accordance with Section 5.5; and no party shall unreasonably withhold its consent to a settlement proposed by the other party; provided, however, that failure by a party to secure consent from the other shall not release such other party to the extent the party who failed to obtain such consent demonstrates that the other party was not prejudiced by such failure.

(f) In case a claim or suit shall be commenced against any party hereto for or on account of Loss and/or Damage for which another party hereto is or may be solely liable or Co-Liable under the provisions of this Section 5, the party against whom such claim or suit is commenced shall give to such other party prompt notice in writing of the pendency of such claim or suit, and thereupon such other party shall assume or join in the defense of such claim or suit as follows: If the claim or suit involves Loss and/or Damage to the Sole Employees or Sole Property of a party or its invitee or property in its care, custody or control, that party shall assume and control the investigation and defense of such claim or suit; if the claim or suit involves Loss and/or Damage to third parties, Joint Employees or the Joint Trackage, the party whose Sole Employees or Equipment were involved in the incident shall investigate and defend such claim or suit; and if such claim or suit involves Loss and/or Damage to third parties, Joint Employees or the Joint Trackage and neither or both party's Equipment and Sole Employees were involved in the incident, Owner shall investigate and defend such claim or suit; provided that the other party also may participate in the defense of any of the foregoing if it may have liability as a result of such incident.

(g) No party hereto shall be conclusively bound by any judgments against the other party, unless the former party shall have had reasonable notice requiring or permitting it to investigate and defend and reasonable opportunity to make such defense. When such notice and opportunity shall have been given, the party so notified and the other party shall be conclusively bound by the judgment as to all matters which could have been litigated in such suit, including without limitation a determination of the relative or comparative fault of each.

5.4 Wrecks and Derailment. The cost and expense of repairing bad ordered Equipment, clearing wrecks or otherwise disabled Equipment or rerailing Equipment (and the costs of repair or renewal of damaged Joint Trackage or adjacent properties) shall be borne by the party whose Equipment was wrecked, disabled, or derailed or caused such damage. All Employees or Equipment, while engaged in, en route to or from, or otherwise incident to operating wrecker or work trains clearing wrecks, disabled Equipment or Derailments or engaged in repair or renewal of the Joint Trackage subsequent to any such wreck, disability or Derailment, shall be

deemed to be Sole Employees and/or Sole Property of the party whose Equipment was wrecked, disabled or derailed. However, such Employees or Equipment, while en route from performing such clearing of wrecks, disabled Equipment or Derailments or repairing or renewing the Joint Trackage to perform another type of service, shall not be deemed to be performing service incident to the instant wreck, disability or Derailment.

5.5 Allocation.

(a) Each party shall bear all costs of Loss and/or Damage to its Sole Employees or its Sole Property, or property in its care, custody or control or its invitees without regard to which party was at fault.

(b) Loss and/or Damage to third parties (i.e., any person or entity other than a party hereto, a Sole Employee of either party, a Joint Employee or an invitee of either party) or their property, to Joint Employees or their property or to Joint Property shall be borne by the parties hereto as follows:

(i) If the Loss and/or Damage is attributable to the acts or omissions of only one party hereto, that party shall bear and pay all of such Loss and/or Damage.

(ii) If such Loss and/or Damage is attributable to the acts or omissions of more than one party hereto, such Loss and/or Damage shall be borne and paid by those parties in accordance with a comparative negligence standard, whereby each such party shall bear and pay a portion of the Loss and/or Damage equal to the degree of causative fault or percentage of responsibility for the Loss and/or Damage attributable to that party without regard to laws limiting recovery if one party is more than fifty percent (50%) at fault.

(iii) Loss and/or Damage to third parties or Joint Employees occurring in such a way that it cannot be determined how such Loss and/or Damage came about shall be apportioned between Owner, User and any other party(ies) authorized to use the Joint Trackage as a trackage rights tenant, on a usage basis considering each party's gross ton miles over the Joint Trackage for the preceding twelve (12) months or, if such Loss and/or Damage occurs during the first twelve (12) months following the effective date of the Terms, the usage of each party between the occurrence of such Loss and/or Damage and the effective date of the Terms, provided that, without limitation, User shall not bear or incur any liability for claims, suits, demands, judgments, losses or damages resulting from environmental contamination of or hazardous material on or released from the Joint Trackage, except contamination or a release of hazardous materials from User's own

Equipment or caused by or arising from the actions or omissions of User or User's Employees, and then only in accordance with the other provisions hereof.

(c) The parties agree that the characterization herein of certain Employees as "Sole Employees" or "Joint Employees" is only for the purpose of allocating Loss and/or Damage suffered by those Employees. Except as specified in subsection (a) of this Section 5.5, (which provides for the allocation of certain Loss and/or Damage between the parties without regard to fault), no party shall be liable for the acts or omissions (negligent or otherwise) of any other party's Employee.

5.6 OWNER AND USER EXPRESSLY INTEND THAT WHERE ONE PARTY IS TO INDEMNIFY THE OTHER PURSUANT TO THE TERMS, SUCH INDEMNITY SHALL INCLUDE (1) INDEMNITY FOR THE NEGLIGENCE OR ALLEGED NEGLIGENCE, WHETHER ACTIVE OR PASSIVE, OF THE INDEMNIFIED PARTY WHERE THAT NEGLIGENCE IS A CAUSE OF THE LOSS OR DAMAGE; (2) INDEMNITY FOR STRICT LIABILITY OF THE INDEMNIFIED PARTY RESULTING FROM A VIOLATION OR ALLEGED VIOLATION OF ANY FEDERAL, STATE OR LOCAL LAW OR REGULATION BY THE INDEMNIFIED PARTY, INCLUDING BUT NOT LIMITED TO THE FEDERAL EMPLOYERS LIABILITY ACT ("FELA"), THE SAFETY APPLIANCE ACT, THE BOILER INSPECTION ACT, THE OCCUPATIONAL SAFETY AND HEALTH ACT ("OSHA"), THE RESOURCE CONSERVATION AND RECOVERY ACT ("RCRA"), THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT ("CERCLA"), THE CLEAN WATER ACT ("CWA"), THE OIL POLLUTION ACT ("OPA"), AND ANY SIMILAR STATE STATUTE IMPOSING OR IMPLEMENTING SIMILAR STANDARDS; AND (3) INDEMNITY FOR ACTS OR ALLEGED ACTS OF GROSS NEGLIGENCE OF THE INDEMNIFIED PARTY, OR OTHER CONDUCT ON THE PART OF THE INDEMNIFIED PARTY FOR WHICH PUNITIVE DAMAGES MIGHT BE SOUGHT.

Section 6. ARBITRATION

6.1 If at any time a question or controversy shall arise between the parties hereto in connection with the Terms upon which the parties cannot agree, such question or controversy shall be submitted to and settled by arbitration. Unless other procedures are agreed to by the parties, arbitration between the parties pursuant to this Section 6 shall be governed by the rules and procedures set forth in this Section 6.

6.2 If the parties to the dispute are able to agree upon a single competent and disinterested arbitrator within twenty (20) days after written notice by one party of its desire for arbitration to the other party, then the question or controversy shall be submitted to and settled by that single arbitrator. Otherwise, any party (the notifying party) may notify the other party (the noticed party) in writing of its request for arbitration and nominating one arbitrator. Within twenty (20) days after receipt of said notice, the noticed party shall appoint an arbitrator and notify the notifying party in

Trackage. The Terms shall terminate as to the section of Joint Trackage so abandoned upon the effective date of such approval by governmental authority.

7.4 Owner and User each shall be responsible for and shall bear labor claims, and employee protection payable to, its own respective employees (and employees of its respective affiliated companies) including any amounts that either Owner or User may be required to pay to its own respective employees pursuant to labor protective conditions imposed by the STB.

Section 8. CATASTROPHIC EXPENSE

Catastrophic expense to the Joint Trackage, such as, but not limited to, that arising from flood, earthquake or acts of God, etc., in excess of One Hundred Thousand Dollars ($100,000) for each occurrence shall be billed in addition to the GTM Rates and apportioned on the basis of the parties' GTMs operated over the Joint Trackage for the twelve (12) month period ending immediately prior to the first day of the month of occurrence.

Section 9. TERM; TERMINATION

Upon termination of the Terms, or any partial termination, as the applicable case may be, however the same may occur, User shall be released from any and all manner of obligations and shall be deemed to have forever relinquished, abandoned, surrendered and renounced any and all right possessed by User to operate over that part of the Joint Trackage to which such termination applied, and as to such part, User shall forever release and discharge Owner of and from any and all manner of obligations, claims, demands, causes of action, or suits which User might have, or which might subsequently accrue to User growing out of or in any manner connected with, directly or indirectly, the contractual obligations of Owner under the Terms; in all events provided, however, the aforesaid relinquishment, abandonment, surrender, renunciation, release and discharge by User shall not in any case affect any of the rights and obligations of either Owner or User which may have accrued, or liabilities accrued or otherwise, which may have arisen prior to such termination or partial termination. Upon any termination, Owner shall remove from Owner's right of way any connecting track, and any exclusive facility of User, at User's expense with salvage to be delivered to and retained by User. Upon any partial termination of the Terms, however the same may occur, the terms and conditions hereof shall continue and remain in full force and effect for the balance of the Joint Trackage.

Section 10. ASSIGNMENT

The Terms and any rights granted hereunder may not be assigned in whole or in part by User without the prior written consent of Owner except (i) as provided in Section 3.5, and (ii) to the purchaser of substantially all of User's rail properties. The Terms may be assigned by Owner without restriction. In the event of an authorized assignment, the Terms and the operating rights hereunder shall be binding upon the successors and assigns of the parties.

Section 11. DEFAULT

11.1 Notwithstanding the provisions of Section 3 of these General Conditions, either party hereto claiming default of any of the provisions of the Terms (including these General Conditions) shall furnish notice and written demand to the other party for performance or compliance with the covenant or condition of the Terms claimed to be in default, which notice shall specify wherein and in what respect such default is claimed to exist and shall specify the particular Section or Sections of the Terms under which such claim of default is made.

11.2 If the default shall continue for an additional period of thirty (30) days after receipt of such written notice and demand, and such default has not been remedied within said thirty (30) day period, or reasonable steps have not been nor continue to be taken to remedy a failure or default which cannot reasonably be remedied within said thirty (30) day period, and such default relates to the provisions and terms of the Terms, either party shall resort to binding arbitration provided that the arbitrator shall not have the authority to amend, modify or terminate the Terms.

11.3 Failure of a party to claim a default shall not constitute a waiver of such default. Either party hereto entitled to claim default may waive any such default, but no action by such party in waiving such default shall extend to or be taken to affect any subsequent defaults or impair the rights of either party hereto resulting therefrom.

Section 12. OTHER CONSIDERATIONS

12.1 The Terms 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.

12.2 If any covenant or provision of the Terms not material to the right of User to use the Joint Trackage shall be adjudged void, such adjudicanon 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 Terms be adjudged void, the parties shall make such other arrangements as will effect the purposes and intent of the Terms.

12.3 In the event there shall be any conflict between the provisions of these General Conditions and the Terms, the provisions of the Terms shall prevail, except that the definition of Joint Trackage set forth in Section 1.7 of these General Conditions shall prevail.

12.4 All section headings are inserted for convenience only and shall not affect any construction or interpretation of the Terms.

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12.5 Reference to any agency or other organization shall include any successor agency or organization, and reference to any index or methodology (e.g., RCAF-U, URCS, etc.), if such index or methodology ceases to exist or is no longer available, shall include any substantially similar index or methodology selected by the parties or, if the parties fail to agree on such, one determined by binding arbitration under Section 6 of these General Conditions.

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36500

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

SIMMONS R.V.S. EXHIBIT 4

HOUSTON TO BEAUMONT, TEXAS TRACKAGE RIGHTS AGREEMENT (SP-TM)

HOUSTON TO BEAUMONT, TEXAS
TRACKAGE RIGHTS AGREEMENT

THIS AGREEMENT made as of this 16th day of June, 1997, by and between SOUTHERN PACIFIC TRANSPORTATION COMPANY, a Delaware corporation (hereinafter referred to as "SP" or "Owner"), and THE TEXAS MEXICAN RAILWAY COMPANY (hereinafter referred to as "Tex Mex" or "User"). (SP and Tex Mex sometimes referred to collectively herein as "Parties").

RECITALS

A. SP owns a line of railroad consisting of track structure extending between Houston, Texas, in the vicinity of SP's Milepost 360.42 (Carr Street Connection) and Beaumont, Texas, in the vicinity of SP's Milepost 282.4, as shown by bold line on the attached print dated June 4, 1997 (and identified as Exhibit "A"), and further described in Section 1.7 of Exhibit "B", which shall be referred to herein as the "Joint Trackage".

B. Union Pacific Railroad Company, a Utah corporation, (hereinafter referred to as "UP"), owns a line of railroad extending between Houston and Beaumont, Texas, over which Tex Mex was granted rights for use of UP tracks along with trackage rights over portions of SP's lines between Beaumont, Texas and Robstown/Corpus Christi, Texas, pursuant to Terms For Texas Mexican Railway Company Trackage Rights effective September 11, 1996 (the "Terms"), between SP, Missouri Pacific Railroad Company, UP's predecessor in interest, and Tex Mex; and

C. SP desires to implement directional operations between Houston, Texas and Beaumont, Texas using its line for eastbound movements and the lines subject to the Terms, Agreement for westbound movements so that Tex Mex and SP may operate their through trains directionally between Houston and Beaumont, Texas, to reduce train delays caused by the meeting of trains; and

D. SP is agreeable to granting Tex Mex bridge trackage rights over the Joint Trackage only to facilitate such directional operations between Houston and Beaumont, Texas and only so long as SP operates directionally between Houston and Beaumont; and

E. SP and Tex Mex wish to more specifically define the terms and conditions under which said trackage rights shall be exercised.

NOW, THEREFORE, it is mutually agreed by and between the parties:

1. General Conditions:

The General Conditions set forth in Exhibit "B" attached hereto are hereby made a part of this Agreement. All capitalized terms used and not otherwise defined in this Agreement shall have the meaning ascribed to them in the General Conditions. If any conflict between the General Conditions and this Agreement shall arise, the provisions of this Agreement shall prevail.

2. Rights of Tex Mex:

(a) Subject to the terms and conditions contained herein, SP hereby grants to Tex Mex the nonexclusive right to use the Joint Trackage for the limited operation of eastbound movements of Equipment in Tex Mex's account over the Joint Trackage in common with SP, UP and such other railroad company or companies as SP has heretofore admitted or may hereafter at any time in the future admit to the joint use of all or part of the Joint Trackage (provided that such future admittance shall not materially hinder or obstruct the fair and reasonable exercise of the rights granted in this Agreement), such other railroad company or companies to hereinafter be considered SP for the purposes of this Agreement, it being understood and agreed that Tex Mex shall not have the right to:

(i) Switch industries upon the Joint Trackage;

(ii) Set out, pick up or store Equipment upon the Joint Trackage, or any part thereof, except as otherwise provided in this Sections 2.11, 2.12 and 2.13 of Exhibit B;

(iii) Serve any industry, team or house track, transload facilities, intermodal or auto facility now existing or hereafter located along the Joint Trackage;

(iv) Permit or admit any third party to the use of all or any portion of the Joint Trackage, nor, under the guise of doing its own business, contract or make any agreement to handle as its own Equipment over or upon the Joint Trackage, or any portion thereof, the Equipment of any such third party which in the normal course of business would not be considered the Equipment of Tex Mex; provided, however, that the foregoing shall not prevent Tex Mex, pursuant to a run-through agreement with any railroad, from using the locomotives and cabooses of another railroad as its own under this Agreement;

(v) Build into or out from any facility from/to the Joint Trackage; or

(vi) Connect with or interchange with any other railroad; provided, however that Tex Mex shall have the right to connect with Houston Belt & Terminal Railway Company's East Belt main line in the vicinity of Tower 87 via SP's East Yard solely for the purpose of ingressing and egressing the Joint Trackage.

(b) The rights granted in Section 2 (a) shall be for rail traffic of all kinds and commodities, both carload and intermodal, in Equipment that meets all applicable specifications established by the Association of American Railroads and the Federal Railroad Administration, provided that all freight handled by Tex Mex pursuant to such rights must have a prior or subsequent movement on Tex Mex's Laredo-Robstown-Corpus Christi Line.

(c) If Tex Mex uses the Joint Trackage, it shall be obligated to use the Houston - Beaumont rights granted by the September 11, 1996 Terms only for movements in the same direction as the directional current of flow on those lines, notwithstanding any additional rights set forth in the September 11, 1996 Terms.

3. GTM Rate:

(a) In addition to other payments to be made under this Agreement, Tex Mex shall remit to SP monthly for the use of the Joint Trackage in the operation of its Equipment therealong and thereover, the total amount of 3.84 mills per GTM for all Equipment, which sum per GTM ("GTM Rate") shall be deemed to include ordinary and programmed maintenance of the Joint Trackage, operating expenses, interest rental, depreciation and taxes.

(b) For the purpose of computing the GTM Rate under this Section 3, it is mutually agreed that the distance between the designated points of the Joint Trackage shall be determined by reference to SP's Station Pair Master File, which shall be subject to verification by Tex Mex.

(c) The GTM Rate set forth in Section 3(a) of this Agreement shall be subject to adjustment annually, commencing as of July 1, 1998, as follows:

All trackage rights charges under this Section 3 shall be subject to adjustment annually beginning as of the effective date of this Agreement to reflect seventy percent (70%) of increases or decreases in Rail Cost Adjustment Factor, not adjusted for changes in productivity ("RCAF-U") published by the STB or successor agency or other organizations. In the event the RCAF-U is no longer maintained, the parties shall select a substantially similar index and failing to agree on such an index, the matter shall be referred to binding arbitration.

4 Additions:

(a) Expenditures for any future Changes in and/or Additions to the Joint Trackage, such as, but not limited to, sidings, Centralized Traffic Control, grade separations, and future connections, shall be handled as follows: (i) if the Change in and/or Addition to the Joint Trackage is for the sole benefit of one party, that party shall be solely responsible for the entire cost and expense thereof; (ii) all other Changes in and/or Additions to the Joint Trackage shall be shared by SP and Tex Mex on the basis that the parties' respective GTM's operated over the Joint Trackage bear to total GTM's operated over the Joint Trackage for the twelve (12) month period immediately prior to the month work on the project is commenced. The use of Joint Trackage by any third party shall be attributed to SP for purposes of computing respective GTM's for purposes of this Section 4.

(b) In the event such Changes in and/or Additions to the Joint Trackage are constructed at the sole cost and expense of one party (party of the first part), the other party (party of the second part) shall be denied access to such Change in and/or Addition to the Joint Trackage. If the party of the second part at some future date shall choose to use such Changes in and/or Additions to the Joint Trackage, such right shall be granted to party of the second part by party of the first part upon payment of fifty percent (50%) of party of the first part's initial costs plus per annum interest thereon at a rate equal to the average paid on 90-day Treasury Bills of the United States Government as of the date of completion until the date of use by party of the first part commences. Per annum interest shall be adjusted annually on the first day of the twelfth (12th) month following the date of completion and every year thereafter on such date, based on the percentage increase or decrease, in the average yield of 30-year U.S. Treasury Notes for the prior year compared to their average yield in the first year of completion of the trackage. Each annual adjustment shall be subject, however, to a "cap" (up or down) of two percentage points of the prior year's interest rate (i.e. the adjustment may not exceed an amount equal to two percentage points of the immediately preceding year's interest rate).

(c) In the event Tex Mex shall have been required to participate in the cost of any Changes in and/or Additions to the Joint Trackage as set forth in the preceding paragraph of this Section 4, and SP subsequently elects to cease directional operations and terminate this Agreement as provided for in Section 9.1 of the General Conditions, SP shall reimburse Tex Mex for the unamortized portion of any Change in and/or Addition based upon a straight line amortization methodology over a 25 year period. For the purpose computing the refund, the amortization will be assumed to begin on the first date such Changes in and/or Additions to the Joint Trackage are placed in service and shall end on the effective date of termination of this Agreement. In the event SP terminates this Agreement pursuant to Section 9.1 of the General Conditions within the first year after any Change or Addition is placed in service, SP will refund to Tex Mex any payments made for such Changes in and/or Additions to the Joint Trackage.

In the event Tex Mex elects to terminate this Agreement at any time as provided for in Section 9.1 of the General Conditions, Tex Mex will not be entitled to any refund.

5. Modification of Directional Flow.

SP and Tex Mex recognize that at some time in the future it may be necessary, for operational efficiencies, for SP to modify the directional flow specified in this Agreement so that the line used for eastbound through trains may be used for westbound through trains and vise versa at the discretion of SP. Such a directional modification may be instituted upon thirty (30) days notice from SP to Tex Mex.

6. Notices:

All notices, demands, requests, submissions and other communications which are required or permitted to be given pursuant to this Agreement shall be given by either party to the other in writing and shall be deemed properly served if delivered by hand, or mailed by overnight courier or by registered or certified mail, return receipt requested, with postage prepaid, to such other party at the address listed below:

If intended for SP:

Executive Vice President-Operation
Room 1206
1416 Dodge Street
Omaha, Nebraska 68179

With a copy to:

Director Joint Facilities
Room 1200
1416 Dodge Street
Omaha, Nebraska 68179

If intended for Tex Mex:

The Texas Mexican Railway Company
1200 Washington Street
P.O. Box 419
Laredo, Texas 78042

Notice of address change may be given any time pursuant to the provisions of this Section 6.

7. Term.

This Agreement shall be effective upon execution and, unless earlier terminated as provided herein below, shall terminate on the same date that the September 11, 1996 agreement between SP, UP and Tex Mex covering trackage rights between Beaumont, Texas and Robstown/Corpus Christi, Texas terminates; provided, however, that this Agreement may be terminated upon thirty (30) days prior written notice from SP

to Tex Mex that SP will cease to operate directionally between Houston and Beaumont, Texas; and provided, further, that Tex Mex shall have the right to terminate the Agreement upon twelve (12) months prior written notice to SP. Liabilities created under this Agreement, if it becomes effective and is later terminated, shall survive such termination.

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

SOUTHERN PACIFIC TRANSPORTATION COMPANY

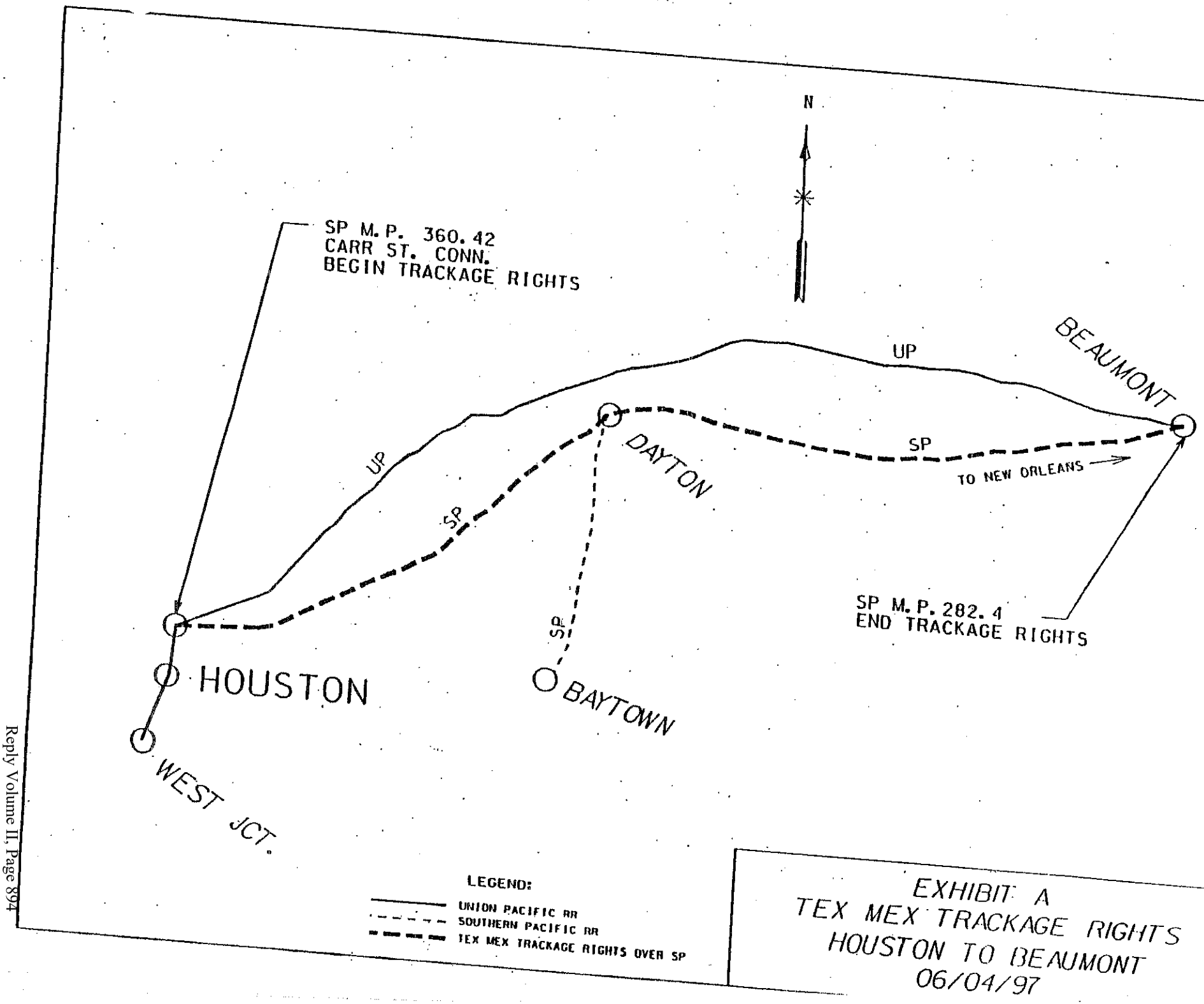
By _____

Position: Dir.-Joint Facilities

THE TEXAS MEXICAN RAILWAY COMPANY

By _____

Position: Vice President - Transportation



REDACTED PUBLIC RECORD VERSION

EXHIBIT "B"

GENERAL CONDITIONS

Section 1. DEFINITIONS

1.1 "Annual" shall mean a calendar year.

1.2 "Car" shall mean one (1) rail car; provided, however, that each platform in an articulated rail car of two (2) or more platforms shall be counted as one (1) rail car, subject to modification by mutual agreement of the parties based upon changes in railroad technology.

1.3 "Changes in and/or Additions to" shall mean work projects and retirements, the cost of which is chargeable in whole or in part to Property Accounts during the term of the Agreement.

1.4 "Equipment" shall mean trains, locomotives, rail cars (loaded or empty), intermodal units (loaded or empty), cabooses, vehicles, and machinery which are capable of being operated on railroad tracks or on right-of-way for purposes of the maintenance or repair of such railroad tracks.

1.5 "GTM" shall mean gross ton mile which is the weight in tons for Equipment and lading transported over one (1) mile of track included in the Joint Trackage.

1.6 "GTM Handled Proportion" shall mean the GTMs handled over the Joint Trackage by or for a party divided by the total number of GTMs handled by or for all parties using the Joint Trackage, during the same period. For the purpose of computing such GTM's Handled Proportion, Equipment engaged in work service pertaining to construction, maintenance or operation of the Joint Trackage or Changes in and/or Additions to the Joint Trackage shall not be counted and GTMs of third parties shall be attributed to the Owner.

1.7 "Joint Trackage" shall mean the track structure of Owner as described in this Agreement including necessary right-of-way and all appurtenances, signals, communications, and facilities of Owner and all Changes in and/or Additions to said track structure now or in the future located as are required or desirable for the operation of the Equipment of the parties hereto.

1.8 "Mill" shall mean one-tenth of a cent ($0.001 US).

1.9 "Owner" shall have the meaning given to it in the Agreement.

1.10 "Property Accounts" shall mean accounts so designated under the Uniform System of Accounts for Railroad Companies prescribed by the Interstate Commerce Commission, or any replacement of such system prescribed by the applicable federal regulatory agency, if any, and used by the parties hereto.

1.11 "STB" shall mean the Surface Transportation Board of the United States Department of Transportation or any successor agency.

1.12 "Terms" shall mean those certain Terms for Texas Mexican Railway Company Trackage Rights to which this Exhibit "B" is attached.

1.13 "User" shall have the meaning given to it in the Agreement.

Section 2. MAINTENANCE, ADDITIONS, OPERATION, AND CONTROL

2.1 Owner shall have sole charge of the maintenance and repair of the Joint Trackage with its own supervisors, labor, materials and equipment. Owner, from time to time, may make such Changes in and/or Additions to the Joint Trackage as shall be required by any law, rule, regulation or ordinance promulgated by any government body having jurisdiction, or as Owner, in its sole discretion, shall deem necessary, subject to Section 2.2. Such Changes in and/or Additions to the Joint Trackage shall become a part of the Joint Trackage or in the case of retirements shall be excluded from the Joint Trackage.

2.2 Unless otherwise mutually agreed to by the parties in writing, Owner shall, (i) keep and maintain the Joint Trackage on a consistent basis at no less than the track standard designated in the timetable in effect on the date of the Agreement, including special instructions for the Joint Trackage as of the date of the Agreement, (ii) maintain at least the physical capacity of the Joint Trackage as of the date of the Agreement (i.e., number of main tracks, support tracks, signal systems, rail weight, line clearances, etc.), and (iii) be responsible for any Changes in and/or Additions to the Joint Trackage as shall be necessary to accommodate the traffic of Owner and User while maintaining existing service standards (including transit times) in effect on the date of the Agreement. In the event that User desires that the Joint Trackage be improved to a condition in excess of the standard set forth in this Section 2.2, or desires that other Changes in and/or Additions to be made to the Joint Trackage, Owner agrees to make such Changes in and/or Additions to the Joint Trackage if funded in advance by User. Thereafter, such Changes in and/or Additions to the Joint Trackage shall become part of the Joint Trackage and shall be maintained by Owner in such improved condition.

2.3 Owner shall employ all persons necessary to construct, operate, maintain, repair and renew the Joint Trackage. Owner shall be bound to use reasonable and customary care, skill and diligence in the construction, operation, maintenance, repair and renewal of the Joint Trackage and in managing of the same. Owner shall make its best effort to ensure that User is given the same advance notice of maintenance plans and schedules as is provided to Owner's personnel.

2.4 The trackage rights granted hereunder shall give User access to and joint use of the Joint Trackage, for such use as is permitted by Section 2 of the Agreement, equal to that of Owner. The management, operation (including dispatching) and maintenance of the Joint Trackage shall, at all times, be under the exclusive direction and control of Owner, the movement of Equipment over

and along the Joint Trackage shall at all times be subject to the exclusive direction and control of Owner's authorized representatives and in accordance with such reasonable operating rules as Owner shall from time to time institute, but in the management, operation (including dispatching) and maintenance of the Joint Trackage, Owner and User shall be treated equally. User shall, at User's sole cost and expense, obtain, install and maintain necessary communication equipment to allow User's Equipment to communicate with Owner's dispatching and signaling facilities the same as Owner's trains so utilize. Owner shall consult with User prior to the adoption of new communication or signaling systems to be employed on the Joint Trackage, which have not theretofore been generally adopted in the railroad industry.

2.5 A Joint Service Committee ("Committee"), comprised of the chief transportation officers of Owner and User (or their designees) shall be established, and shall be responsible for establishing rules or standards as appropriate to ensure equitable and non-discriminatory treatment, appropriate maintenance and efficient joint use of the Joint Trackage. The Committee shall meet on a regular basis, but not less often than every three (3) months during the first year of operation under this Agreement, and thereafter when any party serves upon the other party thirty (30) days' written notice of its desire to meet to review the overall performance of Equipment on the Joint Trackage, conflicts, if any, experienced between Equipment of Owner and Equipment of User, grievances over the handling of particular Equipment or operational events, maintenance of the Joint Trackage, ways in which future conflicts may be minimized, ways of improving operations and maintenance of the Joint Trackage and such other relevant matters as the Committee may decide to consider. The Committee may issue standards or rules to prevent unnecessary interference or impairment of use of the Joint Trackage by either party or otherwise ensure fair and equal treatment as between Owner and User. Either party may request a special meeting of the Committee on reasonable notice to the other. Informal telephonic conferences shall be held by the Committee where appropriate to address immediate concerns of either party. It is expected that the work on the Committee shall be undertaken in a spirit of mutual cooperation consistent with the principles expressed in the Agreement.

2.6 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 caused by or resulting solely from such interruption or delay.

2.7 Owner may from time to time provide any track or tracks on the Joint Trackage other than those delineated in Exhibit A to the Agreement for use by User provided there shall at all times be afforded User a continuous route of equal utility and quality for the operations of its Equipment between the termini of the Joint Trackage. When such tracks which are not part of the Joint Trackage are used as provided herein, the Agreement shall govern for purposes of direction and control and liability as if all movement had been made over the Joint Trackage.

2.8 Each party shall be responsible for furnishing, at its sole cost and expense, all labor, fuel and train and other supplies necessary for the operation of its own Equipment over the Joint Trackage. In the event a party does furnish such labor, fuel or train and other supplies to another

party, the party receiving the same shall promptly, upon receipt of billing therefor, reimburse the party furnishing the same for its reasonable costs thereof, including customary additives.

2.9 User shall be responsible for the reporting and payment of any mileage, per diem, use or rental charges accruing on Equipment in User's account 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.

2.10 Except as otherwise may be provided in the Agreement, User shall operate its Equipment over the Joint Trackage with its own employees, but before said employees are assigned or permitted to operate Equipment over the Joint Trackage as herein provided, and from time to time thereafter as and when reasonably requested by Owner, they shall be required to pass the applicable rules examinations required by Owner of its own employees. Owner shall delegate to specified User's officers the conduct of such examinations in the event User chooses to conduct such examinations. If an Owner officer conducts such examinations of employees of User, User shall pay Owner a reasonable fee for each employee so examined, such fee to be mutually agreed upon by the parties from time to time in a separate agreement. Notwithstanding any such examination, User shall be responsible for ensuring that its employees are qualified and have taken all such rules examinations. Upon request of User, Owner shall qualify one or more of User's supervisory officers as pilots and such supervisory officer or officers so qualified shall qualify employees of User engaged in or connected with User's operations on or along the Joint Trackage. At User's request, Owner shall furnish a pilot or pilots, at the expense of User, to assist in operating trains of User over the Joint Trackage.

2.11 If any employee of User shall neglect, refuse or fail to abide by Owner's rules, instructions and restrictions governing the operation on or along the Joint Trackage, such employee shall, upon written request of Owner, be suspended by User from working on the Joint Trackage unless and until requalified to return to work and approved to do so by Owner. 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 the parties concerned shall participate and bear the expense for their respective officers, counsel, witnesses and employees. Notice of such investigations to User's employees shall be given by User's officers, and such investigation shall be conducted in accordance with the 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 by 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 arising from such withdrawal.

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 disciplinary action.

2.12 If any Equipment of User is bad ordered enroute on the Joint Trackage and (i) it is necessary that it be set out, and (ii) only light repairs to the Equipment are required, such bad ordered Equipment shall be promptly repaired, and, thereafter, be promptly removed from the Joint Trackage by User. Owner may, upon request of User and at User's sole cost and 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 enroute to or returning to Owner's terminal from such an assignment shall be considered Sole Employees (as hereinafter defined) of User and Sole Property (as hereinafter defined) of User. However, should Owner's employees after repairing such bad ordered 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 ("AAR"), hereinafter called "Interchange Rules", in effect on the date of performance of the repairs. Owner shall then prepare and submit billing directly to and collect from the car owner for car owner responsibility items as determined under said Interchange Rules, and Owner shall prepare and submit billing directly to and collect from User for handling line responsibility items as determined under said Interchange Rules. Owner also shall submit billing to and collect from User any charges for repair to freight cars that are User's car owner responsibility items as determined under said Interchange Rules, should said car owner refuse or otherwise fail to make payment therefor. Repairs to locomotives shall be billed as provided for in Section 3 of these General Conditions.

2.13 If Equipment of User shall become derailed, wrecked, or otherwise disabled while upon the Joint Trackage, it shall be rerailed or cleared by Owner, except that employees of User may rerail User's derailed Equipment on the Joint Trackage whenever use of motorized on or off track equipment is not required; however, in any such case, employees of User shall consult with and be governed by the directions of Owner. Owner reserves the right to rerail Equipment of User when, in the judgment of Owner, Owner deems it advisable to do so to minimize delays and interruptions to train movement. The reasonable costs and expenses of rerailing or clearing derailed, wrecked or disabled Equipment shall be borne by the parties in accordance with Section 5 of these General Conditions. Services provided under this section shall be billed in accordance with Section 3 of these General Conditions.

2.14 In the event Equipment of User shall be forced to stop on the 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 (other than bad ordered Equipment subject to light repairs pursuant to Section 2.11), or to any other cause not resulting from an accident or derailment (including the failure of User to promptly repair and clear bad ordered Equipment pursuant to Section 2.11), 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, disabled 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 recrew 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 reasonable costs and expenses of rendering such assistance shall be borne by User. Services provided under this section shall be billed in accordance with Section 3 of these General Conditions.

2.15 User shall pay to Owner reasonable expenses incurred by Owner in the issuance of timetables made necessary solely by changes in the running time of the trains of User over the Joint Trackage. If changes in running time of trains of Owner or third parties, as well as those of User, require the issuance of timetables, then User shall pay to Owner that proportion of the expenses incurred that one bears to the total number of parties changing the running time of their trains. If changes in running time of trains of Owner or third parties, but not those of User, require the issuance of timetables, then User shall not be required to pay a proportion of the expenses incurred in connection therewith.

2.16 User, at Owner's request, shall be responsible for reporting to Owner the statistical data called for in the Agreement, which may include, but is not limited to, the number and type of Equipment and GTMs operated on the Joint Trackage.

Section 3. BILLING

3.1 Billing shall be accomplished on the basis of data contained in a billing form mutually agreed to between the parties. Such billing forms shall contain sufficient detail to permit computation of payments to be made hereunder. Billing shall be prepared according to the rules, additives, and equipment rental rates as published by the 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 in writing, all the compensation and charges of every name and nature which in and by the Agreement User is required to pay in lawful money of the United States within sixty (60) days after the rendition of bills therefor. Bills shall contain a statement of the amount due on account of the expenses incurred, properties and facilities provided 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, but shall be paid subject to subsequent adjustment; provided, 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 and 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 is established. This provision shall not limit the retroactive adjustment of billing made pursuant to exception taken to original accounting by or under authority of the STB or 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 any applicable laws or regulations.

3.4 Should any payment become payable by Owner to User under the Agreement, the provisions of Sections 3.1 and 3.2 of these General Conditions shall apply with User as the billing party and Owner as the paying party.

3.5 Either party hereto may assign any receivables due it under the Agreement; provided, however, that such assignments shall not relieve the assignor of any rights or obligations under the Agreement.

Section 4. COMPLIANCE WITH LAWS

4.1 With respect to operation of Equipment on the Joint Trackage, each party shall comply with all applicable federal, state and local laws, rules, regulations, orders, decisions and ordinances ("Standards"), and if any failure on the part of any party to so comply shall result in a fine, penalty, cost or charge being imposed or assessed on or against another party, such other party shall give prompt notice to the failing party and the failing party shall promptly reimburse and indemnify the other party for such fine, penalty, cost or charge and all expenses and reasonable attorneys' fees incurred in connection therewith, and shall upon request of the other party defend such action free of cost, charge and expense to the other party.

4.2 User agrees to comply fully with all applicable Standards concerning "hazardous waste" and "hazardous substances" ("Hazardous Materials"). Except with Owner's prior consent, User covenants that it shall not treat or dispose of Hazardous Materials on the Joint Trackage. User further agrees to furnish Owner (if requested) with proof, satisfactory to Owner, that User is in such compliance.

In the event any accident, bad ordered Equipment, derailment, vandalism or wreck (for purposes of this Section 4.2 and Section 4.3 hereinafter called collectively "Derailment") involving Equipment of or a train operated by User carrying 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.

In the event of a Derailment, Owner shall assume responsibility for cleaning up any release of Hazardous Materials from User's Equipment 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 5 of these General Conditions.

If a Hazardous Materials release caused by a derailment involving Equipment of User, or on a train operated by User, results in contamination of real property or water on the Joint Trackage or on real property or water adjacent to the Joint Trackage (whether such real property or water is owned by Owner or a third party), Owner shall assume responsibility for emergency cleanup conducted to prevent further damage. User shall be responsible for performing cleanup efforts thereafter. Any costs associated with cleaning up real property or water on or adjacent to the Joint Trackage contaminated by Hazardous Materials shall be borne in accordance with Section 5 of these General Conditions.

If Hazardous Materials must be transferred to undamaged Equipment or trucks as a result of a release caused by a derailment involving Equipment of User, or on a train operated by User, User shall perform the transfer; PROVIDED, HOWEVER, that if the Hazardous Materials are in damaged Equipment that is blocking the Joint Trackage, Owner, at its option, may transfer the Hazardous Materials with any costs associated with such transfer borne in accordance with Section 5 of these General Conditions. Transfers of Hazardous Materials by User shall only be conducted after being authorized by Owner.

4.3 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 5 of these General Conditions.

4.4 In the event of release of Hazardous Materials caused by faulty Equipment or third parties, cleanup will be conducted as stated in Sections 4.2 and 4.3 of these General Conditions.

Section 5. LIABILITY

5.1 General. The provisions of this Section 5 shall apply only as between the parties hereto and are solely for their benefit. Nothing herein is intended to be for the benefit of any person or entity other than the parties hereto. It is the explicit intention of the parties hereto that no person or entity other than the parties hereto is or shall be entitled to bring any action to enforce any provision hereof against any of the partes hereto, and the assumptions, indemnities, covenants, undertakings and agreements set forth herein shall be solely for the benefit of, and shall be enforceable only by, the parties hereto. Notwithstanding anything contained in this Section 5, no provisions hereof shall be deemed to deprive Owner or User of the right to enforce or shall otherwise restrict any remedies to which they would otherwise be entitled under other provisions of the Agreement as a result of the other party's failure to perform or observe any other obligation or duty created by the Agreement. The provisions of this Section 5 shall apply as between the parties hereto irrespective of the terms of any other agreements between the parties hereto and other railroads using

the Joint Trackage, and the allocation of liabilities provided for herein shall control as between the parties hereto.

5.2 Definitions and Covenants. The parties agree that for the purposes of this Section 5:

(a) The term "Employee(s)" of a party shall mean all officers, agents, employees and contractors of that party. Such Employees shall be treated either as "Sole Employees" or "Joint Employees", as hereinafter specified;

(b) "Sole Employees" and "Sole Property" shall mean one or more Employees, Equipment, tools and other equipment and machinery while engaged in, en route to or from, or otherwise on duty incident to performing service for the exclusive benefit of one party. Pilots furnished by Owner to assist in operating Equipment of User shall be considered the Sole Employees of User while engaged in such operations. Equipment shall be deemed to be the Sole Property of the party receiving the same at such time as deemed interchanged under AAR rules or applicable interchange agreements, or when such party is responsible for the car hire or per diem for the Equipment under agreement between the parties;

(c) "Joint Employee" shall mean one or more Employees while engaged in maintaining, repairing, constructing, renewing, removing, inspecting or managing the Joint Trackage or making Changes in and/or Additions to the Joint Trackage for the benefit of both of the parties hereto, or while preparing to engage in, en route to or from, or otherwise on duty incident to performing such service for the benefit of both parties;

(d) "Joint Property" shall mean the Joint Trackage and all appurtenances thereto, and all Equipment, tools and other equipment and machinery while engaged in maintaining, repairing, constructing, renewing, removing, inspecting, managing or making Changes in and/or Additions to the Joint Trackage for the benefit of both of the parties hereto, or while being prepared to engage in, en route to or from, or otherwise incident to performing such service;

(e) "Loss and/or Damage" shall mean injury to or death of any person, including Employees of the parties hereto, and loss or damage to any property, including property of the partes hereto and property being transported by the parties, which arises out of an incident occurring on, the Joint Trackage and shall include liability for any and all claims, suits, demands, judgments and damages resulting from or arising out of such injury, death, loss or damage, except liability for punitive and exemplary damages. Loss and/or Damage shall include all costs and expenses incidental to any claims, suits, demands and judgments, including attorneys' fees, court costs and other costs of investigation and litigation. Loss and/or Damage shall further include the expense of clearing wrecked or derailed Equipment and the costs of environmental protection, mitigation or clean up necessitated by such wreck or derailment and shall include any liabilities for any third-party claims for personal injury

or death, property damage, natural resource damage, or any penalties, judgments or fines associated with a release of any contaminants resulting from such wreck or derailment;

(f) Operating Employees of Owner whose service may be jointly used by the parties hereto for the movement of trains over the Joint Trackage, including, but not limited to, train dispatchers, train order operators, operator clerks and watchmen shall at the time of performing their services be deemed to be Sole Employees of the party hereto for whose benefit said services may be separately rendered (during the time they are so separately rendered) and be deemed to be Joint Employees of the parties hereto at such time as their services may be rendered for the parties' joint benefit;

(g) All Employees, Equipment, tools and other equipment and machinery other than as described in (b), (c), (d) or (f) above or in Section 5.4. shall be deemed the Sole Employees of the employing party and the Sole Property of the using party;

(h) Any railroad not a party to the Agreement heretofore or hereafter admitted to the use of any portion of the Joint Trackage, shall, as between the parties hereto, be regarded in the same light as a third party. Without limiting the generality of the foregoing, neither of the parties hereto assumes any responsibility to the other under the provisions of the Agreement for any Loss and/or Damage occasioned by the acts or omissions of any employees of any such other railroad, or for any Loss and/or Damage which such other railroad shall be obligated to assume in whole or in part pursuant to law or any agreement relating to such other railroad's use of any portion of the Joint Trackage;

(i) For the purpose of this Section 5, Equipment of foreign lines being detoured over the Joint Trackage, and all persons other than Joint Employees engaged in moving such Equipment, shall be considered the Equipment and Employees of the party hereto under whose detour agreement or other auspices such movement is being made.

5.3 Reimbursement and Defense. The parties agree that:

(a) Each party hereto shall pay promptly Loss and/or Damage for which such party shall be liable under the provisions of this Section 5, and shall indemnify the other party against such Loss and/or Damage, including reasonable attorneys' fees and costs. If any suit or suits shall be brought against either of the parties hereto and any judgment or judgment shall be recovered which said party is compelled to pay, and the other party shall under the provisions of the Agreement be solely liable therefor, then the party which is so liable shall promptly repay on demand to the other party paying the same any monies which it may have been required to pay, whether in the way of Loss and/or Damage, costs, fees or other expenses; and if the Loss and/or Damage in such case or cases is joint or allocated between the parties to the Agreement, the party defendant paying the same or any costs, fees or other

expenses shall be reimbursed by the other party as allocated pursuant to the Agreement;

(b) Each party covenants and agrees with the other party that it will pay for all Loss and/or Damage, both as to persons and property, and related costs which it has herein assumed, or agreed to pay, the judgment of any court in a suit by third party or parties to the contrary notwithstanding, and will forever indemnify and save harmless the other party, its successors and assigns, from and against all liability and claims therefor, or by reason thereof, and will pay, satisfy and discharge all judgments that may be rendered by reason thereof, and all costs, charges and expenses incident thereto;

(c) Each party hereto shall have the sole right to settle, or cause to be settled for it, all claims for Loss and/or Damage for which such party shall be solely liable under the provisions of this Section 5, and the sole right to defend or cause to be defended all suits for the recovery of any such Loss and/or Damage for which such party shall be solely liable under the provisions of this Section 5;

(d) User shall provide written notice to Owner of any accidents or events resulting in Loss and/or Damage within seven (7) days of its discovery or receipt of notification of such occurrence;

(e) In the event both parties hereto may be liable for any Loss and/or Damage under the provisions of this Section 5 ("Co-Liable"), and the same shall be settled by a voluntary payment of money or other valuable consideration by one of the parties Co-Liable therefor, release from liability shall be taken to and in the name of all the parties so liable; however, no such settlement in excess of the sum of One Hundred Thousand Dollars ($100,000) shall be made by or for any party Co-Liable therefor without the written consent of the other parties so liable, but any settlement made by any party in consideration of One Hundred Thousand Dollars ($100,000) or a lesser sum shall be binding upon the other parties and allocated in accordance with Section 5.5; and no party shall unreasonably withhold its consent to a settlement proposed by the other party; provided, however, that failure by a party to secure consent from the other shall not release such other party to the extent the party who failed to obtain such consent demonstrates that the other party was not prejudiced by such failure.

(f) In case a claim or suit shall be commenced against any party hereto for or on account of Loss and/or Damage for which another party hereto is or may be solely liable or Co-Liable under the provisions of this Section 5, the party against whom such claim or suit is commenced shall give to such other party prompt notice in writing of the pendency of such claim or suit, and thereupon such other party shall assume or join in the defense of such claim or suit as follows: If the claim or suit

involves Loss and/or Damage to the Sole Employees or Sole Property of a party or its invitee or property in its care, custody or control, that party shall assume and control the investigation and defense of such claim or suit; if the claim or suit involves Loss and/or Damage to third parties, Joint Employees or the Joint Trackage, the party whose Sole Employees or Equipment were involved in the incident shall investigate and defend such claim or suit; and if such claim or suit involves Loss and/or Damage to third parties, Joint Employees or the Joint Trackage and neither or both party's Equipment and Sole Employees were involved in the incident, Owner shall investigate and defend such claim or suit; provided that the other party also may participate in the defense of any of the foregoing if it may have liability as a result of such incident;

(g) No party hereto shall be conclusively bound by any judgments against the other party, unless the former party shall have had reasonable notice requiring or permitting it to investigate and defend and reasonable opportunity to make such defense. When such notice and opportunity shall have been given, the party so notified and the other party shall be conclusively bound by the judgment as to all matters which could have been litigated in such suit, including without limitation a determination of the relative or comparative fault of each.

5.4 Wrecks and Derailment. The cost and expense of repairing bad ordered Equipment, clearing wrecks or otherwise disabled Equipment or rerailing Equipment (and the costs of repair or renewal of damaged Joint Trackage or adjacent properties) shall be borne by the party whose Equipment was wrecked, disabled, or derailed or caused such damage. All Employees or Equipment, while engaged in, en route to or from, or otherwise incident to operating wrecker or work trains clearing wrecks, disabled Equipment or Derailments or engaged in repair or renewal of the Joint Trackage subsequent to any such wreck, disability or Derailment, shall be deemed to be Sole Employees and/or Sole Property of the party whose Equipment was wrecked, disabled or derailed. However, such Employees or Equipment, while en route from performing such clearing of wrecks, disabled Equipment or Derailments or repairing or renewing the Joint Trackage to perform another type of service, shall not be deemed to be performing service incident to the instant wreck, disability or Derailment.

5.5 Allocation.

(a) Each party shall bear all costs of Loss and/or Damage to its Sole Employees or its Sole Property, or property in its care, custody or control or its invitees without regard to which party was at fault.

(b) Loss and/or Damage to third parties (i.e., any person or entity other than a party hereto, a Sole Employee of either party, a Joint Employee or an invitee of either party) or their property, to Joint Employees or their property or to Joint Property shall be borne by the parties hereto as follows:

(i) If the Loss and/or Damage is attributable to the acts or omissions of only one party hereto, that party shall bear and pay all of such Loss and/or Damage.

(ii) If such Loss and/or Damage is attributable to the acts or omissions of more than one party hereto, such Loss and/or Damage shall be borne and paid by those parties in accordance with a comparative negligence standard, whereby each such party shall bear and pay a portion of the Loss and/or Damage equal to the degree of causative fault or percentage of responsibility for the Loss and/or Damage attributable to that party without regard to laws limiting recovery if one party is more than fifty percent (50%) at fault.

(iii) Loss and/or Damage to third parties or Joint Employees occurring in such a way that it cannot be determined how such Loss and/or Damage came about shall be apportioned between Owner, User and any other party(ies) authorized to use the Joint Trackage as a trackage rights tenant, on a usage basis considering each party's gross ton miles over the Joint Trackage for the preceding twelve (12) months or, if such Loss and/or Damage occurs during the first twelve (12) months following the effective date of the Agreement, the usage of each party between the occurrence of such Loss and/or Damage and the effective date of the Agreement, provided that, without limitation, User shall not bear or incur any liability for claims, suits, demands, judgments, losses or damages resulting from environmental contamination of or hazardous material on or released from the Joint Trackage, except contamination or a release of hazardous materials from User's own Equipment or caused by or arising from the actions or omissions of User or User's Employees, and then only in accordance with the other provisions hereof.

(c) The parties agree that the characterization herein of certain Employees as "Sole Employees" or "Joint Employees" is only for the purpose of allocating Loss and/or Damage suffered by those Employees. Except as specified in subsection (a) of this Section 5.5. (which provides for the allocation of certain Loss and/or Damage between the parties without regard to fault), no party shall be liable for the acts or omissions (negligent or otherwise) of any other party's Employee.

5.6 OWNER AND USER EXPRESSLY INTEND THAT WHERE ONE PARTY IS TO INDEMNIFY THE OTHER PURSUANT TO THE TERMS, SUCH INDEMNITY SHALL INCLUDE (1) INDEMNITY FOR THE NEGLIGENCE OR ALLEGED NEGLIGENCE, WHETHER ACTIVE OR PASSIVE, OF THE INDEMNIFIED PARTY WHERE THAT NEGLIGENCE IS A CAUSE OF THE LOSS OR DAMAGE; (2) INDEMNITY FOR STRICT

LIABILITY OF THE INDEMNIFIED PARTY RESULTING FROM A VIOLATION OR ALLEGED VIOLATION OF ANY FEDERAL, STATE OR LOCAL LAW OR REGULATION BY THE INDEMNIFIED PARTY, INCLUDING BUT NOT LIMITED TO THE FEDERAL EMPLOYERS LIABILITY ACT ("FELA"), THE SAFETY APPLIANCE ACT, THE BOILER INSPECTION ACT, THE OCCUPATIONAL SAFETY AND HEALTH ACT ("OSHA"), THE RESOURCE CONSERVATION AND RECOVERY ACT ("RCRA"), THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT ("CERCLA"), THE CLEAN WATER ACT ("CWA"), THE OIL POLLUTION ACT ("OPA"), AND ANY SIMILAR STATE STATUTE IMPOSING OR IMPLEMENTING SIMILAR STANDARDS; AND (3) INDEMNITY FOR ACTS OR ALLEGED ACTS OF GROSS NEGLIGENCE OF THE INDEMNIFIED PARTY, OR OTHER CONDUCT ON THE PART OF THE INDEMNIFIED PARTY FOR WHICH PUNITIVE DAMAGES MIGHT BE SOUGHT.

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, such question or controversy shall be submitted to and settled by arbitration. Unless other procedures are agreed to by the parties, arbitration between the parties pursuant to this Section 6 shall be governed by the rules and procedures set forth in this Section 6.

6.2 If the parties to the dispute are able to agree upon a single competent and disinterested arbitrator within twenty (20) days after written notice by one party of its desire for arbitration to the other party, then the question or controversy shall be submitted to and settled by that single arbitrator. Otherwise, any party (the notifying party) may notify the other party (the noticed party) in writing of its request for arbitration and nominating one arbitrator. Within twenty (20) days after receipt of said notice, the noticed party shall appoint an arbitrator and notify the notifying party in writing of such appointment. Should the noticed party fail within twenty (20) days after receipt of such notice to name its arbitrator, said arbitrator may be appointed by the Chief Judge (or acting Chief Judge) of the United States District Court for the District of Columbia upon application by either party after ten (10) days' written notice to the other party. The two arbitrators so chosen shall select one additional arbitrator to complete the board. If the arbitrators so chosen fail to agree upon an additional arbitrator, the same shall, upon application of a party, be appointed by said judge in the manner heretofore stated.

6.3 Upon selection of the arbitrator(s), said arbitrator(s) shall, with reasonable diligence, determine the questions as disclosed in said notice of arbitration, shall give both parties reasonable notice of the time and place (of which the arbitrator(s) shall be the judge) of hearing evidence and argument, may take such evidence as the arbitrator(s) shall deem reasonable or as either party may submit with witnesses required to be sworn, and hear arguments of counsel or others. If an arbitrator declines or fails to act, the party (or parties in the case of a single arbitrator) by whom the arbitrator was chosen or said judge shall appoint another to act in the arbitrator's place.

6.4 After considering all evidence, testimony and arguments, said single arbitrator or the majority of said board of arbitrators shall promptly state such decision or award and the reasoning for such decision or award in writing which shall be final, binding, and conclusive on all parties to the arbitration when delivered to them. The award rendered by the arbitrator(s) may be entered as a judgment in any court having jurisdiction thereof and enforced as between the parties without further evidentiary proceeding, the same as entered by the court at the conclusion of a judicial proceeding in which no appeal was taken. 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.

6.5 Each party to the arbitration shall pay all 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, cost, and expenses of the single arbitrator or the additional arbitrator in the board of arbitrators shall be paid in equal shares by all partes to the arbitration.

6.6 The parties may obtain discovery and offer evidence in accordance with the Federal Rules of Civil Procedure Rules 26 - 37, and Federal Rules of Evidence, as each may be amended from time to time.

6.7 Interest computed annually, at a rate equal to the Prime Rate plus two (2) percentage points, shall be applied to any and all arbitrator's awards requiring the payment of money and shall be calculated from thirty (30) days following the date of the applicable arbitration decision. The term "Prime Rate" shall mean the minimum commercial lending rate charged by banks to their most credit-worthy customers for short-term loans, as published daily in the Wall Street Journal.

Section 7. GOVERNMENTAL APPROVAL AND ABANDONMENT

7.1 Owner and User shall, at their respective cost and expense, initiate by appropriate application or petition and thereafter diligently prosecute proceedings for the procurement of all necessary consent, approval or authority from any governmental agency for the sanction of the Agreement and the operations to be carried on or conducted by User thereunder. User and Owner agree to cooperate fully to procure all such necessary consent, approval or authority.

7.2 In the event Owner shall be involuntarily dispossessed, including by threat of condemnation by competent public authority, of the right to operate upon and maintain any portion of its Joint Trackage and Owner fails or declines to replace said Joint Trackage, Owner shall have no obligation hereunder to provide tracks in replacement of such Joint Trackage for User's use, and User shall have and shall make no claim of any kind, legal or otherwise, against Owner for failure to provide such Joint Trackage for User's use.

7.3 To the extent that Owner may lawfully do so, Owner reserves to itself the exclusive right, exercisable at any time during the life of the Agreement without concurrence of User, to elect to abandon all or any part of the Joint Trackage by giving six (6) months' prior written notice to User of its intention so to do ("Notice of Abandonment").

Owner shall, concurrent with its Notice of Abandonment, if legally able to do so, give to User the option to purchase the part or parts of the Joint Trackage thereof to be abandoned at the Net Liquidation Value thereof, on the date of said notice; provided, however, it is understood that Burlington Northern Railroad Company and The Atchison, Topeka & Santa Fe Railway Company (collectively, "BNSF") shall be given an option upon the Agreement set forth in this Section 7.3, prior to that given User, to purchase the Placedo, Texas to Robstown, Texas segment of the Joint Trackage, subject to User's trackage rights, if BNSF is operating over that segment at the time of its proposed abandonment.

7.4 Owner and User each shall be responsible for and shall bear labor claims, and employee protection payable to, its own respective employees (and employees of its respective affiliated companies) including any amounts that either Owner or User may be required to pay to its own respective employees pursuant to labor protective conditions imposed by the STB.

Section 8. CATASTROPHIC EXPENSE

Catastrophic expense to the Joint Trackage, such as, but not limited to, that arising from flood, earthquake or acts of God, etc., in excess of One Hundred Thousand Dollars ($100,000) for each occurrence shall be billed in addition to the GTM Rates and apportioned on the basis of the parties' GTMs operated over the Joint Trackage for the twelve (12) month period ending immediately prior to the first day of the month of occurrence.

Section 9. TERM

Upon termination of the Agreement, or any partial termination, as the applicable case may be, however the same may occur, User shall be released from any and all manner of obligations and shall be deemed to have forever relinquished, abandoned, surrendered and renounced any and all right possessed by User to operate over that part of the Joint Trackage to which such termination applied, and as to such part, User shall forever release and discharge Owner of and from any and all manner of obligations, claims, demands, causes of action, or suits which User might have, or which might subsequently accrue to User growing out of or in any manner connected with, directly or indirectly, the contractual obligations of Owner under the Agreement, in all events provided, however, the aforesaid relinquishment, abandonment, surrender, renunciation, release and discharge by User shall not in any case affect any of the rights and obligations of either Owner or User which may have accrued, or liabilities accrued or otherwise, which may have arisen prior to such termination or partial termination. Upon any termination, Owner shall remove from Owner's right of way any connecting track, and any exclusive facility of User, at User's expense with salvage to be delivered to and retained by User. Upon any partial termination of the Agreement, however the

same may occur, the terms and conditions hereof shall continue and remain in full force and effect for the balance of the Joint Trackage.

Section 10. ASSIGNMENT

The Agreement and any rights granted hereunder may not be assigned in whole or in part by User without the prior written consent of Owner except (i) as provided in Section 3.5, and (ii) to the purchaser of substantially all of User's rail properties. The Agreement may be assigned by Owner without restriction. In the event of an authorized assignment, the Agreement and the operating rights hereunder shall be binding upon the successors and assigns of the parties.

Section 11. DEFAULT

11.1 Notwithstanding the provisions of Section 3 of these General Conditions, either party hereto claiming default of any of the provisions of the Agreement (including these General Conditions) shall furnish notice and written demand to the other party for performance or compliance with the covenant or condition of the Agreement claimed to be in default, which notice shall specify wherein and in what respect such default is claimed to exist and shall specify the particular Section or Sections of the Agreement under which such claim of default is made.

11.2 If the default shall continue for an additional period of thirty (30) days after receipt of such written notice and demand, and such default has not been remedied within said thirty (30) day period, or reasonable steps have not been nor continue to be taken to remedy a failure or default which cannot reasonably be remedied within said thirty (30) day period, and such default relates to the provisions and terms of the Agreement, either party shall resort to binding arbitration provided that the arbitrator shall not have the authority to amend, modify or terminate the Agreement.

11.3 Failure of a party to claim a default shall not constitute a waiver of such default. Either party hereto entitled to claim default may waive any such default, but no action by such party in waiving such default shall extend to or be taken to effect any subsequent defaults or impair the rights of either party hereto resulting therefrom.

Section 12. OTHER CONSIDERATIONS

12.1 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.

12.2 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 shall make such other arrangements as will effect the purposes and intent of the Agreement.

12.3 In the event there shall be any conflict between the provisions of these General Conditions and the Agreement, the provisions of the Agreement shall prevail, except that the definition of Joint Trackage set forth in Section 1.7 of these General Conditions shall prevail.

12.4 All section headings are inserted for convenience only and shall not affect any construction or interpretation of the Agreement.

12.5 Reference to any agency or other organization shall include any successor agency or organization, and reference to any index or methodology (e.g., RCAF-U, URCS, etc.), if such index or methodology ceases to exist or is no longer available, shall include any substantially similar index or methodology selected by the parties or, if the parties fail to agree on such, one determined by binding arbitration under Section 6 of these General Conditions.

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36500

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

SIMMONS R.V.S. EXHIBIT 5

EXCERPTS FROM UP-BNSF RESTATED AND AMENDED SETTLEMENT AGREEMENT, MARCH 2001

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760 204871

UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY
AND MISSOURI PACIFIC RAILROAD COMPANY

– CONTROL AND MERGER –

SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN PACIFIC
TRANSPORTATION COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY
COMPANY, SPCSL CORP. AND THE DENVER AND
RIO GRANDE WESTERN RAILROAD COMPANY

Finance Docket No. 32760 (Sub-No. 21) 204872

UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY
AND MISSOURI PACIFIC RAILROAD COMPANY

– CONTROL AND MERGER –

SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN PACIFIC
TRANSPORTATION COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY
COMPANY, SPCSL CORP. AND THE DENVER AND
RIO GRANDE WESTERN RAILROAD COMPANY – OVERSIGHT

JOINT SUBMISSION OF RESTATED AND AMENDED
BNSF SETTLEMENT AGREEMENT

ENTERED
Office of the Secretary
MAR 04 2002
Part of
Public Record

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March 1, 2002

UP/SP-393

BNSF-100

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY
AND MISSOURI PACIFIC RAILROAD COMPANY

– CONTROL AND MERGER –

SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN PACIFIC
TRANSPORTATION COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY
COMPANY, SPCSL CORP. AND THE DENVER AND
RIO GRANDE WESTERN RAILROAD COMPANY

Finance Docket No. 32760 (Sub-No. 21)

UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY
AND MISSOURI PACIFIC RAILROAD COMPANY

– CONTROL AND MERGER –

SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN PACIFIC
TRANSPORTATION COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY
COMPANY, SPCSL CORP. AND THE DENVER AND
RIO GRANDE WESTERN RAILROAD COMPANY – OVERSIGHT

**JOINT SUBMISSION OF RESTATED AND AMENDED
BNSF SETTLEMENT AGREEMENT**

The Burlington Northern and Santa Fe Railway Company ("BNSF") and Union Pacific Railroad Company ("UP") submit the attached Restated and Amended BNSF Settlement Agreement pursuant to the Board's order in General Oversight Decision No. 21, served December 20, 2001. Also attached is a red-lined version of the Restated and Amended BNSF

Settlement Agreement that identifies the changes from the version of the Restated and Amended BNSF Settlement Agreement submitted by the parties on July 25, 2001.

Respectfully submitted,

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March 1, 2002

03/01/02

RESTATED AND AMENDED AGREEMENT

This Restated and Amended Agreement ("Agreement") is entered into this ___ day of March, 2002, between UNION PACIFIC RAILROAD COMPANY ("UP"), a Delaware corporation, and THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY ("BNSF"), a Delaware corporation.

WITNESSETH:

WHEREAS, UP and BNSF entered into an agreement dated September 25, 1995, as amended by supplemental agreements dated November 18, 1995, and June 27, 1996 (collectively, the "1995 Agreement"), in connection with UP's acquisition of Southern Pacific Rail Corporation and its affiliates ("SP") in Finance Docket No. 32760, Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company -- Control and Merger -- Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company;

WHEREAS, the Surface Transportation Board ("STB") approved the common control and merger of UP and SP in Decision No. 44 in Finance Docket No. 32760 (served August 12, 1996) and in so doing imposed certain conditions on UP and SP, including, as modified by the STB, the April 18, 1996 settlement agreement among UP, BNSF and the Chemical Manufacturers Association (the "CMA Agreement");

WHEREAS, as a part of its oversight of the UP/SP merger in Finance Docket Nos. 32760, 32760 (Sub-No. 21), and 32760 (Sub-No. 26), the STB has modified and clarified certain of the conditions it imposed in Decision No. 44;

WHEREAS, UP and BNSF entered into a Term Sheet Agreement dated February 12, 1998 (the "Term Sheet Agreement"), pursuant to which UP and BNSF agreed to the joint ownership of the line of railroad between Dawes, TX and Avondale, LA, which joint ownership was effected by separate agreement dated September 1, 2000 (the "TX-LA Line Sale Agreement");

WHEREAS, UP and BNSF have reached agreement with respect to the implementation of the conditions imposed by the STB on the UP/SP merger, as modified and clarified, and certain other matters relating to their rights and obligations under the 1995 Agreement, the CMA Agreement, the Term Sheet Agreement and the TX-LA Line Sale Agreement; and

WHEREAS, UP and BNSF now wish to amend and restate the 1995 Agreement to incorporate the conditions imposed by the STB on the UP/SP merger (including the CMA Agreement, as modified by the STB) and the agreements they have reached relating to those conditions and other related matters.

NOW, THEREFORE, the parties agree to amend and restate the 1995 Agreement as follows:

DEFINITIONS

For purposes of this Agreement, the following definitions and terms shall apply:

Shipper Facilities shall mean all existing or new shipper or receiver facilities, including transload facilities as well as rail car storage and car service and repair facilities not owned, leased or operated by UP.

"2-to-1" Points shall mean all geographic locations at which at least one "2-to-1" Shipper Facility is located. Such points include, without limitation, the points listed in Section 8(i) of and on Exhibit A to this Agreement. The boundaries for such "2-to-1" Points shall be deemed to

include all areas within the switching limits of the locations as described in Section 9(g) of this Agreement.

"2-to-1" Shipper Facilities shall mean all Shipper Facilities that were open to both UP and SP, whether via direct service or via reciprocal switching, joint facility or other arrangements, and no other railroad when the 1995 Agreement was executed, regardless of how long ago the shipper or receiver at that facility may have shipped or received, or whether the shipper or receiver at that facility ever shipped or received, any traffic via either UP or SP. The "2-to-1 Point Identification Protocol" between the parties attached hereto as Exhibit E shall govern the process for identifying "2-to-1" Shipper Facilities open to BNSF as a result of the conditions imposed on the UP/SP merger.

New Shipper Facilities shall mean: (i) existing Shipper Facilities constructing trackage for accessing rail service for the first time; and (ii) newly constructed rail-served Shipper Facilities. New Shipper Facilities shall also mean previously-served Shipper Facilities that begin to ship by rail again where (i) there has been a change of owner or lessee, and (ii) the use of the facility is actually different in nature and purpose from the facility's prior use (e.g., there has been a change in the type of products shipped from or received at the facility). New Shipper Facilities shall not include expansion of or additions to an existing rail-served Shipper Facility, but do include (1) Shipper Facilities which, on September 25, 1995, were being developed or for which land had been acquired for that purpose in contemplation of receiving rail service by both UP and SP, and (2) Transload Facilities located after September 11, 1996, including those owned or operated by BNSF.

Trackage Rights Lines shall mean the lines over which BNSF has been granted trackage rights pursuant to this Agreement, but shall not include any other lines over which UP/SP grants

BNSF trackage rights ("Overhead Trackage Rights") solely (i) to facilitate the parties' operation over Trackage Rights Lines, (ii) to permit BNSF's operation between a mutually-agreed upon BNSF junction point and points listed or described in Section 8(i) of this Agreement, or (iii) to permit BNSF's operation between a mutually-agreed upon BNSF junction point and a build-in/build-out line pursuant to Sections 4(a), 6(c) and 8(l) of this Agreement. The mutually-agreed upon junction point will be selected with the objective of minimizing the operating inconvenience to UP, consistent with ensuring that BNSF can provide competitive service. BNSF acknowledges that it shall not have the right to serve any existing or New Shipper Facility on a line over which BNSF has been granted Overhead Trackage Rights unless such right is specified in this Agreement or in any agreement implementing the Overhead Trackage Rights or unless BNSF has the right to serve a build-in/build-out line on such Overhead Trackage Rights line pursuant to the CMA Agreement or the conditions imposed on the UP/SP merger. All Overhead Trackage Rights Lines, as of the date of the execution hereof, are listed in Exhibit F to this Agreement, which exhibit may be amended and replaced from time to time by a new exhibit signed and dated by the parties. New Shipper Facilities shall be deemed to be "on" a Trackage Rights Line if the facility is either (1) adjacent to a Trackage Rights Line or (2) adjacent to a spur, an industrial track, or a yard that is itself served by such Trackage Rights Line. New Shipper Facilities are not "on" a Trackage Rights Line if they can be accessed only via a 49 U.S.C. 10901 "line of railroad" which is not a Trackage Rights Line.

Transload Facilities shall mean Shipper Facilities other than automotive or intermodal facilities or team tracks where freight is transferred from one railcar to another or from one mode to another (short term incidental storage may also occur) as defined by the STB in its decisions

lines to the Ports at BNSF's option to allow for additional operating capacity. UP/SP's commitment is subject to available capacity. Any incremental capacity related projects necessary to accommodate BNSF traffic shall be the sole responsibility of BNSF.

(h) At least forty-five (45) days before initiating service to (i) a Shipper Facility open to BNSF at a point listed or described on Exhibit A to or in Section 8(i) of this Agreement, or (ii) any New Shipper Facility on a Trackage Rights Line, BNSF shall notify UP of its election, subject to Section 3(d) above, of the manner by which it proposes such service be provided and the specifics of its operating plan over UP/SP trackage. Within thirty (30) days of its receipt of BNSF's proposed operating plan, UP shall notify BNSF of its approval or disapproval of BNSF's plan. UP's approval of such plan shall not be unreasonably withheld. In the event UP disapproves of BNSF's proposed plan, UP shall provide an explanation in writing to BNSF of its reasons for disapproval, and UP shall propose an alternative operating plan that would be acceptable to UP and also be no more onerous than the operating plan that UP would establish for service provided by UP. If UP approves BNSF's plan but establishes conditions on that approval, those conditions shall be set forth in writing and shall be no more onerous than UP would establish for service provided by UP. BNSF shall have the right, upon one hundred eighty (180) days' prior written notice to UP/SP, to change its election; PROVIDED, HOWEVER, that BNSF shall not change any such election more often than once every five (5) years. BNSF shall reimburse UP/SP for any costs incurred by UP/SP in connection with any changed election.

4. **South Texas Trackage Rights and Purchase**

(a) UP/SP shall grant to BNSF trackage rights on the following lines:

- UP's line between Ajax and San Antonio, TX;

- UP's line between Houston (Algoa) and Brownsville, TX (with parity and equal access to the Mexican border crossing at Brownsville);
- UP's line between Odem and Corpus Christi, TX;
- UP's line between Ajax and Sealy, TX;
- SP's line between San Antonio and Eagle Pass, TX (with parity and equal access to the Mexican border crossing at Eagle Pass);
- UP's line between Craig Junction and SP Junction, TX (Tower 112) via Track No. 2 through Fratt, TX;
- SP's line between SP Junction (Tower 112) and Elmendorf, TX;
- SP's line in San Antonio between SP Tower 105 and SP Junction (Tower 112);
- Overhead Trackage Rights on SP's Port Lavaca Branch, between Placedo and Port Lavaca, TX, for the purpose of reaching a point of build-in/build-out to/from Union Carbide Corporation's ("UCC") facility at North Seadrift, TX. UP/SP shall permit BN/Santa Fe or UCC to construct and connect to the Port Lavaca Branch, at their expense, a build-in/build-out line. BN/Santa Fe or UCC shall have the right to purchase for net liquidation value all or any part of the Port Lavaca Branch that UP/SP may abandon;
- UP's line between Kerr (connection to Georgetown RR) and Taylor, TX;
- Overhead Trackage Rights on UP's line between Round Rock and McNeil, TX for the purpose of interchanging with the Capital Metro Transit Authority, its successors or agent;

- UP's line between Temple and Waco, TX;
- UP's line between Temple and Taylor, TX;
- UP's line between Taylor and Smithville,TX; and
- SP's line between El Paso and Sierra Blanca, TX.

(b) The trackage rights granted under this section shall be bridge rights for the movement of overhead traffic only, except for the local access specified herein. BNSF shall receive access on such lines only to (i) "2-to-1" Shipper Facilities and Existing Transload Facilities at points listed on Exhibit A to this Agreement and City Public Service Board of San Antonio, Texas Elmendorf facilities listed on Exhibit A to this Agreement, (ii) any New Shipper Facility located subsequent to UP's acquisition of control of SP at points listed on Exhibit A to this Agreement, and (iii) any New Shipper Facility located subsequent to UP's acquisition of control of SP on the Trackage Rights Lines. BNSF shall also have the right to establish and exclusively serve intermodal and auto facilities at points listed on Exhibit A to this Agreement and at points identified or described in Section 8(i) of this Agreement. BNSF shall also have the right to interchange with: the Texas Mexican Railway Company at Corpus Christi and Robstown, TX; the Georgetown Railroad at Kerr; Transportacion Ferroviaria Mexicana ("TFM") at Brownsville (Matamoros, Mexico); Ferrocarril Mexicano ("FXE") at Eagle Pass; and the operator of SP's former line between Giddings and Llano at McNeil, TX. BNSF's access and interchange rights at Corpus Christi and Brownsville shall be at least as favorable as SP had on September 25, 1995. BNSF shall have direct access to the Port of Brownsville, the Brownsville and Rio Grande International Railroad, and the TFM. UP will designate a yard in Brownsville for sale to BNSF at such time as BNSF establishes its own trackage rights operations into Brownsville and at such time as the connection between UP and SP as a part of the Brownsville

relocation project is completed. In the event UP/SP determines to cease operations in the SP East Yard at San Antonio, TX, UP/SP will give first consideration to BNSF for taking over operation of the East Yard pursuant to a mutually-agreeable arrangement.

(c) Access to Shipper Facilities at points listed on Exhibit A to this Agreement open to BNSF shall be direct or through reciprocal switch, or, with UP/SP's prior agreement, through a third party contractor. Access to New Shipper Facilities open to BNSF on the Trackage Rights Lines shall be (i) direct; (ii) with UP/SP's prior agreement, through haulage for the shortest period of time necessary to allow BNSF to establish its own direct operating access after initiating service to a New Shipper Facility, but not to exceed the later to occur of 90 days or the date upon which UP completes the construction of and accepts for service any connections, sidings or other support facilities to be paid for by BNSF that UP is then obligated to construct pursuant to this Agreement or the trackage rights agreements executed pursuant to Section 9(f) of this Agreement; (iii) with UP/SP's prior agreement, reciprocal switching where, at the time BNSF service is to commence, UP/SP already provides reciprocal switching on the portion of the Trackage Rights Line upon which the turnout to the facility is to be located; or (iv) with UP/SP's prior agreement, the use of a third party contractor; PROVIDED, HOWEVER, that it shall be UP/SP's sole decision whether BNSF's service will be provided by either haulage or reciprocal switching; and PROVIDED, FURTHER, that in no case shall UP/SP be required to initiate any new local service or increase its level of service to accommodate the level of service proposed by BNSF. New Shipper Facilities open to BNSF under this Agreement shall be open to both UP/SP and BNSF, subject to Section 9(c)(v) of this Agreement. The geographic limits within which (x) New Shipper Facilities shall be open to BNSF service at points listed on Exhibit A to this Agreement and (y) BNSF shall have the right to establish and exclusively serve intermodal and

for service provided by UP. If UP approves BNSF's plan but establishes conditions on that approval, those conditions shall be set forth in writing and shall be no more onerous than UP would establish for service provided by UP. BNSF shall have the right, upon one hundred eighty (180) days' prior written notice to UP/SP, to change its election; PROVIDED, HOWEVER, that BNSF shall not change any such election more often than once every five (5) years. BNSF shall reimburse UP/SP for any costs incurred by UP/SP in connection with any changed election.

(e) UP/SP shall grant BNSF the right to use SP's Bridge 5A at Houston, Texas.

(f) Except as otherwise provided herein, trackage rights and access rights granted pursuant to this section shall be for rail traffic of all kinds, carload and intermodal, for all commodities.

(g) UP/SP shall sell to BNSF UP's Main Line No. 1 between MP 14.11 and 10.38, UP's Westwego intermodal terminal, SP's old Avondale Yard (together with the fueling and mechanical facilities located thereon) as shown on Exhibit C; and SP's Lafayette Yard.

6. **Houston, TX-Valley Junction, IL Trackage Rights**

(a) UP/SP shall grant to BNSF trackage rights on the following lines:

- SP's line between Houston, TX and Fair Oaks, AR via Cleveland and Pine Bluff, AR;
- UP's line between Fair Oaks and Bridge Junction, AR;
- SP's line between Brinkley and Briark, AR;
- UP's line between Pine Bluff and North Little Rock, AR
- UP's line between Houston and Valley Junction, IL via Palestine, TX;
- SP's line between Fair Oaks and Illmo, MO via Jonesboro, AR and Dexter Junction, MO; and

- UP's line between Fair Oaks and Bald Knob, AR.

(b) In lieu of conducting actual operations between Pine Bluff and North Little Rock, AR, UP/SP agrees, upon request of BNSF, to handle BNSF's business on a haulage basis for the fee called for by Section 8(m) of this Agreement.

(c) BNSF shall have the right to transport unit coal trains (i) over the Trackage Rights Lines to and from a point of build-in/build-out to and from Entergy Services, Inc.'s plant at White Bluff, AR if and when such a build-in/build-out line is constructed by an entity other than UP/SP to connect such plant with an SP line, and (ii) to and from Entergy Services, Inc.'s plant at White Bluff (1) by entering and exiting the Trackage Rights Lines at Jonesboro and Hoxie, AR, respectively, and/or (2) by utilization of BNSF's line via Memphis, TN.

(d) The trackage rights granted under this section shall be bridge rights for the movement of overhead traffic only, except for the local access specified herein. BNSF shall receive access on such lines only to (i) "2-to-1" Shipper Facilities and Existing Transload Facilities at points listed on Exhibit A to this Agreement, (ii) any New Shipper Facility located subsequent to UP's acquisition of control of SP at points listed on Exhibit A to this Agreement, and (iii) any New Shipper Facility located subsequent to UP's acquisition of control of SP on the Trackage Rights Lines. BNSF shall also have the right to establish and exclusively serve intermodal and auto facilities at points listed on Exhibit A to this Agreement and at points identified or described in Section 8(i) of this Agreement. In addition to the other restrictions and limitations set forth herein, as to UP's and SP's lines between Memphis and Valley Junction, IL: (1) BNSF shall not have the right to enter or exit at intermediate points north of Bald Knob and Fair Oaks, AR; and (2) BNSF traffic is limited to traffic that moves through, originates in, or terminates in Texas or Louisiana. These two restrictions do not apply to traffic moving to or

from Shipper Facilities in the Houston-Memphis-St. Louis Corridor to which BNSF has access pursuant to this Section 6(d) or Section 8(i) below. The two restrictions also do not apply to the traffic that BNSF is permitted to handle pursuant to the remaining provisions of this Section 6(d), which remains subject to all other conditions and restrictions. BNSF shall also have the right to handle traffic of shippers open to all of UP, SP and KCS at Texarkana, TX/AR, and Shreveport, LA, to and from the Memphis BEA (BEA 73), but not including proportional, combination or Rule 11 rates via Memphis or other points in the Memphis BEA. In the Houston-Memphis-St. Louis corridor, BNSF shall have the right to move some or all of its traffic via trackage rights over either the UP line or the SP line, at its discretion, for operating convenience. BNSF shall also have the right to interchange: with the Little Rock and Western Railway at Little Rock, AR; the Little Rock Port Authority at Little Rock, AR; KCS at Shreveport, LA and Texarkana, TX/AR, for movements of traffic originated by KCS at or delivered by KCS to shippers or receivers at Lake Charles, West Lake, or West Lake Charles, LA; with KCS (y) at Shreveport, LA for movements of loaded and empty coal trains moving to and from Texas Utilities Electric Company's Martin Lake generating station, and (z) at Texarkana, TX/AR for movements of empty coal trains returning from Texas Utilities Electric Company's Martin Lake generating station; and with the Texas Northeastern Railroad at Texarkana, TX for the sole purpose of moving BNSF traffic to and from Shipper Facilities at Defense, TX.

(e) Access to Shipper Facilities at points listed on Exhibit A to this Agreement open to BNSF shall be direct or through reciprocal switch, or, with UP/SP's prior agreement, through a third party contractor. Access to New Shipper Facilities open to BNSF on the Trackage Rights Lines shall be (i) direct; (ii) with UP/SP's prior agreement, through haulage for the shortest period of time necessary to allow BNSF to establish its own direct operating access after

imposed on the UP/SP merger and BNSF has previously entered into a contract to provide transportation services to the Existing Transload Facility, UP shall extend the lease for the remaining period of such transportation contract or for a period not to exceed 24 months, whichever period is shorter.

9. **Trackage Rights - General Provisions**

(a) The compensation for operations under this Agreement shall be set at the levels shown in the following table as subsequently indexed under the 1995 Agreement:

Table I
Trackage Rights Compensation
(mills per ton-mile)

	Keddie-Stockton/Richmond	All Other Lines
Intermodal and Carload	3.48	3.1
Bulk (67 cars or more of one commodity in one car type)	3.0	3.0

These rates shall apply to all equipment moving in a train consist including locomotives. The rates shall be escalated in accordance with the procedures described in Section 12 of this Agreement. The owning line shall be responsible for maintenance of its line in the ordinary course including rail relay and tie replacement. The compensation for such maintenance shall be included in the mills per ton mile rates received by such owning line under this Agreement.

(b) BNSF and UP/SP will conduct a joint inspection to determine necessary connections and sidings or siding extensions associated with connections, necessary to implement the trackage rights granted under this Agreement. The cost of such facilities shall be borne by the party receiving the trackage rights which such facilities are required to implement. Either party shall have the right to cause the other party to construct such facilities. If the owning carrier decides to utilize such facilities constructed by it for the other party, it shall have

the right to do so upon payment to the other party of one-half (½) the original cost of constructing such facilities.

(c) Capital expenditures on the Trackage Rights Lines and on lines over which BNSF is granted Overhead Trackage Rights will be handled as follows:

(i) UP/SP shall bear the cost of all capacity improvements that are necessary to achieve the benefits of its merger as outlined in the application filed with the ICC for authority for UP to control SP. The operating plan filed by UP/SP in support of the application shall be given presumptive weight in determining what capacity improvements are necessary to achieve these benefits.

(ii) Any capacity improvements other than those covered by subparagraph (i) above shall be shared by the parties based upon their respective usage of the line in question, except as otherwise provided in subparagraph (iii) below. That respective usage shall be determined by the 12 month period prior to the making of the improvement on a gross ton mile basis.

(iii) For 18 months following UP's acquisition of control of SP, BNSF shall not be required to share in the cost of any capital improvements under the provision of subparagraph (ii) above.

(iv) BNSF and UP/SP agree that a capital reserve fund of $25 million, funded out of the purchase price listed in Section 10 of this Agreement, shall be established. This capital reserve fund shall, with BNSF's prior consent which will not unreasonably be withheld, be drawn down to pay for capital projects on the Trackage Rights Lines that are required to

accommodate the operations of both UP/SP and BNSF on those lines, but in any event shall not be used for expenditures covered by subparagraph (i) above. Any disputes over whether a project is required to accommodate the operation of both parties shall be referred to binding arbitration under Section 15 of this Agreement.

(v) If both UP/SP and BNSF intend to serve New Shipper Facilities located subsequent to UP's acquisition of control of SP as authorized by Sections 1(b), 3(c), 4(b), 5(b), 6(d), and 8(i) of this Agreement, they shall share equally in any capital investment in such connections and sidings and siding extensions or other support facilities required by both UP and BNSF to provide rail service to such New Shipper Facility. If only one railroad initially provides such service, the other railroad may elect to provide service at a later date, but only after paying to the railroad initially providing such service 50% of any capital investment (including per annum interest thereon) made by the railroad initially providing rail service to the New Shipper Facility. Per annum interest shall be at a rate equal to the average paid on 90-day Treasury Bills of the United States Government as of the date of completion until the date of use by the other railroad commences. Per annum interest shall be adjusted annually on the first day of the twelfth (12th) month following the date of completion and every year thereafter on such date, based on the percentage increase or decrease, in the average yield of 30-year U.S. Treasury Notes for the prior year compared to their average yield in first year of completion of the

access to such industry or industries. Each annual adjustment shall be subject, however, to a "cap" (up or down) of two percentage points more or less than the prior year's interest rate.

(d) Subject to the terms of the Dispatching Protocols attached hereto as Exhibit D and incorporated herein, the management and operation of the lines over which the parties have granted trackage rights to each other pursuant to this Agreement ("Joint Trackage") shall be under the exclusive direction and control of the owning carrier, and the owning carrier shall have the otherwise unrestricted power to change the management and operations on and over Joint Trackage as in its judgment may be necessary, expedient or proper for the operations thereof intended. Trains of the parties utilizing Joint Trackage shall be given equal dispatch without any discrimination in promptness, quality of service, or efficiency in favor of comparable traffic of the owning carrier. Trains operating in the Houston terminal shall be routed over the most efficient routes as necessary to avoid delays and congestion, even routes over trackage over which the operating carrier has no operating rights.

The owning carrier shall keep and maintain the Joint Trackage at no less than the track standard designated in the current timetable for the applicable lines subject to the separate trackage rights agreement. The parties agree to establish a joint service committee to regularly review operations over the Joint Trackage lines.

In the event the owning carrier determines to sell or remove from service a Joint Trackage line and/or any associated facilities, the owning carrier shall provide the other carrier with reasonable written notice of such determination. Any such sale to a third party shall be expressly made subject to the terms and conditions of this Agreement, and the owning carrier

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36500

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

SIMMONS R.V.S. EXHIBIT 6

LETTER FROM ONE OF OUR ATTORNEYS TO AN ATTORNEY AT UP

KANSAS CITY SOUTHERN

MAILING ADDRESS: P.O. BOX 219335 • KANSAS CITY, MO 64121-9335

FOUNDED 1887

OFFICE AND EXPRESS DELIVERY ADDRESS:
427 WEST 12TH STREET
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DAVID C. REEVES
ASSOCIATE GENERAL COUNSEL
(816) 983-1387
FAX (816) 983-1227
E-MAIL: DREEVES@kcsouthern.com

July 23, 2012

Lawrence E. Wzorek, Esquire
AVP – Law
Union Pacific Railroad
1400 Douglas Street STOP 1580
Omaha, NE 68179 – 1580

Re: MP/SP Trackage Rights Agreement
HBT Trackage Rights Agreement

Larry –

I was reminded when we met in Omaha recently that I had promised you last Fall a letter to follow up on our discussion about whether KCS continues to view the GTM rate paid under the above-referenced trackage rights agreements as covering the costs of capacity improvements on the trackage rights lines needed to keep up with traffic growth. Yes, KCS continues to hold that view.

During the discussions that you and I had last Fall with Gayla, Mike and Jim, I expressed KCS's view that the GTM rate under the referenced agreements specifically covers capital improvements required to maintain the service standards, including transit times, that were in effect when the agreements were entered. You stated several reasons why UP believes that the GTM rate does not include the cost of maintaining those standards, citing language in an STB decision in UP/SP referring to the *SSW Compensation* decisions and UP's understanding with BNSF about the meaning of a similar UP-BNSF trackage rights agreement.

KCS believes that the clear language of the referenced trackage rights agreements governs, calling for UP to maintain the capacity and transit times of the trackage rights lines despite traffic growth. The agreements specifically state, "[T]he total amount of 3.84 mills per GTM ... shall be deemed to include ordinary and programmed maintenance of the Joint Trackage, Changes in and/or Additions to the Joint Trackage (to the extent required by the first sentence of Section 2.2 of the General Conditions...)". The referenced first sentence of Section 2.2 of the General Conditions states,

> Owner shall, (i) keep and maintain the Joint Trackage on a consistent basis at no less than the track standard designated in the timetable in effect on the date of the Terms, including special instructions for the Joint Trackage as of the date of the Terms, ... and (iii) be responsible for any Changes in and/or Additions to the Joint Trackage as shall be necessary to accommodate the traffic of Owner and User while maintaining existing service standards (including transit times) in effect on the date of the Terms.

(Underlining added.)

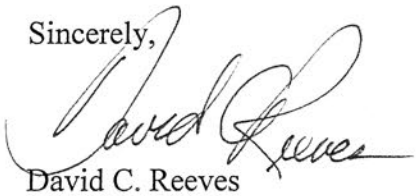
This quoted language plainly provides that UP, as the Owner, is responsible to make capacity improvements needed to continually maintain service standards, including transit times.

Our understanding of that plain language is not altered by the other matters that you referred to in our discussions. The Board's decisions in the UP/SP case did not analyze UP's duty to maintain capacity of the trackage rights lines in relation to the *SSW Compensation* decisions. Accordingly, we do not find the Board's passing reference to those decisions controlling. Moreover, we are not convinced that even if the *SSW Compensation* decisions were relevant that they would overrule or contradict the plain language of the UP-KCS trackage rights agreements.

Likewise, the fact that BNSF and UP have settled on an interpretation of the UP-BNSF trackage rights agreement that they find mutually satisfactory does not change what the language of the UP-KCS agreements actually says. Moreover, there are several important differences between the UP-BNSF agreement and the referenced agreements, not the least of which is that BNSF pays a significantly lower trackage rights fee than does KCS. It therefore does not seem that whatever UP and BNSF may have agreed to among themselves as to the interpretation of their agreement has any relevance to what the plain language of the UP-KCS agreements means.

Again, KCS believes that the language of the trackage rights agreements is clear, and that it requires UP to make capacity improvements necessary to maintain service standards and transit times in effect when the agreements were entered, regardless of the growth of traffic on those lines, without additional compensation from KCS. As the chokepoints between Robstown and Victoria, in particular, become more limiting, the need for capacity improvements to preserve the competition that the STB sought to preserve by granting the trackage rights become more pronounced.

Sincerely,



David C. Reeves

cc: Gayla Thal, Esquire

BEFORE THE
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SIMMONS R.V.S. EXHIBIT 7

KCS-UP CAPACITY PROJECT MAP, OCTOBER 2018

KCS - UP Capacity Project Map

REDACTED PUBLIC RECORD VERSION

Project	Status / Next Steps	TOTO
Inari Siding Extension	Completed	3/18
Victoria Interlocker / Hold Signal	Completed interlock, hold signal 9/18	4/18 & 11/18
CTC Cuero Sub	Completed	4/18
Placedo Siding	Completed (Benavides)	4/18
Rosenberg Siding	Completed (McHattie)	7/18
CTC Odem-Robstown	Completed	9/18
Greta Siding	Progressing design / legal, RE w TxDOT	2019
Sinton Siding Reconfig	Progressing design / legal ,RE w TxDOT	2019
Victoria Ind Lead – ML power switch	Project bid, begin construction in Nov 18	2Q19

UP | KCS | KCS Trackage Rights

Reply Volume II, Page 937

Updated 10/11/18

Project Update

Confidential

REDACTED PUBLIC RECORD VERSION

Project Update - KCS Projects

UPDATED: 10/11/2018

Dates in italic are estimates and subject to change

PROJECT	DESIGN									BID	CONSTRUCTION				NOTES
	Civil/Track - START	Civil/Track Design %	Civil/Track - FINISH	Utilities	Real Estate	Permitting	Signal - START	Signal Design %	Signal - FINISH	Est. Bid Date	Civil/Track START	Civil/Track FINISH	Signal START	Signal FINISH	
CUERO SUB SURFACE & SUBGRADE UPGRADE	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	*Subgrade work in March 2016. New rail Victoria to Placedo in Oct/Nov 2016*				2/17/17 - G.O. SPEED INCREASED TO 40 MPH MP 14.7 - 26.6
VICTORIA INDUSTRIAL LEAD TIE UPGRADE	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	**Work complete**				PID 79237 - 79258 - 79238 - 88435
VICTORIA, TX INTERLOCKER (CUERO SUB) & HOLD SIGNAL (ROSENBURG SUB)	KCS	**100%**	KCS	KCS	KCS	KCS	**9/2015**	**100%**	*5/2016*	*KCS*	**11/2016**	***3/2017***	**11/2016**	*12/2018*	Victoria Interlocker Complete. Hold Signal at MP 87 for 12/2018 completion, steel tie replacement should be complete 10/2018
VICTORIA, TX 10MPH CURVATURE UPGRADE (ROSENBURG SUB)	**10/2015**	**100%**	**5/2016**	NA	NA	NA	NA	NA	NA	NA	**12/2016**	**6/2017**	NA	NA	DelMar Curve was completed
CTC S. ODEM TO ROBSTOWN (BROWNSVILLE SUB)	**10/2015**	**100%**	**3/2016**	**100%**	**100%**	NA	**1/2015**	**100%**	**10/2015**	**4/2016**	**1/2018**	***3/2018***	**9/2017**	***9/2018***	4 Phases- Sinton to Odem - Odem Interlocker - Odem to Robstown - Robstown Interlocker
BLOOMINGTON, TX POWER SWITCH TO VICTORIA IND LD (BROWNSVILLE SUB)	**1/2018**	**100%**	***6/2018***	**100%**	90%	**100%**	**4/2018**	**100%**	**7/2018**	**8/2018**	11/2018	2/2019	3/2019	5/2019	Bid on 8/30/2018
CTC VICTORIA TO PLACEDO (CUERO SUB)	NA	NA	NA	NA	NA	NA	**10/2015**	**100%**	**2/2016**	*NA*	NA	NA	**10/2016**	***4/2018***	
PLACEDO, TX SIDING (CUERO SUB)	**6/2015**	**100%**	**6/2016**	**100%**	**100%**	**100%**	**10/2015**	**100%**	**1/2016**	**6/2016**	**2/2017**	**5/2017**	**10/2017**	***4/2018***	
GRETA, TX SIDING EXT (BROWNSVILLE SUB)	NA	10%	NA	NA	NA	NA	NA	NA	NA	*TBD*	*TBD*	*TBD*	*TBD*	*TBD*	Need to verify CAPS program is closing the private crossing at MP 192.80. If crossing is closed, we can proceed with SU and NP concurrence.
ROSENBERG, TX SIDING (ROSENBURG SUB)	**6/2015**	**100%**	**9/2016**	**100%**	**100%**	**100%**	**11/2015**	**100%**	**8/2016**	**10/2016**	**1/2017**	***2/2018***	**8/2017**	***8/2018***	
SINTON, TX RUN-AROUND (BROWNSVILLE SUB)	**1/2017**	***100%***	***12/2017***	*80%*	*50%*	***100%***	**6/2017**	**100%**	**12/2017**	11/2018	*TBD*	*TBD*	*TBD*	*TBD*	Public Affiars, Real Estate and MIPP are working with TxDOT for an agreement to construct our shoulder on TxDOT R/W
INARI, TX SIDING EXT (BROWNSVILLE SUB)	**6/2015**	**100%**	**1/2016**	**100%**	**100%**	**100%**	**10/2015**	**100%**	**11/2015**	**2/2016**	**4/2016**	***3/2018***	**8/2017**	***3/2018***	

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SIMMONS R.V.S. EXHIBIT 8

NECHES RIVER BRIDGE FEASIBILITY STUDY, FINAL REPORT – JUNE 2013, RAIL DIVISION, TEXAS DEPARTMENT OF TRANSPORTATION

Neches River Bridge Feasibility Study

Final Report – June 2013

Rail Division

Neches River Bridge Feasibility Study

prepared by

TranSystems Corporation

In association with

URS Corporation

RJRivera Associates Inc.

for

The Texas Department of Transportation

Rail Division

FINAL Report

June 2013

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Executive Summary

This Report and summary is organized around four sections; background and context, existing conditions, projected conditions and concludes with the evaluation of alternatives. At this time a preferred alternative has not been identified. The material presented in this report is intended to inform decision-makers regarding the basic elements of physical and financial attributes. The next step is to coordinate with the various stakeholders - including the public - to arrive at a mutual consensus involving a multitude of institutions and agencies and to identify a future development plan.

Background and Context

The City of Beaumont, Texas is on the coastal plain of Texas about 30 miles inland from the Gulf of Mexico. The City is the county seat of Jefferson County, Texas. Beaumont with the cities of Port Arthur and Orange form the Golden Triangle, a major industrial area on the Gulf Coast. There is currently only one railroad bridge with a single track crossing the Neches River in Beaumont. The bridge is owned and operated by the Kansas City Southern (KCS) Railroad which shares operating rights across the bridge with the Union Pacific Railroad (UPRR), BNSF Railway Company (BNSF) and Amtrak. The study area for this report is bordered on the north by Interstate 10, on the east by the eastern city limits (extended to intersect IH-10 in Orange County), on the south by Washington Boulevard, and on the west by primarily 4th Street. A significant portion of the study area is shown in the oblique aerial photograph in Figure 1.1. A significant element in the region's economy is the Port of Beaumont which is located in the study area at the existing river bridge crossing.

Figure ES.1 – Beaumont, Texas
with Port of Beaumont in foreground, KCS Neches River Bridge
in mid-ground and Interstate 10 bridge in background

This study evaluated the feasibility of rail corridor system improvements at or near the existing Neches River rail bridge crossing in the City of Beaumont, Texas. The Neches River is a navigable waterway and the railroad lift bridge is raised in order to allow river traffic to pass. The purpose of the study is to:

- evaluate rail movements and operations within the study area,
- identify opportunities to increase rail efficiency,
- analyze potential alternatives and improvements to the existing bridge and rail alignment, and
- determine the physical and financial viability of such potential improvements.

Within the scope of this study, the elimination of the existing structure was not considered feasible. Also while the evaluation considers the potential effects upon the environment, this report is not an environmental document. The project's no-build scenario is utilized only to define the project's purpose and serve as the baseline for the alternatives. Nonetheless as a feasibility study, the focus is upon the technical, financial and political aspects of build alternatives.

Pertinent reports reviewed as background information for this study included:

- Texas Rail Plan, November 2010
- Amtrak Gulf Coast Service Plan Report, July 16, 2009
- Rail Access to the Port of Beaumont, April 2005
- Gulf Coast High-Speed Rail Corridor Evaluation, November 2004
- Metropolitan Transportation Plan (MTP)

These reports are relevant because they address all modes of transport while focusing upon rail transportation issues both for freight and passenger rail service within the State. The reports also contain regional and local information that may affect where potential rail alignments might be located.

Existing Conditions

This section provides an overview of socioeconomics and environmental resources in the study area as well as an inventory of existing rail transportation, its operations in the Beaumont region and the development of a Rail Traffic Control model to simulate existing and projected conditions. The social and environmental resources inventoried include:

- Population and Households
- Income and Race
- Employment
- Water Resources
- Wetlands and Floodplains
- Threatened and Endangered Species
- Archeological and Historic
- Land Use Conditions

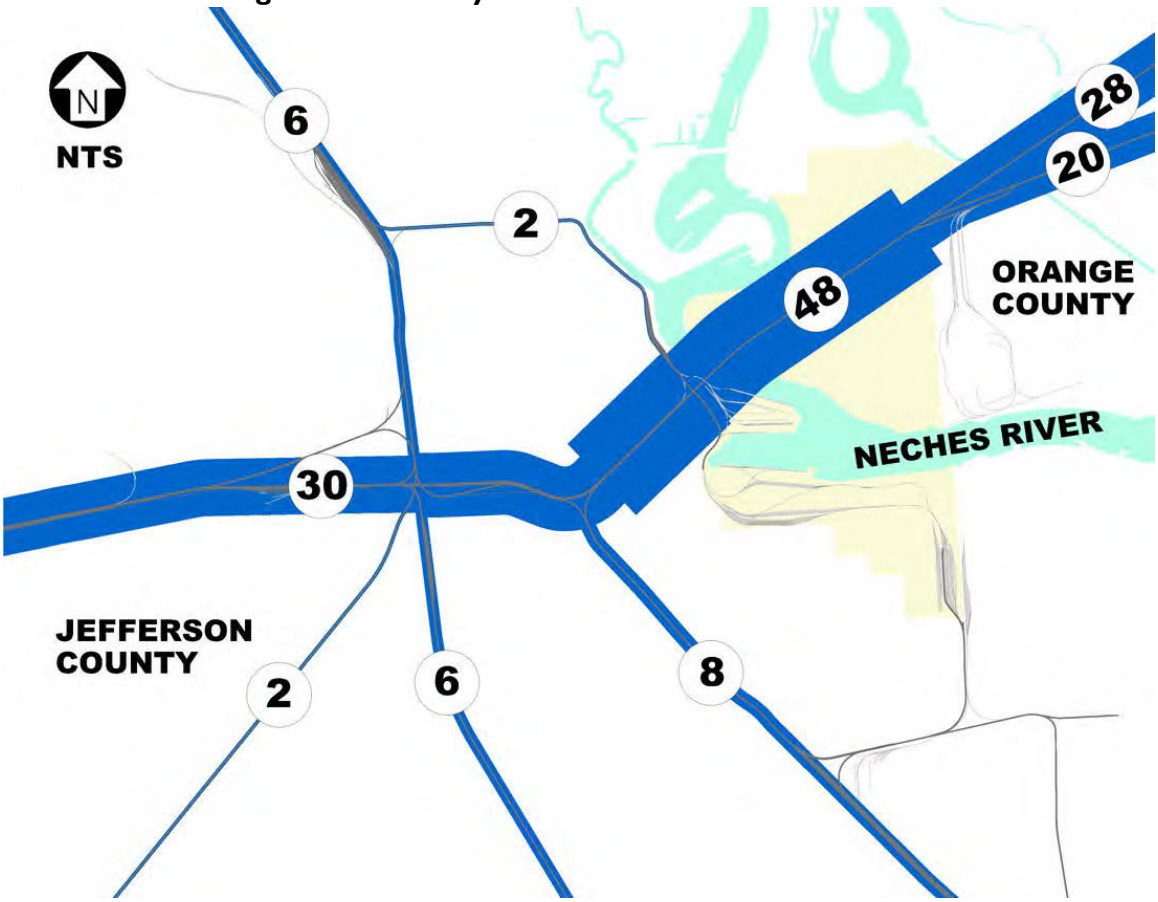
There are three Class I railroads operating in the Beaumont area; the Kansas City Southern (KCS) Railroad, the Union Pacific Railroad (UPRR) and the Burlington Northern and Santa Fe (BNSF). Each of these railroads systems are described beginning with a depiction of each freight rail carrier's national system and then moving into the regional system. Elements of the rail corridors studied are included with the identification of key at-grade crossing and service provided to local industries as well as access to the

Port of Beaumont. For this study, the rail serving the Port is focused upon the Port's Interchange Yard. The Port of Beaumont's Master Plan focuses upon the Port's Orange County facilities which could build out in excess of 450 acres. Amtrak provides intercity passenger rail service in the Beaumont Texas area via the Sunset Limited.

Rail Corridors and Operations

The primary east-west rail corridor through the Beaumont area includes the Neches River rail bridge, a vertical lift span bridge that allows river traffic to pass under the bridge. The bridge is in the rail-locked position until a navigation request is made to raise the lift bridge, generally to a requested vertical clearance. Information supplied by the United States Coast Guard (USCG) indicates approximately 400 lifts per year in 2011. Data from KCS in 2012 indicates 7 lifts in a six day period which is consistent with the USCG's annual lifts. While requests for bridge openings can occur at any time, most occur during daylight hours. The bridge raising can result in some train delays. The delays are more pronounced when trains are traveling in the same direction across the bridge as adjacent trains must be separated by two signals in order to prevent a train from stopping on the bridge. Typically the bridge stays open to river traffic between 15 and 30 minutes. The daily train count across the Neches River bridge ranges between 40 to 50 trains based upon daily train movements in the FRA's crossing inventory. Figure ES.3 represents that information as a band of varying thickness.

Figure ES.2 – Daily Train Volumes Beaumont Area



Another important issue regarding train traffic through Beaumont is that close follow-up movements are restricted by crew changes in each direction. Both the UPRR and KCS have crew changes in Beaumont which occur on the railroad's main lines. Finally, yard capacity and yard operation's efficiency have a direct impact on the rail system operations. Several yards are located in and around the Beaumont area and include:

- Port of Beaumont Interchange Yard
- KCS's Chaison Yard and Vidor Siding
- UPRR's South, East and Beaumont Yards
- BNSF's Beaumont Yard.

Projected Conditions

This section discusses rail forecast and operations in the forecasted year 2035 under the no-build scenario. An assessment of operations and various improvement concepts were developed and assessed. A key element with any improvement concept is the crossing of the Neches River with regards to meeting the river navigation criteria. The parameters for different bridge crossing types (lift vs. fixed) are discussed followed by reviews of some potential alignments. The 2035 rail forecast includes an overview of rail traffic at both a national level as well as specific to the region based upon the Texas Statewide Rail Plan. Potential impacts of implementation of the Gulf Coast High Speed Rail (GCHSR) passenger initiative are discussed. The no-build scenario's future rail system operations were analyzed utilizing the existing rail network and committed improvements, such as the new switch into the Port of Beaumont.

Rail Traffic Controller (RTC) is a computer program created by Berkeley Simulation Software, LLC, which simulates train operations over a railroad network. Variations can be made in network track layouts such as new rail lines, train composition and schedules, and operating rules and constraints, which allow for the testing and assessment of modifications. RTC is used by most North American Class I railroads to evaluate and plan their operations and in turn determine capital expenditures. The Base (Modified) RTC model estimates that under current conditions 287 trains operate during a typical week through the project study area. This translates to approximately 40 to 50 trains per day crossing the Neches River. Forecasted growth for the number of trains expected to be operating weekly in the Beaumont area by 2035 was determined utilizing a three percent (3%) compounded annual growth rate. The 3% growth rate is reasonable given the population growth forecasted for the State of Texas and the expected increased level of cross-border trade on a national basis. In addition, this is the rate that other recently completed freight studies used. Train traffic is projected to essentially double from the base condition to an estimate of 87 trains per day crossing the Neches River.

In the forecasted year with no improvements to the rail network, the average speed across the entire study network declines by about one-third from 15.0 mph to 10.6 mph. The forecasted train traffic results in the quadrupling of the delay ratio and the delay in minutes per 100 train miles. The forecasted delay hours increase at an even more significant rate, approaching eight times the value of delay hours under existing conditions. Essentially, the application of the forecasted train volumes to the existing rail network results in significant congestion. However, this is consistent with other studies regarding future levels of service for freight rail at the national level.

Developing Options

The development of options can be thought of in two basic parameters:

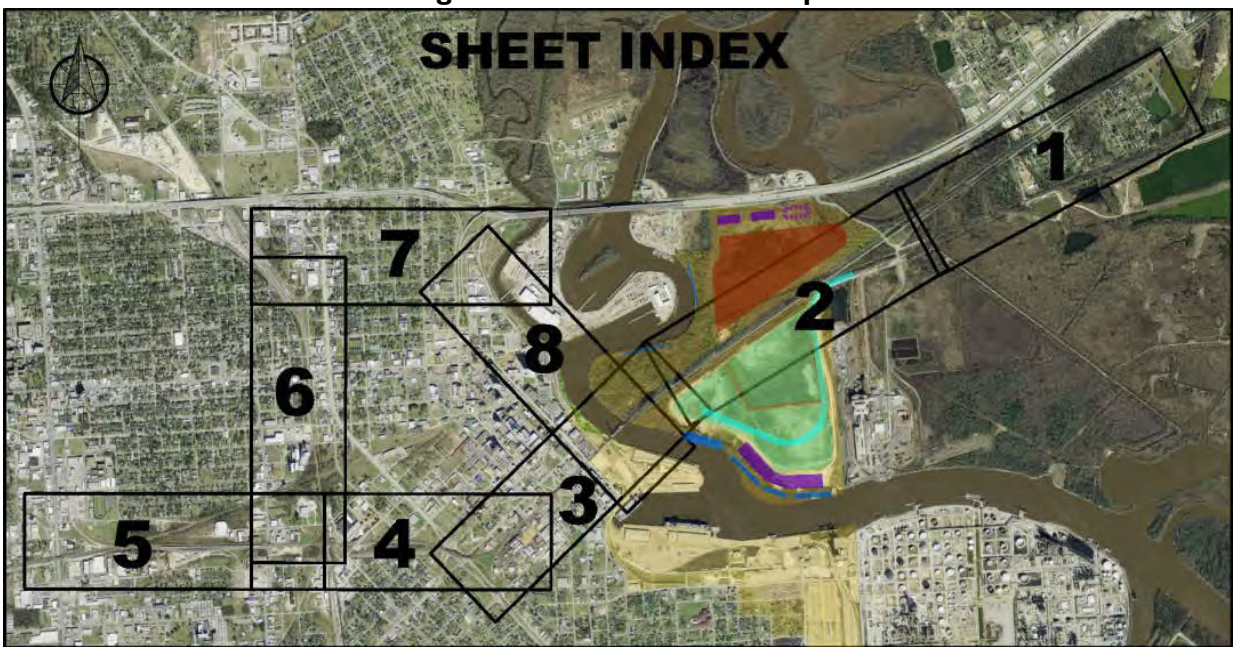
1. the development of bridge type (stationary or lift) and

2. the development of bridge crossing locations (along existing or on new alignment).

The determination of bridge type also influences the location of the bridge crossing. A stationary bridge type could consider three levels; a high level, a mid-level and a low-level. The high-level bridge would accommodate a vertical clearance at the maximum height (150 feet) which would meet the USCG's recommended navigation clearance for the Neches River. A mid-level bridge would have a vertical clearance that would accommodate the majority of river navigation. This report assumes that the mid-level bridge would have a 50 foot vertical clearance similar to the IH-10 crossing of the Neches River. A low-level crossing assumes a lift bridge with a minimum 13 foot river navigation vertical clearance in the closed position (to mimic the existing bridge vertical clearance).

A multitude of options were considered and screened. Concepts of high-level structures (with a vertical clearance of 150 feet) were considered but found to be both physically and financially impractical. Concepts for a lift bridge located south of the existing KCS bridge would have significant impacts on river navigation and the increase in the number of lifts would adversely affect rail operations. And while consideration of a former rail corridor is philosophically often a reasonable approach, the former Southern Pacific alignment through Downtown Beaumont is heavily developed with numerous street crossings. Creating an elevated rail corridor through Downtown Beaumont would have significant property and visual impacts. The corridor or alignments studied are summarized in Figure ES.3 and in the appendix.

Figure ES.3 –Sheet Index Map



Design aspects to accommodate the GCHSR were also considered and include, as part of a Phase 2 component of the GCHSR study, a proposed rail line along the existing UPRR-KCS rail corridor on the north side of the existing rail alignment. This concept is reflected by illustrating a third main west of the Gulf Coast Lines (GCL) junction, located between UPRR's East Yard and the Neches River bridge, through UPRR's east yard and continuing further westward. In Orange County, a proposed rail line is also shown in this study along the existing UPRR-KCS rail corridor on the north side of the existing rail

alignment which requires a crossing of the KCS rail. Because of the extensive existing right-of-way width on the north side between the Neches River bridge and the KCS-UPRR split at Tower 31, approximately 1 mile east of the Neches River bridge, design options were considered to accommodate a crossing with the proposed additional rail line on the north side. In order to provide a level at-grade crossing, the new rail alignment must cross at a tangent and then begin its horizontal curvature. This geometric design may necessitate minor additional right-of-way acquisition. Another option could be grade separation, though obviously this has cost implications. Considerations may even need to be given to the potential for double track alignments coming together along both the UPRR and the KCS routes at the KCS-UPRR split.

Three build alternative crossings of the Neches River were evaluated. These include an alignment along the existing river crossing corridor as well as new alignment alternatives with different types of river bridge crossings; stationary or lift span. Essentially these were determined to be the best of the options considered for alignment location and bridge type. The three alternatives are:

- Add capacity adjacent to existing KCS alignment with a new lift bridge
- Add capacity on new alignment adjacent to Interstate-10 with a stationary bridge, and
- Add capacity on new alignment along Pine Street corridor with a new lift bridge

Evaluation of Alternatives

The evaluation of transportation impacts for the alternatives included a review of river, rail, and highway operations. The rail operations are based upon the output from the RTC model while highway operations focus upon the output from GradeDec.net at the selected key at-grade rail-highway crossings. River impacts were based upon the degree of obstruction to navigation traffic. All alternatives offer the option to route trains via either the existing rail lines or the alternate route, depending upon circumstances. In effect when combined, the existing route and proposed alignments create at least two main tracks over the Neches River, and to some extent three, between the UPRR Beaumont Yard and the KCS-UPRR split. This added capacity offers more flexibility than just the existing route alone.

The rail operation measures include system route miles, total system train miles, total system weekly trains, system average velocity, total weekly system train delay, and a system delay ratio. The evaluation of an improved river crossing shows an increase in average speed over existing single track operations. However, there is no change to the delay ratio and only minor decreases in delay hours and minutes, 10% and 20% respectively. The effects of the double track are more prominent (ranging from 40% to 55% reduction in delay measures) when comparing potential projected volumes to operations on a single track.

To review potential impacts to vehicular traffic, the alternatives studied were subdivided into five rail segments for assessment via GradeDec.net. Three of the five rail segments are essentially evaluated under future conditions (increased train and vehicular volumes) while the other two rail segments have the potential to be directly affected by the alternate alignments under consideration. In summary, of the at-grade crossings evaluated for grade separation, only the crossing at Martin Luther King Parkway approaches a benefit close to the probable construction costs. This occurs only with increased and diverted train traffic associated with the new rail alignment alternative adjacent to IH-10. The existing low volume service line today would not reach a level to suggest the need for a grade separation.

Figure ES.4
Existing Alignment Evaluated
(New lift bridge adjacent to existing)

New Alignment Evaluated
(Stationary bridge Interstate 10)

New Alignment Evaluated
(Lift bridge Pine Street)

The evaluation of sustainability impacts includes a review of potential environmental and social impacts. Elements from the transportation and implementation impacts cross over to provide additional input on such factors as property impacts and transportation delay which has an effect upon air quality and energy use.

The potential for environmental impact is associated with the implementation of an alternative's infrastructure. The key issues are potential environmental impacts as well as the complexity of permits for the alternative. Several of the attributes described under the existing conditions such as population, households, income, race and employment are represented by the surrogate of property impacts by land use categories. Residential impacts would affect population and households, while commercial and industrial impacts would affect employment and income. Impacts to water resources including wetlands and floodplains are indicated by assumed areas of potential right-of-way. Often these natural areas are habitat and thus served as a surrogate for threatened and endangered species for this study. Specific sites that could be affected are identified for archeological, historic and community facilities including public lands and parks. Impacts to these attributes are represented by four degrees of impact ranging from no impact to low impact to medium impact to high impact. Superfund is the name given to the environmental program established to address abandoned hazardous waste sites. There is one Superfund site within the Study Area named International Creosoting located at 1110 Pine Street, Beaumont, Jefferson County. The new IH-10 alignment runs through the middle of this superfund site.

The evaluation of implementation impacts includes a review of probable construction costs as part of a cost effectiveness assessment. Property impact costs, while not specifically estimated at this time, are discussed in broader terms as an influence upon project development. The construction costs for the alignment

concepts have been developed based upon major elements such as the river crossing bridge as well as the length of structural approach spans. These bridge approach spans can be very long considering the potential height of the proposed rail, topography, and local soil conditions. For alignment comparisons, the quantity and associated costs of the rail were estimated based upon new rail alignment and existing rail alignment. The cost of improving adjacent to the existing rail alignments also considered whether the proposed track was within the existing rail right-of-way or adjacent to but outside existing rail right-of-way. The costs of track was varied depending upon upgrade of existing track, new track on-grade, new track on fill (typically up to 16 feet), new track on structure, and new track on river bridge. For this study, it was assumed that only a single track would be added for those new alignments. However, the bridge costs are based on providing the ability to construct a future track. In order to be consistent with the structural availability for a second track, the earthwork for the future second track is also included in the estimate. If necessary, new rail sidings and connections are quantified. At this stage, the rail traffic control and signaling system as well as improvements to crossing devices at highways are included in the contingencies. The costs only account for construction activities in 2012 dollars. The costs do not include right-of-way acquisition, design, permitting or construction inspection costs, or any annual maintenance costs. The potential for such costs should be considered when comparing alignments, particularly on those alignments that have significant property impacts.

Summary of Alternatives

Four alternatives have been assessed under forecasted 2035 conditions. The projected "no-build" alternative was analyzed to establish a baseline for comparison. This alternative establishes the fact that Beaumont's rail network would benefit from having additional rail lines at the Neches River crossing. In addition to the "no-build" alternative, three "build" alternatives were evaluated that involved improving capacity by providing additional track as well as exploring operational issues associated with the lift bridge over the Neches River. The three alternatives concentrated on improving the existing rail route with 1) a new adjacent lift bridge, 2) a new rail alignment also with a lift bridge near the existing rail corridor, and 3) a new rail alignment with a fixed river bridge crossing north of the existing rail corridor. A brief summary of the pros and cons of each build alternative are provided below.

Expand existing route to double track river crossing (lift bridge)

This alternative keeps the existing bridge in place and assumes it to be operational with a projected 16 lifts per week in the future scenario. In addition, a second lift bridge is considered immediately adjacent and north of the existing structure. While this alternative's RTC model performance measures improve over the "no-build" conditions, the operations still show significant delays. Even with the double track operations, delays under the projected train volumes would be twice to four times as great as they are now. Some potential improvements to address this delay beyond the additional capacity over the Neches River could be a third main for the UPRR and is shown conceptually in the Alternatives Evaluated mapping. This alignment alternative does not intrinsically address the delays associated with the KCS-UPRR split at Tower 31. As the proposed improvements essentially remain adjacent to or within the existing rail corridors, impacts to the community are minimized. Costs for this improvement in the Beaumont area are estimated in 2012 construction dollars approach $120 million.

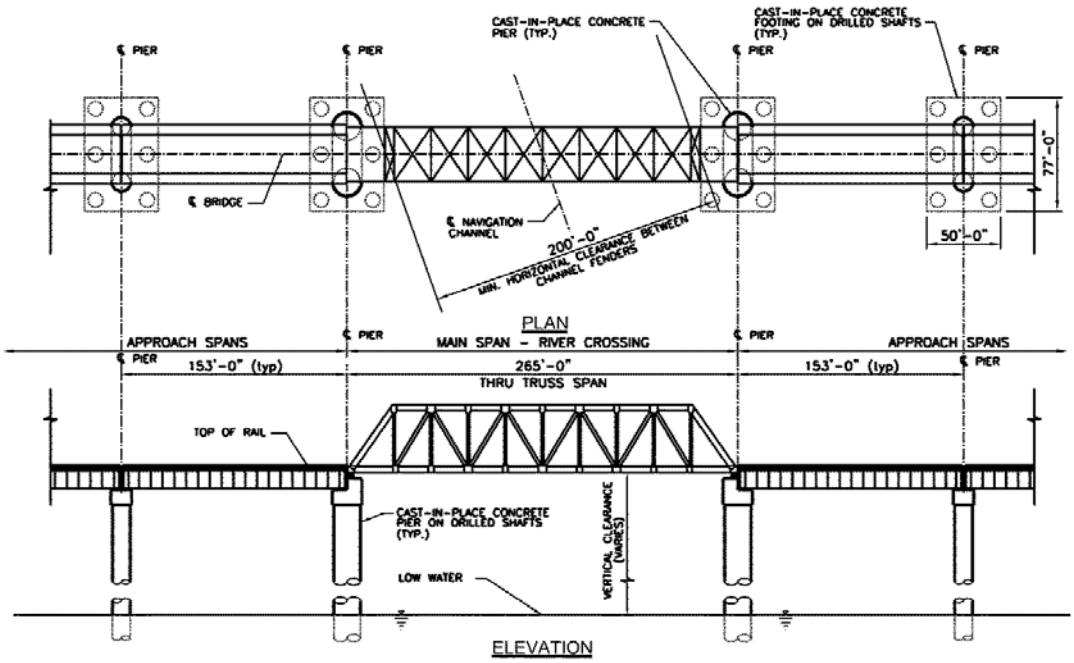
New Pine Street alignment (lift bridge over Neches River)

This alternative keeps the existing bridge in place and assumes it to be operational with a projected 16 lifts per week. The Pine Street alignment was initially tested through the RTC model with a potential fixed river bridge crossing. However physical limitations determined that the only practical fixed river bridge crossing lies immediately adjacent to the IH-10 corridor. Consequently it was determined that the Pine

Street alignment was the best new rail alignment with a lift bridge over the Neches River. Nonetheless, that new lift bridge location created its own set of design issues that result in additional costs compared to constructing an adjacent rail bridge to the existing rail's river crossing. The alignment's tie in on the west side is likely to create significant adverse impacts to a neighborhood with property acquisition as well as impacts to vehicular operations at critical at-grade crossings that will only add to the probable construction costs. This alignment alternative does not intrinsically address the delays associated with the KCS-UPRR split at Tower 31. Costs for this alignment are estimated in 2012 construction dollars approach $170 million.

<u>New IH-10 alignment (fixed bridge over Neches River)</u>
This alternative keeps the existing bridge in place and assumes it to be operational with a projected 16 lifts per week. The new IH-10 rail alignment has potentially significant operational benefits by addressing two key issues: 1) the delays associated with the lift operations of the river crossings, and 2) addresses the grade separation of the KCS-UPRR split on the east side of the Neches River. However, the alignment tie in on the west side is likely to create significant adverse impacts to a neighborhood with property acquisition as well as impacts to vehicular operations at critical crossings that increase the probable construction costs. This alignment is located close to an EPA Superfund site. Costs for this alignment are substantial and are estimated in 2012 construction dollars approach $240 million. While viewed from a railroad operationally viewpoint only, this new alignment is the best within this study area. The high degree of cost and probable impacts may be offset by any additional operational benefits.

Figure ES.5 – Stationary Bridge General Plan and Elevation



1.0 Background and Context

This section describes the study area and elements immediately surrounding the Neches River Bridge crossing in Beaumont, Texas. It includes a listing of the various tasks associated with the feasibility component of the study. This section concludes with a review of pertinent previous reports with a summary of their relevant aspects to this study.

Study Area

The City of Beaumont, Texas is on the coastal plain of Texas about 30 miles inland from the Gulf of Mexico. It is bordered on the east by the Neches River and on the north by Pine Island Bayou. The City is the county seat of Jefferson County, Texas. Beaumont with the cities of Port Arthur and Orange form the Golden Triangle, a major industrial area on the Gulf Coast. In 2010, Beaumont's population was 118,296.[1]

There is currently one railroad bridge crossing the Neches River in Beaumont. The bridge is owned and operated by the Kansas City Southern (KCS) Railroad that shares operating rights across the bridge with the Union Pacific Railroad (UPRR), Burlington Northern Santa Fe (BNSF) Railway and Amtrak. This bridge was constructed in 1941 and was operated on-site until 2004. In 2004, it became remotely operated from Kansas City.[2]

The study area is bordered on the north by Interstate 10 (IH-10), on the east by the eastern city limits (extended to intersect IH-10 in Orange County), on the south by Washington Boulevard, and on the west by primarily 4th Street. A significant portion of the study area is shown in the oblique aerial photograph in Figure 1.1. A map of the entire study area is shown in Figure 1.2.

A significant element in the region's economy is the Port of Beaumont which is located in the study area at the existing river bridge crossing. Due to the significant volume of maritime trade of petrochemicals, the US Customs District - that includes the Port of Beaumont - was ranked 6th in the nation in terms of total cargo volume in 2002.[3] The Port mainly handles wood products, pot ash, grain and similar bulk items as well as petroleum and chemical products. Military shipments are an important and growing source of business for the Port as well, making the Port the second largest military seaport in the world.[4]

The main vehicular entrance gate for the Port of Beaumont is located at the intersection of Main and Franklin Streets. Vessel access is provided via the Sabine-Neches Waterway, a 40-foot deep federally maintained channel. Ships and barges have free access to the Port via Sabine Pass, the Port Arthur and Sabine-Neches Canals, and the Neches River. The Port contains more than one linear mile of open wharf space, eight ship berths, 50 acres of open storage, and 600,000 square feet of transit sheds.[5]

Figure 1.1 – Beaumont, Texas

with Port of Beaumont in foreground, KCS Neches River Bridge
in mid-ground and Interstate 10 bridge in background

The Port is currently expanding its Dreyfus Yard (seen in the foreground of Figure 1.1) and constructing a new south connection to the KCS track that was planned for completion in 2011. In addition, over $20 million in capital improvement projects, including a new railcar holding yard, have been made to improve operating conditions. The Port's existing interchange yard lies north of the mainline. As a result of planned track improvements, the Port plans to lease a portion of the yard to the City of Beaumont for redevelopment. See Figure 1.3 for an image of the Port Master Plan concentrating on the Orange County facilities.

Figure 1.2 - Neches River Rail Bridge Feasibility Study Area

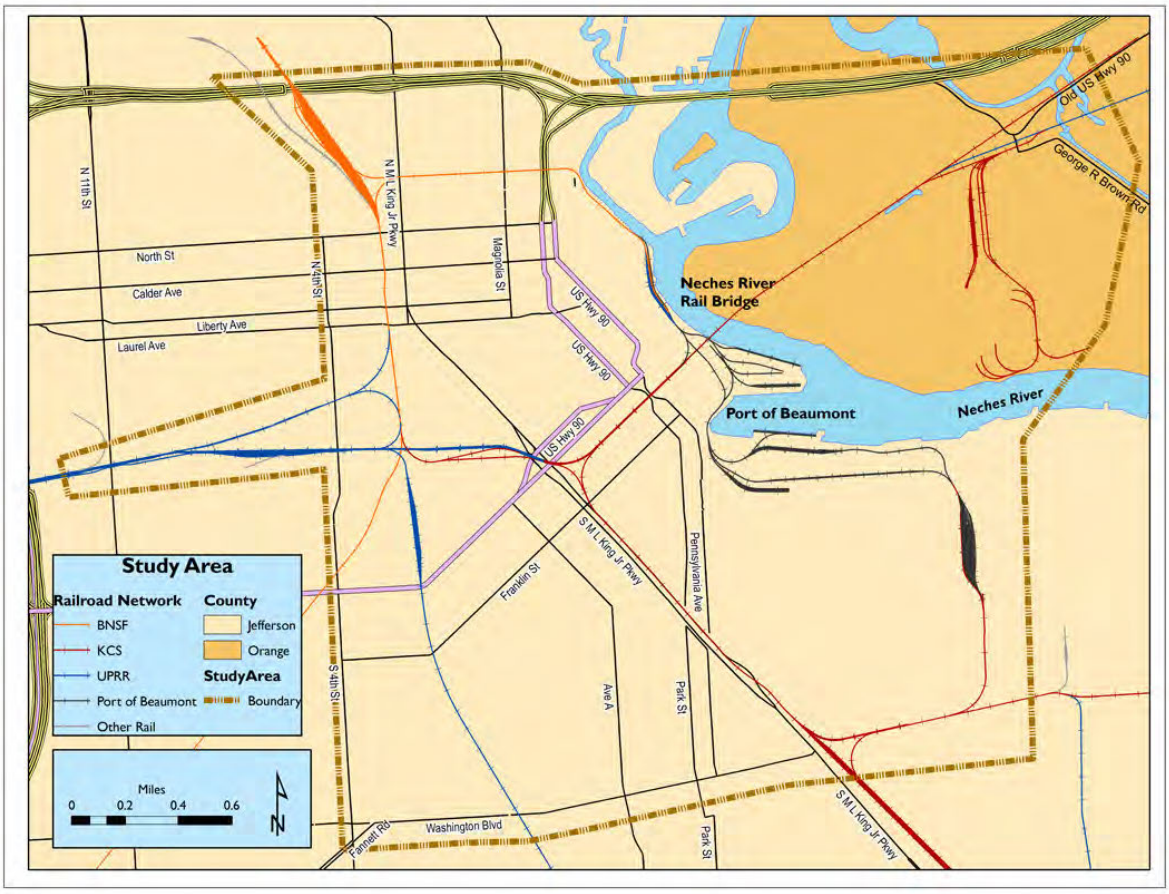
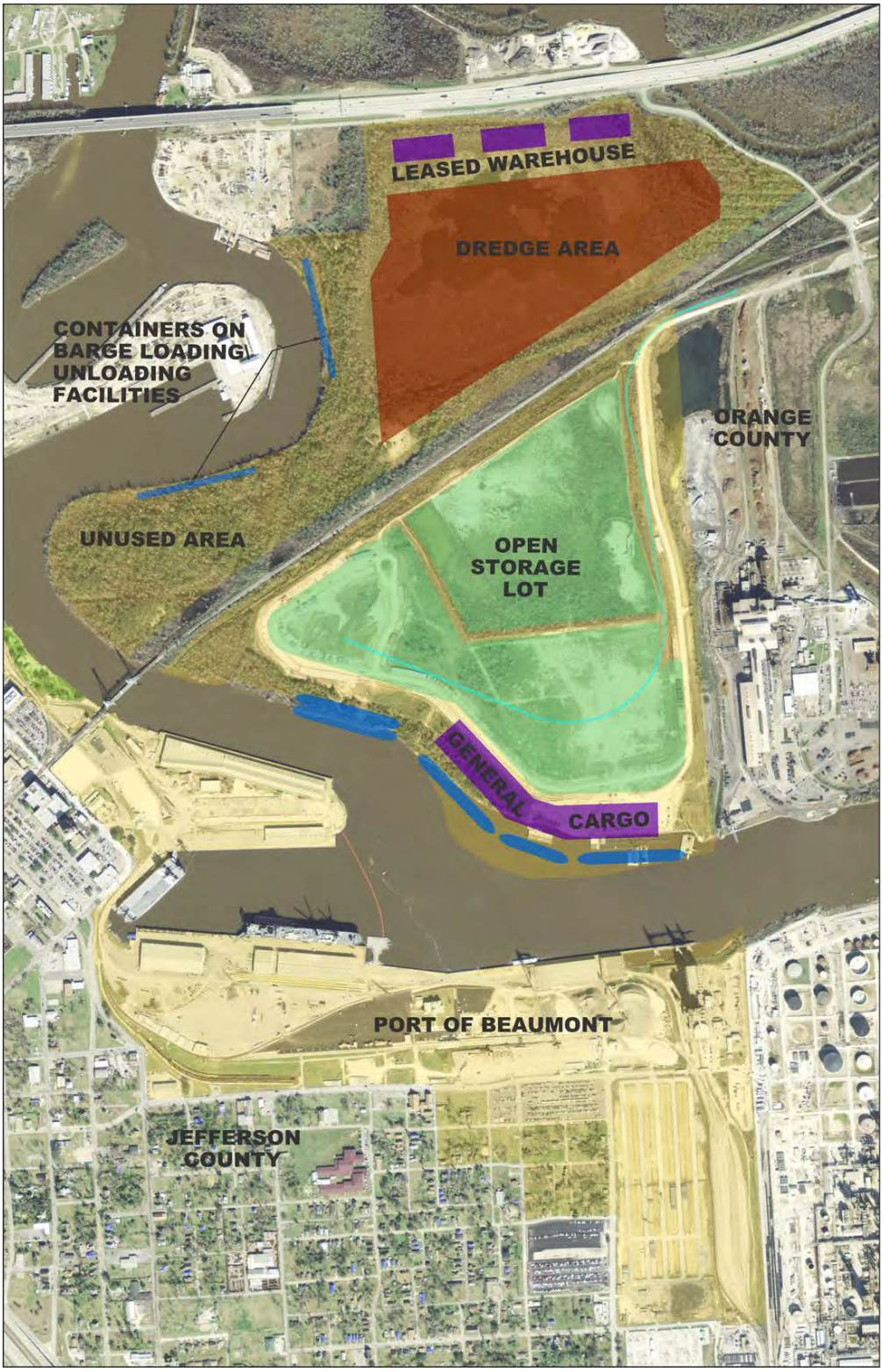


Figure 1.3 - Port of Beaumont Master Plan



Project Description

The study is to evaluate the feasibility of rail corridor system improvements at or near the existing Neches River rail bridge crossing in the City of Beaumont, Texas. This rail corridor serves a combination of Class I railroads including the Kansas City Southern (KCS) railway, the Union Pacific Railroad (UPRR), the Burlington Northern and Santa Fe (BNSF) Railway, and passenger rail operated by Amtrak. All of these railroads currently use the existing lift span bridge owned by the KCS. Approximately 40-50 trains a day cross the Neches River bridge.[6] The Neches River is a navigable waterway and the railroad lift bridge can be raised in order to allow river traffic to pass.

The purpose of the study is to:

- evaluate rail movements and operations within the study area,
- identify opportunities to increase rail efficiency;
- analyze potential alternatives and improvements to the existing bridge and rail alignment, and
- determine the physical and financial viability of such potential improvements.

This report documents the development and assessment of potential improvements and/or alternatives that could be presented to the railroads for consideration, including the evaluation of the financial, engineering, and operational viability of constructing a second river bridge crossing. These concepts were developed in coordination with the Port of Beaumont (POB) Master Plan and the Jefferson-Orange-Hardin Regional Transportation Study area Metropolitan Transportation Plan (JOHRTS MTP) and therefore should be consistent with Statewide planning practices.

The following is an outline of the study tasks. As part of the process, meetings with various stakeholders were conducted including but not limited to the City of Beaumont, the Port of Beaumont, the three major railroads operating in the region (KCS, UPRR and BNSF), as well as contacts with numerous state agencies and industries to obtain data.

Inventory Existing Rail System

- Review and summarize previous pertinent rail studies. Studies include the Texas State Rail Plan, Amtrak Gulf Coast Service Plan, TxDOT's High Speed Rail Study, Port of Beaumont as well as available studies from the Class I railroads.
- Meet with railroad representatives from BNSF, KCS, and UPRR to understand design alternatives, traffic volumes, forecasts, impacts, operating parameters and operating costs.
- Meet with the Port of Beaumont to understand their perspectives and objectives relative to the project.

Conduct Freight Rail Operational Study

- Meet with rail carriers who operate within the Beaumont area regarding existing traffic volumes and operational parameters.
- Collect available information on projected freight volumes for the study area from each railroad.

- Collect future population and employment projections from the State for the period through to the year 2035.
- Integrate data to develop a projection for future rail traffic volumes.

Identification of Freight Rail Movement Constraints

- Establish layout of track geometry that graphically represents the inventory assessed. A validated existing Rail Traffic Controller (RTC) model was used to estimate the constraints on the main line rail operations and efficiency resulting from:
  - Track, Bridge, and/or Signal deficiencies
  - Rail traffic congestion and yard utilization
  - Highway/Rail grade crossing conflicts.

Develop Alternatives and Assess Feasibility for Rail System Improvements

- Develop potential improvements at the Neches River crossing and necessary related main line track improvements, and associated track connections in the vicinity of the existing bridge. Potential track alignments to be examined include:
  - A new alignment immediately adjacent to the existing span.
  - A new approach span to new double track moveable span at the current location.
  - Up to four alternate alignments for new crossing consisting of a moveable span over the Neches River with fixed span approaches

Potential alternates for each new alignment to be examined include:

- Structure Type
  - EITHER a moveable span over the Neches River channel
  - OR a fixed span bridge that meets navigation requirements:
- Structure Typical Section
  - For alignments that connect Port of Beaumont property on both sides of the Neches River, the typical section will allow for rail double track. A 2-lane roadway section suitable for vehicles will also be examined.
  - For alignments that do not connect Port of Beaumont property on both sides of the Neches River, the typical section will only have rail double track.

Within the scope of this study, elimination of the existing structure is not considered feasible. Also while the evaluation considers the potential effects upon the environment, this report is not an environmental document. The project's no-build scenario is utilized to define the project's purpose. Nonetheless as a feasibility study, the focus is upon the technical, financial and socioeconomic aspects of build alternatives.

Utilizing the RTC Base Case model developed for the Texas Department of Transportation (TxDOT) as part of the Houston Regional study, forecasts and updated train operations for the various alternatives were prepared. A cost/benefit analysis based on order of magnitude costs for the construction of improvements, excluding right-of-way costs, was developed. Elements to be considered in the cost/benefit analysis included:

- Environmental:
  - Individual Permit or Nation Wide Permit: US Army Corps of Engineers, Galveston District.
  - Environmental Impact Statement or Categorical Exclusion
  - Potential Wetland Impacts
  - FEMA: A Conditional Letter of Map Revision (CLOMR) or Letter of Map Revision (LOMR)
  - U.S. Coast Guard and U.S. Army Corps of Engineers §10 Permits (Title 33, USC §403)
  - FAA Permit: Notice of Proposed Construction or Alteration.
  - Coastal Management Zone
  - Noise
  - Texas Land Office Permit

- Costs:
  - Probable costs including rail and structure costs as well as other associated transportation improvements to highways.
- Public Benefits:
  - Utilizing GradeDec.net, the Federal Railroad Administration's online planning tool, the public benefit for any proposed changes at key at-grade crossings was estimated.

Review of Previous Reports

Pertinent reports were reviewed as background information for the study. A brief synopsis is provided.

Texas Rail Plan, November 2010

TxDOT developed its first rail plan in 2005 and updated in 2010. The purpose of the rail plan, known as the Texas Rail Plan (TRP), is to set policy, direction, and the vision for the state in compliance with both federal and state regulations as well as how it is to be integrated into the state's multimodal transportation system. Other key components of the plan are an inventory of the freight and passenger rail infrastructure and performing a needs assessment.

The plan states that forecasted growth in population will lead to increased vehicle miles traveled (VMT) and congestion on the highways. Increased VMT and congestion will result in environmental, social, and economic impacts on Texas. Increased population also generates additional demand for consumer products and the need for an efficient freight network. Maintenance and expansion of the existing rail network will be necessary to meet that demand.

Population growth also creates additional demand on the transportation system. The TRP focuses on the ability of passenger rail to serve the demand. Three elements point to the need to integrate passenger rail as another option for intercity travelers:

1. the social and interconnectivity of many of Texas' urban areas,
2. the increasing interest in rail transportation, and
3. the accessibility rail offers to those not willing or unable to drive or fly.

The TRP provides an inventory of existing freight and passenger services provides information on safety and security, and reports on financial opportunities for rail transportation in the State.

Relevance to this Feasibility Study:

- TxDOT's proactive approach to addressing rail transportation issues within the State
- A statewide forecast of freight
- Identification of rail congestion in the Beaumont area, and
- A methodology for assessing and rating rail projects across the State.

Amtrak Gulf Coast Service Plan Report, July 16, 2009

In 1993, Amtrak's *Sunset Limited,* which had previously operated between Los Angeles, California and New Orleans, Louisiana, was extended east from New Orleans to Jacksonville, Orlando, and Miami, Florida. This created a new transcontinental Amtrak route and brought passenger rail service to the Gulf Coast Region between New Orleans and Miami. In August 2005, however, *Sunset Limited* service east of New Orleans was suspended due to massive damage to rail infrastructure caused by Hurricane Katrina. The service on this segment of the *Sunset Limited* remains suspended today due to the cost and challenges associated with restoring this service.

The report detailed the alternatives that Amtrak is considering in restoring service between New Orleans and Florida. Amtrak initially evaluated 12 alternatives. Three were selected as preferred options for evaluation based upon projected ridership, revenue, operating costs, and operating loss. After analysis, three of the options are preferred and are listed below:

1. Restore tri-weekly *Sunset Limited* service between Los Angeles, California and Orlando, Florida.
2. Extend the daily *City of New Orleans* service, which currently operates between Chicago, Illinois and New Orleans, Louisiana, east from New Orleans to Orlando, Florida.
3. Implement daily stand-alone overnight service between New Orleans, Louisiana and Orlando, Florida.

The study recommended that Congress will need to determine if passenger rail service should be restored between New Orleans and Orlando and, if so, identify its preferred option for service restoration; and provide the additional funding for capital and ongoing operating costs that will be required to implement that option. Once these steps are taken, Amtrak will move quickly to initiate the actions required for service restoration.

Relevance to this Feasibility Study:

- If Option 1 is selected, the original Sunset Limited service between Los Angeles and Orlando will be restored, increasing the ridership on this route and potentially the need for additional service, and putting additional pressure on the Neches River bridge crossing. The *Sunset Limited* has a station stop in Beaumont, Texas.

Rail Access to the Port of Beaumont, April 2005

This is a study of rail infrastructure and operations around the Port of Beaumont. It assesses several plans for relieving local rail congestion and inefficient rail service that have been proposed by the Port of Beaumont and the KCS. The Port of Beaumont's motivation to improve local rail operations centers on three objectives:

- Increase port efficiency by replacing its current interchange yard;
- Improve port security for military shipments; and
- Team with the City of Beaumont to redevelop the existing Port interchange yards and thereby increase the local tax base and provide opportunities for economic development.

Three alternatives were proposed to improve rail access to the Port. Recommendations in the report are for all parties to consider a multi-phase approach to deal with the rail congestion. The first phase would be to build a proposed turnout from the south track of the KCS Main track into the Port as well as two rail yards within the Port. These improvements have been funded and are built with the exception of the connection. The second phase would be a detailed operational and economic analysis comparing uni-directional versus bi-directional train operations at the Port. The third phase would be to address the regional rail congestion problems which would include improving the Neches River crossing and various track improvements.

Relevance to this Feasibility Study:

- The Port of Beaumont is a critical rail user in the Beaumont area
- Access to the Port of Beaumont has a strong influence on rail operations in the region, and
- Anticipated growth at the Port necessitates the identification of immediate and long-range transportation improvements.

Gulf Coast High-Speed Rail Corridor Evaluation, November 2004

The report describes an evaluation of the proposed high speed rail corridor which traverses the southeastern portion of Texas from Houston to the Louisiana/Texas State Line near Echo, Texas. This route passes through the Texas communities of Dayton, Liberty, China, Nome, Beaumont, and Orange. Station stops were assumed in Houston and Beaumont. The UPRR owns most of the route with the exception of a short segment in the City of Beaumont where the BNSF, UPRR, and KCS railroads all cross the Neches River on an existing lift span bridge owned by the KCS. The report details:

- existing conditions along the corridor;
- proposed phase improvements;
- an order of magnitude cost estimate;
- ideas for a proposed fixed span structure crossing the Neches River; and
- reviews of equipment technology options.

Phase I of the improvements deal with upgrading the corridor to increase operating speeds up to 79 miles per hour (mph). The report details the necessary horizontal and vertical alignment, number of

grade crossings, bridge and drainage structures, environmental conditions, and any grading issues. The focus of Phase II is to expand the existing route capacity to facilitate both additional freight and enhanced passenger operations. Proposed improvements include double tracking throughout most of the corridor by connecting all of the existing sidings with additional track. The primary focus of Phase III is to upgrade the track and signal infrastructure to facilitate 90 mph operations. Primary improvements recommended include grade crossing and track improvements.

Relevance to this Feasibility Study:

- Passenger rail plays an important part in the nation and in this region, and it utilizes the Neches River bridge
- Rail improvements are needed to accommodate the Gulf Coast High Speed Rail throughout Texas,
- Within Beaumont, rail improvements are desired at the existing Amtrak station.

Metropolitan Transportation Plan (MTP)

In 1974, the Governor of Texas designated the South East Texas Regional Planning Commission (SETRPC) as the Metropolitan Planning Organization (MPO) for Jefferson, Orange, and Hardin Counties as shown in Figure 1.4. As the MPO, SETRPC is responsible for conducting comprehensive, coordinated, and continuing long range transportation planning in the three-county region. The SETRPC-MPO developed a 20-year long-range Metropolitan Transportation Plan (MTP) to accommodate the future needs of the three-county region and acknowledges the vital role that transportation plays in the region's social, environmental, and economic health.

This MTP covers the Jefferson-Orange-Hardin Regional Transportation Study (JOHRTS) area. The plan details projects contained in the "financially constrained" MTP but are not in the Transportation Improvement Program (TIP) or "locked years" sections (normally years 5-20 plus) and the "unconstrained needs" project (i.e. projects that are not funded during the first 20 years). These projects were identified by the public for having merit if funding should become available. As in other Texas urban areas, the JOHRTS area has experienced significant increases in traffic volumes and traffic congestion. In large measure, increased traffic and congestion are directly correlated to the region's growth in population which by 2030 is expected to reach approximately 435,700 persons. The population of the JOHRTS region was approximately 385,090 persons in 2000, with 252,051 in Jefferson County, 84,966 in Orange County, and 48,073 in Hardin County. Geography and regional travel patterns are contributing factors to escalating traffic between the three major cities (Beaumont, Orange, and Port Arthur) and surrounding communities.[7]

The Plan contains one major transportation improvement within the City of Beaumont:

IH-10: Proposed improvements to expand IH-10 from four to six lanes between Beaumont and the eastern county line in Orange are moving forward. Engineering and design studies for each of these phased construction projects are near completion – one section has been completed and a second section is currently under construction. TxDOT is still trying to secure funding to complete all the

projects along the entire link. Long-range plans also exist to expand the capacity of IH-10 in Jefferson County from four to six or eight lanes.

The Plan also details specific objectives in improving transit and non-motorized travel in the region.

Relevance to this Feasibility Study:

- The Plan addresses all modes of transport including freight (by truck, rail, water and air)
- Air quality attainment in the region needs to be addressed and will influence future transportation improvements, and
- Roadway improvement projects in the region may affect where potential rail alignments might be located.

Figure 1.4 - South East Texas Regional Planning Commission Area

2.0 Existing Conditions

This section provides an overview of socioeconomics and environmental resources in the study area as well as an inventory of existing rail transportation, its operations in the Beaumont region and the development of a Rail Traffic Control (RTC) model to simulate existing and projected conditions.

Socioeconomic and Environmental Resources

The City of Beaumont is within Jefferson County, Texas and is part of the Metropolitan Planning Organization (MPO) known as the South East Texas Regional Planning Commission (SETRPC).

Population and Households

During the 1980's, Jefferson, Orange and Hardin counties experienced a decline in population and employment due to a downturn in the petrochemical industry. From 1980 to 1990, population in the region decreased by four percent. During the next decade (1990 to 2000), the region experienced a 6.6 percent increase in population growing to 385,090 people. Between 2000 and 2010, population growth slowed to one percent and in 2010 the three counties had a total population of 388,745. Population forecasts anticipate further growth of 11.6 percent for the SETRPC area between 2000 and 2030. Jefferson County is also forecast to grow by 11.6 percent.[8]

According to the 2010 U.S. Census, the City of Beaumont had a population of 118,296 which represents a four percent increase from 2000. This population had a median age of 32.8 years with 12 percent of the residents 65 years old or over.[9,10] Figure 2.1 displays households by block. Within the study area, the number of households tends to be low with a majority of single family households. Also note that limited residential development is located immediately adjacent to several of the railroads. Of the 43,569 occupied housing units, 56 percent are owner occupied and the remaining 44 percent are rented.[11] The median value of a house was $90,900 in 2009 within the study area.[12]

Income and Race

Economic characteristics show that in 2009 the median household income for the City of Beaumont was $39,899 and the median family income was $49,766.[13] Figure 2.2 displays the locations of families that are low to moderate income (approximately $30,000 median family income or less). Note that the entire study area includes families with low to moderate income levels. In terms of racial composition, 48 percent of the residents are black, 43 percent are white, and the balance is a mixture of other races. Figure 2.3 displays the distribution of the non-white population in the study area.[14]

Income and race statistics are important to note for environmental justice reasons. Environmental justice is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation of environmental laws, regulations and policies. If a project utilizes federal funds and goes through the NEPA (National Environmental Policy Act) process, there is an obligation to avoid or minimize and mitigate adverse impacts to low-income and minority populations and to assure that disproportionately high and adverse impacts on these populations are identified and addressed.

Figure 2.1 - 2010 Households by Block

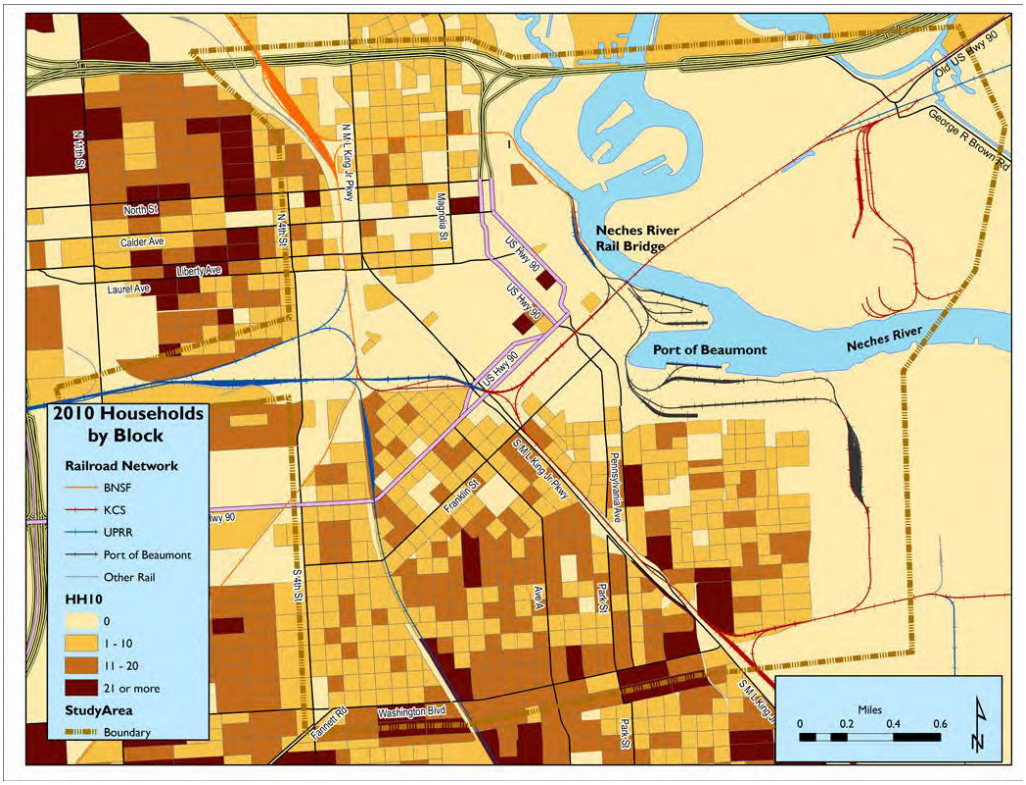


Figure 2.2 - 2010 Low-Moderate Income Population by Block Group

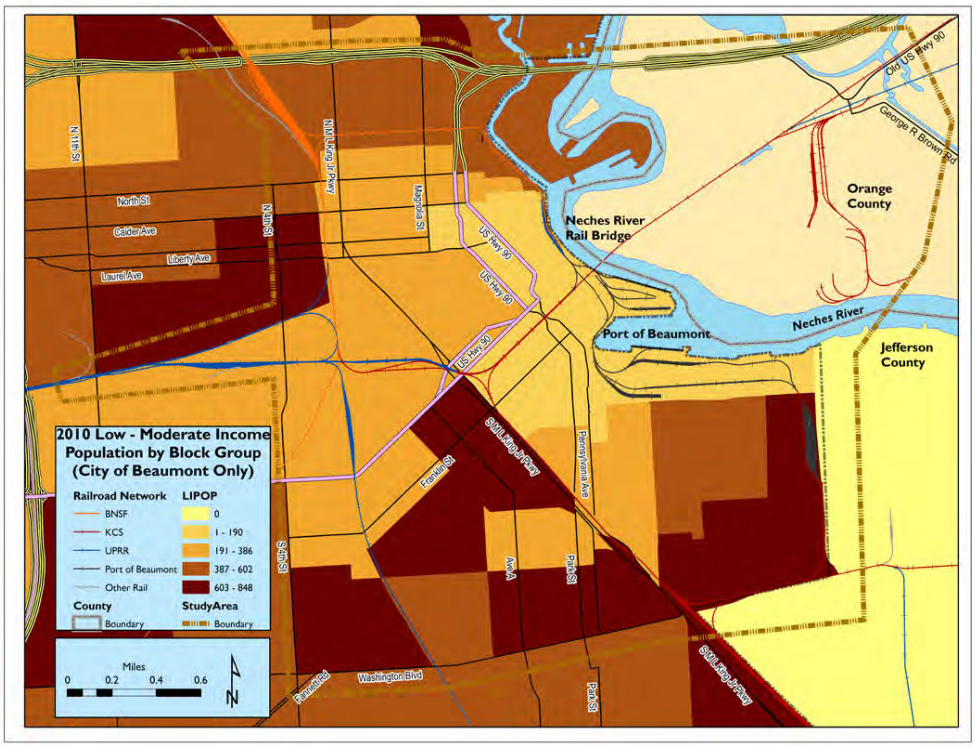
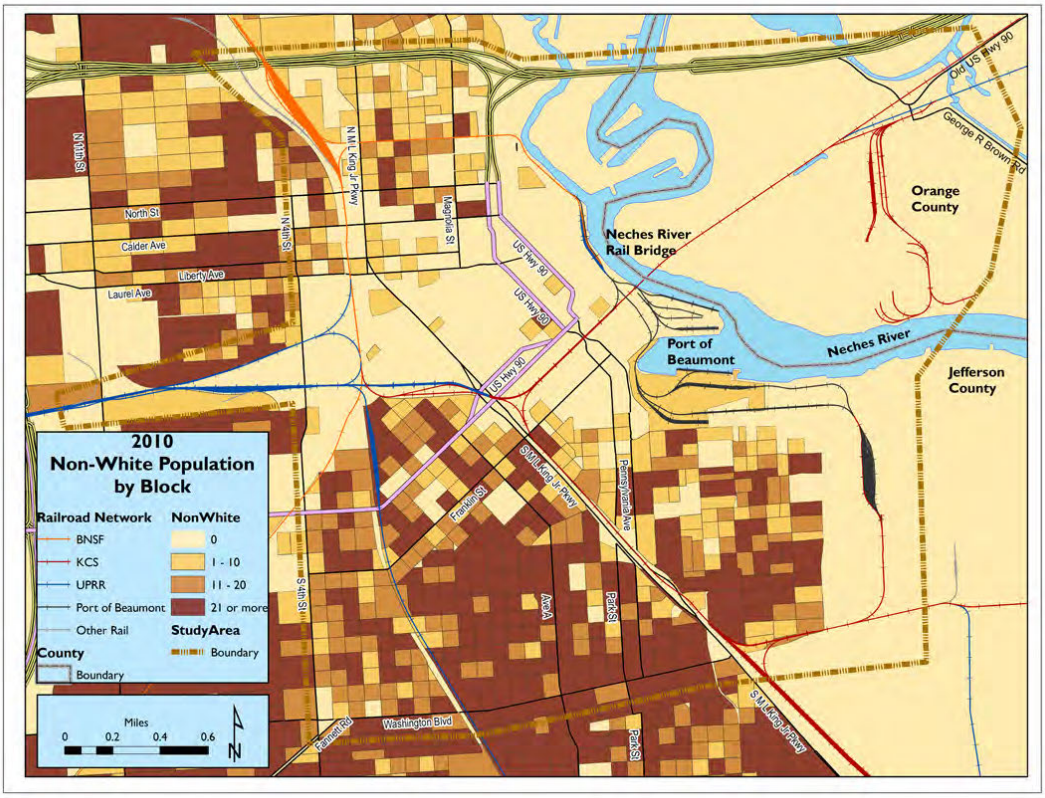


Figure 2.3 – 2010 Race: Percent Non-Caucasian By Block



Employment

Overall employment is expected to increase by 16.3 percent in the Jefferson-Orange-Hardin county region between 2002 and 2030. Since the 1970's, the regional job profile has been changing from "basic sector jobs" (i.e. mining, construction, manufacturing, transportation, communications, public utilities, and wholesale trade) to jobs classified as service (i.e. finance, insurance, real estate services, educational services, and governmental organizations) or retail. In 2002, "basic sector" employment for Jefferson, Orange, and Hardin counties accounted for 36.2 percent of employment in the region. By 2030, it is expected that these types of jobs will drop slightly to 34.1 percent of regional employment. By comparison, "service sector" employment accounted for 43.8 percent of regional employment in 2002 and is forecasted to grow slightly to 46.1 percent by 2030. Retail sector employment accounted for 19.9 percent of the overall employment in the region and is estimated to remain the same by 2030.

Major employers of over 1,000 employees within the City of Beaumont are show in Table 2.1. These employers account for 17.03 percent of all employment in Beaumont.

Table 2.1
Major Employers - City of Beaumont, Texas

Number	Employer	Number of Employees
1	Beaumont Independent School District	2,893
2	Memorial Hermann Baptist Hospital	1,621
3	Christus St. Elizabeth Hospital	1,602
4	City of Beaumont	1,314
5	Lamar University	1,174
6	Jefferson County	1,093

Source: City of Beaumont 2011 Comprehensive Annual Financial Report

Water Resources

The Neches River flows for 416 miles through east Texas to its mouth on Sabine Lake near the Port Arthur-Orange Bridge. The Lower Neches Valley Authority is the river authority which oversees the Neches River. Except for a few miles near its head, the Neches River for its entire length serves as a boundary stream, forming the county lines between Orange and Jefferson Counties. Two major reservoirs, Lake Palestine and Lake B. A. Steinhagen are located on the Neches. Several cities are located along the Neches River, including the City of Beaumont. From Lake B.A. Steinhagen down to Beaumont, the Neches River flows through the 97,000 acres Big Thicket National Preserve. This important ecosphere preserves the area where several ecosystems converge - an event that harkens back to the last glacial period. High rainfall rates produce frequent flooding of low-lying areas, and large floods occur on the average every five years. Floods in the basin are often of long duration.

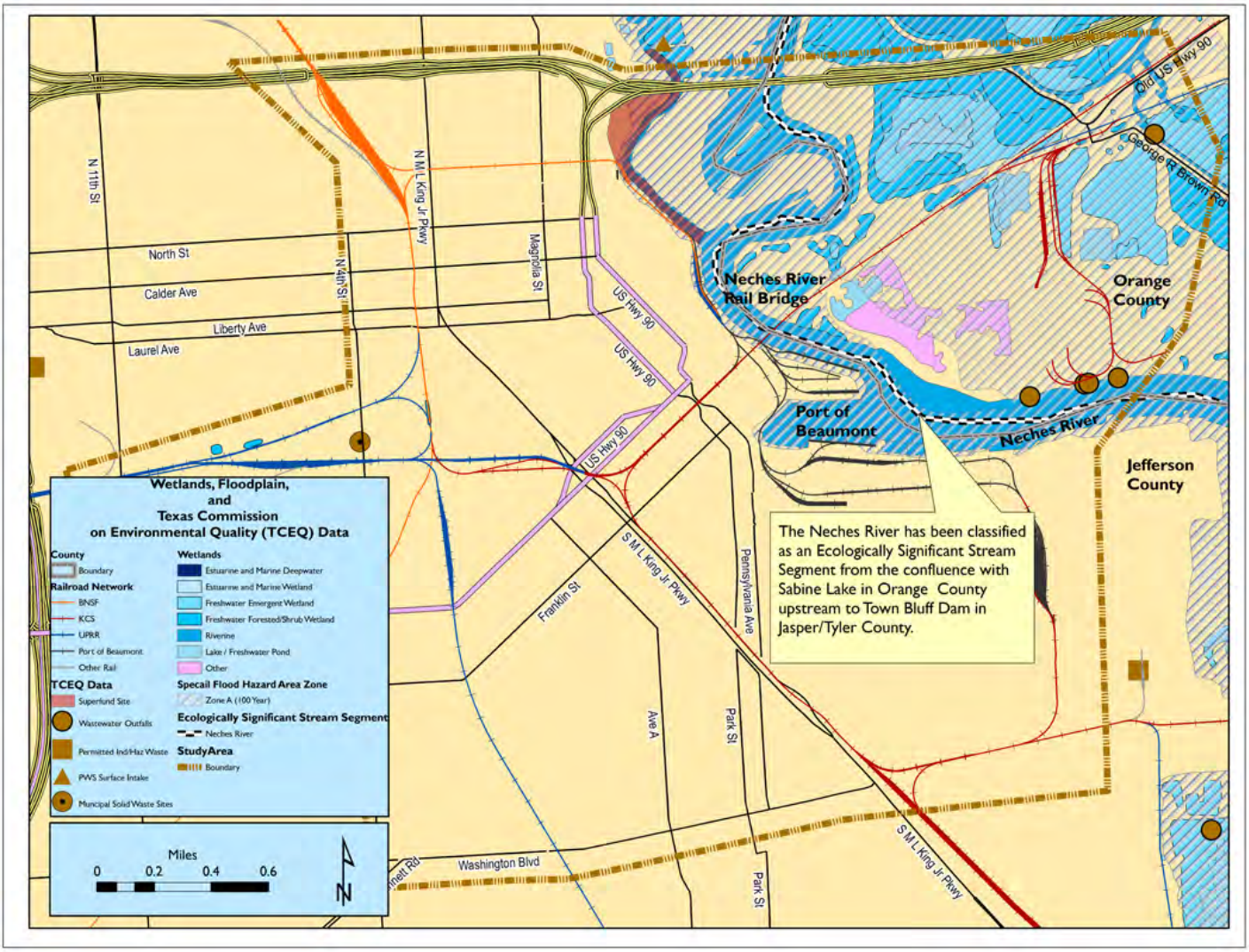
During the late nineteenth and early twentieth centuries the upper Neches River basin was the site of intensive logging. Numerous sawmills were built along the banks of the river and its tributaries during this time. After 1901, the Neches River basin became the site of large-scale oil exploration. The growth of the oil industry led to the development of the Beaumont-Port Arthur-Orange metropolitan area as a major site for oil refining, processing, and shipping. As a consequence of these developments, the waters of the Neches River became polluted. Efforts have been made to clean up the stream. An area-wide water-quality management plan was adopted for the area. But in the early 1990's the pollution problem continued, especially in the river's lower reaches.[16]

As a result of the passage of Texas Senate Bill 1 (SB1) in 1997, water planning in Texas became the domain of regional planning groups. As a part of the planning process, each regional planning group may include recommendations for the designation of ecologically unique river and stream segments in their adopted regional water plan. The Neches River from the confluence with Sabine Lake in Orange County upstream to Town Bluff Dam in Jasper/Tyler County (Texas Natural Resource Conservation Commission (TNRCC) classified stream segments 0601 and 0602) has been classified as an Ecologically Significant Stream Segment.

Wetlands and Floodplains

Figure 2.4 displays the wetlands and floodplains in the study area. The Federal Emergency Management Agency (FEMA) designated Zone A floodplain covers a significant portion of the Orange County area within the study boundary.

Figure 2.4 – Wetlands and Floodplains



Threatened and Endangered Species

The Neches River is part of the Great Texas Coastal Birding Trail. It also is considered to have a high water quality with exceptional aquatic life. Threatened or endangered (T&E) species and/or unique communities within the River include:

- Paddlefish
- Largest known population of sandbank pocketbook freshwater mussels in Texas; and

- One of the two largest populations of rare, endemic Texas heelsplitter freshwater mussels remaining.

Other T&E species within Jefferson County are listed in the Appendix. Since the study area has a large area of wetlands in Orange County, there is the potential for natural habitat for these species.

Archeological and Historic

The Neches River basin has long been the site of human habitation. Archeological excavations have discovered evidence of all stages of southeastern Indian development, beginning with the 12,000-year-old Clovis culture. Indian development reached its peak after the arrival of the Caddos about A.D. 780.

There are two recorded historic structures as designated by the Texas Historical Commission (THC) in the study area as well as several more as shown in Figure 2.5 including the Mildred Building, 1929, built by Austin Company (1400 Calder Ave.) and Idle Hours Manor, 1903, built by Frank Tipton Smith (1608 Orange). The THC offers four types of designations to recognize and protect historic and prehistoric properties: National Register of Historic Places, Recorded Texas Historic Landmark, State Archeological Landmark, and Historic Texas Cemetery.[17] The City's website identifies several other locations as "historic" within the study area as well as a Historic District in the Downtown area.[18] However, the existing rail corridors do not abut any of these sites, though the Historic District includes the former Southern Pacific Depot.

Land Use Conditions

Within Jefferson County, the major cities are Beaumont, Port Arthur, Port Neches, Nederland, and Groves. These cities generate most of the economic activity and house the majority of residents. Land uses in the central areas of these cities are predominantly industrial or commercial. Industrial activities include:

- oil refinery,
- oil and gas drilling,
- other types of petrochemical operations;
- port facilities and maritime shipping operations;
- marine construction and repair; and
- sulfur, salt, sand, and gravel mining.

Commercial land uses in the city center are mostly service oriented businesses and small retail shops. Areas on the periphery of these cities consist of residential and commercial districts as well as some agricultural areas. Residential areas are comprised of primarily low-density single-family residential units, while agricultural areas consist of cow pastures, ranches, and rice farms. Commercial districts consist of large shopping or strip malls with an assortment of stores, restaurants, and small strip malls. Institutional land uses are also prevalent. Community facilities within the study area are shown in Figure 2.6.

Figure 2.5 – Historic Resources

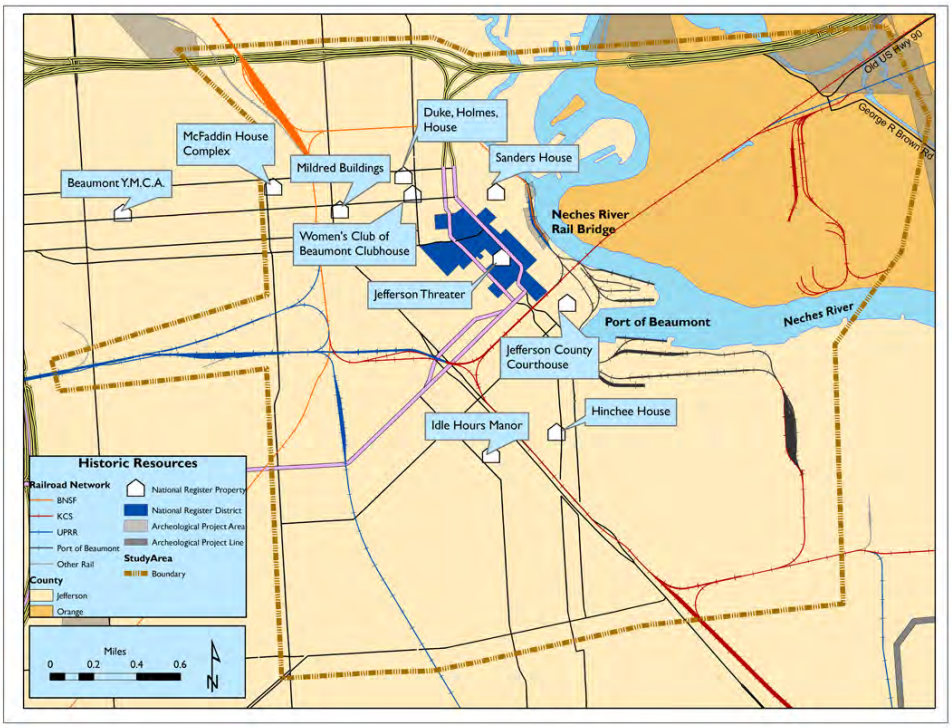
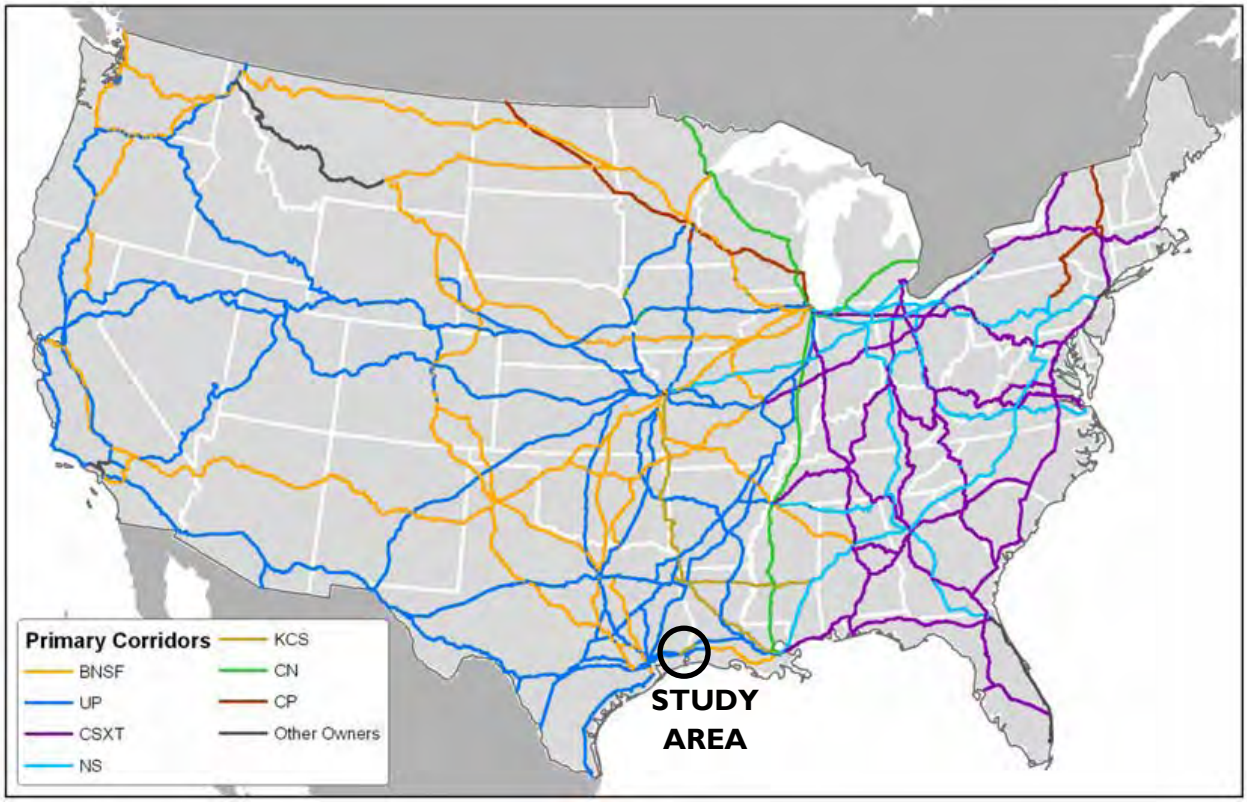


Figure 2.6 – Community Resources

Inventory of Existing Rail System

This section discusses the rail systems of the three Class I railroads operating in the Beaumont area. It begins with a depiction of the freight rail carrier's national system and then moves into the regional system. In a similar manner, the passenger rail system is discussed. Elements of rail corridors are included with the identification of key at-grade crossing and service provide to local industries. Primary rail corridors throughout the contiguous United States are shown in Figure 2.7. These primary corridors are defined by a variety of measures such as volume of traffic, weight of traffic and value of traffic moved along the corridors. The Union Pacific Railroad section east of Houston through Beaumont, with the KCS bridge over the Neches River, is identified as a primary rail corridor.

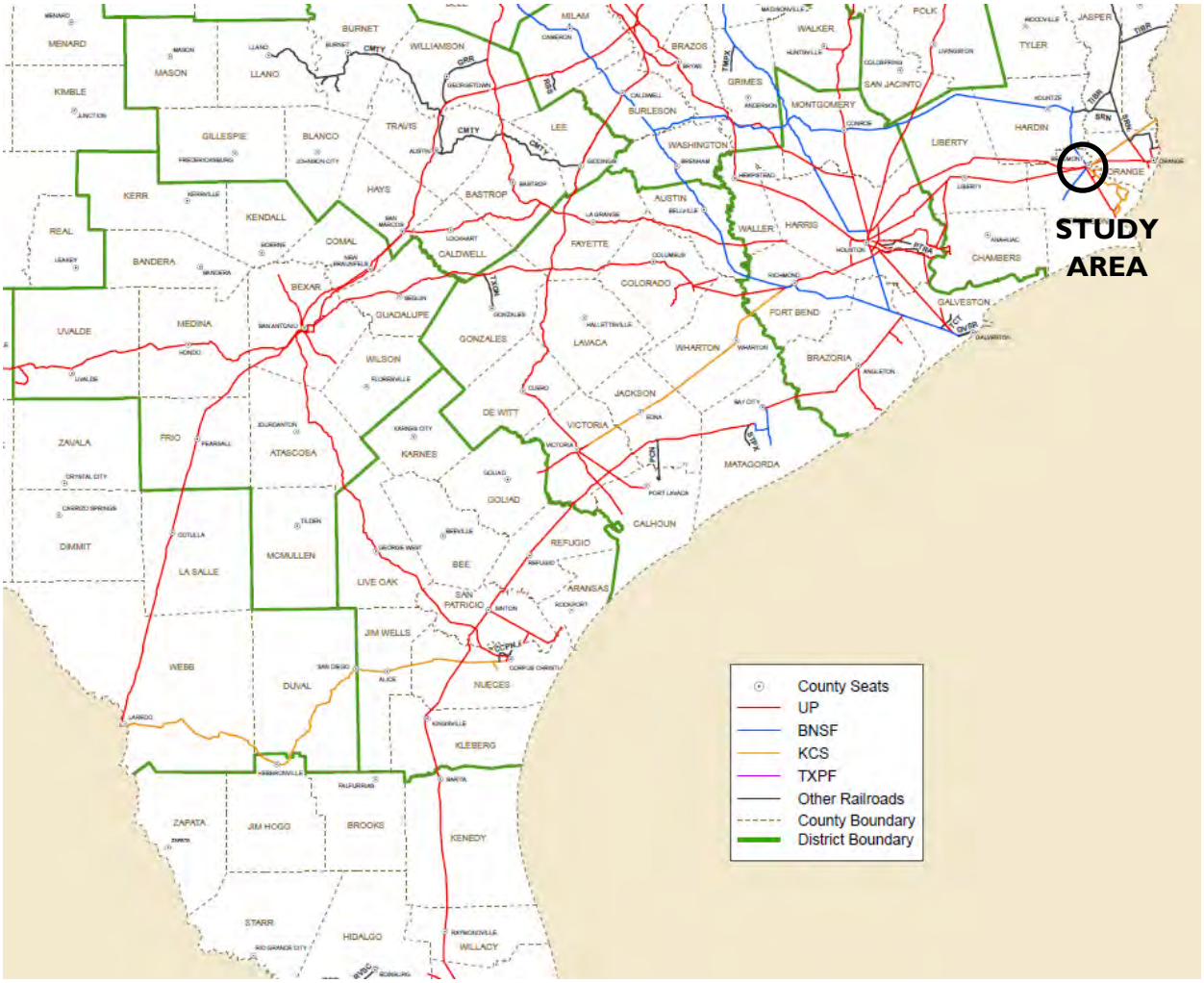
Figure 2.7 – Primary Rail Corridors – Contiguous United States



Freight Railroads

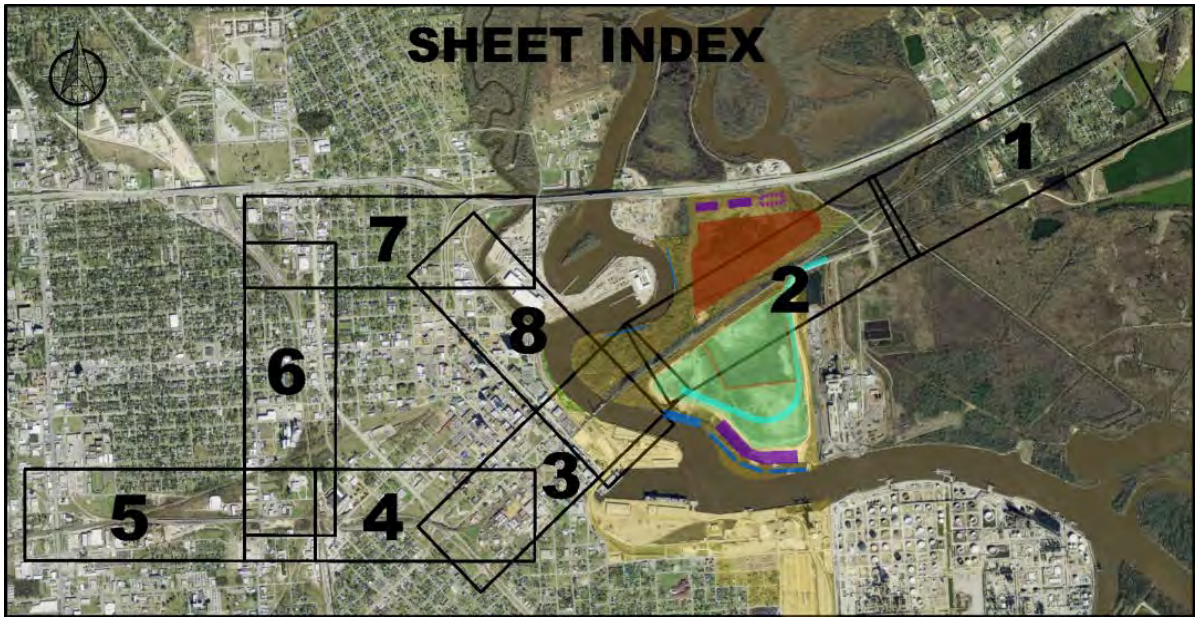
Three Class I railroads utilize the Neches River bridge in the City of Beaumont, Texas. These railroads are the KCS that owns the bridge as well as the UPRR and the BNSF Railway which operate via trackage rights and in turn pay a fee to KCS. Figure 2.8 shows an overview of these railroads and others (including shortline railroads) in the southern portion of the State of Texas along the Gulf of Mexico from the border with Louisiana to Mexico.

Figure 2.8 – Rail Map of Southern Texas



Each of the railroads is defined initially at a larger national perspective and then in a more regional perspective including the Beaumont region. Typically the descriptions follow the railroads milepost (MP) conventions which often increase when travelling westward. To assist in gaining an understanding of the location and context of the rail network, a series of maps is provided in the Appendix of existing conditions at 1" equals 200' scale with aerial photography. Figure 2.9 shows the limits of mapping and a sheet index for the study area beginning east of the KCS-UPRR split, west across the Neches River to a point on the Union Pacific line near IH-10. A loop is then made along BNSF tracks north to its Beaumont Yard and then to the Port of Beaumont at its junction with the KCS.

Figure 2.9 –Sheet Index Map of Existing Conditions in Appendix



Kansas City Southern (KCS) Railroad

The Kansas City Southern Railroad is concentrated in the central Midwest and is an international railroad with service into Mexico as shown in Figure 2.10. Access to the Mexican market is through Houston, via DeQuincy, Louisiana and Beaumont, Texas.

For purposes of the Beaumont study area (and shown in the Appendix Exhibits 1 through 3), the KCS rail corridor begins at MP 763.4 and its stationing increases heading westward towards the Neches River. The rail corridor is a single track with varying right-of-way. There are two pertinent at-grade crossings of the KCS in Orange County; Rose City Drive (MP 763.79) and Old US 90 (MP 764.61). Near Rose City Drive, the right-of-way is 100 feet, while west of Old US 90 the right-of-way widens to 200 feet with the majority of available right-of-way on the north side of the track. At MP 764.87, there is a turn out to the UPRR track that goes to Orange, Texas and onward to Lake Charles, Louisiana.

The KCS track crosses the Neches River on a lift span bridge from Orange County to Jefferson County, Beaumont. On the west side of the bridge, the track has a diamond crossing to the Port of Beaumont before an equilateral turnout expands the line to double track to the wye approximately a mile to the west. At the wye, the KCS track turns south for more than 20 miles to reach Port Arthur. For nearly 1.25 miles, the KCS is physically separated from Martin Luther King (MLK) Parkway (TX 380) on an overpass structure. The Chaison Yard and service to numerous industries are on the line to Port Arthur. Chaison Yard has a capacity of approximately 420 railcars. The wye is commonly referred to as Gulf Coast Lines (GCL) junction or Station 13. The KCS rail corridor between Main Street and Trinity Street is identified on the track charts as having a 50 foot right-of-way on both sides of the centerline. Available property line information illustrates a total right-of-way width of 60-feet. There are three at-

grade crossings (Pearl, Neches and Trinity Streets) and a rail overpass with Park/Orleans Streets within the study area for the KCS. The crossing at Main Street is closed.

Figure 2.10 –Kansas City Southern Rail Map

KCS track also continues westward through the former Wall Street Yard to the KCS-UPRR interchange near Cedar Street. Three tracks are elevated over the junction of US-90 (the one-way couplet of College and Wall Street) and MLK Parkway (TX 380). There is one at-grade crossing with Crockett Street.

Union Pacific Railroad (UPRR)

The Union Pacific Railroad has 31,900 route miles covering 23 states across the western two-thirds of the United States and is shown in Figure 2.11. The UPRR is headquartered in Omaha, Nebraska. The UPRR has an extensive presence in Texas with its major markets including Houston as well as several border crossings into Mexico. East of Houston, through Beaumont, the UPRR connects to New Orleans and its international markets.

Figure 2.11 – Union Pacific Railroad National Map

For purposes of the Beaumont study area, this rail corridor begins at MP 275.5 and its stationing increases heading westward towards the GCL Junction (approximate MP 278.0 and an equivalent station of MP 461.0). East of the UPRR/KCS Junction at Tower 31, east of the Neches River, the rail corridor is a single track within a 200 foot right-of-way. There is a public at-grade crossing of George Brown Road and then an assumed private crossing of an industrial siding which serves Gerdeau Ameristeel.

The UPRR double track continues westward from the joint KCS-UPRR double track at the GCL Junction crossing Crockett Street at-grade and then the railroad is grade separated over both 4th and 11th Streets. In between 4th and 11th Streets on the south side is UPRR's East Yard. UPRR's two main tracks continue westward for five miles to MP 456.0 near Dowlen Road before splitting to directional single tracks. Directional running, which in essence provides double track capacity, west of Beaumont utilizes the former Southern Pacific (SP) railroad for westward movements and the former Missouri Pacific (MP) Line for eastward movements.

Also in between 4th and 11th Streets north of the Municipal Waste Site at a diagonal is the former Southern Pacific alignment. UPRR now owns this track and utilizes it and several turnouts. The Amtrak station is located on the north side of these tracks immediately east of 11th Street. South of the UPRR-KCS Junction, another UPRR line continues to Port Arthur. UPRR's South Yard is located on this line between Crockett and Gilbert Streets. There are ten at-grade crossings along this rail corridor within the study area before Washington Boulevard. Two tracks cross US-90 which has over 30,000 vehicles per day at this location. A little more than two miles south of Washington Boulevard is a service track to the east to Exxon-Mobil's refinery. The UPRR owns several rail yards in Beaumont with a total capacity of approximately 1,700 cars.

With 24 percent of all freight cars handled by UPRR originating or terminating in Southern California, the Sunset Route is a key corridor for North American railroads. The Sunset Route is an important transcontinental route for package express business, finished automobiles, and grain. Less than one quarter of the Sunset Route had a second double-track when UPRR acquired it in 1996 as part of the merger with Southern Pacific. Since then UPRR has built 292 miles of new main line double-track through this corridor to handle the nation's growing freight traffic.

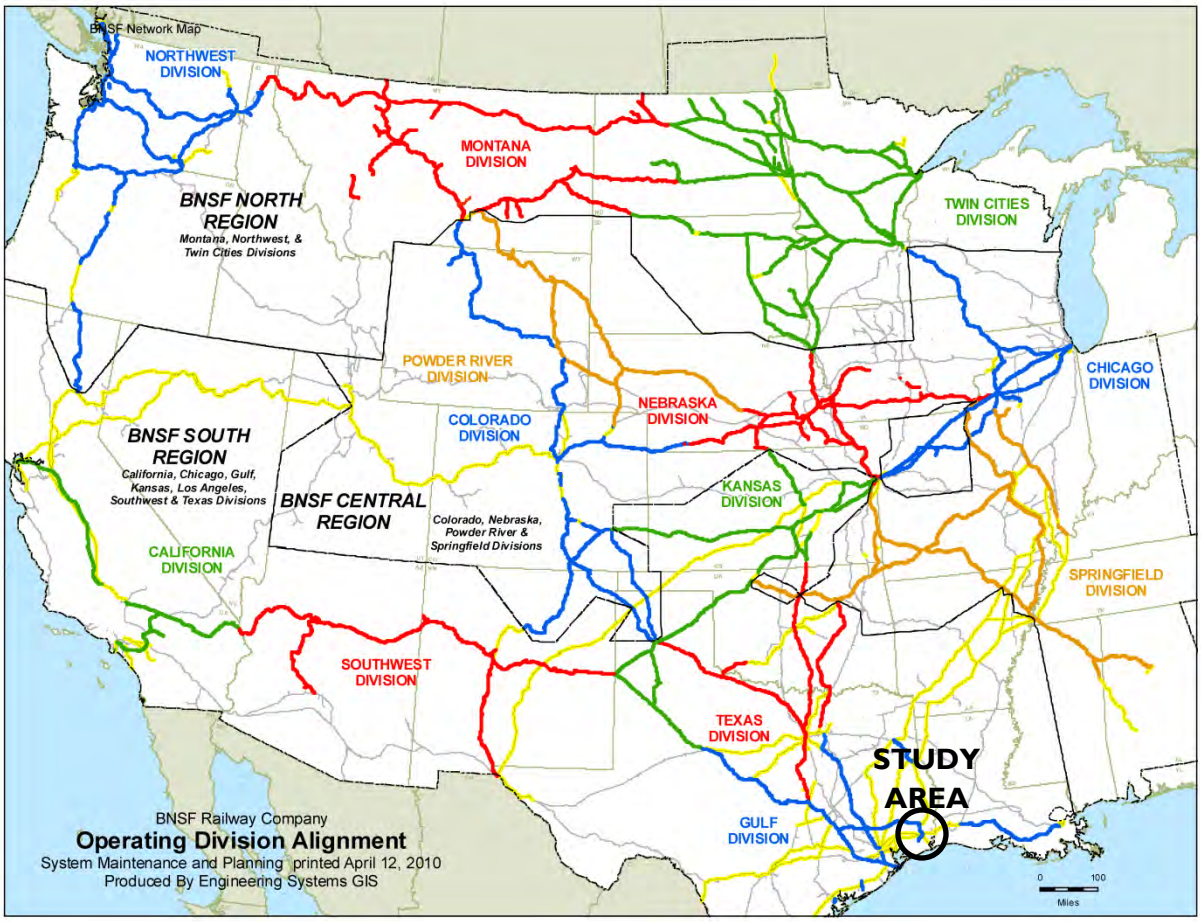
Burlington Northern and Santa Fe (BNSF)

The BNSF Railway Company (BNSF) , headquartered in Fort Worth, Texas operates one of the largest railroad networks in North America with 32,000 route miles covering the western two-thirds of the United States. Because of its extensive network in Texas alone, Figure 2.12 focuses in on BNSF's Gulf Operating Division. As BNSF does not have a hub in Houston, its presence through Beaumont is less prevalent than the other railroad companies.

For purposes of the Beaumont study area, the BNSF rail corridor begins at MP 0.0 (equivalent Union Pacific MP 30.0) and its stationing increases heading northward towards its yard, a portion of which passes beneath Interstate 10. The yard has a capacity of approximately 600 railcars. The rail corridor is a single track within an approximate 100 foot right-of-way with 1st Street parallel on the west side and Gulf Street parallel on the east side. There are six at-grade crossings south of the BNSF Yard. Between

Broadway and Calder Avenue, the horizontal alignment of the tracks shifts approximately 60 feet to the east.

Figure 2.12 – Burlington Northern and Santa Fe (Gulf Operating Division)



East of the BNSF Yard is a wye with a service track (Track 72) that is located in the middle of the Long Avenue right-of-way. The street right-of-way is approximately 60 feet wide and the road pavement is approximately 24 feet wide. The rail passes beneath US-90 before turning south along Pine Street and the west bank of Brake's Bayou. The BNSF recently upgraded the north connection along Long Avenue to the existing Port Interchange Yard which serves as their primary entrance accommodating nearly three-fourths of BNSF traffic. To access the Port of Beaumont, BNSF trains also use the diamond crossing immediately west of the Neches River Bridge. A former (now inactive) spur line crossed Brake's Bayou to Chicago Bridge and Iron. South and west of the UPRR-KCS interchange is the single track BNSF Subdivision to Fannett. Within the study area the BNSF has six at-grade crossings along the approximately 80-foot wide right-of-way.

Port of Beaumont

The Port of Beaumont is accessible from the Gulf of Mexico and Intracoastal Waterway via the federally maintained Sabine-Neches Ship Channel, 42 miles upstream from the Gulf. It is the fourth busiest port

in the United States according to the American Association of Port Authorities. It is also the busiest military port in the U.S. and the headquarters of the U.S. Army's 842d Transportation Battalion, which specializes in port logistical activity. For purposes of the Beaumont study area, the rail serving the Port is focused upon the Port's Interchange Yard. Trains entering the Port of Beaumont are directed into the Port's Interchange Yard. The existing interchange yard for the port is located on the north side of the main line while the port is on the south side. The interchange yard, located along the Neches River, has six tracks. Five of the tracks are short storage tracks that have a total capacity of approximately 100 - 120 rail cars. The short length of these tracks requires the BNSF, UPRR, and KCS to split up inbound trains so that a single train can be made to fit. The lowline (lowest elevation track) from the interchange yard is below the high-water surface elevation and often stays wet. It has a 17'-6" clearance so it is used primarily for storage or movement of empty cars. The highline (highest elevation track) is used for loads traveling between the Interchange Yard and the Port. This track has a diamond crossing of the KCS track immediately west of the Neches River Bridge. Interchange yard tracks 3 and 4 currently prohibit the use of six-axle locomotives in favor of the four-axle locomotives used primarily for local traffic and yard work.

The Port of Beaumont's Master Plan

This text focuses upon the Port's Orange county facilities which at this time appear to have begun development yet can be considered to be in the early stages of full build out. The Port's Master Plan presents an exhibit of potential facilities as shown in Figure 2.13. Major elements have been transposed onto the study's base-map to allow for an integrated planning effort. The Orange County port facilities can be divided into two basic areas that are physically separated by the KCS tracks. Under existing conditions, a crossing of the KCS tracks is not provided. Consequently the access to the two areas (north and south of the KCS) is described separately.

The site north of the KCS tracks is approximately a 215 acre area bounded on the north by the IH-10 eastbound frontage road, Old US-90 on the east side, the KCS tracks on the south side and the Neches River on the west side. Currently a large depressed area is in the center of the parcel. This depressed area is proposed as a 60 acre dredged disposal area. Along the nearly 2,200 foot of IH-10 frontage, a series of leased warehousing is proposed. A vehicular access drive is shown from Old US 90 heading westerly south of the dredge disposal area and then turning to cross the KCS tracks into the south parcel of the Port. Along the Neches River frontage, two container-on-barge wharf facilities are proposed. Water access to and from these wharfs will require a lift at the KCS bridge. No rail service is currently provided nor is shown as proposed to this parcel north of the KCS tracks.

The site south of the KCS tracks is approximately a 250 acre area bounded on the north by the KCS tracks, the rail tracks of the Gerdeau Ameristeel facility on the east side, and the Neches River on the south and west side. Currently vehicular access is provided from George R. Brown Drive which leads into Gerdeau Ameristeel and has an at-grade crossing of the UPRR tracks. Rail service to the property is an extension of the service tracks to the steel facility. The rail service would follow the eastern property line and reach a dock on the Neches River. Other tracks would swing up into the site to access an open storage area. Several general cargo docks are shown along the Neches River that could serve up to five ships.

Figure 2.13 – Port of Beaumont Master Plan (Orange County)

Amtrak

Amtrak provides intercity passenger rail service in Texas via the Sunset Limited, Heartland Flyer, and the Texas Eagle which serve most of the State's major urban areas, as shown in Figure 2.14. The Sunset Limited as shown in Figure 2.15 provides service to the City of Beaumont. The Sunset Limited's current schedule runs three times a week in each direction. Westbound trips stop in Beaumont on Mondays, Wednesdays, and Fridays while eastbound trips stop on Tuesdays, Fridays, and Sundays. Ridership at the station in Fiscal Year (FY) 2010 was 2,135 or approximately 40 passengers per week.

The Amtrak station is located at 2555 West Cedar Street. Facilities include a small unattended parking lot and 650 foot long platform. Recent improvements were made at the station for passengers requiring wheelchairs as well as adding lighting, a small passenger shelter, and other site improvements.

Figure 2.14 – Amtrak Passenger Rail Lines National

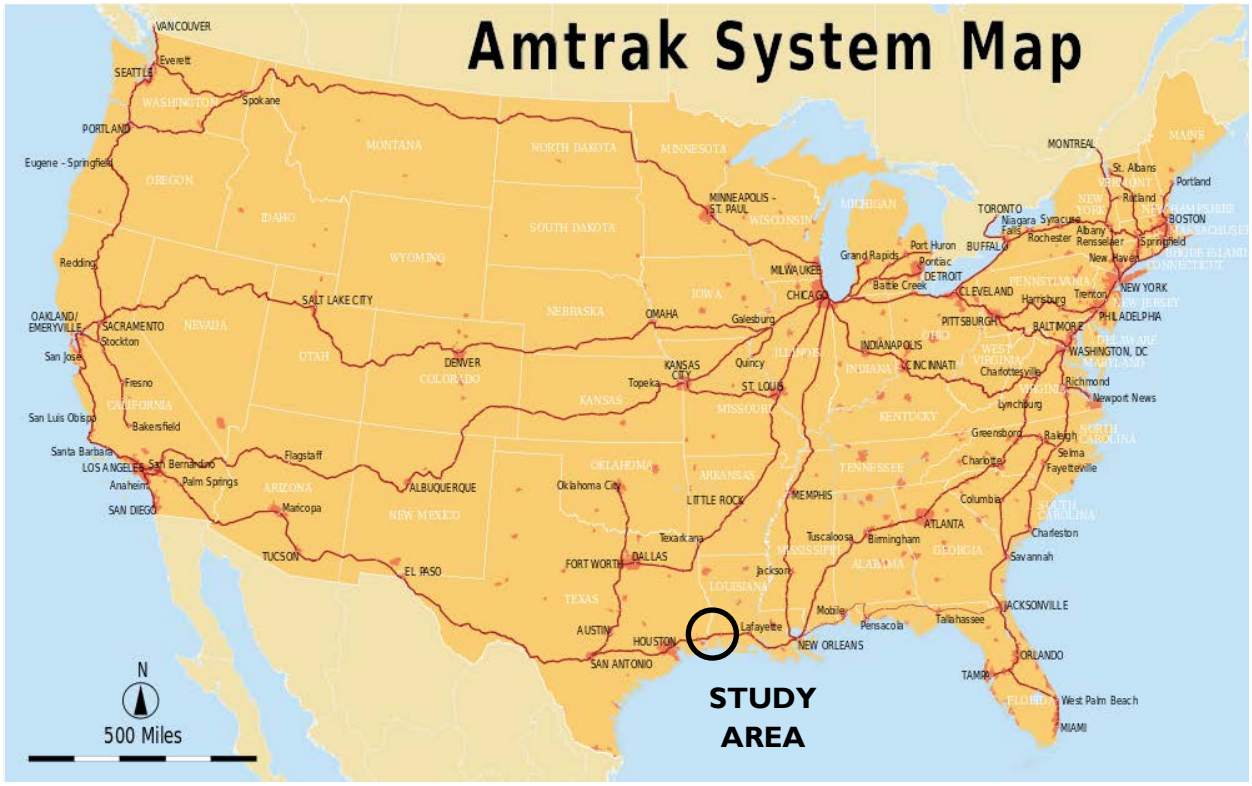


Figure 2.15 – Amtrak Sunset Limited Route

Rail Corridors

This section on rail infrastructure focuses upon the primary east-west corridors within the Study Area. Additional rail service is provided in a north-south direction via several spur lines. An understanding of train traffic volumes in the next section confirms this perspective of primary east-west movement. While many of the rail corridors are under one principal owner, trackage rights along the corridors allow other railroad carriers under an operating agreement to utilize the rail corridors.

The primary east-west rail corridor through the Beaumont area is maintained by the KCS and UPRR to the appropriate Federal Railroad Administration (FRA) classification based on the posted speeds. A review of the Beaumont Time Schedule, dated September 1, 2010 indicates the following posted speeds:

- 50 mph (miles per hour) on the KCS tracks east of the KCS/UPRR split (single track),
- 50 mph on the UPRR tracks east of the KCS/UPRR split (single track),
- 40 mph on the KCS tracks east of the Neches River bridge to the KCS/UPRR split (single track),
- 20 mph from the Gulf Coast Line (GCL) wye on the KCS tracks (double track to Main Street) through the Neches River bridge (single track),

The Neches River rail bridge is a vertical lift span bridge that allows river traffic to pass under the bridge. River traffic appears equally split between industrial barges and pleasure craft. The Beaumont Yacht Club immediately north of IH-10 has four launch ramps and several covered and uncovered slips. The bridge is in the rail-locked position until a navigation request is made to raise the lift bridge, generally to a requested vertical clearance. Information supplied by the United States Coast Guard (USCG) indicates approximately 400 lifts per year.[19] The bridge is controlled from the KCS Kansas City, Missouri dispatch office. Data from KCS indicates 7 lifts in a six day period (Monday, September 12 through Saturday, September 17, 2011) which is consistent with the USCG's annual lifts.

The railroad lift bridge across the Neches River is located at navigation mile 19.5. It has a maritime horizontal clearance of 200 feet, a vertical clearance of 13 feet above mean low water in the closed position, and a vertical clearance of 150 feet above mean low water in the open position. Note that the stated vertical clearance on the National Oceanic and Aeronautical Association (NOAA) charts is 145 feet. These clearances have been adequate to date, as the USCG has not received any complaints from waterway users.[7] From a railroad perspective, the bridge's truss structure can accommodate double stack train cars. While train speeds are limited to 20 mph, this is in part associated with the track geometry immediately west of the bridge. Because of the track and bridge conditions, capital investment improvements are currently planned including the replacement of the west timber approach and cables and sheaves on the lift bridge.

In the case of westward trains, trains are held at the KCS/UPRR split at Tower 31 in order to avoid blocking road crossings. Thus the KCS dispatcher cannot send a train across the river bridge until the UPRR dispatcher releases a signal in their territory in order to prevent trains from stopping on the bridge

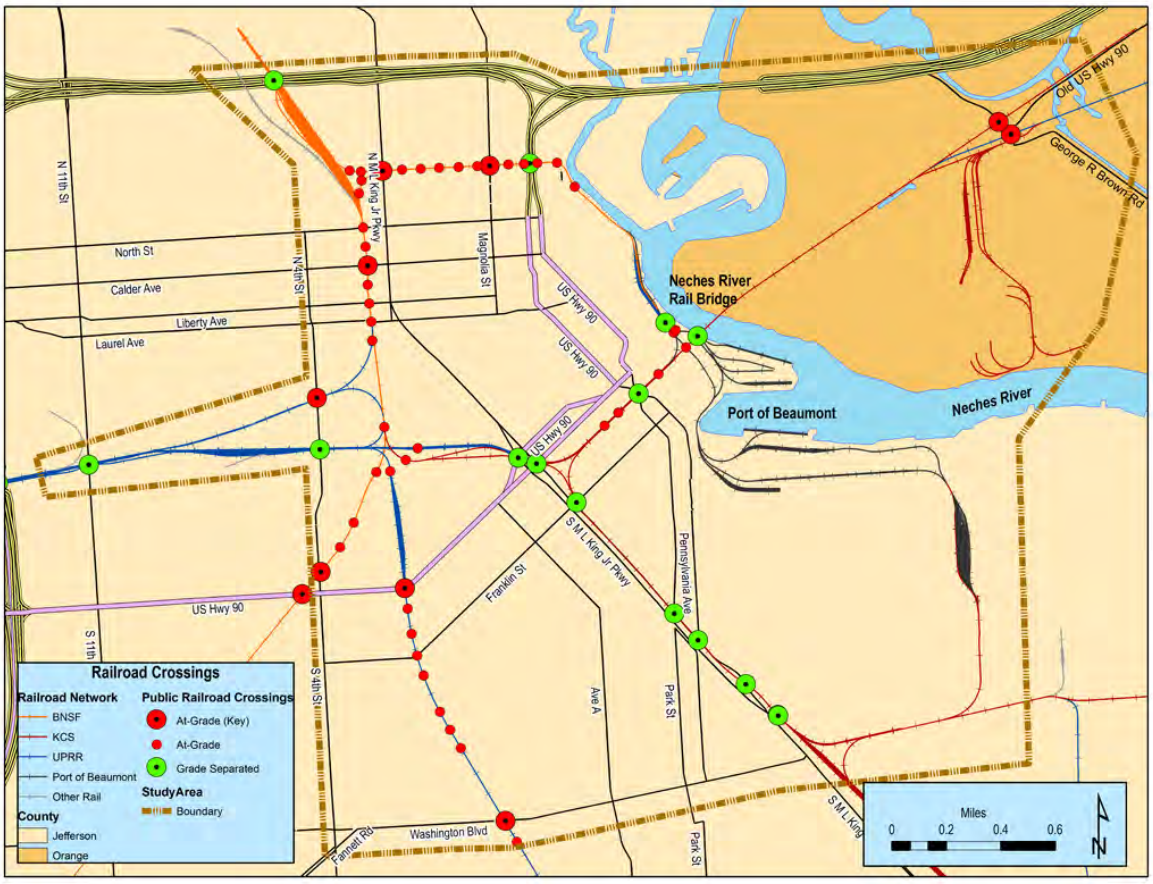
Key At-Grade Crossings

Nearly 100 highway/rail at-grade crossings (active, inactive and former crossings) were initially identified within the study area. After a field reconnaissance, review of roadway functional classifications and vehicular traffic volumes at the railroad crossings, the list of active key highway/rail at-grade crossings of public streets was reduced to ten (10). These ten crossings were viewed as representative of key rail corridors (for both existing conditions and potential future alternative corridors) at the crossings of important community roadways. For reference purposes, additional active at-grade crossings as well as grade separated crossings are shown with the key at-grade crossings selected in Figure 2.16. This data

establishes the existing conditions for the at-grade crossings. The key crossings were evaluated within a series of corridors using "GradeDec.net" which is a decision support tool developed by the Federal Railroad Administration (FRA) for benefit-cost analyses of investments involving highway-rail grade crossing improvements.

The key at-grade crossings are located at collector and arterial streets within Beaumont and at two locations in Orange County. It is anticipated that these crossings could be impacted by growth in either train or vehicular volumes or both, as well as changes to train volumes based upon potential new alignments. The highest vehicular traffic volumes are along US 90 at the BNSF Gulf Silsbee crossing and the UPRR Lafayette crossing. The BNSF Port of Beaumont line also crosses Martin Luther King (MLK) Parkway with an average daily traffic (ADT) volume of 27,000. While these crossings were identified as key locations, the majority are currently equipped with gates and flashers. The next level of improvement would be a grade separation between the rail and roadway.

Figure 2.16 – Key At-Grade Crossing Locations



Local Industries Served

Many local industrial and distribution companies are served by rail. As a city and region served by railroads for over 100 years, numerous industries have developed adjacent to the rail corridors over decades. In fact much of the local and regional industrial land uses are located near the rail corridors as shown in Figures 2.17 and 2.18. While some industry spur lines have been removed, many others remain active. The industries are located within the central downtown area of Beaumont as well as along the City's edges, including immediately west of the Beaumont Airport. The KCS recently assisted in the development of the 400-acre Triangle Marine Industrial Park. The industrial park has access to a 23-acre rail yard and includes a switching yard with a 150-car capacity, which could potentially be expanded to 300 cars. The site has 1,700 feet of frontage on the Neches River with 3 deep water docks and a 90-acre turning basin.[20]

Figure 2.17 – Land Use within Study Area

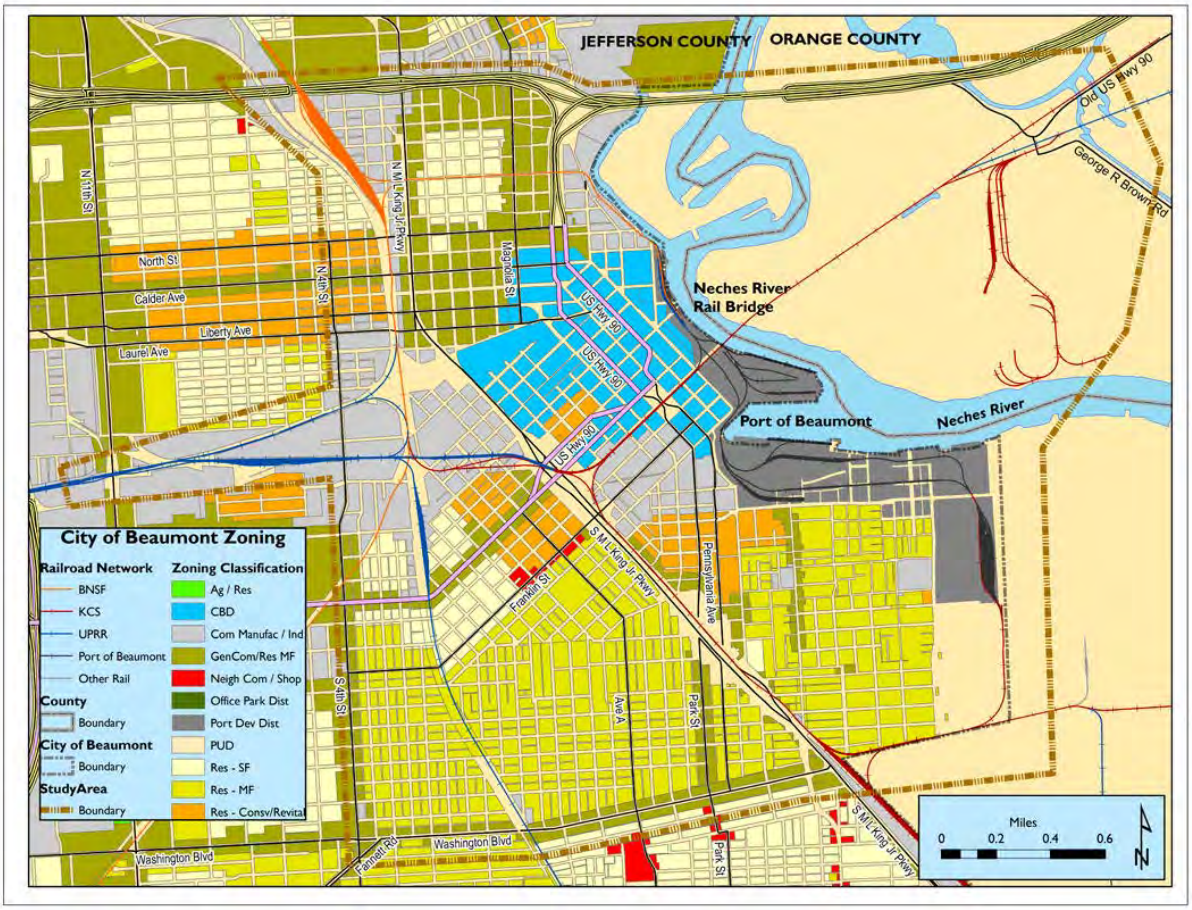
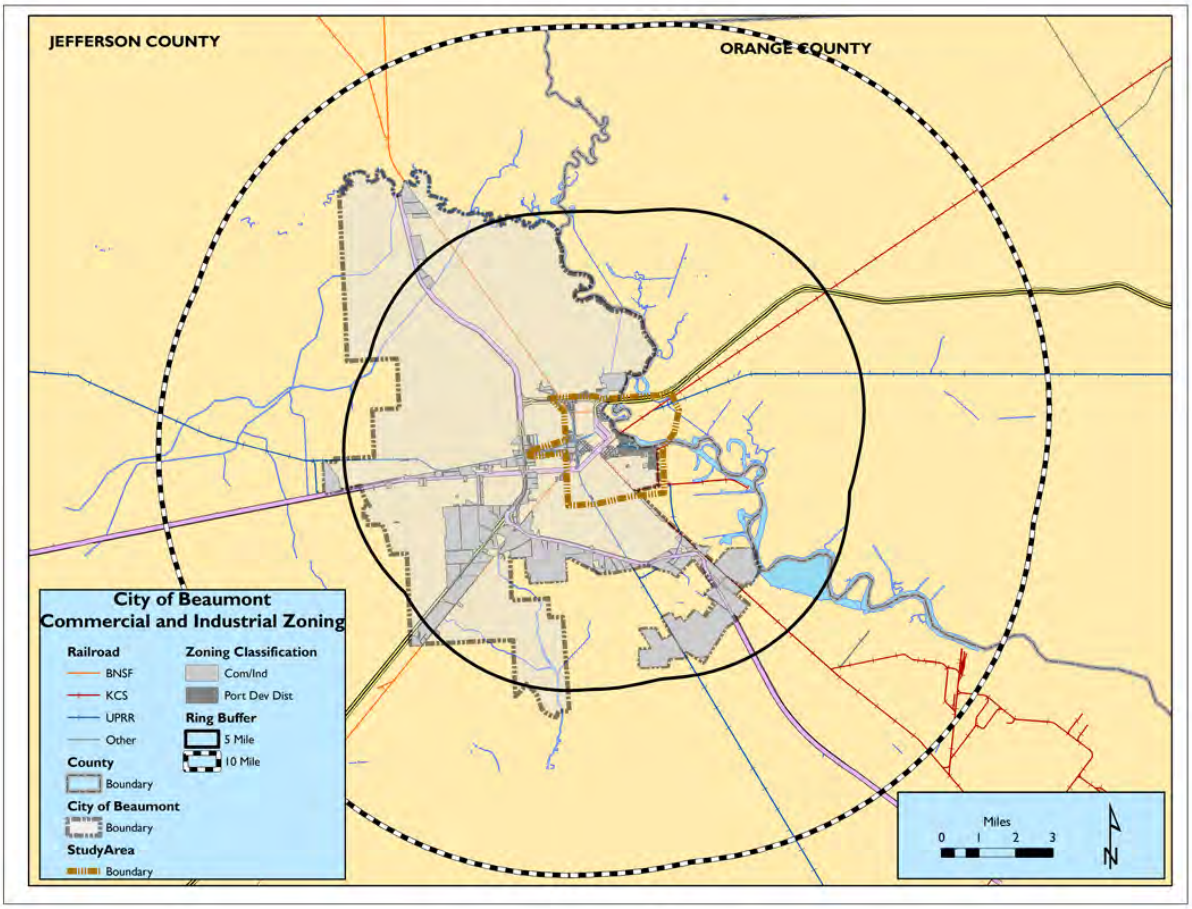


Figure 2.18 – Industrial Land Use in Beaumont Region



There is a neck of land located between Brake's Bayou and the Neches River as well as between the IH-10 and the KCS bridges that formerly had rail service. While within Jefferson County, the area is outside the City of Beaumont. Since the early 1900's, the land was used for shipbuilding. During World War II, its two side-launch ways were increased to four. In 2006, Trinity Industries sold it to Chicago Bridge & Iron (CBI) for use as a fabrication base for CBI's contracts to construct Liquefied Natural Gas (LNG) import terminals. Trinity Industries has moved some five miles to the east near Vidor with service from the UPRR line.

Current Railroad Operations

This section provides an overview of train operations in and around the Beaumont region that could directly affect operations within the Study Area. First existing traffic volumes are discussed then the operations at various yards. Also discussed is the topic of crew changes on the KCS and UPRR railroads.

Existing Rail Traffic Volumes

The daily train count across the Neches River bridge ranges between 40 to 50 trains based upon the most currently available information in the FRA's database of crossing. Figure 2.19 represents that information as a band of varying thickness similar to the national figure shown in Figure 2.20.

Figure 2.19 – Daily Train Volumes Beaumont Area (FRA database)

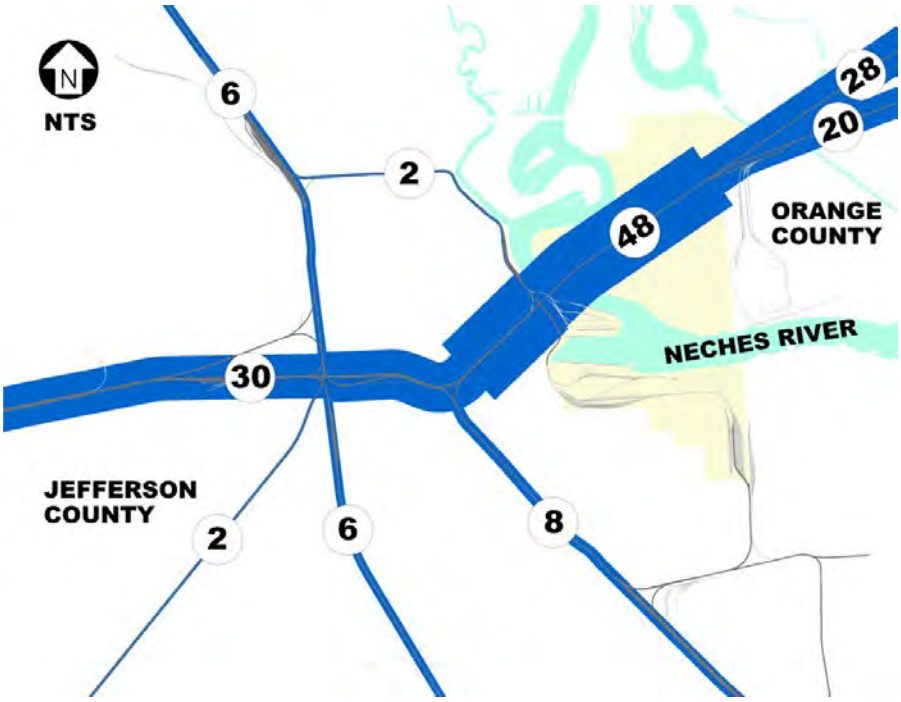
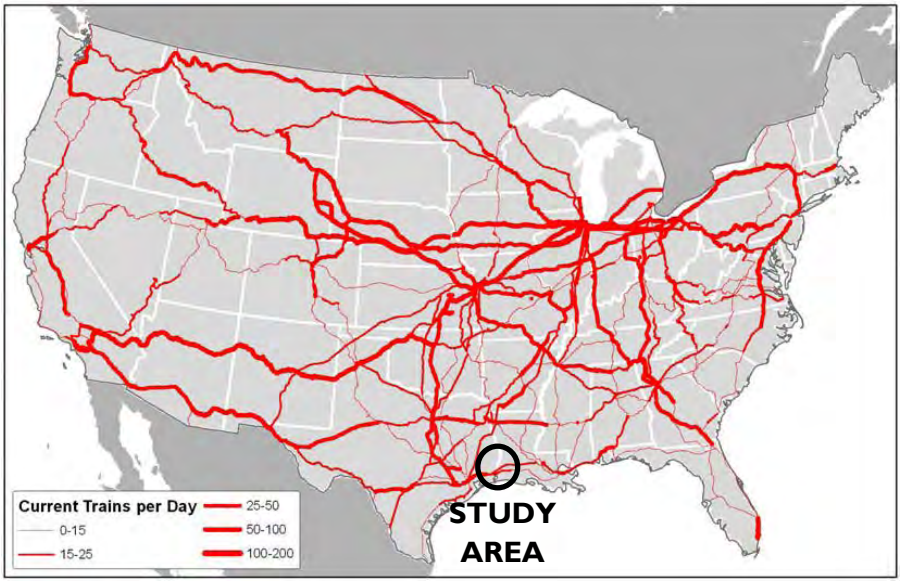


Figure 2.20 – Daily Train Volumes - National

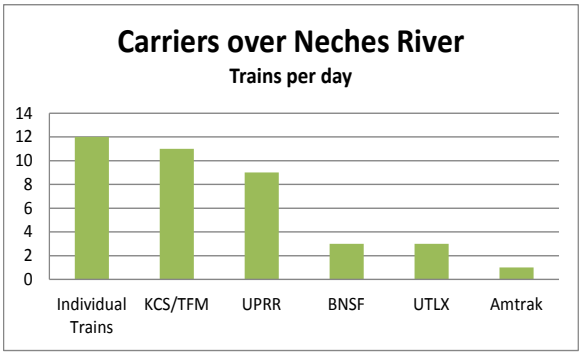


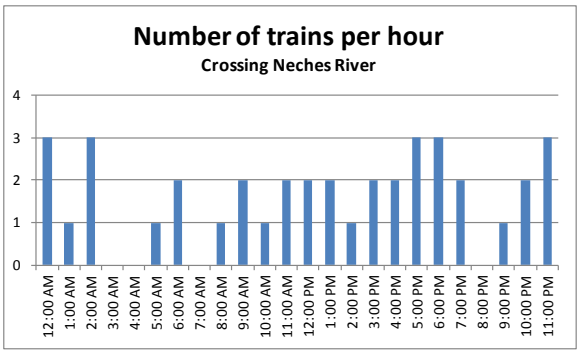
A daily breakdown of trains crossing the Neches River bridge was received from the KCS railroad. A review of this spot location shows:

- A total of 39 trains in a day cross the Neches River bridge, including one Amtrak train
- The average speed across the bridge ranged from 11 to 21 mph (average speed of 14.8 mph),
- The length of trains ranged from 7 to 118 cars, averaging over 60 cars per train, and
- The maximum number of trains that crossed in an hour was three (3), which occurred five times throughout the day.

A range of distribution by carriers occurred as shown in Figure 2.21. Individual trains include CSXT, DTTX, GMTX, IBT, MDW, NAHX, SRN, TILX, TPIX, TR, TTGX, and XOMX.

Figure 2.21 – Sample of Neches River Rail Crossings





While requests for bridge openings can occur at any time, most occur during daylight hours. Each request to raise the bridge includes a clearance (in feet) which allows the bridge to open only as high as necessary to accommodate river traffic. Data provided by KCS over a random six day period indicates:

- Requests for seven (7) lifts, for four northbound and three southbound marine vessels,
- The requests occurred on Monday, Wednesday Thursday and Saturday,
- Two boats on a Saturday were identified as pleasure craft, and
- The requested clearance ranged from 30 feet to 70 feet.

The raising of the bridge can result in some train delays, especially for trains going in the same direction across the bridge as they must be separated by two signals in order to prevent a train from stopping on the bridge. Trains traveling in opposite directions do not have to be separated by two signals. Typically the bridge stays open to river traffic between 15 and 30 minutes. However it may be open longer due to river traffic not appearing at the time requested or mechanical issues with the bridge. Mechanical issues often occur with high temperatures as experienced in the summer of 2011.

Additional national, state and regional data illustrate similar patterns of usage based upon tonnage. For example Figures 22 and 23 illustrate 2007 annual rail tons across the state of Texas and in more detail the Texas East Region. Typically any rail corridor with 30 or more million gross tons (MGT) is considered a critical rail corridor because it represents a significant level of business to the rail carrier.

It is also worth noting that with UPRR's directional running of traffic west of Beaumont and with the KCS-UPRR split east of Beaumont, the tonnage through Beaumont is far in excess of 30 MGT.

Figure 2.22 – Freight Density - Annual Rail Tonnage - Texas

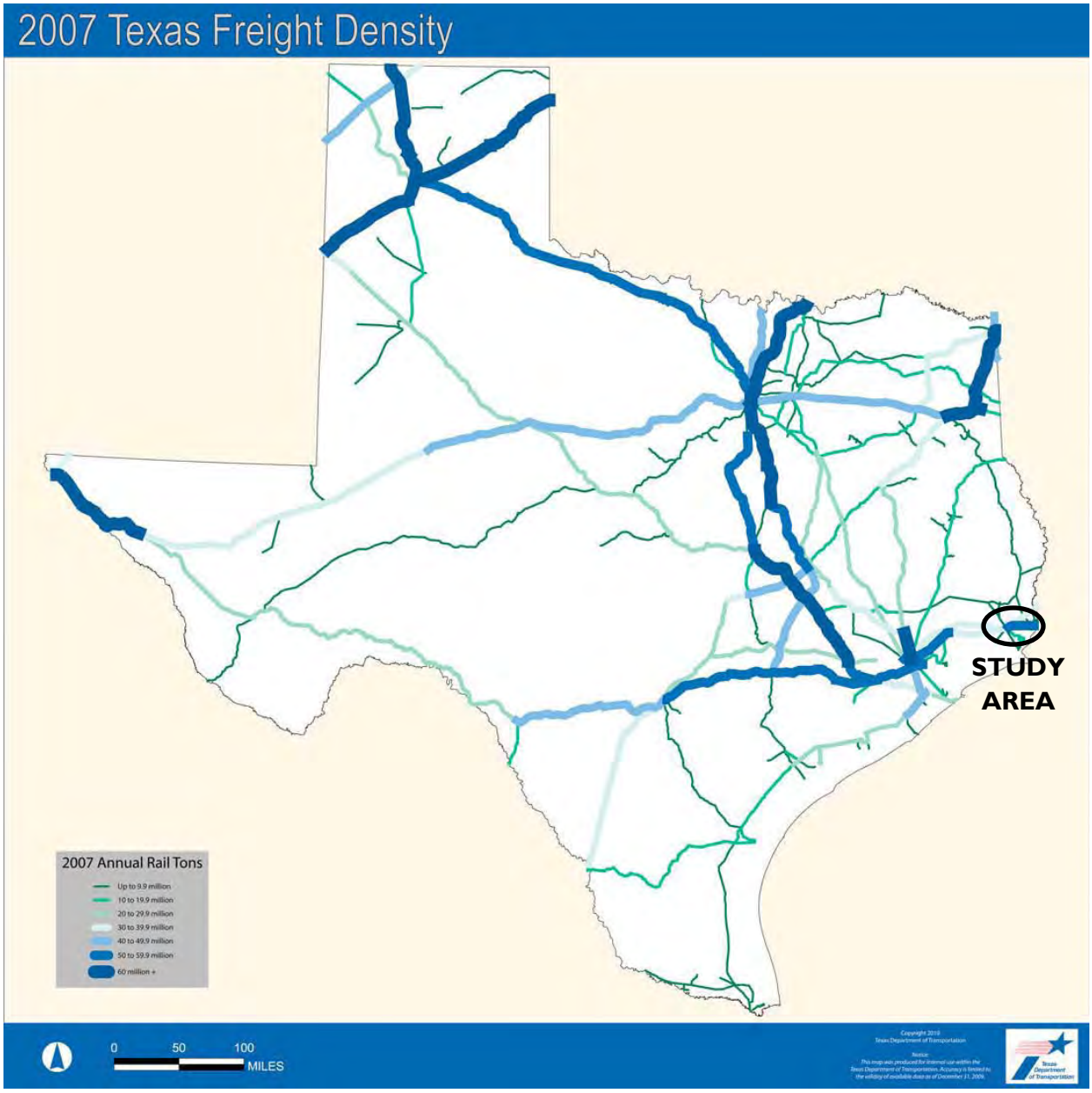
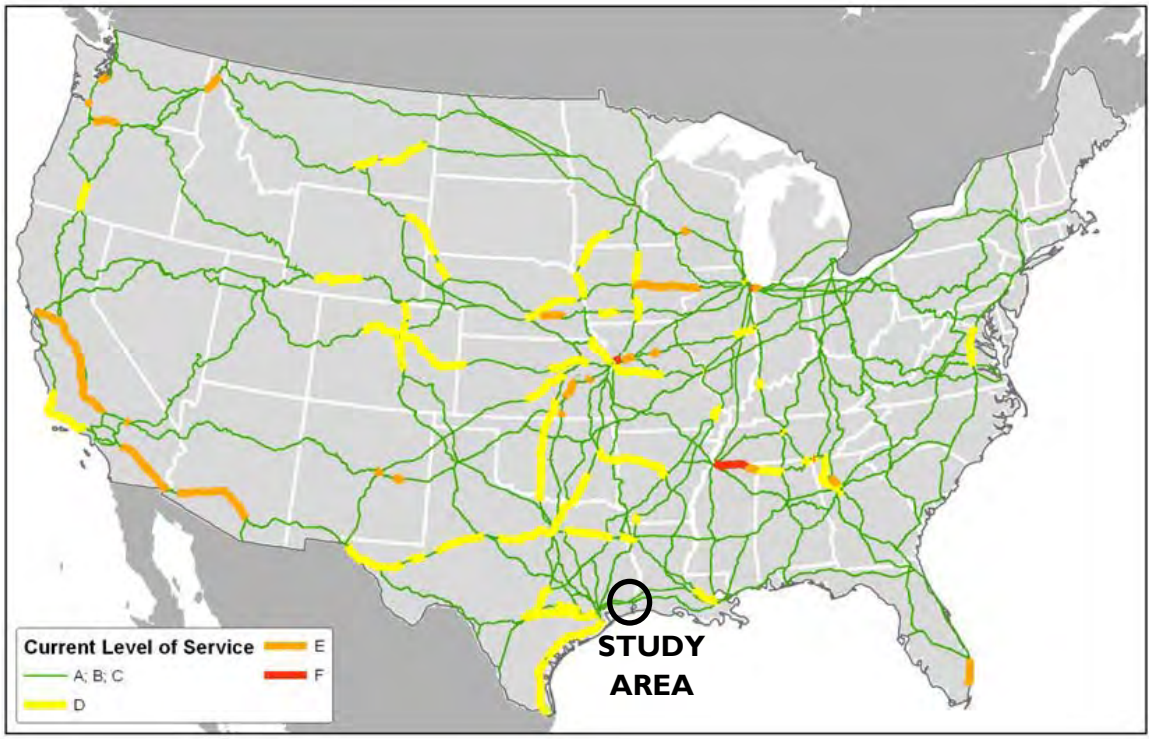


Figure 2.23 – Freight Density - Annual Rail Tonnage – Texas East Region

An overview of national railroad operations in terms of Level of Service is shown in Figure 2.24. The importance of this perspective will be more apparent when reviewing projected conditions in the next section of the report.

Figure 2.24 – Current Level of Service - National



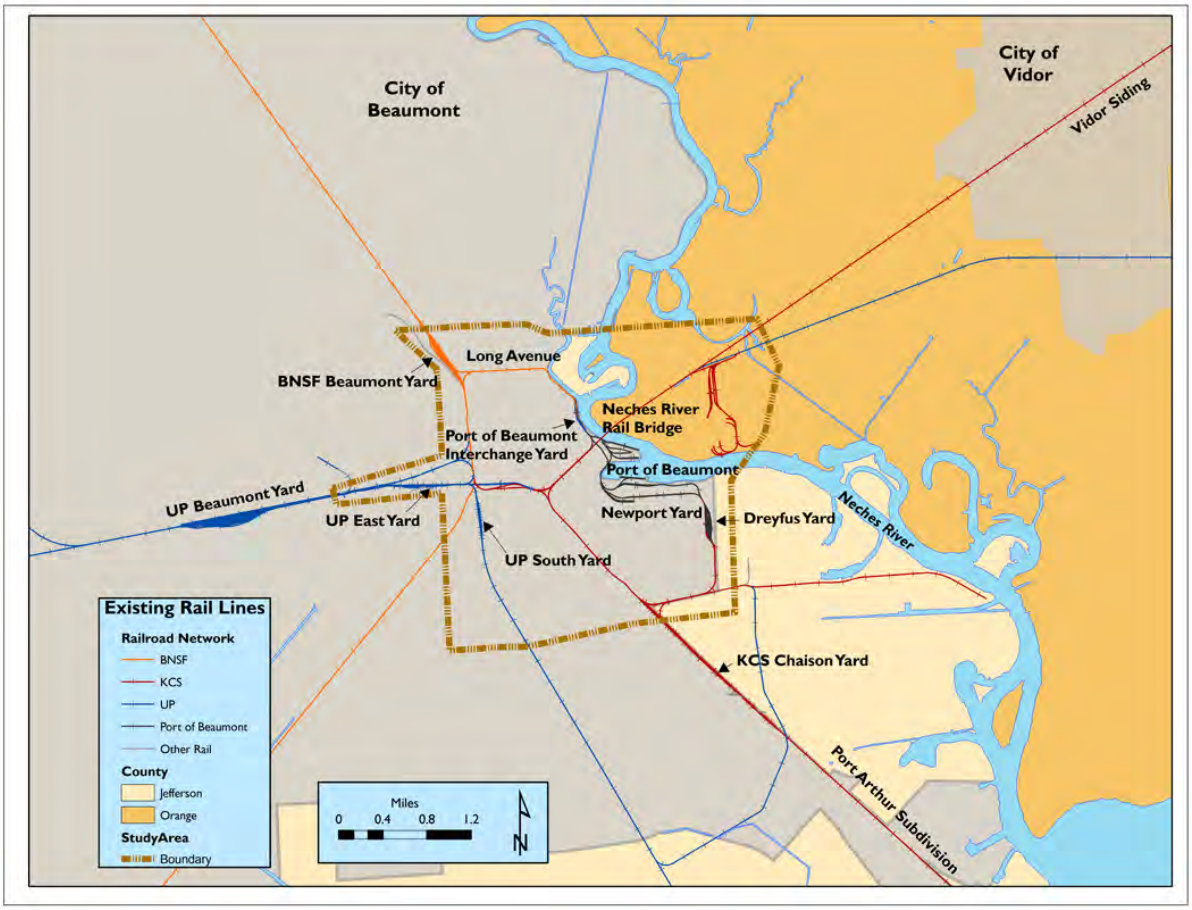
Yards and Crew Changes

Yard capacity and efficiency has a direct influence on the operations of the rail system. Several yards are located in and around the Beaumont area as shown in Figure 2.25 and include:

- Port of Beaumont Interchange Yard
- KCS's Chaisson Yard and Vidor Siding
- UPRR's South, East and Beaumont Yards
- BNSF's Beaumont Yard.

Each is described in more detail along with crew changes when and if applicable. Another important issue regarding train traffic through Beaumont is that close follow-up movements are restricted by crew changes in each direction. Both the UPRR and KCS have crew changes in Beaumont which occur on the railroads main lines.

Figure 2.25 – Rail Yards in Beaumont Region



Port of Beaumont Interchange Yard

While the Port of Beaumont has several internal yards within the Port's boundaries and south of the Neches River bridge including Newport Yard and Dreyfus Yard, the Interchange Yard north of the Neches River bridge has been the subject of numerous operational issues. The Ports' yards are shown in Figures 2.26a through c. When a train is currently being delivered to the Port of Beaumont, the train operator must approach the Port turnout from the west and then "run around" the cars and then shove them into the interchange yard, which briefly blocks both main tracks at the diamond. Trains coming from the east pull past the turnout and reverse into the yard. Any train cars moved from the Interchange Yard to the Port also blocks the mainline. The low line, with its limited vertical clearance, is only used for moving train cars from the Port to the Interchange Yard. In either case; one of the two main tracks is blocked for an extended period, effectively lengthening the single-track portion of the route.[21] Rail cars are handled within the Port's perimeter by Trans-Global Solutions, Inc., a contract switching operator. Moving cargo into and out of the port is assisted by an extensive railway system that can accommodate 600 rail cars and handles 80 cars simultaneously at shipside.[22]

Figure 2.26a – Port of Beaumont Interchange Yard

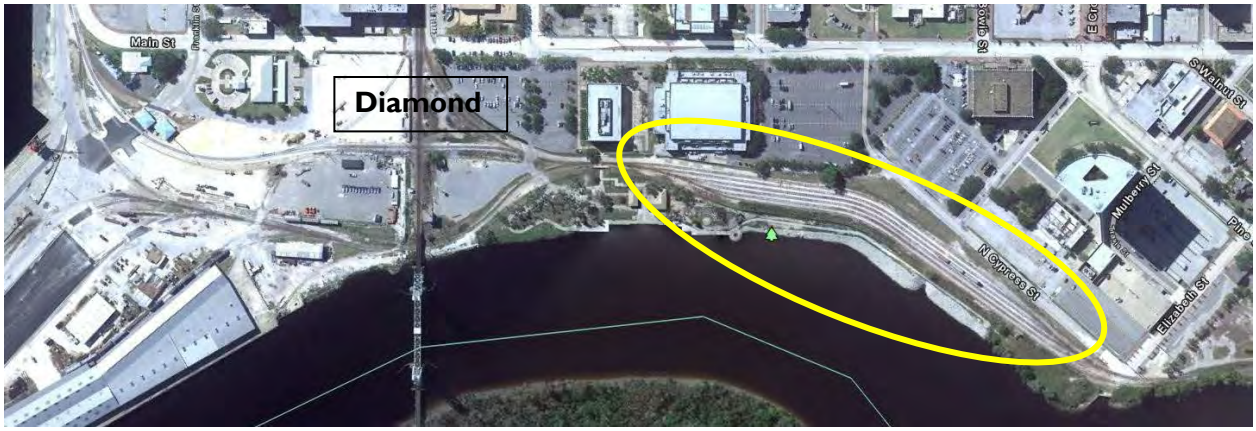


Figure 2.26b – Port of Beaumont Newport Yard

Figure 2.26c – Port of Beaumont Dreyfus Yard

BNSF utilizes the Long Avenue connection as their primary entrance to the Port. The UPRR has trackage rights along Long Avenue and occasionally utilizes it to exit the Interchange Yard after delivering rail cars. Under this scenario the UPRR will pull off the KCS main track, then take headroom toward the BNSF heading out the north end of the Interchange Yard and place their rail cars into the interchange yard without blocking the KCS mainline.

In 2003, the Port of Beaumont contacted TxDOT to discuss a proposed plan that would improve the rail infrastructure at the Port with the purpose of reducing rail traffic delays. The Port proposed construction of a new turnout from the KCS mainline, south, directly into the Port and adding capacity in the Port by extending current tracks and constructing new tracks. This would enable the railroads to perform interchange services within the Port itself, making the north yard unnecessary. TxDOT studied the proposal and found it to be both feasible and beneficial. The Beaumont MPO provided $8.5 million in Congestion Mitigation and Air Quality (CMAQ) funds for the project. It is currently under construction. The current intent, once the project is completed, is that one running track will remain through the former yard to allow BNSF access to and from the Port. All other tracks would then be removed.[23]

The Port of Beaumont handled almost 48,000 rail cars in 2003. Of these rail cars 26,398 (55 percent) were moved by the BNSF; 19,138 (40 percent) were moved by the UPRR; and 2,344 (5 percent) were moved by the KCS.[24] This amount of annual traffic is equivalent to 925 rail cars per week on average. The Port moves four main commodities: grain, potash, military equipment and wind turbine equipment. According to the American Association of Port Authorities, the Port of Beaumont ranked 54th in the world in 2009 based upon total cargo volume.[15] This ranks the Port of Beaumont 7th in the United States with 67.7 million tons. The Port of Beaumont's expansion and the new rail access route from the KCS main tracks will likely increase rail volumes in and out of the Port. The new route will enable other development on the vacated property. However, BNSF cross traffic will continue to operate through this location.[16] Expansion by the Port to property located on the east side of the Neches River with a planned rail facility may also increase rail traffic across the bridge due to internal movements within the Port. Slow moving unit trains and other rail traffic entering and exiting the Port on both sides of the Neches River may influence the need for capacity improvements as well as to allow through traffic to bypass port switching movements.

KCS's Chaison Yard and Vidor Siding

The KCS has its yard located on the line to Port Arthur, TX. In addition, the KCS utilizes the Vidor Siding as a critical operational element for staging trains as well as for conducting crew changes. Consequently, both are discussed here and are shown in Figures 2.27a and b.

Figure 2.27a – KCS Chaison Yard

Chaison Yard is located southwest of the Neches River bridge and is bordered by the Port of Beaumont to the east and MLK Parkway (TX Route 380) to the west. Six tracks are used for train makeup and arrival. Storage cars are held here for Exxon Mobil and other customers. UPRR unit trains carrying soda ash and other commodities pass through Chaison Yard enroute to Port Arthur. Local trains to the south and the east depart and arrive through Chaison Yard. The connector track (nearly two miles in length) from Chaison Yard to the UPRR is used for KCS-UPRR interchanges, KCS-BNSF interchanges, and KCS Acid Unit Trains for the Port Arthur Subdivision. The main track from GCL Junction to Chaison Yard is used by a daily local each way and a daily manifest train each way. In addition, yard jobs make transfer runs to the BNSF, UPRR, Port of Beaumont, and other area industries such as Gerdeau Ameristeel in Orange County on Tuesdays and Thursdays. This occupies the single main track (with no passing) west of the KCS-UPRR split at Tower 31 for approximately to two hours. KCS Chaison Yard to the south originates and terminates some of these trains as well. Rail traffic on the KCS Port Arthur line is also expected to grow through new contracts signed for several commodities involving unit train operations.

Figure 2.27b – KCS Vidor Siding

Vidor siding is located at KCS MP 760.4 on the Beaumont Subdivision. It is approximately five miles east of the Neches River bridge. This siding is 13,424 feet in length which enables it to serve as train storage and a staging location for KCS trains, many enroute to the U. S. – Mexican Border at Laredo, TX. Because of the length of this siding, often two trains can be stored at the same time. Vidor siding is also the designated crew change point for westbound freight trains operating between Shreveport and Houston. The siding is under Centralized Traffic Control (CTC) for the meeting and passing of trains. This is the first siding location for the KCS east of Rosenberg, TX. KCS trains are staged at Vidor siding for movement beyond Houston on the Rosenberg Subdivision as well as the UPRR Brownsville Subdivision. The KCS dispatcher cannot line westward trains by Vidor until given permission by the UPRR dispatcher for routing instructions and clearance of main tracks through UPRR's Beaumont Yard.

The KCS eastbound trains change crews at Pearl Street immediately west of the Neches River bridge, while westbound trains change crews at Vidor siding. Crew changes normally take 15 – 30 minutes. Crews are driven to either location from Chaison Yard. KCS westbound trains experience delays at Vidor siding due to operating window restrictions in place by the UPRR on the Brownsville Subdivision between Victoria and Robstown, TX (more than 250 miles west of Beaumont). The KCS is currently operating as many as seven to nine trains in each direction on the Brownsville Subdivision while the UPRR typically has five to six trains. Consequently, lesser priority trains are often held at Vidor, sometimes for eight hours or more. Occasionally trains are tied up in sidings east of Vidor at the next meeting point in Mauriceville, TX ten miles to the east.

Union Pacific Railroad's Yards

UPRR has two yards, the South and East Yards, within the study area yet its largest yard, the Beaumont Yard, is located west of Interstate 10. All of these yards are shown in Figures 2.28a through c. The East Yard is approximately 3,000 feet long and has as many as seven parallel tracks. Portions of this yard and several industry leads are elevated over 4th Street. The South Yard, along UPRR's line to Port Arthur, is approximately 2,500 feet long and has as many as five parallel tracks. The yard stretches from Crockett Street to College Street (US-90) and two tracks cross College Street at-grade.

The majority of through UPRR trains change crews on either of the two main tracks at their switching yard west of downtown Beaumont. The present practice is for these trains to stop and occupy one of the main tracks while the crew change takes place. The crew change takes a minimum of 30 minutes, but can take much longer, e.g., up to two hours, if the trains also are required to set out cars or pick up cars. When this happens, following trains are often delayed as well. UPRR trains (for both directions) change crews at their yard several miles west of the Neches River Bridge. The mainlines are not always clear for trains to enter westward due to switching operations or other trains ahead changing crews. The dispatcher cannot send a following train movement across the bridge until the signals ahead can be cleared in order that the following train will not stop on the bridge. The result of this is that the following train movements in both directions are spaced at least eight to ten minutes apart assuming the train ahead is kept moving.[17]

Figure 2.28a – UPRR South Yard

Figure 2.28b – UPRR East Yard

Figure 2.28c – UPRR Beaumont Yard

BNSF Beaumont Yard

The BNSF Beaumont Yard is located in the northwest area of the study boundary and is shown in Figure 2.29. It essentially encompasses a 3,500 foot length from North Street north to a point north of Interstate 10 just outside the study area. There are as many as fifteen parallel tracks, plus service via industry leads to the west parallel to 1st Street along the former Rock Island branch.

Figure 2.29 – BNSF Beaumont Yard

Observations

As a network, the rail transportation system is directly influenced by operations outside the limits of the study area. To better understand the current operating challenges being faced by the railroads along the corridor, the study team was granted access to the KCS Dispatch Center in Kansas City, Missouri. Operations were observed on two separate occasions for a total of 12-hours on September 12 and 13, 2011. These observations allow for several suggestions for potential operational improvements. In summary the field observations conclude:

- At the present time, neither bridge capacity nor the operation of the Port of Beaumont are a problem in terms of rail operations
- Currently, yard capacity and crew change locations in and around the Beaumont area present obstacles to efficient rail operations.
- Congestion at the Houston terminal also has a negative impact on rail operations in Beaumont, i.e., crew calls may not be made until trains are ready so as to not lose crews between Houston and Beaumont.
- While the operations of the Port and bridge capacity are not problems today; they may become more problematic as rail traffic increases.

Efforts have been made to improve coordination and communication between the various dispatchers to help operations; this should continue.

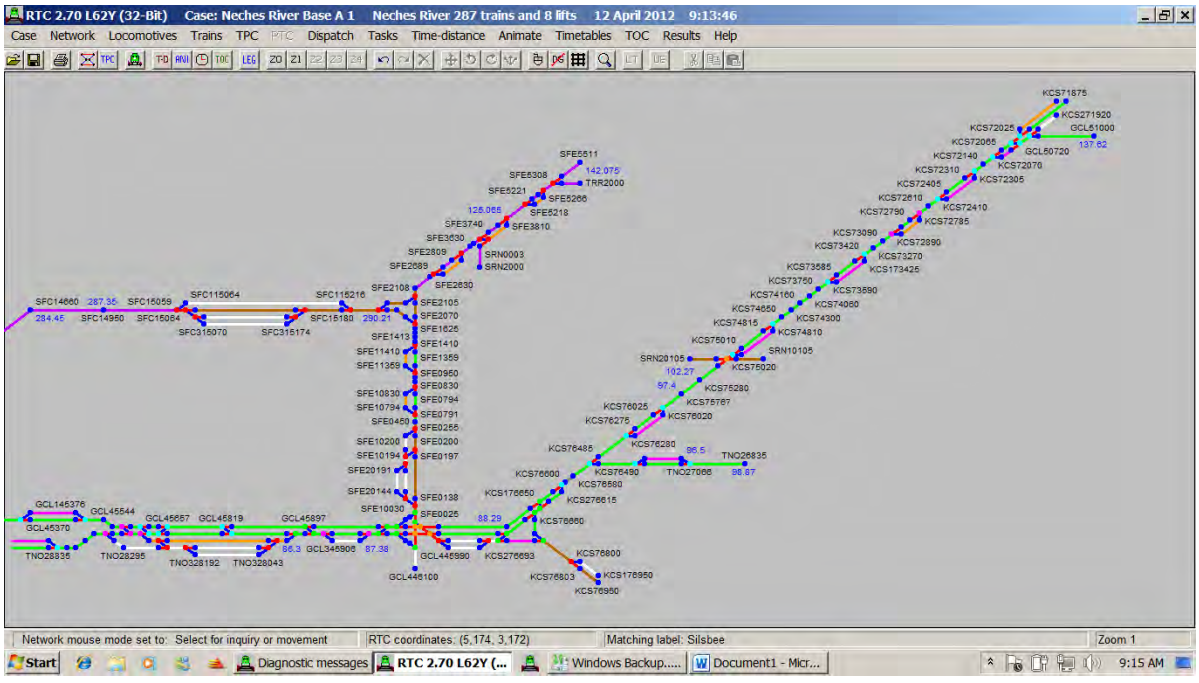
The Rail Traffic Control (RTC) Model

Rail Traffic Controller (RTC) is a computer program created by Berkeley Simulation Software, LLC, which simulates the operation of trains over a railroad network. Variations can be made in network track layouts, train composition and schedules, and operating rules and constraints, which allow for the testing and assessment of modifications. RTC is used by most North American Class I railroads to evaluate and plan their operations and in turn determine capital expenditures.

The "base case" model represents current conditions which are then validated by comparing results to known current system performance. The better the base case model matches current system performance, the more confidence one can have in the results for a planning scenario. The measured part of the Neches River base case network is bounded on the east by KCS MP 735.85 (the west fouls at Starks, Louisiana) and by Texas and New Orleans (T&NO) MP 268.35, east of Connell; and on the west by Gulf Coast Lines (GCL) MP 456.00 at Elizabeth, and T&NO MP 283.04, at the west end of Beaumont. A schematic of the Neches River "line" is shown in Figure 2.30. The UPRR and KCS yards at Beaumont are included in the Neches River "line", which is a subset of the entire network used to measure train performance that is directly affected by the Neches River bridge. The BNSF yard at Beaumont is not within the Neches River line. The simulation model consists primarily of two files:

- **Network files** which include track, signals, grades, curves, bridges, road crossings, and railroad junctions or interlockings and
- **Train files** which include information related to individual trains – their identity, type, weight, length, locomotives, time and day of operation, relative priority, origin and destination, route, railroad carrier, and intermediate work, if any.

Figure 2.30 Rail Traffic Control (RTC) Neches River "line" schematic



In all simulation cases, each train is treated individually. In other words, as no two days in the real world are identical, no two days in the model are identical. Some freight trains operate on completely random schedules, according to traffic demands; or according to availability of resources, such as locomotives and crews. The 2007 base case simulation network was constructed largely from railroad "track charts" supplied by the carriers. These schematic maps show the physical track in sections allowing the modeling of signals, switches, grade crossings, sidings, and yard tracks as well as distances and grades between points. These charts, along with railroad timetables, also show the speed limits for trains on the various sections of the network. The base case train files were constructed from two sources. The first is railroad records of through train movements. These records are taken from the dispatching system and include the identity of the train, its consist, its route, and the day and clock time when it passed certain key recording points. In addition, train data from earlier RTC model runs executed as part of the 2010 Texas Statewide Rail Plan was extrapolated to the Beaumont area network.

The base case includes the operations of 287 total freight trains in a week . In addition, there are six Amtrak passenger trains measured (three eastward, three westward), though these passenger trains are excluded from the freight statistics. The measured freight trains for the simulated week break down by type of train are shown in Table 2.2.

Table 2.2 – RTC Model Base Case – Type of Trains

BY TYPE	BNSF	KCS	UP	Total
Manifest	35	53	67	**155**
Priority Manifest			45	**45**
Expedited	11		19	**30**
Grain		12		**12**
Vehicles/Auto Parts			5	**5**
Coal	2			**2**
Other Unit	2	14	6	**22**
Local			16	**16**
TOTAL	**50**	**79**	**158**	**287**
	17%	28%	55%	

There are eight bridge openings during the week, ranging in length from 17 minutes to 31 minutes in length. The openings are randomly distributed during each day, although none are coded to take place in the early morning (between 1 AM and 4 AM) assuming that no water movements would occur during those hours.

RTC is designed to measure railroad performance in time. Some measures are "absolute" numbers while others are ratios of performance. The performance measures used here include:

- **Train Count** – the number of trains over a period of time, here a week, measured in the model. This number is always less than the number of actual trains in the case. Trains that do not complete their entire run within the measured time period are excluded from the statistics.
- **Average Speed** – the average operating speed, in miles per hour, of the measured trains operating across the entire network, or across a specific part of the network.
- **Delay Ratio** – This is the ratio of congestion-related delay to an "unimpeded" running time. Unimpeded time equals the time it would take to operate all the trains, including any en-route work needed or requirements that must be met, without any congestion-related delay.
- **Delay Hours/Day** – This is the absolute number of train-hours per day lost to congestion-related delay. In general if delay hours can be reduced, costs can be reduced. However the value presented here does not differentiate say between 100 loaded cars of time-sensitive freight from a local switching 20 cars.
- **Delay Minutes/100 Train-miles** – This is an alternate, railroad industry measure of normalized delay. It functions much like the delay ratio (the numerator is actually the same, except reduced to minutes instead of hours); but the denominator is the distance trains travel over time, rather than just the time itself. These ratios can often be high in terminals.

Table 2.3 summarizes the base case train performance over the week long period for the above referenced performance measures. The Base RTC model included 44 lifts per week on the Neches River bridge crossing. Information from various other sources suggested that the number of lifts on a typical week was significantly less; say on the order of eight (8) lifts per week. Consequently the RTC model was rerun with 8 lifts per week and represents the Base (modified). Even with a significant reduction in the number of bridge lifts in the existing conditions analysis, the delay performance measures exhibit relatively minor shifts, though of course in the positive direction, speed increases while delays decrease. Overall changes in terms of speed are very minor on the order of 2%, while delays typically drop by 9%.

Table 2.3
RTC Freight Train Performance - Base Case

Case	Train Count	Average Speed (mph)	Delay Ratio	Delay Hours / Day	Delay Minutes / 100 Train-Miles	Bridge Lifts per Week
Base	287	14.7	25%	9.9	67.0	44
Base (modified)	287	15.0	23%	9.0	61.1	8

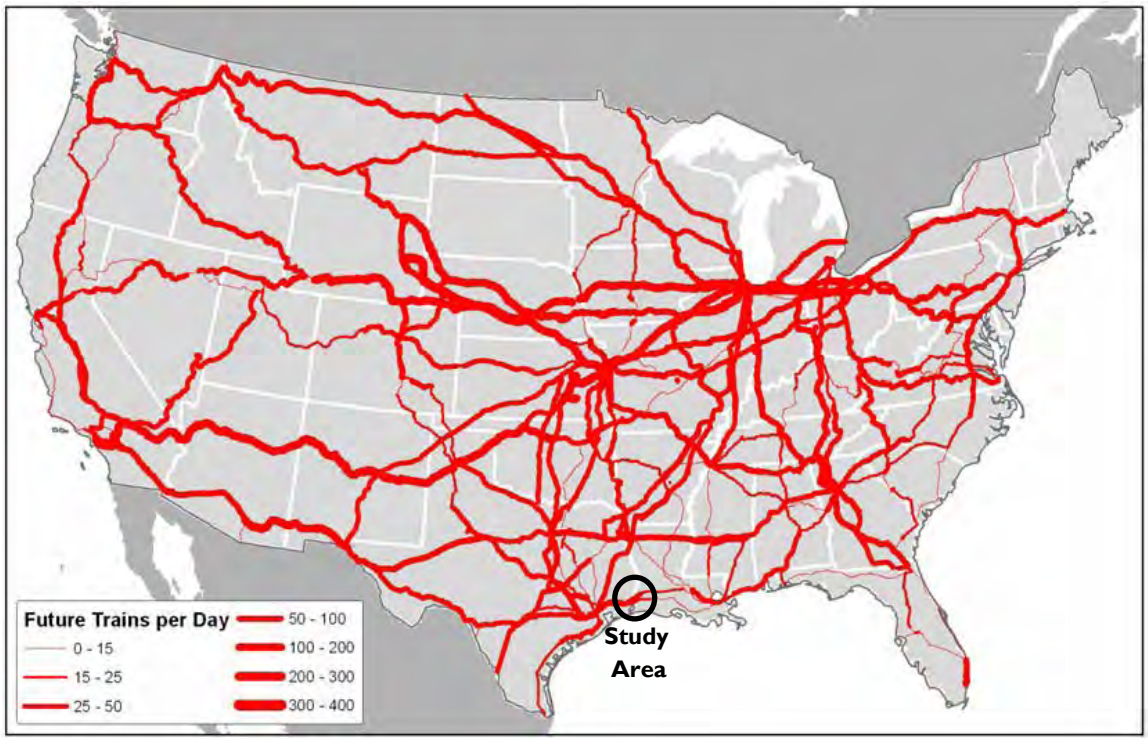
3.0 Projected Conditions

This section discusses rail forecast to the year 2035 under the no-build scenario. Then with an assessment of operations, various improvement concepts are developed and assessed. A key element with any improvement concept is the crossing of the Neches River with regards to meeting the criteria for river navigation. The parameters for different types of bridge crossings are discussed first followed by descriptions of potential alignments.

Rail Forecasts

The study area's rail forecast includes an overview of rail traffic at a national level as well as specific to the region based upon the Texas State Rail Plan. Consideration is also given to the Gulf Coast High Speed Rail passenger initiative. Operations for Beaumont area rail system were conducted for the no-build scenario which utilizes the existing rail network and committed improvements, such as the new switch into the Port of Beaumont. In general, rail traffic throughout the nation is projected to increase as shown in Figure 3.1 which includes the rail corridor through Beaumont.

Figure 3.1 – Future Daily Train Volumes - National



Projected Rail Traffic Volumes

The Base (Modified) RTC model estimates that under current conditions 287 trains operate during a typical week through the Beaumont rail network. This translates to approximately 40 to 50 trains per day crossing the Neches River. Forecasted growth for the number of trains expected to be operating

weekly in the Beaumont area by 2035 was increased from the base case utilizing a three percent (3%) compounded annual growth rate and is shown in Table 3.1. The 3% growth rate is reasonable given the population growth forecasted for the State of Texas and the expected increased level of cross-border trade on a national basis. In addition, this is the rate that other recently completed freight studies used. Train traffic is projected to essentially double during this time period with an estimate of 87 trains per day crossing the Neches River. These forecasts utilize the same distribution by rail carrier as current conditions. Similarly, the growth rate can be applied to the type of trains as previously shown in Table 2.2.

Table 3.1
Forecast of Weekly Train Traffic

Carrier	2011	2035
BNSF	50	102
KCS	79	161
UPRR	158	321
Total	287	584

Rail traffic at the Port of Beaumont is expected to grow as well. The Texas Rail Plan (TRP) reports that the number of containers handled at the Port of Beaumont is forecasted to increase 34 percent while an increase of 60 percent is forecast for tonnage.[25] Forecasts for number of rail cars and tonnage handled at the Port by carrier are shown in Table 3.2. Much of the growth at the port is likely to occur on the Orange County side of the Port, as noted in the discussion of the Port's Master Plan in earlier sections. Consequently, bridge lifts were increased in the same ratio (doubled) to account for potential expansion of the Port of Beaumont's Orange County facility to the north of the existing KCS river bridge.

Table 3.2
Port of Beaumont - Forecast of Annual Rail Cars and Tonnage Handled

	Annual Rail Cars		Annual Tonnage (millions)	
Carrier	2008	2035	2008	2035
BNSF	164	220	4.1	6.5
KCS	1,312	1,763	32.6	52.0
UPRR	1,804	2,424	44.8	71.5
Total	3,280	4,407	81.4	130.0

Gulf Coast High Speed Rail Corridor

In 1998, then U.S. Transportation Secretary Rodney Slater designated the Gulf Coast High-Speed Rail Corridor (GCHSR) which would serve the states of Texas, Louisiana, Mississippi and Alabama with "spokes" extending to Houston, TX, Mobile, AL, Birmingham, AL, and Atlanta, GA as shown in Figure 3.2. The route would connect with the proposed Southeast High Speed Rail Corridor, which extends

to Charlotte, NC, Richmond, VA, and Washington D.C. Prior to this initiative, other efforts were conducted. Aside from the States of Louisiana and Texas studying the corridor, no planning or construction has been done on the Gulf Coast corridor to date mainly due to funding constraints. In addition, the route has experienced decreases in available capacity because of increased freight traffic. The report suggests that before high speed rail can be introduced, overall capacity needs to be improved by establishing a double track mainline operation and the track will need to be upgraded to Federal Railroad Administration (FRA) Class V standards to allow for higher speeds. A three phase implementation plan is proposed on the corridor between Houston Amtrak station and the Louisiana/Texas State line near Echo, Texas. The phases are summarized:

1. Phase One – provisions for the upgrade of several segments of the existing track to facilitate 79 mph operations at an anticipated cost of $150 million.
2. Phase Two – provisions for increasing the amount of capacity by establishing a double track mainline operation throughout the length of the corridor at an anticipated additional cost of $473 million.
3. Phase Three – provisions for increasing operating speeds to 90 mph (track maintenance at FRA Track Class V standards) at an anticipated additional cost of $93 million.

Figure 3.2 – Gulf Coast High Speed Rail

Schematic plans of the GCHSR corridor in the Beaumont area are provided in the Appendix and are reproduced at a conceptual level on the Alternatives Evaluated maps as applicable.

Recently the USDOT announced it was awarding $15 million in high speed rail funds, being redirected from Florida, to Texas. The state will use the money to conduct engineering and environmental work to develop a high-speed rail corridor linking Dallas/Fort Worth and Houston. The City of Beaumont is not within that corridor.

Operations

The forecasted train traffic results in a significant increase in the delay hours per day as well as the delay minutes per 100 train miles for the project study area. The forecasted delay hours increase by a factor

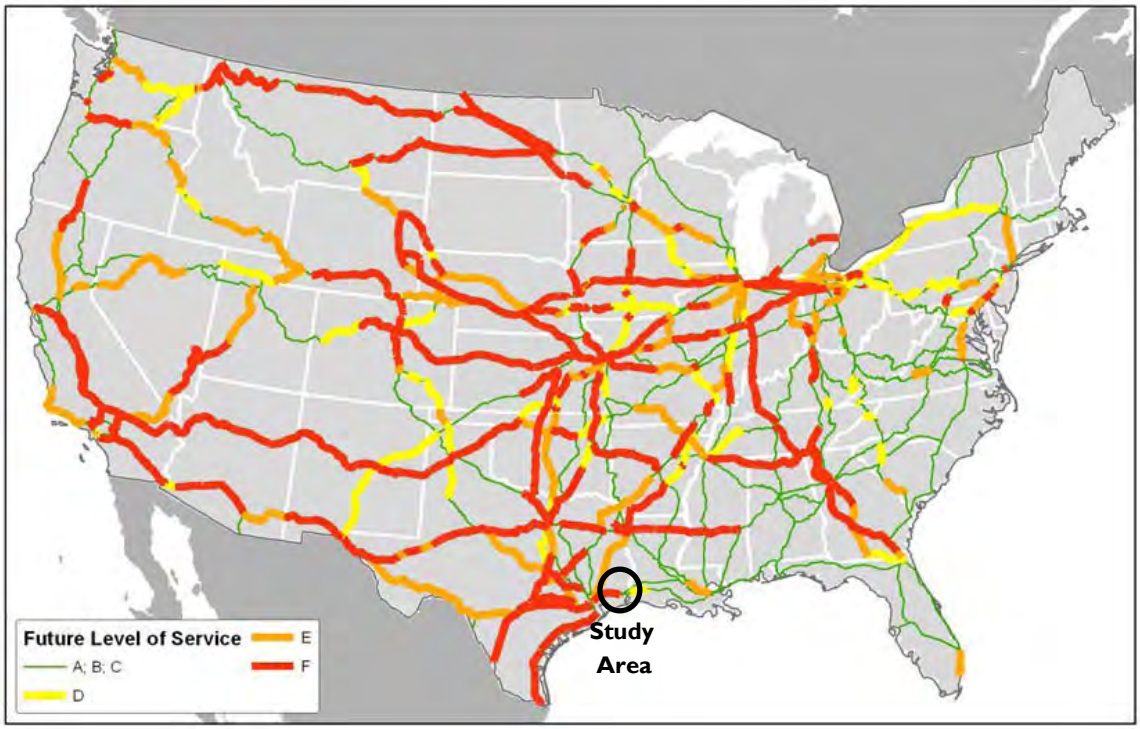
of eight while the delay minutes increase by a factor of five under the no-build conditions. Essentially, the application of the forecasted train volumes to the existing rail network results in significant congestion. However, this is consistent with other studies regarding future levels of service for freight rail at the national level. This delay noted in this report is for those trains operating or projected to operate within the limits of the Beaumont RTC model network.

Table 3.3
RTC Freight Train Performance – Projected "no-build"

Case	Train Count	Delay Hours / Day	Delay Minutes/100 Train-Miles	Bridge Lifts per Week
Base (modified)	287	9.0	61.1	8
Projected "no-build"	582	69.7	306.4	16

An assessment of operations under current rail infrastructure with future train volumes indicates a significant portion of the national rail network to approach capacity or operate at capacity as shown in Figure 3.3. Again, the rail corridor under study here is shown at capacity essentially for the segment within the study area.

Figure 3.3– Future Level of Service – National



Several physical transportation improvements are also anticipated as projected year assumptions that are included with the projected base case. These are:

- Interstate 10 bridge over Neches River expanded to eight lanes, approximately 30 feet to the south from current conditions.
- Port of Beaumont's south switch is operational and the Interchange Yard is removed.
- The BNSF connection to the Port of Beaumont across the KCS remains.
- The Gulf Coast High Speed rail corridor is preserved, if it is not already implemented.

Developing Options

The development of options can be thought of in two basic parameters:

1. the development of bridge type (stationary or lift) and
2. the development of bridge crossing locations (along existing or on new alignment).

The determination of bridge type also influences the location of the bridge crossing. The stationary bridge type could consider three levels; a high level, a mid-level and a low-level. A high-level bridge would accommodate the vertical clearance for river navigation for a maximum height (150 feet). A mid-level bridge provides a vertical clearance to accommodate the majority of river navigation as is the case with the 50 foot vertical clearance defined by the IH-10 crossing of the Neches River. A low-level crossing assumes a lift bridge with a minimum 13 foot vertical clearance in the closed position (to mimic the existing KCS bridge vertical clearance).

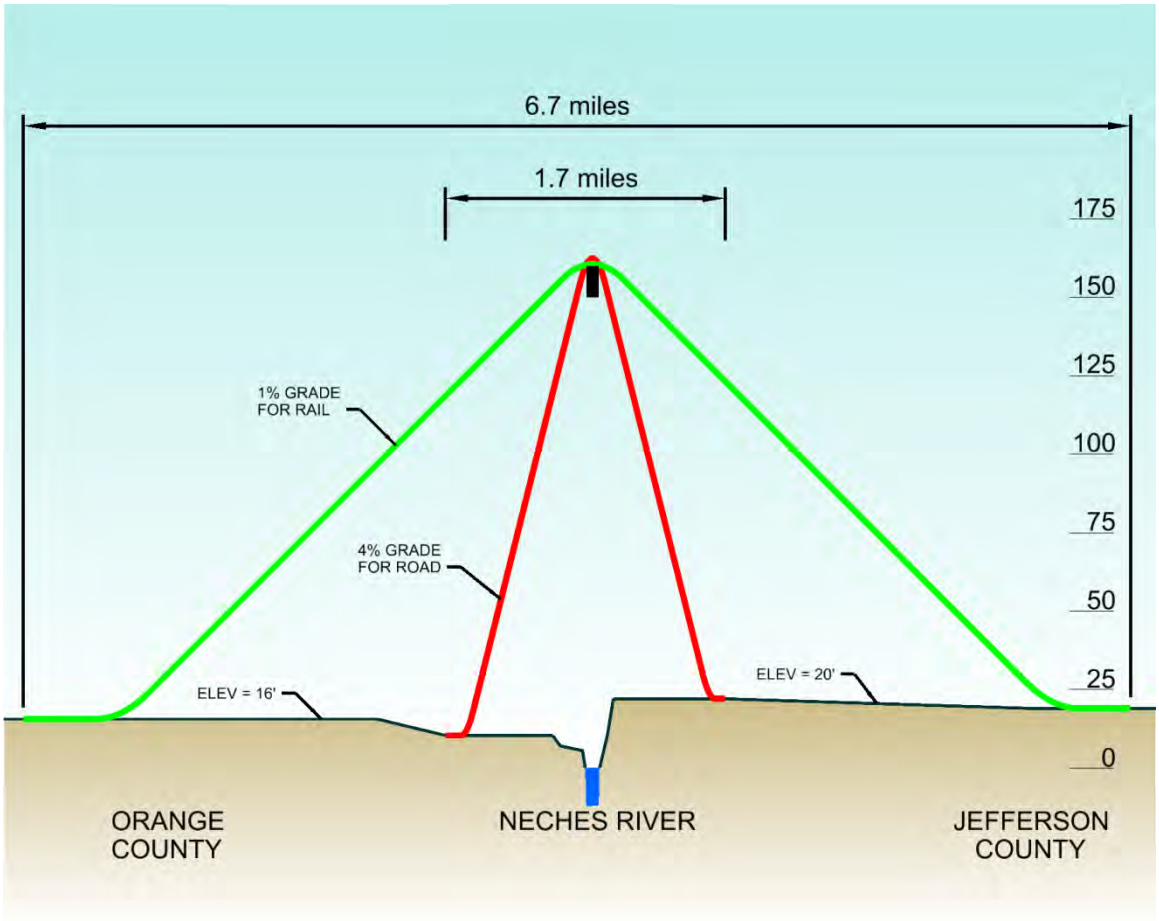
A high-level crossing could essentially occur at any location, yet the practicality of this concept needs to be called into question. A quick review of the Neches River navigation system notes several "crossings" and their associated vertical clearances which are shown in Table 3.4.[26] These crossings are listed in navigation mile markers from the south to the north. Of the crossings, several are overhead power transmission cables. Only three are vehicular bridges and only one (the KCS bridge) is a rail bridge. National Oceanic and Atmospheric Administration (NOAA) lists the following vertical clearances for elements crossing the Neches River:

Table 3.4 – Vertical Clearances along Neches River

Neches River	Mile Reference	Vertical Clearance (feet)
Road bridge - TX 73 EB	0.0	172
Overhead Power Cable	0.0	164
Road bridge - TX 73 WB	0.0	143
Overhead Power Cable	1.9	183
Overhead Power Cable	10.2	172
Overhead Power Cable	16.0	172
Rail bridge - KCS	19.5	13/150
Road bridge - Interstate 10	21.4	50

Port Arthur has State Highway 73 over the Neches River with a vertical clearance as high as 172 feet. This highway structure is nearly 1.5 miles long with an approximate approach grade of four percent. Railroads require a maximum grade of one percent and thus would have a significant increase in the length of structure for such a high-level clearance. An illustration of a theoretical high-level bridge over the Neches River in Beaumont is shown in Figure 3.4. It includes for comparison purposes a schematic profile with grades at four percent (for a highway) and at one percent (for rail). The length of the rail profile and associated structure would extend for a length of approximately 6.7 miles utilizing terrain in the Beaumont area along the existing rail corridor. Of course, no other rail connections serving Beaumont could be achieved along this aerial structure and the excessive costs of such a high-level crossing make the concept impractical.

Figure 3.4 Conceptual High-Level Profile



A tunnel option could also be contemplated. The vertical distance below the depth of the dredged channel including the vertical depth of rail tunnel would be approximately half the height of an elevated structure and therefore have approximately half the length of approach grade. Nonetheless the water table, soil condition, the need for ventilation and potential for flooding of the tunnel make such a concept impractical. However, from an operational perspective, the effects of a high-level bridge can be

assessed by running the RTC model on a theoretical rail network with zero (0) bridge lifts. This will allow an assessment and isolation of the operational impacts based upon bridge lifts as well as the opportunity for sensitivity analysis by varying the number of bridge lifts.

A mid-level crossing with its 50 foot vertical clearance (stationary bridge) is essentially defined as being adjacent to (and along the south side of) the existing Interstate 10 crossing of the Neches River.

A low-level crossing could essentially occur at any location. However, it needs to be acknowledged that at points south of the existing river bridge additional lifts would be required as the Port of Beaumont has much river traffic that accesses the Port. At points north of the existing bridge, the same number of lifts would be required as occur at the existing river bridge. In terms of navigation distance there is a limited length between the rail bridge (Mile 19.5) and the Interstate 10 bridge (Mile 20.7). Consequently as any new river crossing is physically close to the existing bridge, it can be assumed that operationally both bridges may be open at or nearly at the same time. This in turn essentially creates a system interruption in the network similar to what occurs today.

In developing design parameters to determine potential locations for alternative alignments and bridge crossings of the Neches River, the vertical clearance over the river as a navigable waterway becomes critical. Information on vertical clearance was received from the United States Coast Guard (USCG) which states: "The existing vertical lift railroad bridge across Neches River at mile 19.5 in Beaumont has a horizontal clearance of 200 feet and a vertical clearance of 13 feet above high (underline added) water in the closed position and 145 feet above high water in the open position. The existing clearances have been adequate to date, as we have not received any complaints from waterway users. "

Copies of drawings for the Neches River rail bridge, dated 1940, were obtained from KCS. These drawings confirm a horizontal clearance of 200 feet yet state a vertical clearance of 18.32 feet above the mean low water (elevation + 2.68) in the closed position and 150 feet above the mean low water in the open position. A note on the drawings adds that elevations provided are from the KCS datum and are in feet above M.G.L., Biloxi, Miss. elevation +2.68 KCS datum equals elevation 0.00 U.S. datum. Review of the vertical clearances in the closed and open positions suggests that the "water surface reference" (elevation datum) has changed since the Neches River rail bridge was constructed. Comparison to the IH-10 bridge crossing presents similar references to mean low water for clearance and notes a 50 foot clearance at IH-10. Mean low water is designated at elevation 0.30.

Equally important to evaluating the feasibility of the physical aspects of a new river crossing is the electronic contour information used to establish existing and proposed profiles. Based upon the electronic contour files, the known junction point of the KCS and UPRR rail lines (near Tower 31) is shown at elevation 14.6. Track chart from the KCS call out an elevation of 18.0 at this point which would include the difference in datum elevation for the KCS. The water surface elevation for the Neches River is shown at elevation 0.0. Consequently for the purposes of this study, the stated vertical clearance of 50 feet for the IH-10 bridge is proposed for this conceptual design. Later on should the concepts proceed to any further design level, additional and more detailed topographic data will be collected and coordinated through the various review agencies including the U. S. Army Corps of Engineers.

At the existing Neches River rail bridge location, the navigation channel is skewed to the alignment of the railroad bridge. The skewed width of the navigation channel with an allowance for a fendering system and support piers requires center to center pier spacing greater than the 200 foot minimum horizontal navigation channel clearance. Consequently the center pier spacing was lengthened for initial investigations. In order to provide for potential future expansion, the typical bridge sections were designed to accommodate a double track section with a center to center distance of 15 feet.

If a new alignment were to span land owned by the Port of Beaumont on both sides of the Neches River, a new roadway crossing has been requested by the Port in addition to a rail crossing. Therefore, a bridge section to accommodate both rail and highway traffic was developed. To avoid any at-grade crossing of the new rail line, the two-way vehicular roadway would be placed adjacent to the rail bridge. In the case of a lift bridge option, a separate two-way roadway lift bridge would be need to be constructed adjacent to the proposed rail bridge in order to provide a balanced typical section for the lift bridge support structure. Later in the "alternatives considered" section and eventually the "alternatives evaluated" section of this chapter, a vehicular circulation concept is illustrated (see Exhibits 2 and 3 in the Appendix) that includes a crossing of the Neches River as well as a grade separation over the KCS rail corridor connecting the two Orange County parcels of the Port of Beaumont.

Several options were considered including a stationary bridge (navigation clearance level to be determined based upon river crossing location) and a lift bridge. Again, the lift height will be dependent upon the river crossing location. In general, any point south of the existing river bridge should provide the 150 foot clearance as currently provided. Points immediately north of the existing bridge (at least to the limits of the dredged channel) should also provide the 145 foot clearance above high water. Immediately adjacent to the IH-10 bridge (approximately 1.7 navigation miles north of the KCS rail bridge), a lower clearance can be used to match the existing clearance afforded by the IH-10 structure (50 feet above mean low water). NOAA indicates the limits of the dredged channel to be approximately 0.8 navigation miles north of the existing KCS rail bridge.

Stationary Bridge

For planning purposes, the Neches River bridge as a stationary bridge would consist of a 260' – 0" double track thru truss main span, with a composite concrete deck, and 153' – 0" welded steel deck plate girder spans with a composite concrete deck for both approach spans. The main span will provide a minimum horizontal clearance of 200 ft. with 265' – 0" pier spacing to account for a skewed navigation channel. Piers for the bridge would be a cast-in-place concrete pier cap, two concrete columns, with a cast-in-place footing supported on drilled shafts. The approach spans, outside of the river floodway, would be either pre-stressed concrete modified AASHTO I girder spans or welded steel deck plate girder spans. Piers would be a cast-in-place concrete pier cap, with two concrete columns. Depending on the height of the columns; they will be either supported on a cast-in-place footing supported on drilled shafts or supported directly on drilled shafts. The span lengths and girder type could vary depending on the approach alignment, topographic and other environmental/hydraulic constraints. Illustrations of a stationary bridge with general plan and elevations as well as a typical section are shown in Figures 3.5 and 3.6.

Figure 3.5 – Stationary Bridge General Plan and Elevation

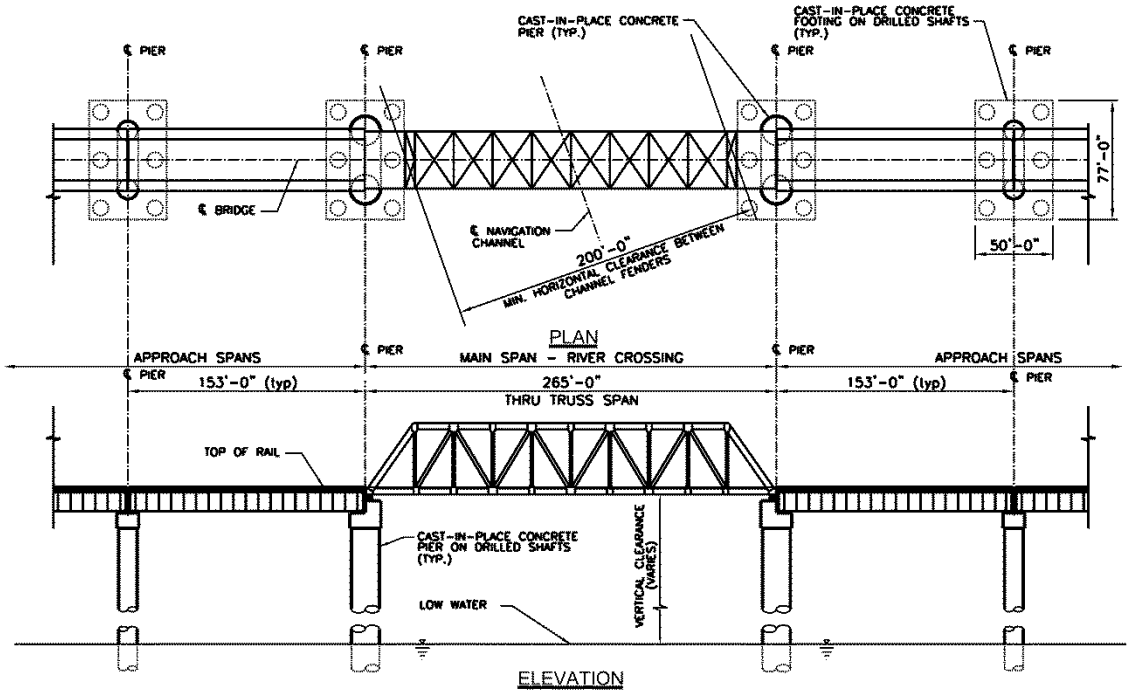
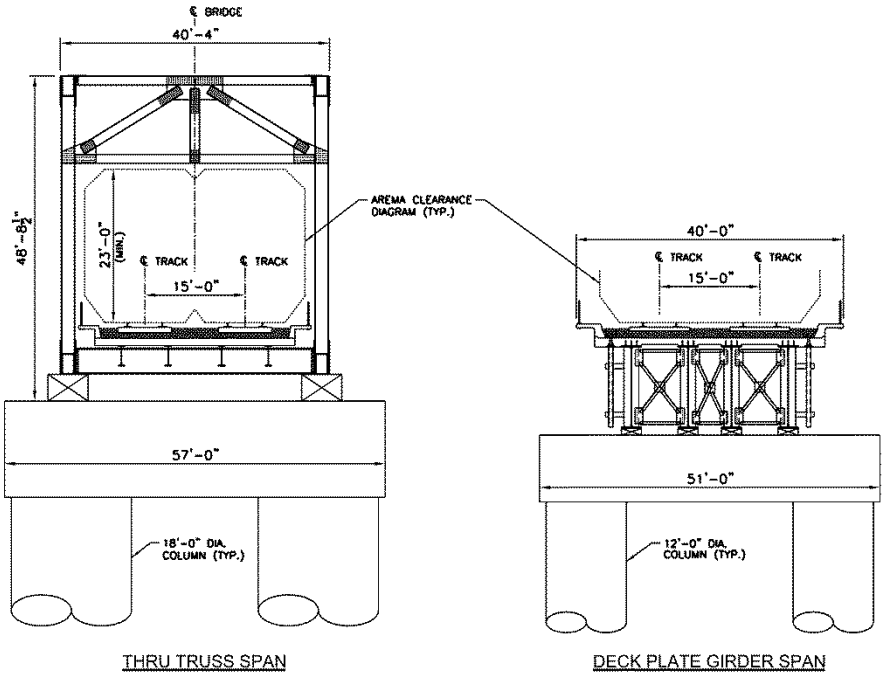


Figure 3.6 – Stationary Bridge Typical Section



A stationary bridge at the 145 foot vertical clearance above high water would be excessively long and by definition extremely expensive. The Rainbow bridge (for vehicles) in Port Arthur provides the navigation clearance for the Neches River. The total length of the bridge is over 1.5 miles. The grades on the approach spans are estimated at four percent. The maximum grade for the rail would be one percent resulting in a comparable length of nearly six miles. Consequently, consideration was also given to establishing an elevation of the bridge in the closed position that would allow say 80 percent of the navigation traffic to pass under the bridge without requiring a lift. Several factors are required to establish this elevation; the appropriate reference water surface elevation, the height of boats using the river and an acceptable minimum clearance allowing boats (and its tow) to pass without requiring the bridge to be opened. Setting this elevation would require coordination with the U. S. Army Corps of Engineers and the U. S. Coast Guard. Lift data from the KCS railroad indicates that the maximum height requested on one occasion (during a sample week) was 70 feet. This height is higher than the clearance afforded by the IH-10 bridge. The average lift request (mathematically) was for 48.6 feet. Only three of the seven lifts requested that week were below 50 feet.

Lift Bridge

This option would be similar to the existing bridge though the new bridge would be capable of supporting two main line tracks, and would be longer to account for the skewed width of the wider double track truss and the larger piers needed to support the additional weight of the second track. A vertical lift bridge typically offers several advantages. For span lengths greater than 150 ft. a steel through truss, vertical lift bridge is the typical structure type used for railroad movable bridges. An open deck system (timber ties supported on steel stringers and floor beams) is recommended to reduce the weight for the lift span. A ballasted deck system would approximately double the span's weight.

Some advantages of vertical lift bridges include:

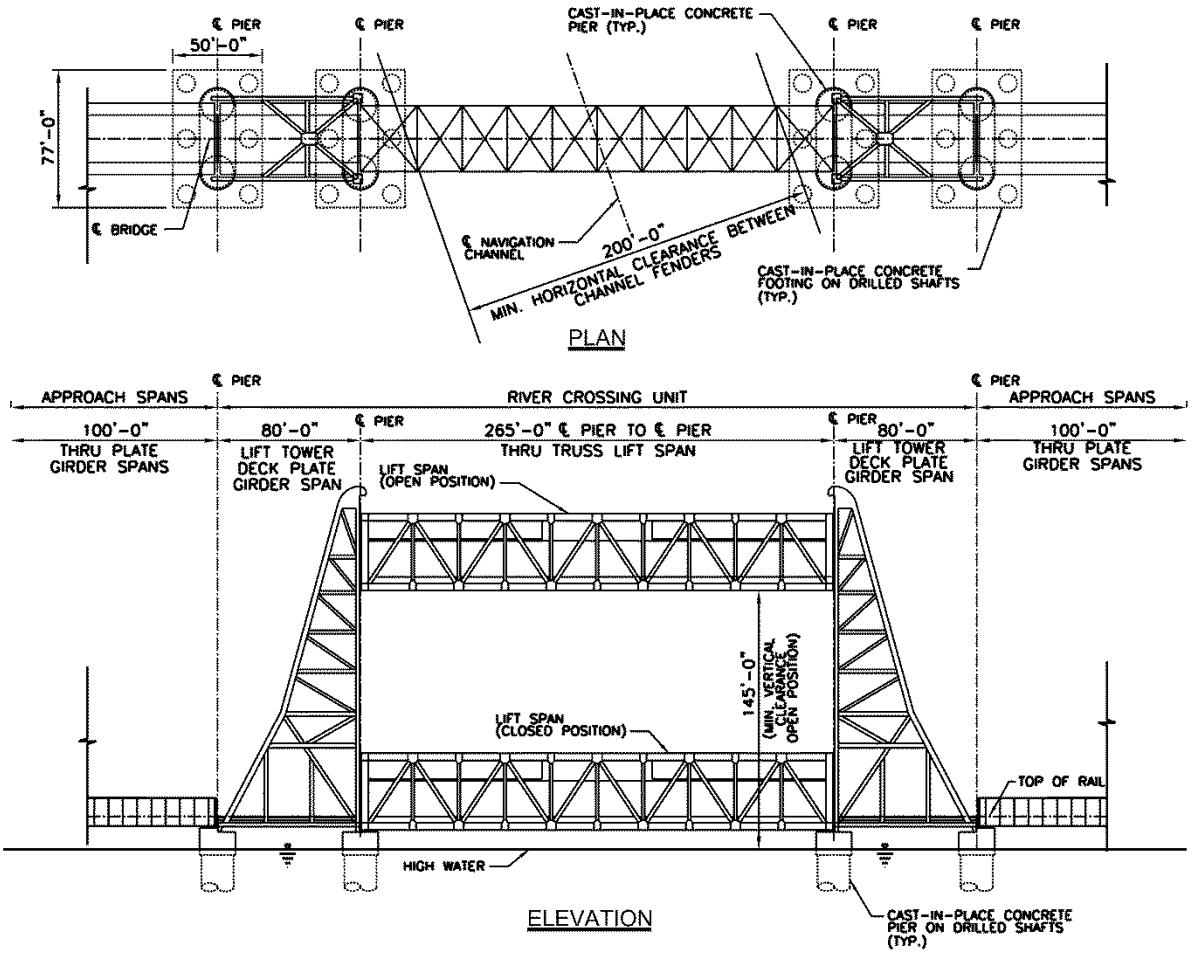
- Longer span lengths and wider navigation openings can be achieved more easily than with other movable span types (i.e. swing or bascule spans).
- The lift span is a standard design (simply supported span), similar to a stationary bridge.
- It is conceivable to design the lift span with a ballasted deck.

Some disadvantages of vertical lift bridges include:

- Towers are required to lift the vertical span and access to the top can be difficult especially on towers approaching 200 feet in height. Service elevators can be provided for tower driven spans that require frequent access to the top.
- The mechanical and electrical systems require periodic maintenance.
- Providing a sufficient number of adequately sized counterweight ropes, a flexible power cable, a large enough sheave groove radius, and adjustable rope termination take-up devices must be considered in the design.

A general plan and elevation as well as a typical section of a lift bridge are shown in Figures 3.7 and 3.8.

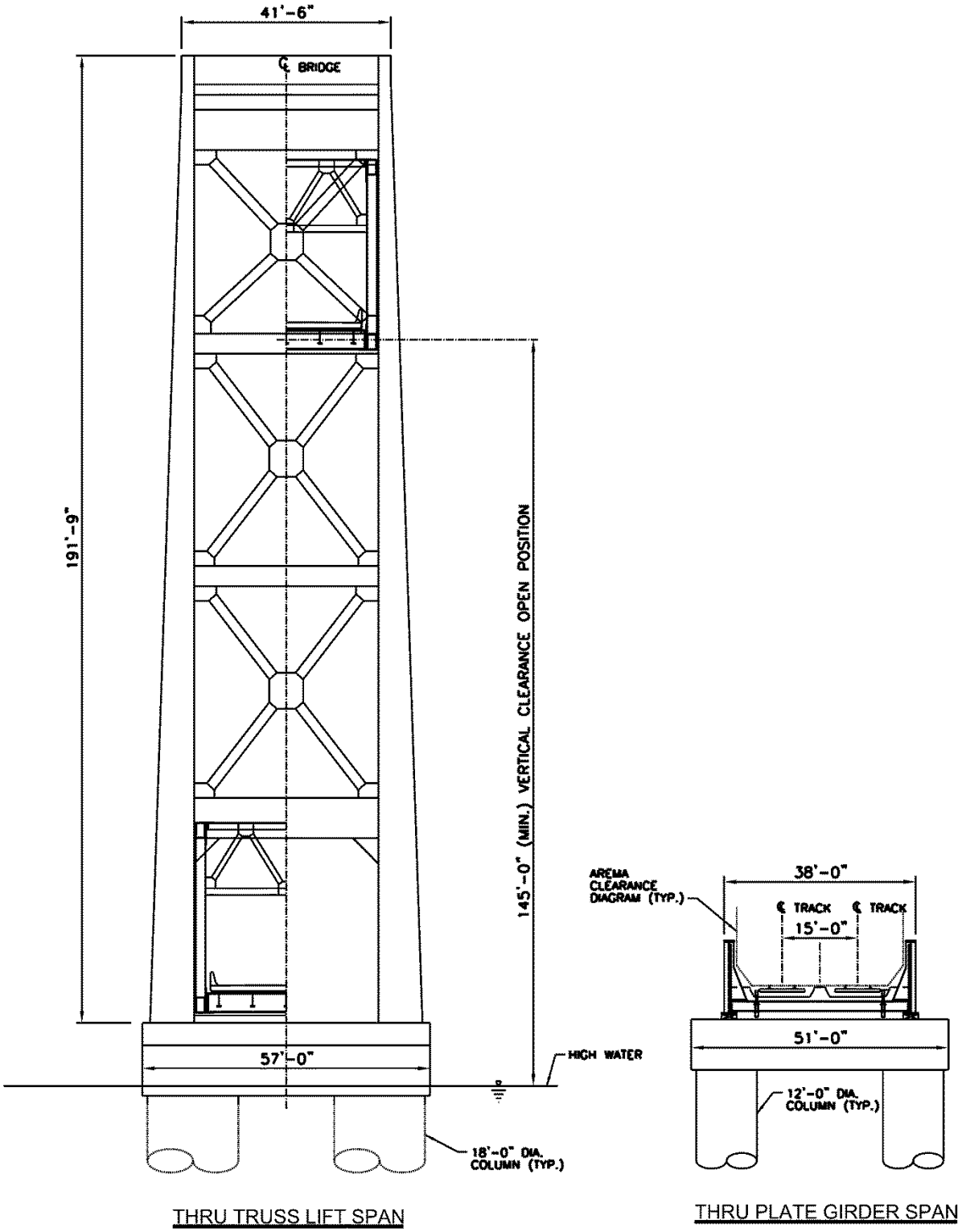
Figure 3.7 – Lift Bridge General Plan and Elevation



The piers adjacent to the navigation channel require a fender system to protect the bridge from vessel impact. Movable bridges are particularly susceptible to service interruptions as a result of vessel collision. Even minor impact on the substructure can cause mechanical equipment to fail.

From a review of the existing Pier Plan – Profile Sheet, dated Feb. 1940, it appears that the channel was about 30 foot deep measured from low water (KCS datum). The boring logs indicate that between elevations -38 to -124, the soil profile consists of alternating layers of hard to very hard clays and course to course packed sand. The foundations for the 1940 construction consisted of caissons or drilled shafts varying from 7 to 18 feet in diameter. The estimated tip was at elev. -90. For tall columns, those exceeding 30 feet ± above ground line, the columns are to be supported on a concrete pile cap or footing founded on drilled shafts. For columns less than 30 feet ± above ground line, the columns are to be supported directly on the drilled shafts or on pile footings. Because of the heavier loads anticipated from the new construction, it is estimated that the tip for drilled shafts to be elevation -110.

Figure 3.8 – Lift Bridge Typical Section



The United States Corp of Engineers will require that the low steel elevation of the approach spans be a specified distance above the high water elevation. To provide a smaller structure depth (top of rail to low steel), through plate girder spans will be used within the river floodway. The approach spans, outside of the river floodway, would be either pre-stressed concrete girder spans, or steel deck plate girder spans or thru plate girder spans. The span lengths and girder type could vary depending on the approach alignment, topographic and environmental / hydraulic constraints. The costs for the stationary and lift bridge options were developed in two forms; the span over the navigation channel and the unit costs for the approach spans assuming a consistent uniform length. This format was deemed suitable for initial considerations. Outside of the river, the span lengths and girder types will vary to provide the most cost effective combination. The costs include the potential for a variety of structural types such as cast-in-place and pre-cast, pre-stressed concrete spans, and steel deck plate girder and through plate girder spans. The costs do not include truss spans, because of the variation in types and lengths, nor for foundations in water requiring special construction techniques. Such costs would be identified at a later stage of design as a separate line item. With specific horizontal and vertical alignments across the Neches River, an accurate length of the bridge approaches and associated probable costs will be determined.

Whether the main span over the navigation channel were constructed as a stationary bridge or as a lift span, the span length of the thru truss element would be set to allow a 200' – 0" minimum horizontal clearance between the navigational channel and fendering system. Because of the potential for skewed alignment crossings of the river, the actual length of the thru truss span may be longer. The approaches in the river would typically be 150' long welded deck plate girder spans. The estimated probable construction cost (in 2012 dollars) of the stationary river bridge is on the order of $30 to $35 million. The lift span over the navigation channel will be constructed to a minimum of 13' above the mean low water level. Because the minimum navigation vertical clearance required is 150' above mean low water, a lift span is required. The estimated probable construction cost of a lift span bridge is on the order of $40 million for a single track and up to $80 million for a double track. If the vertical clearance over the river in the fixed position were higher than 13 feet which in turn reduces the total lift, then the cost of the lift span bridge may be less. This opinion of probable costs are for construction elements only and do not include costs for engineering design, permitting, or construction inspection services.

Alternatives Considered

The alignment location must pass three elements to determine feasibility, an initial review of the technical aspects (typically related to the physical environment), then a financial feasibility test with reasonable costs, and finally a political feasibility where potential impacts are not significant and there is support from applicable partners. Conceptually any new alignment must connect to the existing rail system. For this study area that essentially means connecting from a point near Tower 31 (KCS/UPRR split in Orange County) to the Union Pacific overpass of 11th Street near the existing Amtrak station. To assist in reviewing the location and the surrounding context of the alternatives to be evaluated, see Figure 3.9. A series of 1" equals 200' scale aerial maps of the alternative alignments are included in the Appendix.

For a stationary bridge concept, the alignment location begins by setting the bridge location and then attempting to create the appropriate tie-ins on the east and west sides of the Neches River crossing. For lift bridge concepts, a combination of rail alignment and river crossing location (for navigation traffic and minimizing span length) are given consideration. Operations and connections are also considered when creating the overall rail alignment. The descriptions follow the railroad mileposts which typically increase when travelling westward.

Stationary bridge

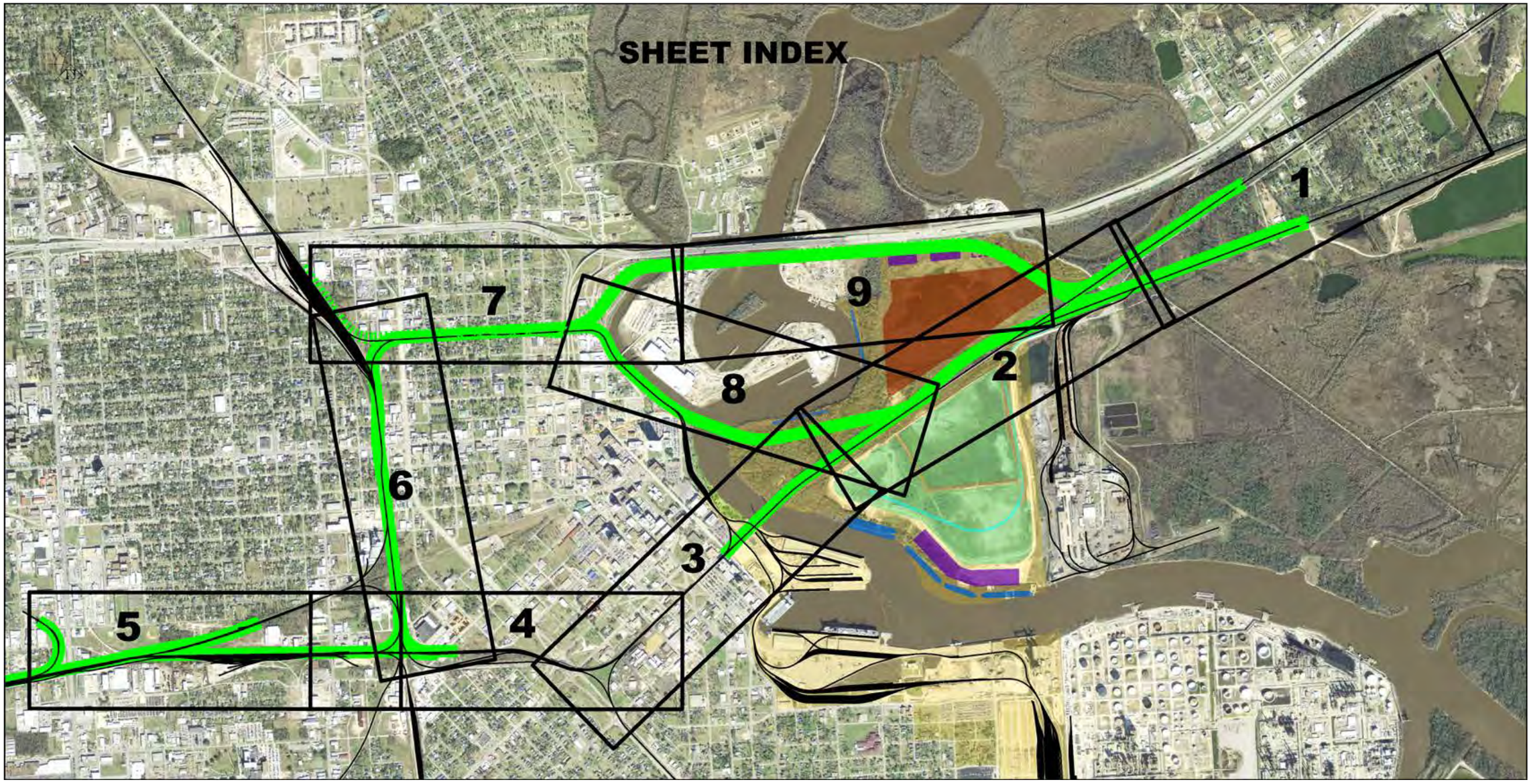
The initial alignment developed for a stationary bridge attempts to create a crossing where interruptions from navigation traffic do not occur. The best location for a stationary bridge is north of the existing KCS bridge near the existing IH-10 bridge over the Neches River. Here, the closest existing rail corridor to IH-10 on the west side of the Neches River is the BNSF spur to and through the Port's interchange yard.

On the east side of the Neches River, the KCS/UPRR split at Tower 31 presents a challenge in connecting to both the KCS and UPRR lines which are diverging. In order to create an appropriate crossover, a grade separation is envisioned. Since the bridge location under consideration is north of the existing KCS line, then the KCS line is to be crossed. The vertical design criteria at this concept planning level is set at 24 foot vertical clearance from the top of rail plus an assumed six foot depth of structure, for a total of 30 feet. The maximum grade is one percent and in general this would mean a 3,000 foot long transition. The straight line distance from the UPRR split to the IH-10 bridge is over 5,500 feet.

The horizontal alignment is conceived to be parallel to the existing track when applicable. The UPRR line includes a new second track as previously described under the Gulf Coast High Speed Rail (GCHSR) initiative. While this initiative may not yet be a committed or funded project, for purposes of a long range planning study, the new rail is shown as an element to be considered and requires coordination. The GCHSR line is shown on the north side of the existing UPRR tracks. Track centers are depicted at 20 foot centers. The spacing of track centers changes to 15 feet on center when the rail is on a structure. This change in dimension is made as a cost-sensitive design. Consequently the new alignment track would run parallel on a retaining wall section close to the proposed GCHSR track before connecting to that track. An access road on embankment is possible on the north side. However, Baird's Bayou and the existing timber viaduct structures on the order of 900 feet for UPRR and 1,000 feet for the KCS would indicate that a structural support system is needed for a portion of the track before transitioning to retaining walls and embankment.

The east tie-in is also further complicated by the at-grade crossing of Old US-90 on the KCS line. A more desirable situation would be a grade separation of this roadway and the KCS tracks. That would necessitate either raising the existing KCS track over Old US-90 or bringing Old US 90 over the KCS tracks. While the road structure would typically be less expensive than a rail structure, the proximity of Baird's Bayou as well as maintaining access across the UPRR track to George Brown Road and access to the Gerdeau Steel complicates any grade separation. In other words, the close proximity of the UPRR crossing to the KCS crossing needs to be treated as one crossing.

Figure 3.9 – Sheet Index Map of Alternatives Evaluated in Appendix



Further to the east on the KCS line is the Vidor siding. Operational consideration could be given to extending the second mainline track to points further east, such as to (or potentially past) the Vidor siding. It should be noted that the Vidor siding track is to the south of the existing mainline track, while the proposed track is on the north side of the existing track.

Any new alignment east of the Neches River and north of the existing KCS tracks will impact the Port of Beaumont's Orange County property. While this part of the Port is currently undeveloped, impacts will be assessed based upon the Port's proposed Master Plan.

The west tie-in is conceived to tie in near the BNSF spur line which occupies the center of Long Avenue. As such, the concept envisions that a new rail corridor providing room for two additional tracks would be acquired. While both sides of Long Avenue could be considered for potential expansion, the north side affords the necessary horizontal clearance between pier supports beneath the US-90 structure over Long Avenue. However, the north side also has an electrical substation located on the northeast corner of Long Avenue and Ewing Street. There are also numerous at-grade crossings to evaluate. Coordination with the BNSF indicated that they found no serious issues with either side of Long Avenue.

The Long Avenue alignment must also cross Martin Luther King Jr. Parkway. The current crossing is at-grade and is equipped with flashers and gates. Martin Luther King Jr. Parkway is six lanes wide and currently carries more than 30,000 vehicles per day. Increased train traffic crossing this roadway may necessitate modifications to the type of warning devices and even a potential grade separation.

Immediately west of Martin Luther King Jr. Parkway is the wye into the BNSF Beaumont Yard. The new track would connect to the run-through track of the BNSF Yard and to provide future double-track service connections. A second track is proposed along with upgrades to the existing track between the BNSF Yard and the existing UPRR-KCS interchange. Along this half-mile long segment, there are seven at-grade crossings.

Overall, the proposed route for a stationary bridge adjacent to IH-10 is approximately 6.0 miles long while the existing route is 5.9 miles long. The operating speeds and lengths along the proposed routes become input to the RTC model and its evaluation of operations.

Lift Bridge

When considering a lift bridge, one must acknowledge that a request for a lift at the existing bridge location will likely translate to a similar request for lift at any new location north of the existing lift bridge. This is especially true for recreational/pleasure craft which are likely utilizing the Beaumont Yacht Club immediately north of the IH-10 bridge. Navigation use by industry vessels may be dependent upon any industrial development including the Port of Beaumont's development of its Orange County facilities. The Port's Master Plan identifies the potential for two container-on-barge loading facilities north of the existing KCS bridge. Such docks would require additional bridge lifts which are not currently occurring. Consequently, the best location for a lift bridge may be as close as practical to and immediately north of the existing lift bridge.

The currently developed parcels of the Port are all located south of the existing KCS river bridge. Current vehicular access from the Jefferson County facilities to the Orange County facilities on the other side of the Neches River necessitates travel north along US-90, then east along IH-10 to Exit 856 continuing east along the Frontage Road to Old US 90 then south across the KCS tracks to George Brown Road crossing the UPRR tracks. All concepts for new alignments being considered (including along the existing river crossing) are located north of the existing river bridge. Consequently to access the new bridges for vehicular use requires crossing the existing KCS tracks on the west side of the river and again on the east side of the river to get to the Port's south parcel.

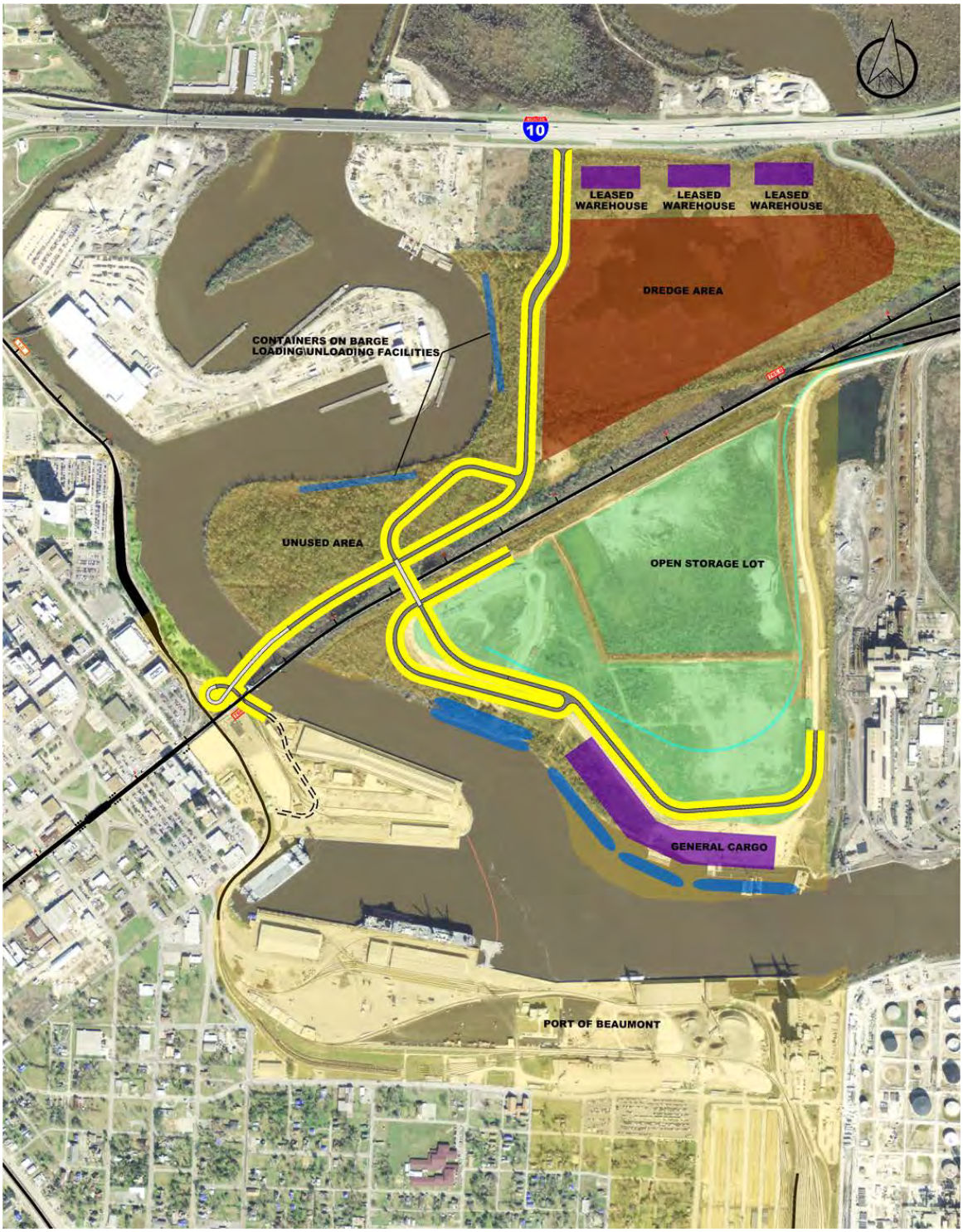
A potential concept for vehicular traffic to cross on the west side is via a grade separation of the existing KCS rail line that utilizes the current "low water" rail crossing beneath the bridge. Review of as-built plans would suggest that the vertical clearance is sufficient for trucks yet only one direction of travel could be permitted because of lateral clearance. However a second opening of similar dimensions is immediately adjacent and could be used for travel in the opposite direction (southbound). A parcel (currently a surface parking lot) in the northwest quadrant from the existing bridge would be utilized as a loop ramp from the passage beneath the bridge to the surface level of the bridge for vehicular traffic. Access from within the Port to this potential loop ramp would require at-grade crossings of numerous service rail lines. Once crossing the river, the vehicles would be on the north side of the KCS tracks.

A concept to connect the south/north parcels of the Port (separated by the railroad) via a grade separation utilizes a crossing point located approximately half-way between UPRR/KCS junction at Tower 31 and the river bridge. The crossing would be over the KCS tracks at a height of 24 feet clearance plus an assumed six foot depth of structure. The maximum grade for trucks to reach this level is 4% which results in a ramp of approximately 750 feet long. Vehicular access to the Port's Orange County facilities may be best achieved along the IH-10 Frontage Road (assuming that access rights have not previously been acquired). However the western edge of the Port property line is located less than 500 feet west of the physical gore point of the eastbound off ramp which may influence where the best location of an access point could be placed. While access via Old US 90 has some merit to limit potential out-of-distance travel of over a mile to reach an entry west of the eastbound gore, the concept of an at-grade crossing of the KCS tracks is less than desirable for a potentially major facility. The crossing location identified also requires a crossing of other industry track. See Figure 3.10 for a depiction of a roadway circulation concept connecting the Port of Beaumont's Jefferson and Orange County facilities.

The closest existing rail corridor north of the existing river bridge is the Port's Interchange Yard with a connection to BNSF's spur line along Long Avenue. Another rail corridor worth potential consideration is the former Southern Pacific (SP) line which has a direct connection on the west side to the UPRR main line. The SP bridge over the Neches River was a bascule bridge. The former timber supports for the approach spans still remain in Orange County. On the other hand, developments in Downtown Beaumont as well as the Port's Interchange Yard are physical issues that would result in potentially significant impacts.

Figure 3.10 – Roadway Circulation Concept

Connecting Port of Beaumont Jefferson and Orange Counties



A new lift bridge adjacent to the existing lift bridge could be expected to experience vertical clearance issues similar to the "low water" rail crossing beneath the existing bridge. Design options are limited to improving the clearance. Further lowering of the track creates additional constraints with water levels. Raising the track would further restrict the types of rail cars that could pass through. And raising the new bridge to a higher elevation to create additional clearance to solve one issue, would create another issue by interfering with the ability to maintain the existing diamond crossing. While a phased approach might be considered, the clearance at the existing river bridge would remain a constraint until the existing bridge may be replaced. In fact, the Port's implementation of a new rail access and expanded capacity at Dreyfus Yard are intended to allow for the removal of the Port's Interchange Yard. With the completion of these improvements, and the redirection of Port traffic, the low water level crossing should become a moot issue.

If one were to consider a lift bridge south of the existing KCS river bridge then a potential location could be along the Port's eastern edge (adjacent to Gerdeau Ameristeel) and cross the Neches River onto Jefferson County side of the Port of Beaumont connecting into the Dreyfus Yard. By connecting to the Dreyfus Yard, rail system connections could be made into the KCS at the wye north of Chaison Yard. While potentially physically possible, any crossing south of the Port of Beaumont will experience a significant increase in the number of bridge lifts to accommodate navigation traffic. Consequently this concept was dismissed.

When an alignment connects to the existing rail corridor west of the KCS- UPRR split at Tower 31, train movements to either rail corridor are direct. However, this at-grade connection will cause delays at Old US 90 and limit access to the industries and the Port of Beaumont due to trains waiting to cross the bridge. The horizontal alignment is conceived to be parallel to the existing track and again this study assumes a proposed second track associated with the GCHSR initiative. Consequently this alignment's new track should be considered a third track with the second track extending eastward along the KCS line to Vidor. To accomplish a grade separation, bringing Old US 90 over the KCS tracks would appear to be a logical opportunity.

Again any new alignment east of the Neches River and north of the existing KCS tracks will impact the Port of Beaumont's Orange County property. This time the lift bridge river crossing location and approach alignment bisects the Port property and creates difficulties for access across the railroad tracks and potentially creating useless remnants of land of reasonable size. While this part of the Port is currently undeveloped, impacts will be assessed based upon the Port's proposed Master Plan.

The west tie-in is conceived to tie in near the Elizabeth Street turn of the BNSF spur line along Long Avenue. Improvements for operating speed and future double track push the alignment east of the existing BNSF track close to the edge of Brake's Bayou and likely will require a retaining wall along the west bank of the bayou. Similar issues as already described along Long Avenue and the south connection on the BNSF line to UPRR would remain with an equivalent number of crossings and potentially a few more associated with Pine Street unless Pine Street is closed to through traffic as conceived and shown in the Appendix exhibits.

This proposed route for the lift bridge is approximately 6.3 miles long while the existing route is 5.9 miles long. Again, the operating speeds and lengths along the proposed routes become input to the RTC model and its evaluation of operations.

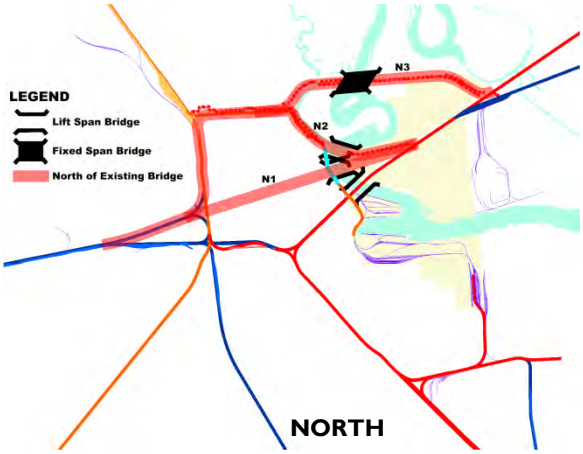
An alternate alignment could move the new river crossing a bit further south and utilize the former SP corridor. While much of the former SP corridor remains intact, the eastern edge close to the Neches River within the study area is densely developed and is designated a Historic District. This presents a challenge in finding an alignment that does not have significant property or other direct impacts. The alignment concept would require the new rail to be elevated over the BNSF track which in turn provides a higher vertical clearance for the river span when in the closed position. Nonetheless, the number of lifts is estimated to remain the same as the minimum requested clearance (based upon sample data) for the existing lift bridge was a 30 foot lift. The alignment would then remain elevated on structure and traverse through Downtown over several streets including the one-way couplet of US-90, Martin Luther King Jr. Parkway and the BNSF line before beginning descending to meet existing track. A grade separation would also be envisioned at 4th Street and dependent upon tie-in locations, a widened grade separation may also be needed at 11th Street.

Summary of Alternatives Considered, Screened and to be Evaluated

A "long list" of options were considered and screened. Concepts of high-level structures (with a vertical clearance of 150 feet) were considered but found to be both physically and financially impractical. Concepts for a lift bridge located south of the existing KCS bridge would have significant impacts on river navigation and the increase in the number of lifts would adversely affect rail operations. And while consideration of a former rail corridor is philosophically often a reasonable approach, the former SP alignment through Downtown Beaumont is heavily developed with numerous street crossings. Creating an elevated rail corridor through Downtown Beaumont would have significant property and visual impacts. Figure 3.11a depicts the broad corridors of these concepts considered and screened. Figure 3.11b depicts the broad corridors of the concepts to be evaluated in the next chapter.

Design aspects to accommodate the GCHSR are also considered and attempt to follow the guidance provided in the August 2004 plan and profile sheets at a 1" equals 3000' scale through Beaumont. Those plans include, as part of a Phase 2 component of the GCHSR study, a proposed rail line along the existing UPRR-KCS rail corridor on the north side of the existing rail alignment. This concept is directly reflected by illustrating a third main west of the GCL junction through UPRR's east yard and continuing further westward to the directional running split. In Orange County, a proposed rail line is also shown along the existing UPRR-KCS rail corridor on the north side of the existing rail alignment. Placing a second UPRR track on the north side of the existing rail requires a crossing of the KCS rail. Placing the second UPRR track on the south side might eliminate the need for a crossing yet with the extensive existing right-of-way width on the north side between the Neches River bridge and the KCS-UPRR split at Tower 31, design options were considered to accommodate a crossing with proposed rail on the north side.

Figure 3.11a – Concepts Considered



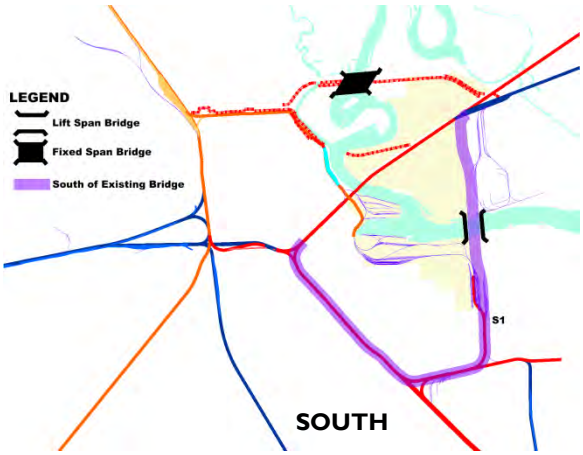
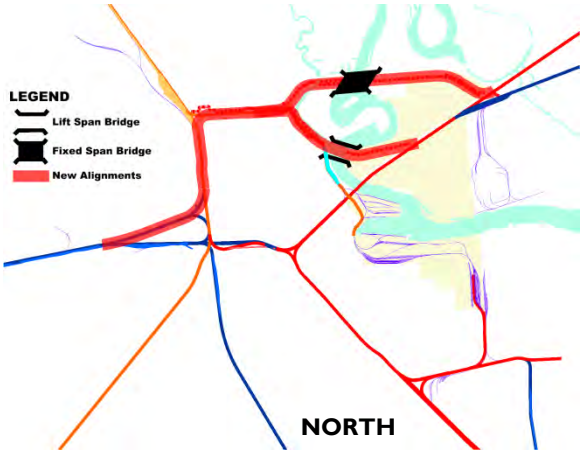


Figure 3.11b – Concepts to be Evaluated



In order to provide a level at-grade rail crossing, the new rail alignment should cross at a tangent and then begin its horizontal curvature. This geometric design may necessitate minor additional right-of-way acquisition. Another option could be grade separation, though obviously this has cost implications. An assessment of an appropriate design can be determined when more information on potential future operations is available. Considerations may even need to be given to the potential for double track alignments coming together along both the UPRR and the KCS routes at the KCS-UPRR split at Tower 31.

Three build alternatives are evaluated in more detail and include:

- Existing Alignment
    - North side of KCS tracks (lift span bridge)
- New Alignments
    - Interstate 10 alignment (fixed span bridge)
    - Pine Street alignment (lift span bridge)

RTC model assumptions

For the alternatives with new railroad alignments, the RTC model assesses an initial single-track configuration with centralized traffic control. Physical planning allows for expansion to double-track configuration though that concept does not affect operations. Maximum permitted speeds are assigned to the various rail segments based upon initial horizontal and vertical curvature as well as existing of adjacent operating speeds. The model is coded in such a way that the new alignment (whichever one is being tested) is preferred, but train traffic will be assigned to the existing route if it minimizes congestion delay. The modified bridge openings for future conditions (16 lifts per week) are retained on the existing railroad route in all alternative simulations, so that the bridge times are a constant, not an independent variable that would skew results.

With the alternate of the double track crossing of the existing route, a second track is simply added in the model to the KCS line relatively independent of physical design elements. Due to the close proximity of the two bridges, it was assumed that any call to lift the bridge for maritime traffic would require the new lift bridge to operate at the same time as the existing lift bridge.

Initially, the alternative alignments previously described in this chapter were screened utilizing existing train traffic volumes. The IH-10 alignment and the Pine Street alignments utilize some common segments including the North-South corridor and the Long Avenue corridor (both currently operated by BNSF). For location of these segments see Sheet Index Maps 6 and 7 respectively. The initial RTC model runs discovered that the North-South corridor was forecasted to experience a significant increase in delays as an existing single-track operation. Consequently, additional RTC model runs with projected train traffic were modified to include a double-track operation. The RTC model does not specifically include the existing BNSF Long Avenue rail as part of its network, although train traffic is accounted for in the model. And since the design concept is to construct a separate new track adjacent to Long Avenue, the only modification was to add the proposed track as part of the RTC model run.

For the IH-10 alignment, a significant operational modification included the railroad grade separation at the KCS-UPRR split at Tower 31 on the east side of the Neches River. Initial design thoughts were to physically tie into the existing rail corridors as quickly as possible in order to minimize construction costs and probable impacts. However the navigation vertical clearance and minimum desirable grades physically required additional horizontal length for the profile to transition over the Neches River before return to existing ground and the existing rail routes. On the east side of the Neches River, this resulted in the new alignment creating a split where one rail tied into the KCS towards DeQuincy while another rail was grade separated over the KCS line before tying into the UPRR towards Connell. This rail grade separation resulted in operational improvements on the east side of the Neches River that was not evident in the alternative without this rail grade separation.

Due to the project scope addressing only the Neches River area, the model assumptions change only the RTC's model rail infrastructure or network within the Beaumont area. Other potential improvements discussed in prior studies, such as the Texas Rail Plan, specifically those in and around the Houston area which would have a direct and positive effect upon operations east of Houston towards Beaumont are not included in the rail network for this study.

4.0 Evaluation of Alternatives

The different route options are evaluated by means of a selection of performance measures. To organize the evaluation, the framework provided by the Texas Department of Transportation's *Guidebook for Rail Project Prioritization* (May 2012) was consulted. As this is a rail capacity/facility improvement project, the measures used focus on the Transportation impacts, e.g., congestion relief and system capacity, of the proposed infrastructure changes. While the focus is on transportation impacts, an assessment is also made of an alternative's performance in the areas of Sustainability, e.g., environmental / social, and Implementation, e.g., project development, as data and known conditions permit.

Three alternative crossings of the Neches River are to be evaluated. These include an alignment along the existing river crossing corridor as well as new alignment alternatives with different types of river bridge crossings; stationary or lift span. Essentially these were determined to be the best of the options considered for alignment location and bridge type. The three alternatives are:

- Add capacity adjacent to existing KCS alignment with new lift bridge, as shown in Figure 4.1
- Add capacity on new alignment adjacent to Interstate-10 with stationary bridge, as shown in Figure 4.2a, and
- Add capacity on new alignment along Pine Street corridor with new lift bridge, as shown in Figure 4.2b

Figure 4.1 – Existing Alignment Evaluated
(New lift bridge adjacent to existing)

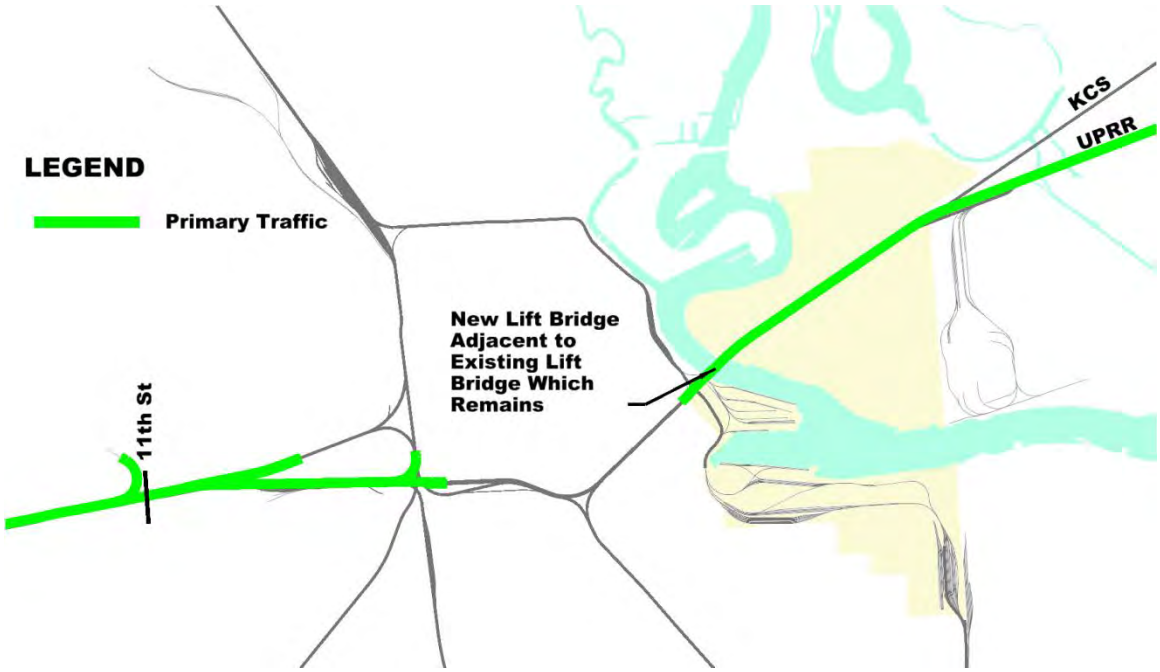


Figure 4.2a – New Alignment Evaluated (IH-10 Fixed bridge)

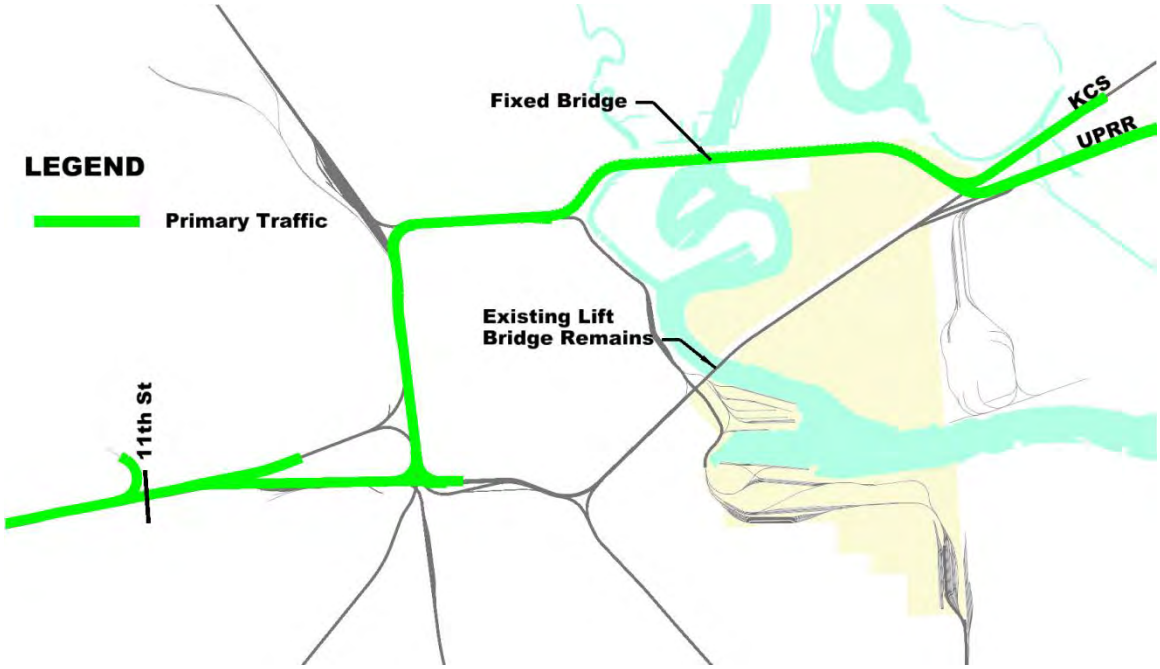


Figure 4.2b – New Alignment Evaluated (Pine Street Lift bridge)

Evaluation Measures

The measures used in the evaluation are discussed below. The performance of rail system given the assumptions underlying each alternative was estimated using Rail Traffic Controller (RTC, Berkeley Simulation Software) and GradeDec.net (Federal Railroad Administration). Each alternative will generate a set of performance measurements for the overall network. These results will be compared to the projected base case, i.e., the Project No-Build. Results may also be reported for the individual railroads (though at an aggregate level) to assess whether impact vary by carrier from a given alternative.

Transportation

The evaluation of transportation impacts includes a review of river, rail, and highway operations. The rail operations are based upon the output from the RTC model while highway operations focus upon the output from GradeDec.net for the at-grade rail-highway crossings along the corridor being evaluated. River impacts are discussed based upon the degree of obstruction to navigation traffic.

Rail Operations

All alternatives offer the option to route trains via either the existing rail lines or the alternate route, depending upon circumstances. In effect when combined, the existing route and proposed alignments create at least two main tracks, and to some extent three, between the UPRR Beaumont Yard and the KCS-UPRR split at Tower 31. This added capacity offers more flexibility than just the existing route alone.

The rail operations measures developed by RTC include total system train miles, total system weekly trains and total system weekly train delay. While 582 trains are dispatched, not all trains complete their runs within the week long measurement window. Delays accumulate over the week and some trains are behind the measurement window at the time it expires. The evaluation of an improved river crossing to provide double track capacity along either the existing route or a new location, as presented in Table 4.1, shows a significant reduction compared to the "no-build" condition (on the order of a factor of three to four). However in comparison to existing conditions this represents an increase in delay by a factor of two or more. Train traffic has also doubled and the delay hours per day may not be unrealistic when considering the Beaumont area as limited distance of a slow-speed terminal with the existing bridge as a bottleneck.

Table 4.1
RTC Freight Train Performance – Alternatives with 2035 projected volumes

Projected 2035 Case	Train Count	Delay Hours / Day	Delay Minutes/100 Train-Miles	Bridge Lifts per Week	# tracks crossing Neches River
"no-build"	582	69.7	306.4	16	1
double track existing route	573	23.4	158.1	16	2
IH-10 new alignment alternative	573	17.3	113.9	16	2

The IH-10 rail alignment alternative, as a fixed bridge, attracts approximately 37% of the total weekly train traffic. However, this represents nearly half of what could be classified as "through" train traffic crossing the Neches River. This amount of rerouting of trains is an indication that the existing rail corridor has a sizeable degree of local service that crosses the Neches River, including trains accessing the Port of Beaumont. While the new alignment option represents an overall operational improvement compared to the double tracking of the existing alignment, all of the options are more congested than current conditions. Comparing the new alignment between existing and projected train volumes, it becomes obvious that the increase in train traffic has the most significant effect upon operations.

River Navigation Impacts

River navigation impacts address the potential to affect the movement of water borne vessels. The concept of additional capacity with a second lift span river bridge adjacent to the existing bridge should not adversely affect river navigation. One central clearinghouse for raising the lift bridge(s) would remain. However, since the two structures would be aging at different rates, the older structure may experience more malfunctions and require more maintenance. The concept of a second lift bridge only 0.3 nautical miles north of the existing bridge, such as shown with the Pine Street alignment, will require both bridges to be in the open position to accommodate river traffic and could potentially increase rail delays. The fixed span rail bridge concept adjacent to the IH-10 alignment at the same vertical clearance afforded by the IH-10 structure would not have any impacts to river navigation, yet the existing lift bridge would still remain.

Key At-Grade Crossings

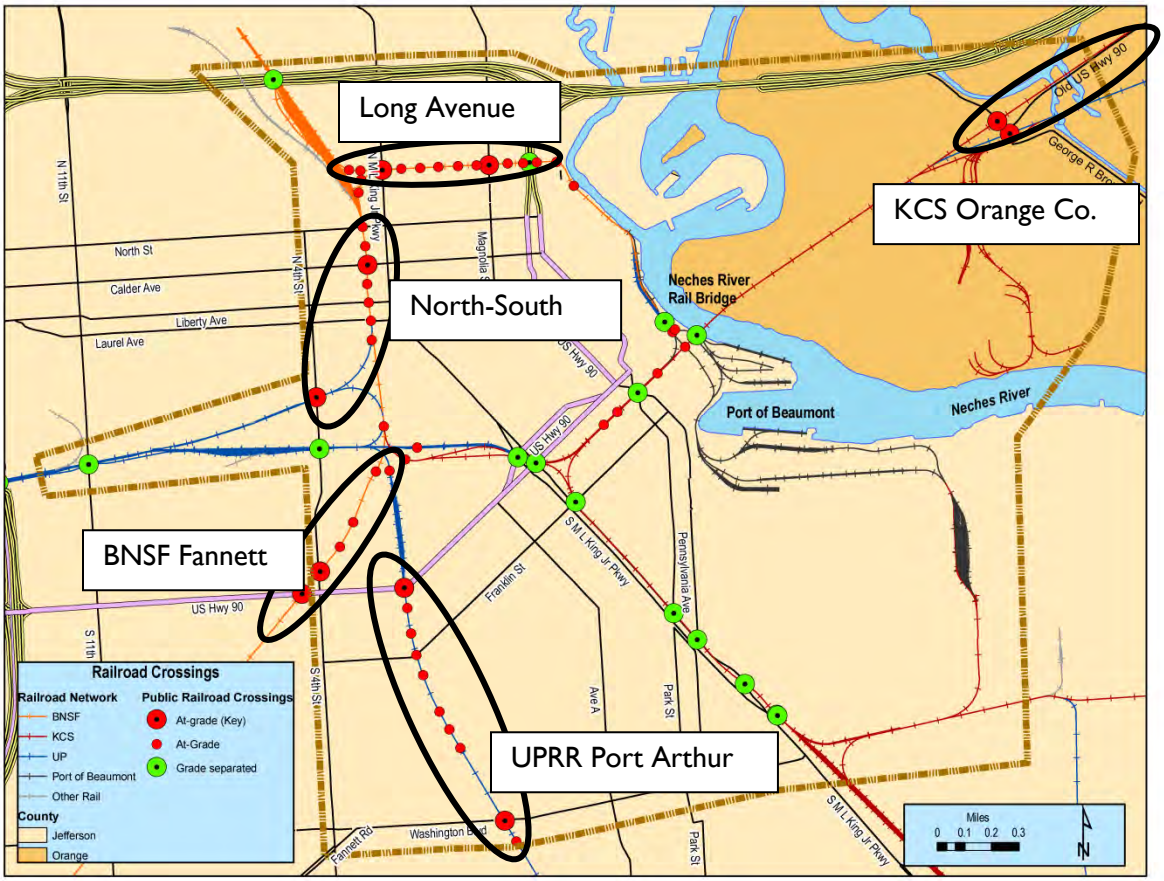
An assessment of critical at-grade crossings for grade separation was conducted utilizing the GradeDec.net software. The software package includes the base condition (type of crossing control) with alternate improvements in a hierarchical manner from passive control to lights, to gates, to new technology to grade separation or closure. A benefit – cost ratio is then determined based upon inputted train volumes, growth rates (both for rail and road) as well as estimated costs for improvements. To conduct the assessment, the input was entered using the base information developed by the RTC runs used for this analysis for the new and existing track configurations. A grade separation concept was developed for the segments analyzed along with an opinion of probable costs. The evaluation can help determine if a grade separation is beneficial.

The five rail segments for assessment via GradeDec.net and are shown in Figure 4.3. These segments were selected as representing corridors with both heavily trafficked vehicular and railroad at-grade crossings based upon projected conditions and their options. Information on these critical crossings and others along the corridors being evaluated is provided in the Appendix.

Three of the five rail segments are essentially evaluated under future conditions (increased train and vehicular volumes) and include:

- BNSF Gulf Silsbee MP 62.9 towards Fannett
- UPRR Lafayette branch Sabine towards Port Arthur, and
- KCS/UPRR in Orange County

Figure 4.3 – Crossing Corridors
(Key at-grade crossings evaluated for grade separation)



The remaining two rail segments have the potential to be directly affected by the alternate alignments under consideration. These include:

- Long Avenue and
- North-South segment (supplemented with 4th Street)

The BNSF Gulf Silsbee segment is assessed from milepost (MP) 74.58 – Washington Blvd. to 76.29 Crockett St., a distance of less than two miles. A total of ten crossings are included in this segment of the BNSF corridor. Grade separations were considered at US-90 (College) and immediately adjacent at 4th Street. Because of the proximity to each other and the major signalized intersection of College and 4th Streets, the grade separations must be viewed together and not separately. The construction costs are estimated in excess of $18 million. Right-of-way costs associated with the surrounding commercial properties may be in excess of $6 million. The overall benefit/cost ratio is significantly less than 1 at 0.229. The major source of benefits (38%) is from travel time savings.

The UPRR branch towards Port Arthur is assessed from milepost (MP) 28.35 – Euclid Ave. to 29.98 Crockett St. a distance of approximately 1.5 miles. A total of eleven crossings are included in the

corridor. Grade separations were considered at Washington Blvd. and at US-90 (College). These crossings are nearly one mile apart from each other. The construction costs are estimated on the order of $9 million for each crossing. Right-of-way costs could range from$1 to $3 million. The overall benefit/cost ratio is significantly less than 1 at 0.299. The major source of benefits (54%) is from travel time savings and is associated with US-90 and its higher level of traffic volume.

The KCS Orange County segment is assessed from milepost (MP) 761.03 – N Dewitt St. to 764.61 Old US-90 a distance of more than 3.5 miles. A total of five crossings are included in the corridor. A grade separation was considered at Old US-90. This crossing is physically very close to the UPRR track as well as the access road (George Brown Drive) leading to the Port of Beaumont. The construction cost is estimated on the order of $11 million for the grade separation of both crossings. Right-of-way costs could reach up to $2 million. The overall benefit/cost ratio is significantly less than 1 at 0.241. The major source of benefits (67%) is from safety benefits. The analysis as conducted only considers the Old US 90 crossing for potential benefits.

The Long Avenue segment is assessed for a distance of approximately 2/3rd of a mile. The existing track is operated by BNSF and is located in the middle of the roadway. A total of ten crossings are included in the corridor under evaluation. Several scenarios could be considered, ranging from a "no-build" scenario to the alternative alignment adjacent to the existing rail line. The concept for rail operations within this corridor would leave the existing BNSF track as is for service to the port and a new alignment would accommodate "through" movements and cross the river near IH-10. Currently only two trains per day utilize the existing track. An estimate of as many as 16 trains per day could be diverted to the new alignment under existing train volume conditions on "opening day" based on RTC simulations. Growth in future years is forecasted to 32 trains per day. Grade separations were considered at MLK Jr. Parkway and at Magnolia Street within the corridor limits. These crossings are nearly 0.4 miles apart from each other. The construction costs are estimated in excess of $13 million and $9 million respectively. Combined right-of-way costs approach $1 million. The overall benefit/cost ratio is 0.863 based upon an initial 16 trains per day. The major source of benefits (78%) is from vehicular travel time savings. The overall benefit/cost ratio increases to more than 1 at 1.596 based upon the future 32 trains per day. The major source of benefits (85%) is from travel time savings. While not specifically evaluated, the "no-build" scenario with just the existing service track would result in a benefit/cost ratio less than 1.0.

The North-South segment is assessed for a distance of approximately ¾ of a mile. The existing crossings include three different sets of milepost designations. A total of eight crossings are included in the corridor under evaluation. Again, several scenarios could be considered, ranging from a "no-build" scenario to the alternative alignment adjacent to the existing rail line. The concept for rail operations would leave the existing BNSF track as is for service use and a new alignment would accommodate "through" movements. Currently as many as six trains per day utilize the track. An estimate of as many as 16 trains per day could be diverted to the new alignment under existing train volumes resulting in a total of 22 trains per day estimated in the Base Case RTC model. Grade separations were considered at Calder Ave. and at 4th Street. These crossings are nearly 0.6 miles apart from each other. The construction costs are estimated at approximately $9 million each. Combined right-of-way costs approach $1.2 million. The overall benefit/cost ratio is significantly less than 1 at 0.240 based upon an

initial six trains per day. The major source of benefits (49%) is from travel time savings. The overall benefit/cost ratio increases to close 1 at 0.805 based upon the new alignment diversion with a total of 22 trains per day. The major source of benefits (78%) is from travel time savings.

Table 4.2
Highway and Railroad Crossing Evaluations

	BN Fannett	UP Port Arthur	Long Avenue		North-South corridor		KCS Orange Co.
			New (16)	New (32)	Existing	Alternate	
Safety Benefits ($1,000)	$ 972	$ 816	$ 957	$ 1,083	$ 582	$ 828	$ 1,145
Travel Time Savings ($1,000)	$ 1,493	$ 2,792	$ 10,888	$ 21,775	$ 1,921	$ 10,242	$ 18
Environmental Benefits ($1,000)	$ 7	$ 14	$ 51	$ 101	$ 8	$ 46	$ -
Veh Operating Cost Benefit ($1,000)	$ 117	$ 216	$ 714	$ 1,428	$ 118	$ 630	$ 1
Network Benefits ($1,000)	$ 9	$ 16	$ 46	$ 93	$ 13	$ 66	$ -
TOTAL BENEFITS ($1,000)	$ 3,918	$ 5,193	$ 13,903	$ 25,719	$ 3,905	$ 13,080	$ 1,703
TOTAL COSTS ($1,000)	$ 17,145	$ 17,393	$ 16,116	$ 16,116	$ 16,242	$ 16,242	$ 7,802
Net Benefits ($1,000)	$ (13,227)	$ (12,200)	$ (2,213)	$ 9,603	$ (12,336)	$ (3,162)	$ (5,378)
Benefit Cost Ratio	0.229	0.299	0.863	1.596	0.240	0.805	0.241

In summary, of the five segments analyzed for grade separation, only the Long Avenue corridor has a positive benefit cost ratio and that is only with increased and diverted train traffic associated with the new rail alignment alternative adjacent to IH-10. The existing low volume service line today would not reach a level to suggest the need for a grade separation. If a new rail alignment alternative is pursued, additional benefits could be investigated with the potential closure of one or more local streets' at-grade crossing along Long Avenue.

Sustainability

The evaluation of sustainability impacts includes a review of potential environmental and social impacts. Elements from the transportation and implementation impacts cross over to provide additional input on such factors as property impacts and transportation which have an effect upon air quality and energy use.

Property Impacts

Right of way acquisition includes right of way impacts created by new railroad construction and any associated roadway improvements, such as grade separations. Four quantitative measures are utilized based on information available in the Jefferson and Orange County Assessor's files and interpretation of aerial photography. These quantitative measures are: Number of Parcels which quantify the parcels that might be impacted, the total area of those parcels, and the area that might be most directly impacted or acquired, and Parcel Ownership which indicates an interpretation of ownership for each parcel based upon the name associated with the parcel in the Assessor's File. Another factor is the land use which was determined through a review of aerial photography. Parcels were categorized as being residential, commercial / industrial, open space / vacant, or other.

The number of properties impacted was determined by combining parcels with a common account number in the Assessor's file. Note however, that not all parcels in the file had account numbers. Assessed value for Jefferson County parcels was estimated by summing the land and improvement value

for each identified property. As was the case with the account numbers, not every property had land or improvement values. This assessed value should not be interpreted as representing probable costs to acquire the right of way as it is not a reflection of market value, does not include any relocation assistance, and values were not available for all parcels potentially impacted. Nonetheless it allows for a relative comparison. Table 4.3 summarizes the results of the analysis of potential right-of-way impacts. The Appendix contains a series of maps that illustrate the parcels potentially impacted by each alignment, the assumed ownership of each parcel, and the land use for each parcel.

Table 4.3 – Potential Property Impacts

ROW Impacts	Alternatives					
	Existing Alignment		New Alignments			
			IH-10 Fixed Bridge		Pine Street Lift Bridge	
	Jefferson Co.	Orange Co.	Jefferson Co.	Orange Co.	Jefferson Co.	Orange Co.
Parcels						
Number	59	1	76	6	85	2
Area (acres)	17	54	48	745	22	268
Acres Impacted	10	9	15	16	9	4
Parcel - Ownership						
Private	14	0	69	2	71	0
Railroad	1	1	0	2	2	1
Utility	0	0	2	0	3	0
Government	27	0	3	1	6	1
Institutional	10	0	2	0	2	0
Unknown	7	0	0	0	1	0
Land Use						
Residential	0	0	15	0	15	0
Commercial / Industrial	17	0	29	1	22	0
Open Space / Vacant	16	0	29	3	45	1
Other	26	1	3	2	3	1
Properties						
Number	18	1	52	6	56	2
Total Assessed Value	$1,270,000	N/A	$1,570,000	$4,870	$2,180,000	$938

Table Note: Not all parcels had a value associated with them. Total Assessed Value includes only parcels where a valuation was available and adjusts the value for parcels that may only be partially impacted.

Potential Environmental Impacts

The potential for environmental impact is driven by construction activities associated with the implementation of an alternative's infrastructure. The focus is upon key environmental issues and impacts as well as the complexity of permits. Several of the attributes described under the existing conditions such as population, households, income, race and employment are represented by the surrogate of property impacts by land use categories. Residential impacts would affect population and

households, while commercial and industrial impacts would affect employment and income. Impacts to water resources including wetlands and floodplains are indicated by assumed areas of potential right-of-way. Often these natural areas are habitat and consequently serve as a surrogate for threatened and endangered species. For a list of threatened and endangered species for Jefferson and Orange counties from the Texas Parks and Wildlife Department, see the Appendix. Specific sites that could be affected are identified for archeological, historic and community facilities including public lands and parks. Impacts to these attributes are represented by four degrees of impact ranging from no impact to low impact to medium impact to high impact. The degree of impact is neither based upon an absolute value nor is it relative to the other alternatives. A summary of potential environmental impacts is shown at the end of this section in Table 4.4.

Superfund Site - Superfund is the name given to the environmental program established to address abandoned hazardous waste sites. It is also the name of the fund established by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended. This law was enacted in the wake of the discovery of toxic waste dumps such as Love Canal and Times Beach in the 1970s. It allows the EPA to clean up such sites and to compel responsible parties to perform cleanups or reimburse the government for EPA-lead cleanups. There is one Superfund site within the Study Area. The name of the site is International Creosoting located at 1110 Pine Street, Beaumont, Jefferson County. The new IH-10 alignment runs through the middle of this site. This site is listed as number 11 out of 25 on the State of Texas Superfund registry that identifies those facilities that have been determined to pose an imminent and substantial endangerment. The Registry, along with a background and history of the International Creosoting site, appear in the Appendix.

Ecologically Significant Stream Segment - As a result of the passage of Texas Senate Bill 1 (SB1) in 1997, water planning in Texas became the domain of regional planning groups rather than the Texas Water Development Board (TWDB). As a part of the planning process, each regional planning group may include recommendations for the designation of ecologically unique river and stream segments in their adopted regional water plan. Stream segment designation is to be supported by a recommendation package that includes a physical description, maps, photographs, literature citations, and data pertaining to each candidate stream segment.

The Neches River is an Ecologically Significant Steam Segment from the confluence with the Sabine Lake in Orange County upstream to Town Bluff Dam in Jasper/Tyler County. Documentation available from the State of Texas Parks and Wildlife Department describes this stream segment as follows:

- Biological function - extensive freshwater wetland habitat displays significant overall habitat value[27]
- Riparian conservation area - Big Thicket National Preserve; Lower Neches River Wildlife Management Area ; Part of the Great Texas Coastal Birding Trail
- High water quality/exceptional aquatic life/high aesthetic value - exceptional aesthetic value[28]
- Threatened or endangered species/unique communities - unique, exemplary, and unusually extensive natural community (NPS, 1995); Paddlefish (SOC/St.T) (TPWD, 1998) ; The most abundant and diverse unionid assemblage found to date in Texas; largest known population of

sandbank pocketbook freshwater mussels in Texas; one of the two largest populations of rare, endemic Texas heelsplitter freshwater mussels remaining[29]

Emergent Wetland – According to the USGS, the Emergent Wetland Class is characterized by erect, rooted, herbaceous hydrophytes, excluding mosses and lichens. This vegetation is present for most of the growing season in most years. These wetlands are usually dominated by perennial plants. All water regimes are included except subtidal and irregularly exposed. In areas with relatively stable climatic conditions, Emergent Wetlands maintain the same appearance year after year. In other areas, such as the prairies of the central United States, violent climatic fluctuations cause them to revert to an open water phase in some years (Stewart and Kantrud 1972). Emergent Wetlands are found throughout the United States and occur in all Systems except the Marine. Emergent Wetlands are known by many names, including marsh, meadow, fen, prairie pothole, and slough.

Forested / Shrub Wetland – According to the USGS, the Class Forested Wetland is characterized by woody vegetation that is 6 m tall or taller. All water regimes are included except subtidal. Forested Wetlands are most common in the eastern United States and in those sections of the West where moisture is relatively abundant, particularly along rivers and in the mountains. They occur only in the Palustrine and Estuarine Systems and normally possess an overstory of trees, an understory of young trees or shrubs, and an herbaceous layer.

Table 4.4 – Potential Environmental Impacts

Environmental Challenge	Alternatives		
		New Alignments	
	Existing Alignment	IH-10 Fixed Bridge	Pine St. Lift Bridge
Superfund Site		Yes	
Ecologically Significant Stream Segment	Yes	Yes	Yes
Freshwater Emergent Wetland		Yes	
Freshwater Forested /Shrub Wetland		Yes	Yes
FEMA Q3 Zone A (100 Year)	Yes	Yes	Yes

Implementation

The evaluation of implementation impacts includes a review of probable construction costs as part of a cost effectiveness assessment. Property impact costs, while not specifically estimated at this time, are discussed in broader terms as an influence upon project development.

Probable Construction Costs

The construction costs for the alignment concepts have been developed based upon major elements such as the river crossing bridge as well as the length of structural approach spans. These approach spans can be very long considering the potential height of the proposed rail, topography, and local soil conditions. For alignment comparisons, the quantity and associated costs of the rail were estimated

based upon new rail alignment and existing rail alignment. The existing rail alignments also considered whether the proposed track was within the existing rail right-of-way or adjacent to but outside existing rail right-of-way. The costs of track was varied depending upon upgrade of existing track, new track on-grade, new track on fill (typically up to 16 feet), new track on structure, and new track on river bridge. Only one of the two potential tracks is initially proposed for new track on structure and the river bridge. In order to be consistent with the structural availability for a second track, the earthwork for the future second track is included. If necessary, new rail sidings and connections are quantified. At this stage, the rail traffic control and signaling system as well as improvements to crossing warning devices at highways are included in the contingencies. Later on as roadway modifications (if necessary) are defined, separate line items may be included.

The costs shown in Table 4.5 only account for construction activities in today's 2012 dollars. The costs do not include right-of-way acquisition, design, permitting or construction inspection costs, or any annual maintenance costs. The potential for such costs should be considered when comparing alignments, particularly on those alignments that have significant property impacts. For comparative purposes, a summary of assessed values for potentially affected properties is provided and discussed in the sustainability section.

It is worth noting that when planning for a double track structure yet only initially constructing one of the two tracks, additional up-front costs are incurred to build a structure capable of supporting the second track. Consequently, alternatives with lengthy bridge structures include costs for initial construction but also future expansion. The new alignment adjacent to Interstate 10, which is primarily structure along its entire length, has initial costs to accommodate future expansion that are greater than the costs to install future track.

Table 4.5 – Probable Construction Costs

Including contingencies in 2012 $ millions

Segment	Existing Alignment	New Alignment	
	Lift Bridge	IH-10 Fixed Bridge	Pine Street Lift Bridge
Orange County	$ 40	$ 185	$ 35
Neches River bridge	$ 40		$ 80
Long Avenue	$ -	$ 5	$ 5
BNSF Connection	$ -	$ 10	$ 10
UPRR 3rd Main	$ 40	$ 40	$ 40
TOTAL	$ 120	$ 240	$ 170

Benefits

The projected conditions provide a means to assess potential future operations under an assumed growth scenario. Operational analysis indicates that current train volumes would benefit from a second track along the current river crossing. A no-action alternative would result in significant congestion. When reviewing the forecasted train volumes with additional track across the Neches River, delays are reduced by half when compared to a single track (existing physical conditions) scenario. In addition, as modeled through RTC, the lift bridge operations result in some delays, however that level is relatively minor. Future growth will demand a second track across the Neches River.

The IH-10 alignment with its fixed bridge has greater overall benefits than a second track on the existing lift bridge alignment. However review of where the benefits accrue indicates that the grade separation at the KCS-UPRR split at Tower 31results in a significant portion of those reduced delays.

Summary of Alternatives

Four alternatives have been assessed under forecasted conditions. The projected "no-build" alternative attempts to establish a baseline for comparison. This alternative establishes the fact that Beaumont's rail network would benefit from an additional river crossing. In addition to the "no-build" alternative, three "build" alternatives were evaluated that involved improving capacity by providing additional track as well as exploring operational issues associated with the lift bridge over the Neches River. The three alternatives concentrated on improving the existing rail route with a new adjacent lift bridge, a new rail alignment also with a lift bridge near the existing rail corridor, and a new rail alignment with a fixed river bridge crossing north of the existing rail corridor. A brief summary of the pros and cons of each build alternative are provided.

<u>Expand existing route to double track river crossing (lift bridge)</u>
This keeps the existing bridge in place and assumes it to be operational with a projected 16 lifts per week in the future case. In addition, a second lift bridge is considered immediately adjacent and north of the existing structure. While the RTC model's performance measures with the double track conditions improve over the "no-build" conditions, the delays under the projected train volumes are greater than under the 'base case'. This alignment alternative does not intrinsically address the delays associated with the KCS-UPRR split at Tower 31. As the proposed improvements remain adjacent to or within the existing rail corridors, impacts to the community are minimized. Infrastructure costs only for this improvement in the Beaumont area are estimated in 2012 construction dollars approach $120 million.

<u>New Pine Street alignment (lift bridge over Neches River)</u>
This keeps the existing bridge in place and assumes it to be operational with a projected 16 lifts per week. The Pine Street alignment was initially tested through the RTC model with a potential fixed river bridge crossing. However physical limitations determined that the only practical fixed river bridge crossing lies immediately adjacent to the IH-10 corridor. Consequently it was determined that the Pine Street alignment would be analyzed with a lift bridge. Nonetheless, that new lift bridge location created its own set of design issues that result in additional costs compared to constructing an adjacent rail bridge to the existing rail's river crossing. The alignment's tie in on the west side is likely to create significant adverse impacts to a neighborhood with property acquisition as well as impacts to vehicular operations at critical at-grade crossings that will only add to the probable construction costs. This

alignment alternative does not intrinsically address the delays associated with the KCS-UPRR split at Tower 31. Costs for this alignment are estimated in 2012 construction dollars approach $170 million.

New IH-10 alignment (fixed bridge over Neches River)

This keeps the existing bridge in place and assumes it to be operational with a projected 16 lifts per week. The new IH-10 rail alignment has potentially significant operational benefits by addressing two key issues, the delays associated with the lift operations of the river crossings as well as the grade separation of the KCS-UPRR split at Tower 31 on the east side of the Neches River. However, the alignment tie in on the west side is likely to create significant adverse impacts to a neighborhood with property acquisition as well as impacts to vehicular operations at critical crossings that will only add to the probable construction costs. This alignment is located close to an EPA Superfund site. Costs for this alignment are substantial and are estimated in 2012 construction dollars approach $240 million. While viewed from a railroad operational viewpoint this new alignment is the best within this study area. The overall rail network operations indicate that more systemic improvements outside the Beaumont area are required. The high degree of cost and probable impacts may be offset by any additional operational benefits.

Funding

Up to this point in the evaluation of alternatives, the emphasis of the analysis has been on the benefits, costs, and impacts of the different alternatives. Given that the alternatives under consideration are conceptually quite similar, it has been the assumption that the selection of a preferred alternative would not be significantly impacted by an analysis of funding options. Nonetheless, all three railroad companies would need to agree upon a specific solution and its funding which in turn could make public funding sources available. While the determination of potential funding sources for the proposed improvements is beyond the scope of this effort, a cursory review may be beneficial. For example, the presence of the Existing Alignment Alternative within a corridor currently used by Amtrak and that is part of the proposed Gulf Coast High Speed Rail project may make it eligible for funding programs that the other alternatives are not.

Funding mechanisms such as tolls, user's fees based on cars and/or weight, or the creative use of public / private partnerships would seem to be options for all the alternatives. The Texas State Rail Plan also presented a summary of Federal and State programs and grants available to Texas to fund improvement projects. This summary is in the Appendix. MAP-21, the Moving Ahead for Progress in the 21st Century Act (P.L. 112-141), was signed into law by President Obama on July 6, 2012. Funding surface transportation programs at over $105 billion for fiscal years (FY) 2013 and 2014, MAP-21 is the first long-term highway authorization enacted since 2005. SAFETEA-LU expired on September 30, 2009 and had ten extensions.

Summary Matrix

Utilizing the Transportation, Sustainability and Implementation categories of TxDOT's rail project prioritization framework, this Neches River Bridge Feasibility Study provides an assessment of the three "build" alternatives under consideration. The assessment is preliminary and the values assigned to the various criteria are subject to change with input from TxDOT. The matrix as shown in Table 4.6 offers an overview and a comparison of the potential impacts of the alternatives.

Figure 4.6 – Summary Matrix

Category	Criterion	Measures	Alternatives			Qualtitative Assessment
			Existing Alignment (new lift bridge adjacent to existing bridge)	New Alignments		
				IH-10 fixed bridge	Pine St. Lift bridge	
Sustainability	Economc Impact	Jobs	5	7	5	Higher construction cost will create more jobs, though this may be in conflict with program financial resources.
		Train Delay	3	5	3	While overall delays are the least with the fixed bridge option, the projected level of train volumes would result in significant delays throughout the entire rail network.
		Fuel Cost	3	5	3	Fewer delays result in less fuel consumption and therefore less cost, however in absolute terms the increase in delays is significant enough to result in increased fuel costs across the board.
	Environmental / Social Impact	Air Quality	3	5	3	Again, the alternatives can be compared on a relative scale amongst each other. Here the least train delay results in the best air quality and review of at-grade crossings indicates minimal enviornmental benefits. Under an absolutre scale, the overall network performance indicates a significant increase in delay and therefore a reduction in air quality.
		Energy Use	3	5	3	Again, the alternatives can be compared on a relative scale amongst each other. Here the least train delay results in the best energy use and review of at-grade crossings indicates minimal enviornmental benefits. Under an absolutre scale, the overall network performance indicates a significant increase in delay and therefore adverse energy use.
		Environmental	3	7	5	The Interstate 10 alignment may have the most significant environmental impacts. It goes through a Superfund Site, has the second longest crossing of Ecologically Sensitive Stream Segment, and crosses the greatest distance in wetlands/floodplains that may be home to T&E species.
		Social Impacts	3	7	7	Both of the new alignments will likely have the greatest community impacts. Homes, businesses, and churches will need to be acquired for the purposes of ROW. Livibility will be reduced as remaining properties will be impacted by increased noise and vibrations from increased train traffic. Right of way will essentially form a barrier between the north and south sides of the neighborhood. Social Justice will likely be a concern as well as the Long Avenue corridor is home to a relatiely low income minority population
	Asset Preservation	ROW	5	7	7	Either new alignment will help to preserve the Long Ave ROW. The improve existing KCS corridor with benefiots for passenger rail will help to preserve the rail corridor between College Street and Milam Street that crosses the existing Neches River rail bridge.
Transportation	Safety and Security	Safety	3	7	7	Increase number of grade separated crossings or improved at-grade rail crossing should help to improve safety. An increase in rail traffic along Long Avenue may increase the potential for accidnets in this residential area. While potentially offset from grade separations, such structres add costs and have other property impacts.
		Security	3	5	5	Communtiy access - more trains will mean a reduction in community access which will most likely be an issue along Long Avenue.
	Connectivity		5	5	5	Existing conenctivity is maintained through use of the existig rail corridor. All three alternatives are equal in this matter.
	Congestion Relief	Rail Travel Times	3	5	3	Improved travel times equate to less congestion - but may be off set by increased train traffic.
		Grade Separations	3	7	7	Reduced number of at grade crossings should help to relieve congestion.
	System Capacity	River Crossing Capacity	5	7	5	All alternatives increase capacity; perhaps the lift bridge alternatives less so than the stationary span
		Track Capacity	5	5	5	The "build" alternatives were specifically developed to provide an equal and comparable set of capacity improvements.
		Improved Signaling	3	3	3	Improved signalling is inherently provided within the rail network improvements. All three alternatives are equal in this matter.
Implementation	Cost Effectiveness	Cost Benefit	5	4	3	The overall cost effectiveness of any of the alternatives assessed is weakened by the operational analysis for the projected train volumes. While relative comparisons can be made amongst the alternatives, it can also be said that none of the alternatives achieve an adequate operation.
	Project Development	What stage is project at?	3	3	3	Each of the "build" alternatives is at the same stage of project development.
		Land Acquisition	3	7	7	The new alignment alternatives impact the largest number of parcels. In both cases the majority of these parcels appear to be privately owned. Both new alignment options also impact residential properties; but, also a relatively large number of parcels that are vacant / open space. These two alignments also have a high assessed valuation.
	Partnerships	Partnerships	5	7	7	The two new alignment alternatives require additional partnering efforts to determine ownership, maintenance, operational and fianncial structure and organization.
	Innovation	Technological	3	5	3	The high-level navigational clearance over the Neches River for a fixed bridge will result in structurally significant eleemnt on the landscape.
		Institutional	3	7	5	Construction adjacent to the existing railroad maintains the institutional status quo. The new alignments would require discussing a potentially new organization structure.

Legend
10 = Exceptonal level of impact/benefit
7 = Significant level of impact/benefit
5 = Moderate level of impact/benefit
3 = Minor level of impact/benefit
0 = No level of impact/benefit

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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*.

SIMMONS R.V.S. EXHIBIT 9

CONFIDENTIAL - NECHES RIVER BRIDGE PROCESS IMPROVEMENT PROJECT, 1/22/2019

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36500

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

SIMMONS R.V.S. EXHIBIT 10

HIGHLY CONFIDENTIAL - DALLAS TERMINAL MARKETING AGREEMENT

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SIMMONS R.V.S. EXHIBIT 11

HIGHLY CONFIDENTIAL - NORFOLK SOUTHERN RAILWAY COMPANY, THE KANSAS CITY SOUTHERN RAILWAY COMPANY, WESTERN HAULAGE AGREEMENT

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SIMMONS R.V.S. EXHIBIT 12

HIGHLY CONFIDENTIAL - NORFOLK SOUTHERN RAILWAY COMPANY-MERIDIAN SPEEDWAY LLC JOINT USE AGREEMENT, MAY 1, 2006

BEFORE THE
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SIMMONS R.V.S. EXHIBIT 13

HIGHLY CONFIDENTIAL - LIMITED LIABILITY COMPANY AGREEMENT

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

SIMMONS R.V.S. EXHIBIT 14

HIGHLY CONFIDENTIAL - MSLLC MEETING PRESENTATION BY NS REGARDING SIDING LENGTHS DALLAS TO ATLANTA (INCLUDING MSLLC) AND DESIRED SIDING EXTENSIONS ON MSLLC (WITH COST ESTIMATES)

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

SIMMONS R.V.S. EXHIBIT 15

HIGHLY CONFIDENTIAL - KCS-CSX NEW ORLEANS INTERCHANGE ALLOWANCE AGREEMENT

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

SIMMONS R.V.S. EXHIBIT 16

HIGHLY CONFIDENTIAL - THE KANSAS CITY SOUTHERN RAILWAY COMPANY – MERIDIAN SPEEDWAY LLC JOINT USE AGREEMENT, MAY 1, 2006

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36500

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

EXHIBIT K

REPLY VERIFIED STATEMENT OF JASON WILKERSON

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36500

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

REPLY VERIFIED STATEMENT OF JASON WILKERSON

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1. I am Jason Wilkerson. I am employed by Canadian Pacific Railway Company as CP's Assistant VP for Transportation Canada. Previously, I was General Manager of the Prairie North Division, and prior to that I served as General Manager of the Eastern Division. I have been working in the railroad industry for more than twenty-four years in a wide variety of positions and have a great deal of experience in many aspects of railroad operations. Before joining CP, I spent nearly nineteen years working for Union Pacific Railroad in a variety of positions, in a scope that progressed from unionized jobs (track laborer, yardmaster), to management roles (yard and terminal manager, senior manager, director), and then to executive positions (superintendent, general superintendent).

2. I am providing this statement to address claims by Union Pacific Railroad Company ("UP") and BNSF Railway ("BNSF") that the anticipated growth in the number of CPKC trains operating through Houston following the implementation of the CP/KCS Transaction could cause "serious congestion and service issues" in "critical areas such as Houston" (BNSF-9-61), and that "additional capacity would be necessary at several locations in the terminal to prevent the projected jump in traffic from endangering operations in Houston." (UP-10 at 59).

3. I am in a position to address those assertions because, prior to coming to CP, I served in a number of operating positions at UP, including one that gave me an in-depth understanding of operations and capacity in the Houston terminal and the UP-owned lines radiating from Houston, including those over which KCS and BNSF operate. In particular, I served as Director of Transportation Services (DTS) for the Houston Service Unit from 2009 to 2013. In that role, I reported directly to the General Superintendent and had responsibilities for service levels and efficient operations for all trains that traversed the Service Unit including the

Houston complex, all yard and local trains, and all operations within yard and local facilities. Those responsibilities also included first and last mile service to local industries. Further, they included evaluating the operational changes that would be needed to accommodate business to ensure that it could be transported in the area without adversely affecting existing customers. As part of my DTS role, all field personnel, including yard and terminal personnel, reported up through me. I also had lead responsibility for the Houston Service Unit when the general superintendent was away.

4. My work for UP in the Houston terminal gave me an intimate understanding of how KCS and other railroads operate there, and the kinds of interactions that occur routinely among those railroads. For example, UP held monthly meetings with BNSF, which I attended, regarding strategic issues and longer term issues. UP also interacted with BNSF and KCS more frequently and as needed regarding tactical issues that arose from day-to-day in Houston operations. My responsibilities required me to work closely with the joint (UP-BNSF-KCS) Spring Dispatching Center (SDC) in Spring, TX (just north of Houston), from which all of the lines radiating from Houston are dispatched. KCS had a representative there along with UP and BNSF personnel (though KCS was not a full-fledged joint participant), and that representative was a regular point of contact for UP's interface with KCS over daily Houston operations. My role also involved regular interaction with the Port Terminal Railroad Association, the major switching railroad serving numerous customers in and around the Port of Houston. In short, cooperation among all the railroads serving Houston was well established from before my time at Houston, and there were clear lines of communications among those railroads, typically directly involving myself and the Spring Dispatching Center (SDC) as the UP representative.

5. To supplement the knowledge I gained while managing the Houston terminal for UP, I have reviewed available information about the current configuration of the infrastructure in the Houston terminal used by KCS trains and the operations that affect those trains. In late May and early June 2022, I visited the Houston complex onsite, allowing me to bring context to the current conditions based on the knowledge I had developed when I was previously responsible for running those same operations.

6. As I explain in the balance of this statement, I can say with confidence that UP and BNSF's assertions about the impact of the CP/KCS Transaction on Houston rail capacity are overblown. The Houston terminal complex has been capable of handling ebbs and flows in rail traffic that exceed--by a wide margin--the potential modest increases in CPKC train counts anticipated from the Transaction. The Houston terminal has ample capacity to handle that traffic, assuming that UP's and BNSF's own operations – which consume the lion's share of available capacity – are well managed, and that all of the railroads serving Houston are able to work together cooperatively to make things work for the benefit of all users. To the extent additional infrastructure turns out to be useful to improve the efficiency, the existing trackage rights terms among UP, BNSF, and KCS provide a well-understood and appropriate mechanism for ensuring those investments get made and the railroads using those assets share appropriately in their costs.

I. THE HOUSTON TERMINAL HAS TREMENDOUS CAPACITY WHEN OPERATED EFFECTIVELY

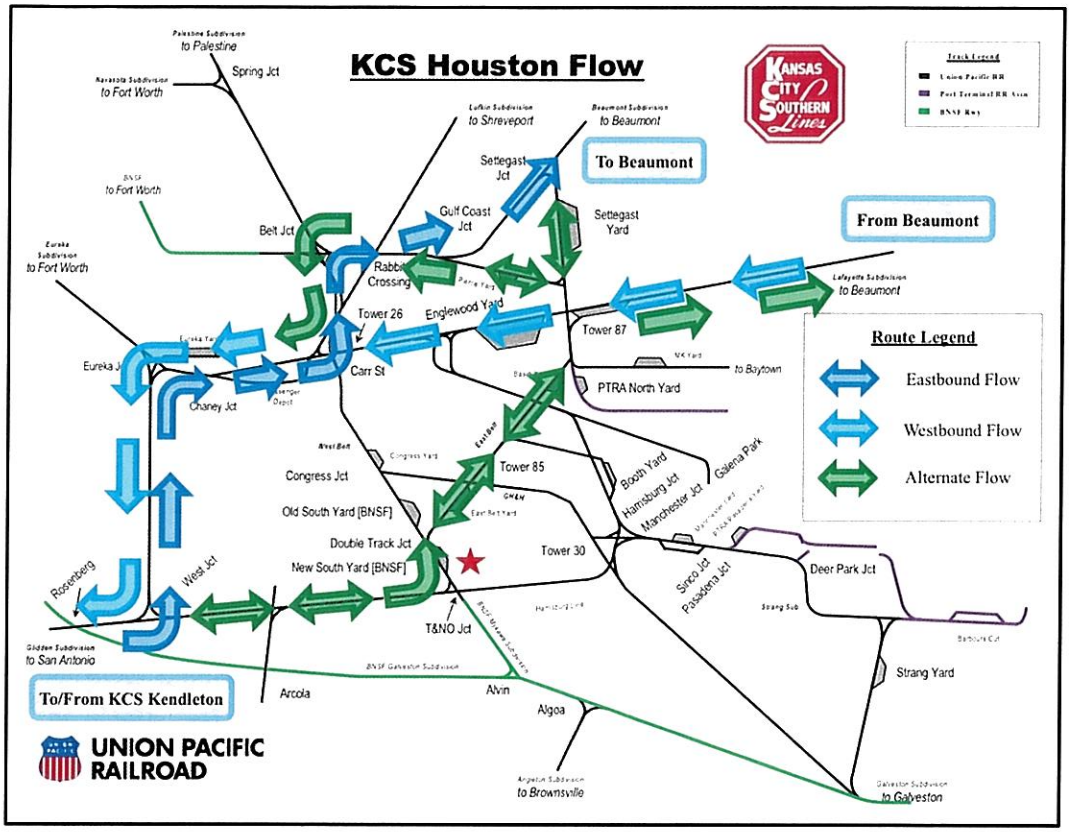
7. The Houston Terminal can be tremendously busy, but its infrastructure is built to handle those volumes. When I was UP's DTS in Houston, the complex regularly handled daily train volumes ranging from around 100 daily trains at the low end to 135 or more during busier periods. The mainline trackage serving the core of the Houston Terminal (and which KCS uses

to traverse Houston) is primarily double- or triple-tracked, and – unlike many terminals – it is configured in a way that provides multiple alternative paths from one side of the terminal to the other.

8. The efficiency of these operations is aided by the fact that dispatchers/representatives for all of the railroads in the Houston area – UP, BNSF, and KCS – are co-located in the Spring Dispatching Center. This coordination ensures that nobody's trains show up in Houston by surprise, enabling the routing of trains to be planned ahead of time to avoid evolving chokepoints. The availability and coordination of alternative routes is another major advantage for fluidity.

9. Figure 1 below is a diagram of Houston's basic mainline track layout, showing the alternative routes that are available for KCS trains moving across the terminal. This diagram was prepared by UP in the ordinary course to guide the UP dispatchers who control train movements in the terminal.

FIGURE 1
UP DIAGRAM SHOWING DIRECTIONAL FLOW OF KCS THROUGH TRAINS



10. The typical path KCS trains take across the terminal are shown with blue purple arrows. KCS's eastbound trains (heading towards Beaumont) move across UP's line from Rosenberg to West Junction, where they continue on UP's Houston Subdivision to downtown Houston, and then proceed via the Houston West Belt Subdivision to North Belt Junction and then traverse the Houston East Belt Subdivision to Gulf Coast Junction, leading them to UP's Beaumont Subdivision, which then moves into Settegast Junction and onto the eastbound directional running toward Beaumont, Texas. KCS's westbound trains (coming from Beaumont) arrive in Houston on UP's Houston Subdivision (which used to be called the Lafayette Subdivision as shown on this diagram), proceed past UP's Englewood Yard through Eureka Junction down to West Junction, entering the Glidden Subdivision and then continuing onward to Rosenberg. But as the diagram shows, there are well-understood alternative routes that can be

Wilkerson R.V.S. at 6

used to bypass congestion and keep trains moving. Furthermore, the diagram does not show all of the available routes, which include but are not limited to the East Belt, West Belt, Bell Main, and the Harrisburg Subdivision. Under the Board's "any clear route" dispatching protocol, KCS trains can use any of these routes, and UP's dispatchers should use that discretion to keep trains moving and preserve the fluidity of the complex for all railroads.

11. During my time in Houston, UP was continually investing in infrastructure replacement and capital expansion. UP did substantial work in the area to reinvest in existing infrastructure and bring it up to UP standards during my tenure on the Houston Service Unit, which resulted in increased capacity. For example, at Englewood Yard, UP installed new ties, made upgrades to the hump facility, and improved the Bell Main. At Settegast Yard, various projects were undertaken, including a tie program. In addition, on a portion of the Palestine Subdivision between Belt Junction and Spring Junction, concrete ties were installed. Similar upgrades were made during my time at UP within the Houston complex and across the service unit. In addition, UP initiated numerous capital expansion projects during my tenure, including creosote expansion, multiple tower connections, Hardy Toll Road staging tracks, Settegast Yard staging tracks, and double-tracking a portion of the Glidden Subdivision from West Junction just short of the Brazos River Bridge near Rosenberg. Significant improvement and capital expansion continued–and new projects were initiated--even after my time there, in order to further enhance fluidity, remove bottleneck issues, and improve customer service.

12. During my time at UP, the company recognized that its growth in the Southern Region would put strains on its infrastructure, particularly in the Houston complex. There was a lot of talk about the benefits associated with UP's planned investment in an entirely new hump yard (known as Brazos Yard) in Hearne, Texas, about 100 miles northwest of Houston. UP's

plan to reallocate capital dollars to that yard would improve operations and enhance customer satisfaction at existing UP facilities within the Houston Service Unit (in particular in the Houston complex) as well as throughout the entire Southern Region. I understand that plans for Brazos Yard were substantially cut back after I left UP and the project has since been moth-balled.

13. During the time I was in Houston, train volumes in the terminal fluctuated a good deal for a variety of reasons – some seasonal, some driven by business cycles, some by strategic decisions made by the operating railroads serving Houston, and many others. If CPKC is successful in attracting the anticipated traffic growth, the extra eight trains a day or so that might operate across Houston would fall well within the range of the normal ebb and flow of volumes. The current infrastructure is well equipped to handle this traffic.

II. KCS'S THROUGH TRAINS IMPOSE MINIMAL STRESS ON HOUSTON-AREA CAPACITY

14. In Houston, like in many other terminals, not every train imposes equal demands on railroad capacity. KCS's operations (just like CPKC's future operations) are at one end (the *low end*) of this spectrum. By plan, KCS through trains traverse Houston without stopping for work or to change crews. From a dispatching perspective, they are the easiest trains to move, provided other operations are well managed so that those other operations do not occupy the mainline track capacity needed for fluid through-train operations. CPKC's planned new train services will operate through Houston the same way, imposing minimal burdens on Houston infrastructure, especially in comparison to the operations of UP and BNSF.

15. In my years as UP's DTS in Houston, I do not recall any issue with KCS's operations, other than maybe one locomotive failure. KCS was never the root cause of a problem within the Houston complex. In fact, KCS was a highy collaborative partner. For example, the KCS and UP operations and service design teams collaborated in 2010 after Hurricane Alex to design new interchange and blocking options to mitigate customer impact and

train congestion, not only through UP's Houston Service Unit but throughout both railroad's networks. I never heard a complaint or issue that arose because of KCS within the Houston complex.

16. The operations of UP and BNSF, on the other hand, place much more intense and complex demands on Houston rail infrastructure. These railroads operate far more trains into and out of Houston than KCS does, or than CPKC will. In addition, each of those trains consumes more of the Terminal's capacity than KCS (or CPKC) trains. UP and BNSF use Houston as a crew change point, and they originate, terminate and (especially in UP's case) classify massive volumes of carload traffic in yards within the Houston complex. That means that trains must enter and exit yards, and at times must be staged outside of yards waiting for yard track space.

17. Dozens of UP trains enter and exit UP's Houston-area yards – especially the Englewood hump yard, but also Settegast, Strang, and others – on a daily basis, and those yards also serve dozens of local switching operations of BNSF, UP, and PTRA. To the extent traffic volumes create challenges in Houston, it is because of these activities, not getting KCS through trains across town. But good management of these issues enables the terminal to work smoothly. To reiterate, there are available alternative routes. If these are used effectively by dispatchers and coordinated well by the yards, they ought to be available to ensure that large numbers of through trains can traverse the Houston terminal without undue delay, and without themselves interfering with the operations of other trains.

18. To be sure, there were times during my Houston tenure when UP struggled to dispatch KCS trains across Houston in a timely manner. But this had nothing to do with the operational needs of the KCS trains. Instead, it happened when other aspects of UP's and

BNSF's operations were not working as smoothly as they should. Most often, problems in the Houston complex arose from a lack of operational planning/execution in and around yards.

19. For example, when UP's inbound trains have to wait to enter Englewood Yard or Settegast Yard, or when UP is short of crews for outbound trains and needs to move trains to make space inside the yard to process incoming trains, available mainline capacity can be reduced. More specifically, the ability of Englewood, Settegast, and--to a lesser degree--the satellite yards (Strang, Basin, Galena Park, etc.) to take the trains as they arrived tended to be the key determining factor. These types of issues at UP affected the ability of KCS's trains to move in and through the terminal.

20. Service interruptions at BNSF and UP –such as a locomotive failure, crew unavailability, mechanical car issue, weather, etc. – were also big drivers of issues in the terminal. These failures, if not managed properly, have the potential to cause further cascading effects such as blocked mainlines, occupied interlockers, crews running out of allowable work time, and similar problems.

21. A portion of the issues caused by BNSF arose at shipper facilities that UP and BNSF jointly served. When BNSF did not pull cars as scheduled, UP was prevented from spotting and/or pulling their own cars on schedule. This caused trains to consume branch line or mainline capacity, which could cause rippling effects in the terminal.

22. In my experience, there is ample capacity in the Houston terminal for projected traffic as long as the terminal is managed properly. I explained above how UP or BNSF problems could cause cascading issues that impact the fluidity of the terminal and KCS trains. However, the impact of these issues on mainline throughput depends primarily on how well UP (and to a lesser extent BNSF) manages their own operations in the area. If issues are managed

properly and effectively compartmentalized, delays and congestion do not have to cascade. I know how the terminal operates. It is complex. However, KCS trains should be free to navigate through the complex as long as UP and BNSF manage the property well and execute their plans efficiently to make sure the flow is maintained. If problems arise, it is imperative that all parties commit to real-time transparency and collaboration in order to minimize negative impacts to the overall complex.

III. MY RECENT VISIT TO HOUSTON CONFIRMS THAT THERE ARE MANY OPPORTUNITIES TO IMPROVE OPERATIONS FOR THE BENEFIT OF ALL RAILROADS AND THEIR CUSTOMERS.

23. My recent visit to the Houston area revealed that there are considerable opportunities to improve operations in the Houston area with more attention, transparency, effective communication, collaborative planning, tactical execution, accountability, and long-term strategic vision.

24. For railroads, infrastructure additions are not the first solution for potential capacity constraints. The first option is always an analysis of the current operations and opportunities to improve. Houston is ripe with such opportunities, and CPKC would look forward to working with both UP and BNSF to improve operations in that area for the benefit of all three railroads and their customers.

25. By way of example, on my Houston visit in May/June, I engaged with a number of KCS managers and train crews. There is no doubt that there are opportunities to improve mainline capacity utilization by making operational design adjustments. To my surpise, some of the problems are the same issues we had overcome during my time with UP in the Houston complex. For example, dispatching protocol in and out of Englewood, blocking of critical interlockers, operational design, capital and engineering renewal programs, and overall collaboration and communication. Union Pacific may not have fully considered the effects on

the broader network in Houston when redesigning, unwinding past practices, and planning its own operations for its own convenience. It was evident to me that it would be highly beneficial to have CPKC management on the ground, with open lines of communication between UP and BNSF representatives. CPKC would look forward to working with all stakeholders in Houston to find mutually beneficial strategies to improve fluidity and customer satisfaction.

26. I obviously do not have a complete grasp of all of the constraints that affect UP and BNSF operational planning choices. However, the principals of transparency and communication remain vital and there are opportunities to improve. During my visit, I learned that UP has stopped sharing certain information and key operational metrics relevant to the Houston terminal. By properly sharing these metrics, all railroads will improve their ability to identify systemic issues in real-time and via data mining. This would enable tactical adjustments, root-cause analysis, development of countermeasures, communication/transparency of countermeasures, implementation and execution, and appropriate consequences if applicable.

27. My on-the-ground observations also confirmed my judgment that that there is plenty of capacity to operate trains through Houston. Since my time working in Houston, there has been substantial investment in additional capacity, providing even more ability to move trains across the Houston terminal.

IV. THE CONTRACTUAL ARRANGEMENTS UNDER WHICH UP, BNSF, AND KCS SHARE TRACKAGE IN HOUSTON ARE WELL UNDERSTOOD AND PROVIDE FOR CAPACITY EXPANSION WHEN APPROPRIATE

28. I understand that both BNSF and UP have suggested that CPKC be required to go through a special process to identify and pay for capacity needs before adding any traffic though Houston. This makes no sense to me. There is a well-established procedure and a long-standing precedent determining how capital is allocated based on joint-use assets and trackage rights agreements. Based upon my knowledge of the Houston complex, the current infrastructure is

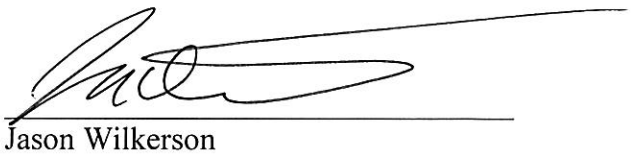
more than sufficient to handle the additional CPKC trains on top of the normal variable volume from the other carriers, and this doesn't even include the soon-to-be completed projects.

Wilkerson R.V.S. at 13

VERIFICATION

I, Jason Wilkerson, declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this statement.

Executed on this 11 day of July, 2022.



Jason Wilkerson

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36500

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

EXHIBIT L

REPLY VERIFIED STATEMENT OF NICK WALKER

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36500

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

REPLY VERIFIED STATEMENT OF NICK WALKER

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EXHIBIT 5: METRA, "*COMMUTER RAIL SYSTEM ON-TIME PERFORMANCE REPORT - DECEMBER 2018*" (EXCERPTS) .....

EXHIBIT 6: METRA, "*COMMUTER RAIL SYSTEM ON-TIME PERFORMANCE REPORT - DECEMBER 2017*" (EXCERPTS).....

EXHIBIT 7: METRA, *"METRA 2019 FACT BOOK"* (EXCERPTS).....

EXHIBIT 8: METRA WEBSITE, https://metra.com/time-performance-reports#Metra_and_On_Time_Performance .....

EXHIBIT 9: B17 AND B12 – FREIGHT WINDOWS – A – REFERENCED IN DEPOSITION HELD ON 06-07-2022.XLS" .....

1. I am Nick Walker, CP's Vice President of Operations for the Western Region. I started at CP in 2005 as a conductor. I was based in Bensenville, Illinois between 2005 and 2013, where I took on increased responsibility for CP's operations there. I was promoted to Yardmaster in 2009, Field Placement Coordinator in 2010, Supervisor of Operations later in 2010, and Chicago Trainmaster in 2011.

2. In July of 2013, I was transferred to St. Paul, MN, where I worked as Trainmaster and then Assistant Superintendent. I then worked as the Assistant Superintendent for the Winnipeg Terminal briefly in 2016 before returning to Bensenville as the Superintendent for the U.S. East – Bensenville Terminal from July 2016 to April 2017. After serving in that position I stayed in Chicago until 2020 as CP's General Manager for the U.S. East and then Assistant Vice President of Operations. In those positions I was principally responsible for CP's design of its planned reconfiguration of Bensenville Yard discussed in the Amended Operating Plan.[1] I worked on Bensenville and Chicago operations and dispatching throughout this time. I also have years of experience managing CP's relations with Metra, including during my time as Superintendent for the U.S. East – Bensenville Terminal.

3. In September 2020, I was promoted to my current position, and am now based in Calgary, Alberta. CP's operating team still regularly consults with me concerning Chicago-area rail operations. My years of knowledge and experience with Chicago give me a thorough and unique understanding of CP's operations in Chicago and how those operations interface with the operations of Metra and other freight railroads.

4. Given my experience, I was asked recently to review Metra's Comments and Request for Conditions and Supplemental Comments in this proceeding. I am providing this

[1] *See, e.g.* Amended Operating Plan ¶¶ 168, 303-07.

Reply Verified Statement to address assertions by Metra made therein regarding CP's dispatching of Metra's MD-W and MD-N lines and performance of Metra trains on those lines.

5. As discussed below, I have concluded that Metra's criticisms regarding delays on the MD-N and MD-W lines are unfair, misleading, and in many cases incorrect. Leaving aside that only delays west of Bensenville on the MD-W line are even relevant – because the Transaction will not otherwise increase traffic on those lines – I emphasize several points.

- First, most of the delays Metra refers to concern delays at Bensenville Yard, which will be alleviated by the Bensenville Reconfiguration I helped design.
- Second, while Metra suggests that there are a large number of delays on these lines, the number of delays – when viewed in proportion to the total number of Metra trains on these lines – is small. Metra's overall on-time performance on CP-dispatched lines is good, and delays associated with freight trains are a small fraction of all the delays to Metra's trains that figure into the OTP calculations. Metra's performance on CP-dispatched lines compares favorably to its performance on other nearby freight railroads that host Metra service.
- Third, taking dispatching away from CP is unwarranted and would harm – not help – the efficiency of rail operations on the lines Metra and CP share, to the disadvantage of Metra and CP alike.
- Fourth, Metra's various other concerns are simply unfair. Metra suggests that CP sometimes wrongly dispatches Metra trains on the other side of the tracks from the side anticipated by passengers, but this is not standard practice and when it does happen it is neither unsafe nor inappropriate, but good dispatching.
- Fifth, Metra's complaint about two instances in early 2019 when CP and Metra did not agree about the addition of Metra off-peak trains on the MD-N line ignores the circumstances of these requests and also ignores the long history of CP supporting the expansion of service on both the MD-N and MD-W lines.
- Finally, I point out that Metra's complaints about PTC implementation involve matters that are in the past and – like Metra's other complaints – have nothing to do with the CP/KCS Transaction

I. CP DISPATCHES THE LINES IT SHARES WITH METRA RESPONSIBLY AND WELL

6. As I explain in this part of my testimony, CP is responsible for dispatching all freight and passenger operations on the lines that CP and Metra share – Metra's MD-N and MD-

W lines which are part of CP's Chicago and Milwaukee and Elgin Subdivisions. CP performs those responsibilities well, with proper and diligent regard for the priority to which Metra is entitled under the governing trackage rights agreement between CP and Metra. Metra's assertions that CP does a poor job dispatching Metra's trains are wrong.

A. CP Dispatchers Understand the Importance of Giving Metra Priority

7. CP dispatches the MD-W and MD-N lines from its U.S. dispatching center in Minneapolis, MN, which will be moving to Kansas City as part of CP/KCS's consolidated headquarters there. CP's dispatchers are experienced and well trained to handle all trains on the lines and dispatch them efficiently. They are supervised by the Director of Dispatching and given instruction in the priorities of the scheduled passenger trains that operate over the MD-N and MD-W lines (both Amtrak and Metra), and in Metra's case they understand the peak-period windows during which CP's trains are not to interfere with Metra's trains except in emergencies. Dispatchers oversee safe and efficient train movements, plan meets and look out to ensure proper planning for inbounds, outbound and over the road performance.

8. CP takes concrete steps to help ensure that Metra's trains perform well on the MD-W and MD-N lines. CP's freight trains on these lines are scheduled to operate outside of Metra's peak windows, either overnight or between the morning and afternoon rush hour periods. As I explain below, we time the departures and arrivals of CP's freight trains to minimize the possibility that they result in delays to Metra trains. And, when Metra's own operations encounter difficulty, we step in to help. For example, I know of situations where CP has interrupted its yard operations to dispatch a yard locomotive to move a disabled Metra train, allowing other Metra trains to proceed and preventing Metra passengers from being stranded.

9. I have reviewed Metra's allegations about instructions given to CP dispatchers by CP "senior management" regarding the treatment of Metra's trains. I am personally offended by

Metra's suggestion that there has been a lack of leadership commitment to supporting Metra. That is just not the case. As I explain further below, CP has worked hard to perform well for Metra.

10. Metra witnesses make the specific accusation that "dispatchers have been directed by senior management to move CP trains, regardless of the impact on the network." METR-7 at 38. Metra ultimately acknowledged that it was referring to "management," not "senior management."[2] Either way, this assertion is unfounded. Metra knows or should know that CP's "senior management" has been and remains committed to supporting Metra's operations and honoring CP's obligations to dispatch Metra's trains well, with or without the Transaction. In addition, CP dispatchers consider a number of factors and circumstances when dispatching a train, many of which Metra is not privy to, and no decision to move CP trains instead of Metra trains would ever be made "regardless of the impact on the network."[3]

11. I looked closely at the specific examples cited by Metra regarding supposed "directions" by senior management (based on the identification supplied in Metra's discovery responses),[4] and while I was not personally involved in any of the specific dispatching decisions Metra refers to, it is very clear that there was no direction "to move CP trains, regardless of the impact on the network." *Id.* Instead it appears that CP's dispatching decisions were made with a

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[2] *See* Deposition of Rich Oppenheim, dated June 7, 2022 ("Oppenheim Dep Tr.") at 195:21-23 ("I would be very happy if you . . . wanted to take the word 'senior' out of that statement and just say it was management.").

[3] *See id.* at 182:7-184:22 (Mr. Oppenheim acknowledging that he did not know the "operating circumstances" informing a dispatching decision he criticized).

[4] *See* METR-7, Oppenheim Verified Statement ("Oppenheim V.S.") at 11 (citing Exh. B-2 at 329); METR-7 Godfrey Verified Statement ("Godfrey V.S."), at 6; Metra, Objections and Responses to Applicants' First Requests at 6-9, 14-16 (Apr. 11, 2022) (Exhibit 1 hereto); Oppenheim V.S., Exhibit B-2 at 204, 252-53, 256, 291, 331.

broader appreciation of the network – including both passenger and freight trains taken together – than Metra realizes. (I explain below how CP's broader network perspective actually benefits Metra's trains operations.)[5] There may be room for a difference of opinion about how individual decisions were made about the specific facts and circumstances in front of a CP dispatcher (and it would be fair to say that from time to time some dispatching decisions can be criticized, especially with the benefit of hindsight). I am not intending to say that every single dispatching decision that Metra says delayed its trains was the correct one. But I am saying that it is impossible to judge those decisions without access to all of the details – network-wide – about the circumstances that informed them. More importantly, none of the decisions cited by Metra reflect any "direction" to disregard impacts on Metra trains. In fact, it would have been counterproductive for CP to make decisions that disregarded those impacts, since blocking Metra's trains needlessly would clog up the network, undermining the movement of all trains – freight trains included.

12. I also note that one of the emails that Metra's witness Mr. Oppenheim cites as support for his claims includes some very positive comments about CP's general approach toward Metra. Before laying out some perceived facts about a single incident in question, the email says: "Let me preface this by saying *how much we appreciate CP's recent willingness to discuss our respective operational concerns* and the need to work together to insure that our goals [are] met," and it goes on to say that, "[a]s we have said repeatedly on our calls, we *truly believe that CP's intentions are sincere in trying to protect Metra's schedules*."[6] In this email, Mr. Oppenheim goes on to describe a single incident where he alleges that a Metra train was

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5 *See* Part II.B below.

6 Oppenheim V.S., Exh. B-2 at 204 (emphasis added).

delayed unfairly by a dispatching decision that did not properly respect Metra's peak windows. I was not involved in this incident and do not know why this decision was made or who made it. CP has investigated this allegation, but has been unable to definitively determine who was involved or what happened – in part due to Mr. Oppenheim's own unwillingness to divulge the details CP would need to properly investigate.[7] Nonetheless, if Mr. Oppenheim's description of the incident is accurate (and I have no idea whether it is), I agree that the dispatching decision as he describes it was unacceptable. But I believe that Mr. Oppenheim's focus on this one incident is the exception that proves the rule: It shows that CP *does* respect Metra's windows; otherwise Mr. Oppenheim would have been able to come up with more than one incident like this one. I have never allowed a dispatching decision like the one Mr. Oppenheim alleges to occur on my watch, and have no intention of doing so in the future.

B. Metra's Own Performance Data Confirms that CP Dispatches Metra's Lines Effectively

13. In addition to Metra's misguided suggestion that CP dispatchers are "directed" to ignore delay to Metra's trains, Metra also implies that CP dispatchers are bad at their jobs. Metra fills page after page cataloging delays that it blames on CP dispatchers and asserts that CP's dispatching of Metra trains is subject to "continual," "routine[]," "weekly," "intentional," "troubling," "serious," and "inevitable" delays. METR-7 at 11, 17, 33, 38, 61, 66, Godfrey V.S. at 6.

14. I strongly disagree with Metra's characterizations. No railroad – even one that only hosts passenger operations – is free from delays relating to dispatching and other causes.

[7] Oppenheim Dep. Tr., at 170:4-8, 171:9-10 (Q. "I'm entitled to ask about circumstances and try – and try and see whether you have knowledge that's accurate and what that information is. We're entitled to respond to your allegations." . . . . A. "[T]his name was given to me in confidence.").

The MD-W and MD-N lines are no exception. But CP's dispatchers perform well, and the delays that do occur are simply the product of the vagaries of railroad operations, especially in a complex operating environment like Chicagoland where dispatchers must make difficult decisions based on the entire network, not an individual train. As Metra's chief dispatcher, Mr. Godfrey explains, even at Metra dispatchers are taught to prioritize an individual freight train over an individual passenger train if that is better for the network in that instance.[8]

15. More importantly, and contrary to the inference that Metra wants drawn from its "delay" data, the objective hard facts show that CP performs well, and Metra is wrong to denigrate CP's performance. A review of all of the data – drawn directly from Metra's own reporting – shows that Metra's portrayal of train performance on the MD-N and MD-W lines is incredibly misleading.

16. There are three principal ways in which Metra's presentation of delay data is misleading:

- Metra witnesses focus solely on trains that were delayed, and not the much larger group of trains that were not delayed at all.
- Metra witnesses examine only the delays that were associated with CP freight trains and not the much larger group of delays that had nothing to do with CP.
- Metra witnesses report delays regardless of whether those delays had anything to do with CP's dispatching performance, or relate at all to the portion of Metra's lines that will be affected by the CP/KCS Transaction.

17. I review all of that data below to demonstrate that CP in fact dispatches Metra trains quite well.

18. I start with the data presented by Metra witness Greg Godfrey, Metra's chief dispatcher since late 2019. He draws on Metra's "TOPS" database to present the delays incurred

[8] *See* Deposition of Greg Godfrey, dated June 9, 2022 ("Godfrey Dep. Tr.") at 81:17-86:10.

by Metra trains since 2000 as a result of the presence of CP freight trains, a small set of all the delays Metra trains experienced, and an even smaller set when compared to all the trains Metra operated that were not delayed at all. He uses this data to support his claim that "from 2000 to 2021 on MD-N and MD-W . . . freight-related delays impacted 1.23 million Metra customers with delays totaling 57,048 minutes, or nearly 40 days and nights."[9]

19. This presentation is incredibly misleading. First of all, the only "delays" presented were those related to CP freight trains. As Mr. Godfrey testified at his deposition, those delays were only 12 percent of the delays that Metra trains, and passengers, incurred. The balance – i.e., the vast majority (88 percent) – were the result of causes having nothing to do with CPs freight trains.[10] These causes include Metra equipment issues, delays loading and unloading passengers, and many other causes.

20. Second, Mr. Godfrey presents the delays supposedly caused by CP freight trains entirely out of context. His presentation fixates solely on the Metra trains that were delayed but ignores all of the Metra trains that were not delayed. When compared to the total number of trains that Metra operated over the MD-W and MD-N lines over the same period, the delays are tiny. Less than about one percent of Metra's trains incurred delays as a direct result of some issue relating to CP freight trains. In the chart set forth in Figure 1 on the next page, I recreate Mr. Godfrey's chart for the period 2017-2021 (the period for which Metra's TOPS data is available on Metra's website in its monthly on-time performance reports). And then, in the right-hand panel, I add in (in the green-shaded area) the trains *that did not incur* the direct and indirect delays that Mr. Godfrey reports. As the chart on the right shows, the supposed freight-

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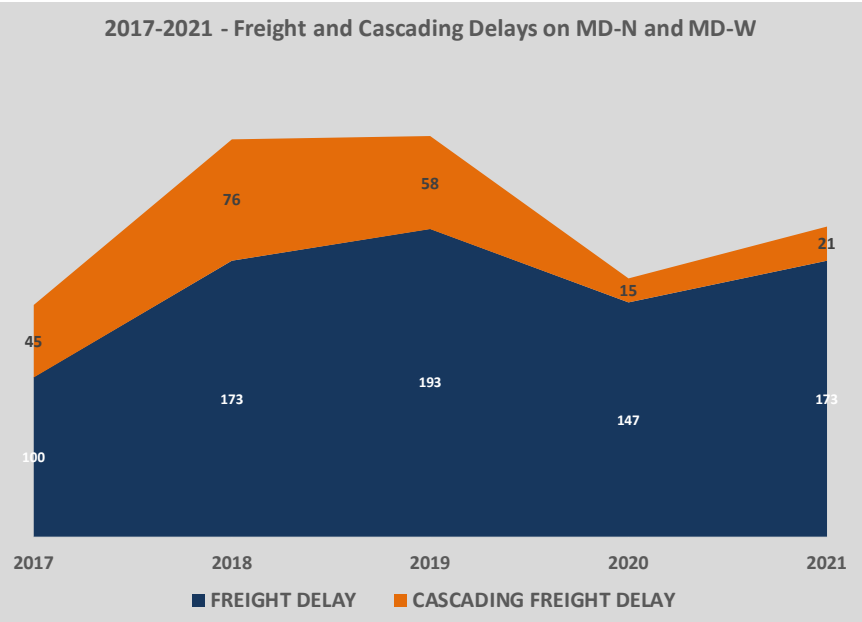
9 Godfrey V.S., at ¶ 9.

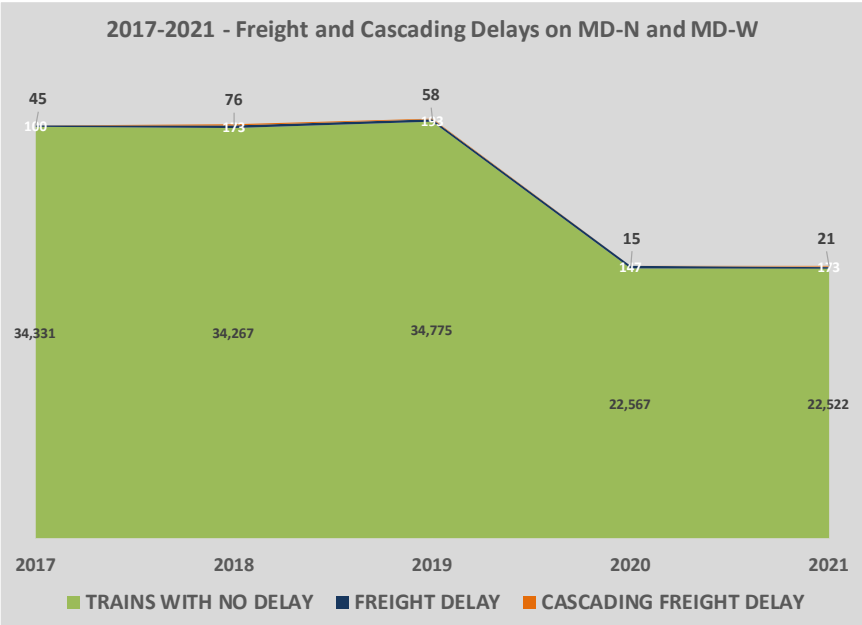
10 Godfrey Dep. Tr., at 45:3-14.

caused delays (the blue and orange lines) are almost invisible when considered against the backdrop of Metra's overall performance on the lines dispatched by CP. Metra witnesses have in effect chosen to keep out of view the much larger part of the iceberg that is underwater.

FIGURE 1[11]
METRA'S MISLEADING PRESENTATION OF "DELAY DATA"



AS PRESENTED BY METRA WITNESS GODFREY



REVISED TO INCLUDE METRA TRAINS NOT DELAYED BY "FREIGHT"

11 *See* "Workpaper_Walker_Godfrey_Rodriguez.xlsx," Tabs "Godfrey 2017 to 2021" and "Godfrey 2017 to 2021 Revised."

Walker R.V.S. at 12

21. I also looked at a separate set of data that Mr. Godfrey presents, which was compiled by Metra witness Rodriguez (and attached to his Verified Statement). The dataset was intended by Metra to reflect a more "systematic" review of delays associated with CP freight trains.[12] That data, however, is equally inconsistent with the rhetoric of the Metra witnesses.

22. Mr. Rodriguez kept track of all delays to Metra trains on the MD-N and MD-W lines between February 2020 and October 2021 caused by CP's freight trains (a subset of all freight train-cased delay, given that UP, IHB, BRC, and other railroads can contribute to freight-caused delays on these lines).[13] This data was presented as more complete because it included delays that did not necessarily result in the train being late at its final destination. The total number of delays over this period was only 337, meaning that the presence of CP freight trains caused delays to only 0.81% percent of Metra's 41,709 trains on these lines over the 21 months according to Mr. Rodriguez's "systematic" data. [14] That is hardly an indictment of CP's dispatching performance.

23. Focusing on the MD-W line, which is the only line where the Transaction will affect train counts, tells a similar story. Of the 273 MD-W line delays Mr. Rodriguez lists as having been "caused" by CP freight trains, 44 were "non-controllable" by CP and had nothing to do with CP's dispatching – like trains going into emergency or broken knuckles on CP freight trains.[15] Another meaningful portion – 25 – were so-called "indirect" delays, which reflected

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[12] *See* Godfrey V.S. ¶ 10.

[13] *See* Rodriguez V.S., Exh. D-2; *see also* Deposition of David Rodriguez dated June 8, 2022 ("Rodriguez Dep. Tr.") at 45:3-9, 68:17-25.

[14] *See* Rodriguez V.S., Exh. D-1; "Workpaper_Walker_Godfrey_Rodriguez.xlsx," Tab "Rodriguez Data."

[15] *See* Rodriguez V.S., Exh. D-1.

Metra trains starting out late at origin because of a prior delay to the same equipment.[16] A proper assessment of the number of incidents where CP freight trains or CP dispatching decisions led to a delay would exclude these events, a point Metra witnesses agreed with.[17] Indeed, Mr. Rodriguez admitted that some delays captured in his spreadsheet could not have been avoided and may not have been CP's fault, or that better dispatching may not have been able to prevent the delay.[18] For example, Metra's data does not distinguish to delays caused by CP's dispatchers from delay that resulted from decisions by another railroad's dispatchers – like IHB, UP, or BRC – affecting the movement of CP freight trains moving to or from those lines.[19]

24. Removing the "uncontrollable" and "indirect" categories from Mr. Rodriguez's tally yields 204 "controllable" delays supposedly caused by CP freight trains over a 21 month period. Figure 2 below puts this figure in context with the total number of trains Metra operated over this line during the same period. In short, 99 percent of all MD-W trains did not encounter any CP-caused freight train interference or dispatcher-cased delay.

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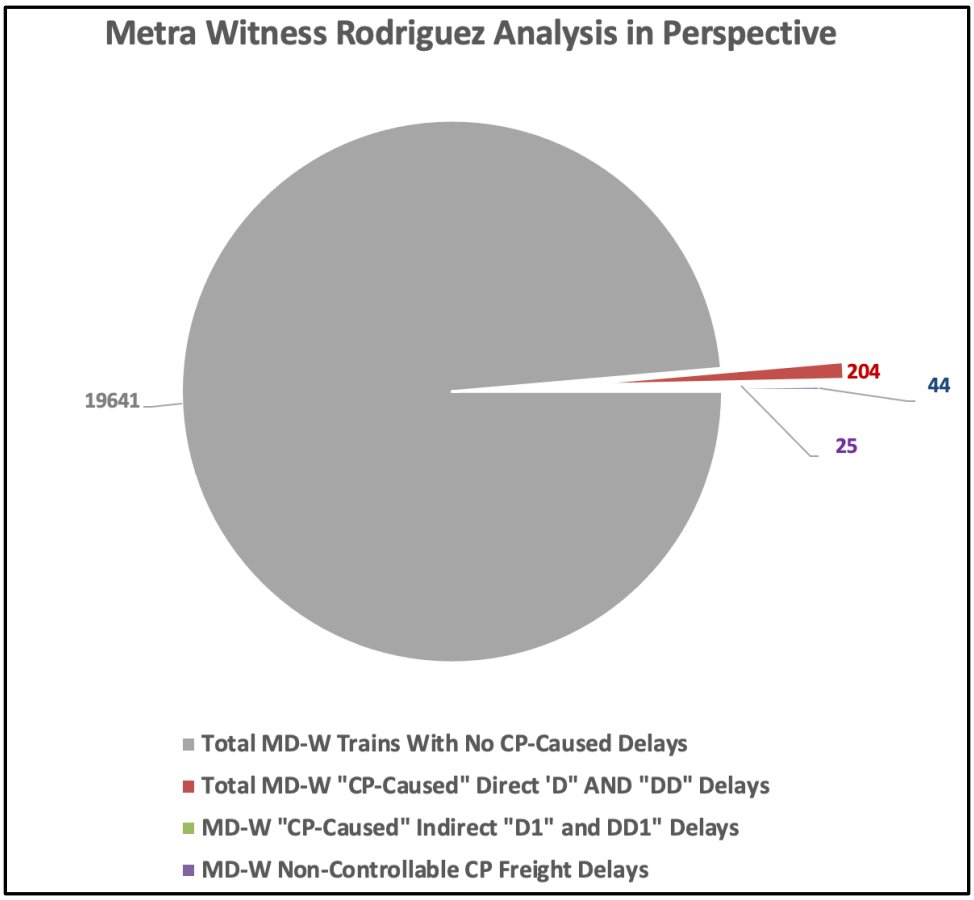
16 *Id.*

17 *See* Godfrey Dep. Tr., at 100:22-102:15.

18 *See* Rodriguez Dep. Tr., at 90:21-91:8, 91:23-92:7.

19 Godfrey Dep. Tr., at 59:16-60:7.

FIGURE 2[20]
NEARLY ALL OF METRA'S MD-W TRAINS INCUR NO CP-CAUSED DELAY



25. Another interesting feature of Mr. Rodriquez's "systematic" data review is that it essentially disproves Metra's suggestion that its own TOPS data is incomplete and overlooks lots of delays caused by CP freight trains that do not result in the trains being late at their final destinations. In fact, over 21 months Mr. Rodriguez identified only nine occasions when this occurred (the lines shown in black on Mr. Rodriquez's exhibit).[21] That's an "extra" (not in TOPS) very short delay only every two months and ten days or so.

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20 *See* "Workpaper_Walker_Godfrey_Rodriguez.xlsx," Tab "Rodriguez in Perspective."

21 Rodriguez Dep. Tr., at 78:25-79:8, 81:3-14; Rodriguez V.S., Ex. D-1.

26. Nonetheless, looking only at the MD-W line delays and including the brief delays that did not cause Metra trains to be late, I totaled up the number of minutes of direct *and indirect* delays (for delays Metra classifies as controllable (or "semi-controllable")) that appeared in Mr. Rodriguez's delay data. All of that delay works out to an average of *7.2 seconds* of delay per Metra train that traversed the MD-W line in that timeframe.[22]

27. To put all of this in context, I examined more deeply Metra's own data reflecting the performance of Metra's passenger trains on CP-dispatched lines and the various sources of train delay reported publicly by Metra on a monthly basis in its "On Time Performance Reports" published on Metra's website. As Metra's reports explain, Metra treats trains as being on time if they arrive at their destination in fewer than six minutes of the scheduled time, and Metra states that its goal is to achieve 95 percent on-time performance.[23] For every train that is delayed, Metra assigns a reason for the delay – some of which are the responsibility of the freight railroad over which Metra operates (*e.g.,* freight train interference) and some are the responsibility of Metra (*e.g.,* mechanical breakdowns and weather). Unlike Metra's witnesses, who focused solely on freight train related delays, I looked more broadly at the performance of Metra's trains overall.

28. Assessed against Metra's own standards, CP's dispatching on the MD-W and MD-N lines over which Metra operates is superlative. Figure 3 below reports Metra data covering all of 2021 to demonstrate the following:

- On both the MD-N and MD-W lines, Metra's overall average on-time performance is close to Metra's 95 percent target, as shown by the blue line. This means that nearly 95 out of every 100 trains are *not delayed for any reason*.

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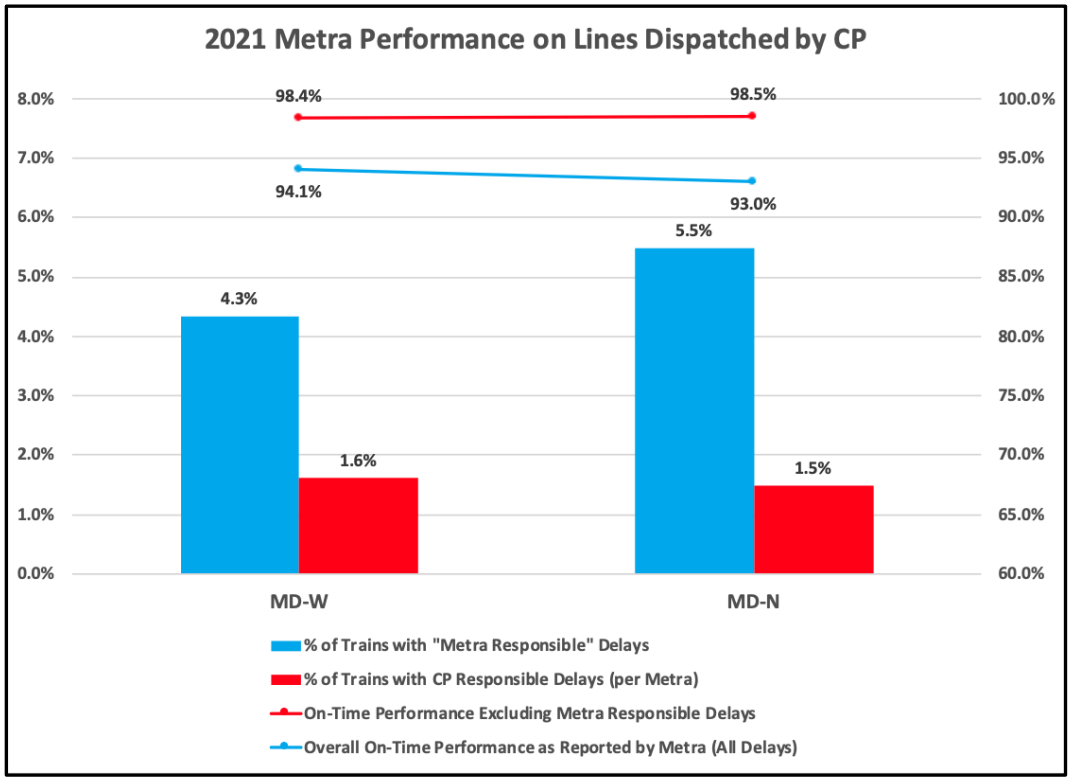
22 *See "*Workpaper_Walker_Godfrey_Rodriguez.xlsx," Tab "Rodriguez Data."

23 METRA WEBSITE, https://metra.com/time-performance-reports#Metra_and_On_Time_Performance (excerpts are Exhibit 8 hereto); METR-7, at 24.

- Removing the delays to Metra's trains on these lines that were *caused by Metra and not by CP* shows that only 1.5-1.6 percent of all Metra trains were delayed for reasons attributable to CP (dispatching or otherwise), as shown by the red bars. In other words, absent the delays caused by Metra, Metra's on-time performance *would exceed 98 percent* on both lines, as shown by the red line. Delays attributable to Metra (the blue bars) far exceed those attributable to CP and drive down Metra's on-time performance.

FIGURE 3[24]
METRA PERFORMANCE ON CP-DISPATCHED MD-W AND MD-N LINES



29. It is also instructive to examine Metra's on-time performance on the MD-W and MD-N lines in comparison to the other lines over which Metra operates. Figure 4 below does this using the same Metra performance data. The MD-W and MD-N lines are shown by thick red lines, and are right in the middle of the pack, bracketing Metra's 95-percent on-time performance goal (shown by the dotted green line).

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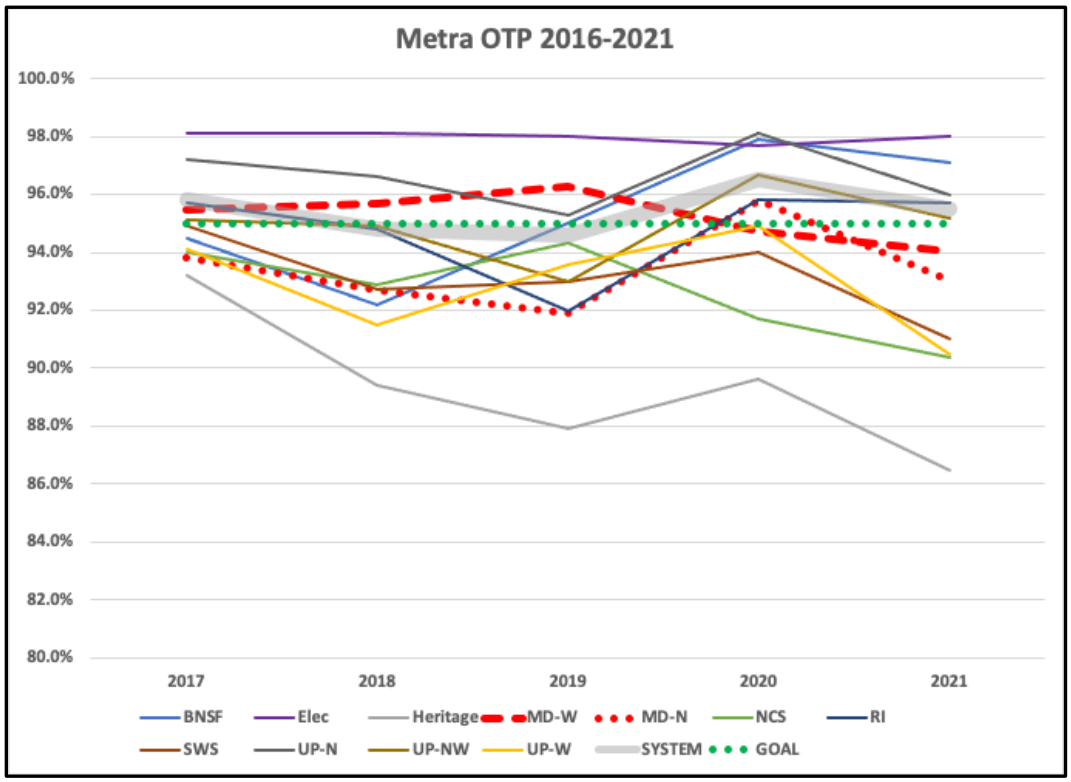
[24] Source: Metra, "*On-Time Performance - December 2021*," *available at* https://metra.com/sites/default/files/inline-files/On-Time%20Performance%20Report%20-%20December_2021.pdf (excerpts are Exhibit 2 hereto); *see* "Metra Data Workpaper," Tab "Fig 3."

FIGURE 4[25]
METRA OTP RELATIVE TO OTHER METRA LINES AND METRA'S 95% OTP GOAL

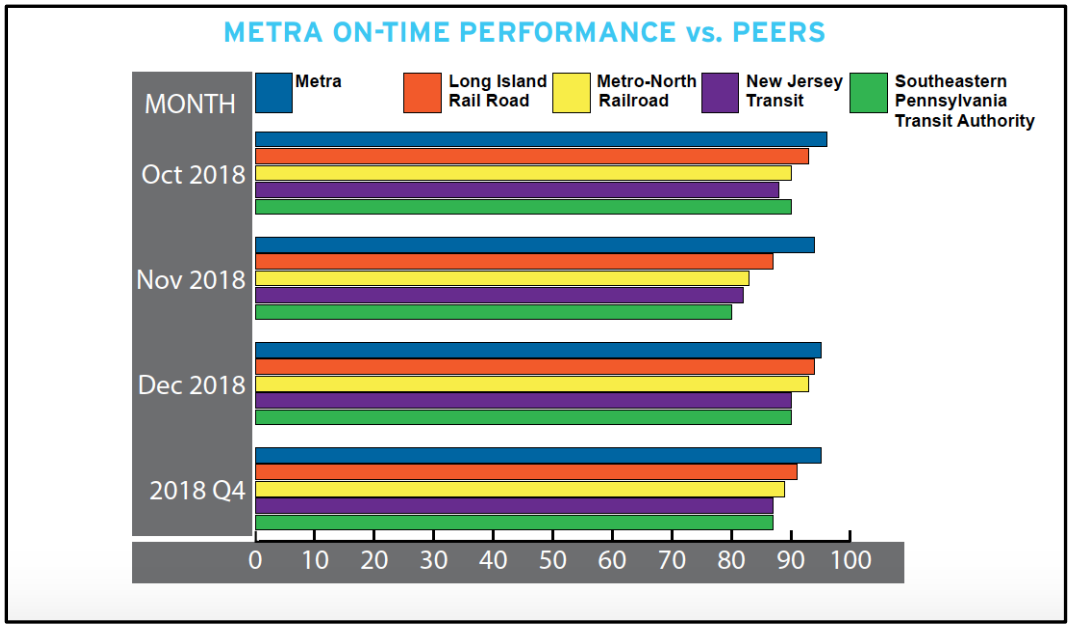


30. Interestingly, Metra's public statements show that it is quite proud of the on-time performance levels it achieves as compared with its peer commuter operations in New York and Philadelphia. Metra is far out in the lead relative to each of these commuter railroads, and

[25] Metra, "*On-Time Performance - December 2021*," *available at* https://metra.com/sites/default/files/inline-files/On-Time%20Performance%20Report%20-%20December_2021.pdf (excerpts are Exhibit 2 hereto); Metra, "*On-Time Performance - December 2020*," *available at* https://metra.com/sites/default/files/inline-files/On-Time%20Performance%20Report%20-%20December%202020.pdf (excerpts are Exhibit 3 hereto); Metra, "*On-Time Performance - December 2019*," *available at* https://metra.com/sites/default/files/assets/planning/on-time_performance_report_-_december_2019.pdf (excerpts are Exhibit 4 hereto); Metra, "*On-Time Performance - December 2018 (Revised)*," *available at* https://metra.com/sites/default/files/assets/planning/ridership/on-time_performance_report_-_december_2018-revised.pdf (excerpts are Exhibit 5 hereto); Metra, *"Commuter Rail System On-Time Performance Report - December 2017*," *available at* https://prod.metrarail.com/sites/default/files/assets/planning/ridership/december_2017_standalone_otp_report.pdf (excerpts are Exhibit 6 hereto); *see* "Metra Data Workpaper," Tab "Fig 4."

Metra's freight railroad partners – including CP – contribute to that excellent performance despite Chicago being by far the busiest freight hub in the Nation.

FIGURE 5[26]
METRA COMPARISON OF ITS ON-TIME PERFORMANCE WITH THAT OF OTHER COMMUTER RAILROADS



31. In the charts that follow, I focus on Metra's MD-W line. I do so for simplicity and also because that is the only line where the CP/KCS Transaction will increase the number of freight trains. (The patterns would be the same for Metra performance on the MD-N line.)

32. Metra presents data on delays experienced by MD-W and MD-N trains that Metra characterizes as "continual" and "routine[]."[27] This is a terribly misleading characterization. In fact, as I hope the preceding figures already demonstrate, CP performs very well, and according to Metra's own data, CP dispatching and freight operations are almost always successful in

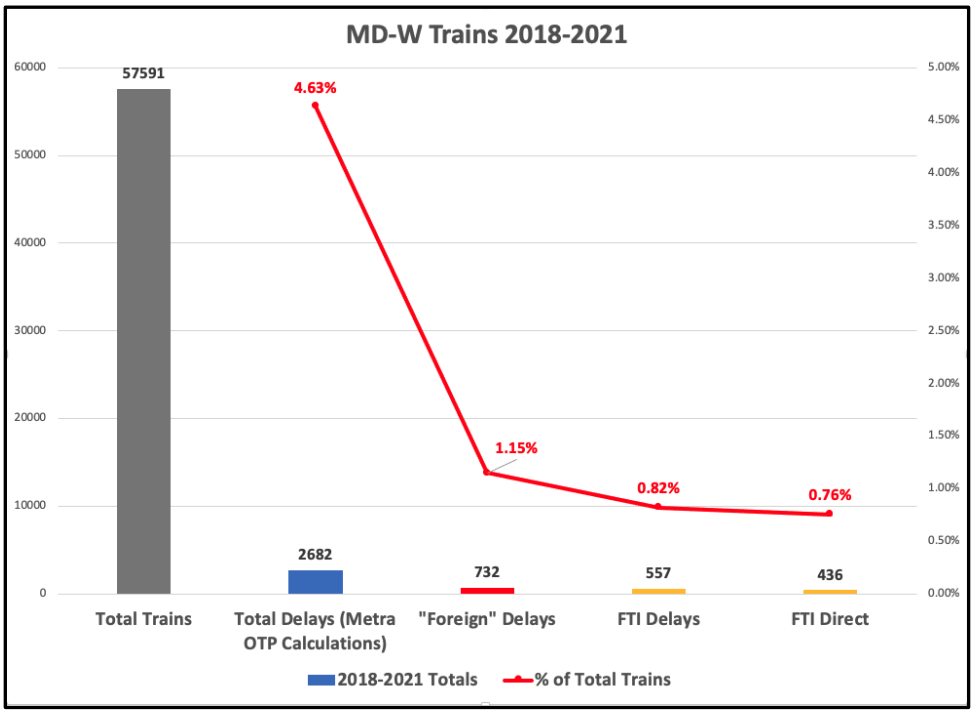
[26] Metra *"Metra 2019 Fact Book at 19," available at* https://metra.com/sites/default/files/assets/2019_fact_book.pdf (excerpts are Exhibit 7 hereto).

[27] METR-7 at 21, 30-31; Metra Comments, Vol. 3, Exhs. C-5-7.

avoiding any delay to Metra trains from CP freight trains (in other words, less than two percent of the time).

33. Despite the excellent percentage on-time performance of Metra's trains on the MD-W line, Metra's approach is to focus only on delayed trains while ignoring all of the trains that are not delayed. Figure 6 below (based on Metra's data) shows that 57,591 trains were scheduled to operate on the MD-W line between 2018 and 2021. Of these, only 2,682 trains suffered any delay meeting Metra's definitions. In other words, only 4.6% of these trains experienced any delay for any reason at all (as shown by the red line in the second column of Figure 6), corresponding to the above 95 percent on-time performance Metra reports for the period 2018-2021.

FIGURE 6[28]
A VERY SMALL PERCENTAGE OF METRA MD-W TRAINS ARE DELAYED



28 *See* "Metra Data Workpaper" Tab "Fig 5."

34. Metra wants the Board to focus only on the 2,682 delayed trains, using that figure to criticize CP's dispatching performance, while ignoring the 54,000+ trains that were not delayed. In fact, even the 2,682 provide no support for Metra's arguments about CP's dispatching performance. Metra's own data breaks down the sources of delays and which Metra trains were involved. As Figure 6 shows, of the 2,682 trains that were delayed for any reason, only 732 of them – in other words, only 1.15% of Metra's MD-W trains – were delayed for reasons attributable to CP.[29] And of these, CP-responsible delays associated with "freight train interference" (the only delays related to dispatching) accounted for only 557 delays – or less than one percent of all MD-W trains. This is shown in the fourth column of Figure 6.

35. Even this small number overstates the occasions when CP freight trains cause delay to Metra's trains. As Metra explains, many of the trains that suffer delay do so because of so-called "cascading" delays. Metra provides an illustration: a train that is delayed en route to destination by some event, and as a result of the equipment arriving late at its last station, another train (the returning equipment) is delayed when it heads back in the other direction.[30] As a result, a single instance of a dispatching decision that causes delay to Metra can result in multiple reported delays, even though it is just one instance – one dispatching event. Metra's OTP reports call these cascading delays "indirect" delays.[31] "Direct" delays are the better measure of the number of occasions when Metra perceives that CP's dispatching decisions have caused a Metra train to be delayed, a sentiment that Metra shares.[32] As shown in Figure 6, over the four years

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29 Metra's OTP reports refer to CP as the "Foreign Carrier."

30 METR-7 at 32.

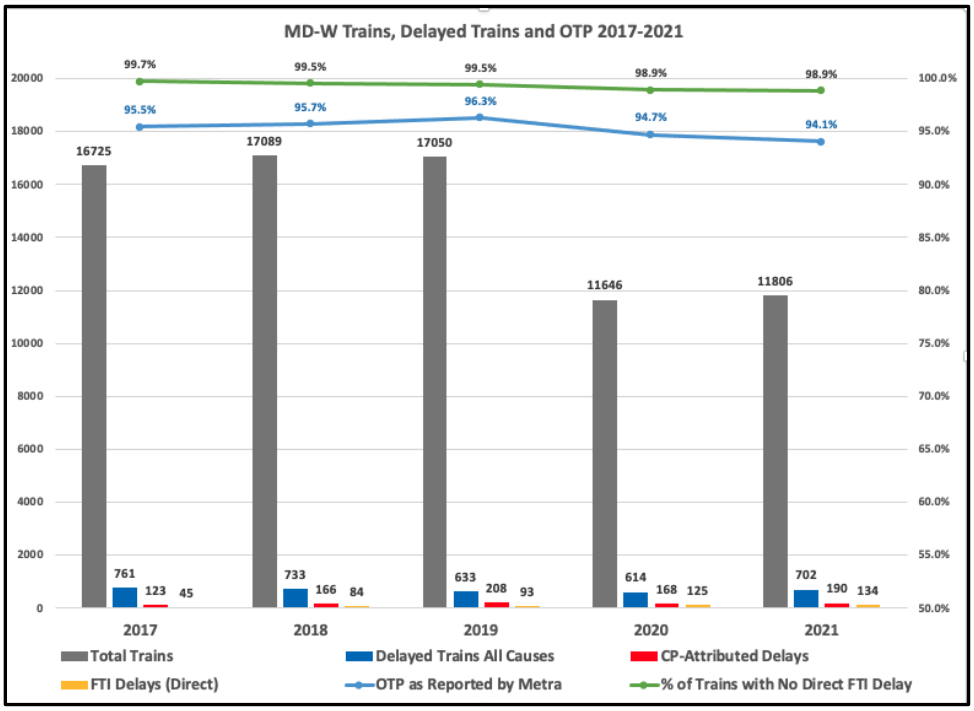
31 Metra, "*On-Time Performance - December 2021*," *available at* https://metra.com/sites/default/files/inline-files/On-Time%20Performance%20Report%20-%20December_2021.pdf (excerpts are Exhibit 2 hereto).

32 *See* Godfrey Dep. Tr., at 43:12-43:23.

from 2018 through 2021 there were only 436 such occasions, representing *just 0.76% of all Metra MD-W trains* (as shown in the rightmost column in Figure 6).

36. Figure 7 below disaggregates the portrayal in Figure 7 and examines the same data points year-by-year, revealing a consistent set of relationships. CP dispatchers consistently support Metra operations at very high levels of on-time performance, with 98-99 percent of trains receiving no direct freight-train interference delays according to Metra's own records (as shown by the green line).

FIGURE 7[33]
METRA MD-W DELAYS AND OTP 2017-2021



37. Viewed another way, even if CP could wave a magic wand for Metra and *remove every single one of its freight trains from the lines shared with Metra*, Metra's on-time performance would only tick up by a tiny fraction. In 2021, Metra's 702 delays on the MD-W

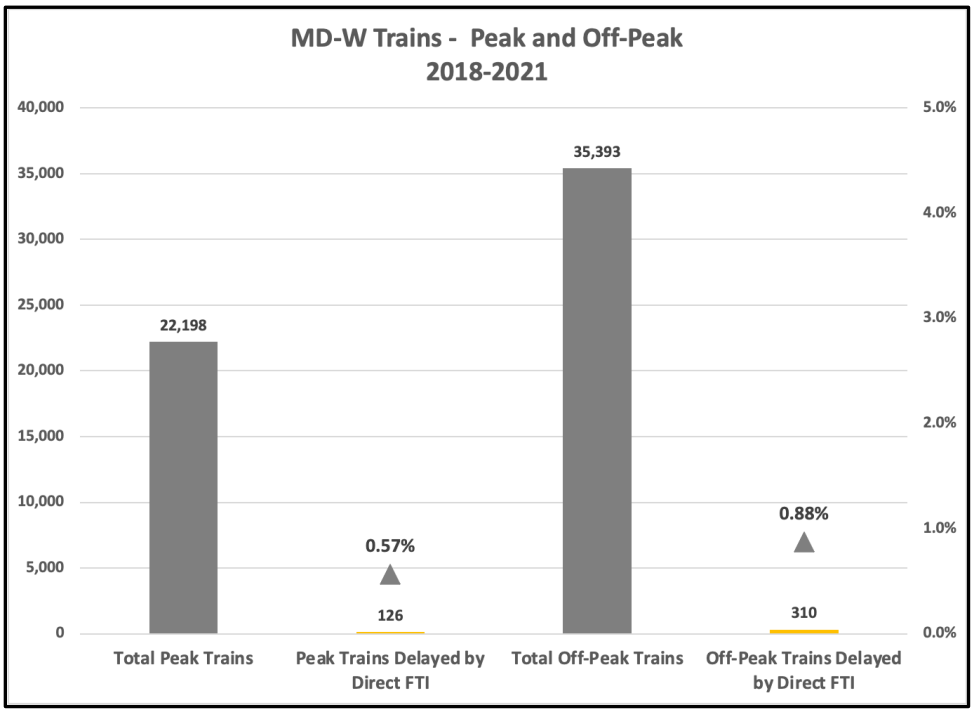
33 *See* "Metra Data Workpaper," Tab "Fig 6."

line would have been reduced by at most 190, leaving 512 delays,[34] for an on-time performance of 95.7 percent – *only 1.6 percentage points higher than with all of CP's freight operations about which Metra complains*.

38. Metra's Comments are particularly critical of CP's dispatching during Metra's so-called "Peak Periods." CP does not schedule freight trains during these periods, but CP is not prohibited by contract from doing so provided it does not "interfere" with Metra's operations during those windows. Unfortunately, Metra does occasionally report delays to its trains during Metra's peak windows. CP strives to avoid this outcome, but sometimes railroad operations do not play out precisely as planned despite our best intentions. As Figure 8 below shows, however, this happens very rarely. Again focusing on the trains that suffer "direct" delays due to freight train interference, only about half of one percent (0.57 percent) of Metra's 22,198 peak-period trains between 2018 and 2021 experienced such delays. This amounted to 126 total delays over the course of four years, or about *one delay every eight business days*. In other words, in roughly fifteen out of every sixteen of Metra's peak rush hour windows (there are two each weekday), not a single Metra train experienced a delay resulting from freight train interference. Delays occur slightly more often – but still less than one percent of the time – for Metra's off-peak trains.

[34] The CP-attributed delays removed in this thought experiment include mechanical and other delays having nothing to do with CP's dispatching of freight trains.

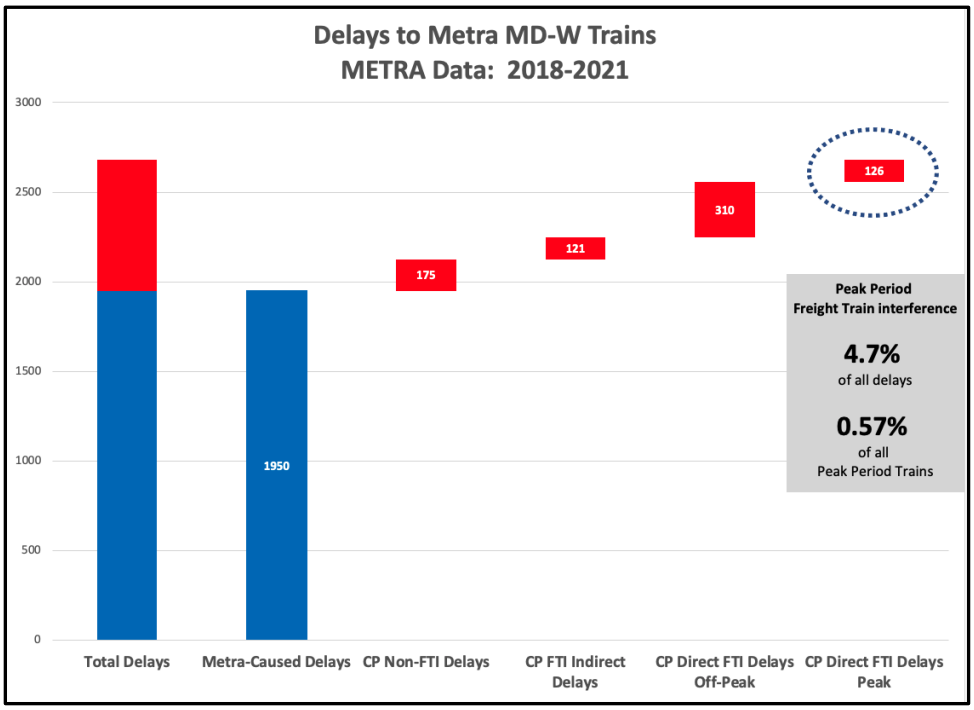
FIGURE 8[35]
MD-W FREIGHT TRAIN INTERFERENCE DELAYS PEAK VS. OFF-PEAK



39. Another useful perspective – similarly not conveyed in Metra's Comments – is how the delays attributable to CP compare to the delays that Metra attributes to itself (in other words, delays that Metra agrees are outside CP control). As Figure 9 below shows, the small numbers of delays attributable to freight train interference is dwarfed by the delays caused by Metra's own actions. Metra's Comments unfairly lump all of these delays together and blame CP for all of them.

[35] *See* "Metra Data Workpaper," Tab "Fig 7."

FIGURE 9[36]
SOURCE OF DELAYS TO METRA MD-W TRAINS 2018-2021



40. I know from my railroad experience that there is always room for improvement, and I also know that CP regrets the rare occasions when its decisions might have led to delay that could have been avoided. But the record that Metra's data reveals is one of which any railroad could be proud. It is certainly not a basis for fundamentally re-writing longstanding contractual rights.

41. Another way to understand how well Metra trains have performed on the CP-dispatched MD-W line is to consider that performance in comparison to Metra's own stated on-time performance target of 95 percent. Outside of this proceeding, Metra acknowledges to its customers that no railroad – Metra, CP, nor any other – is perfect, and that conditions preclude achieving 100% on-time performance. That is why Metra measures only delays that are six minutes or longer. To quote Metra's website:

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36 *See* "Metra Data Workpaper," Tab "Fig 8."

> "Like other commuter railroads, Metra considers a train to have operated on time if it reaches its final destination within five minutes and 59 seconds of its scheduled arrival. That standard filters out some of the delays that are beyond a railroad's control, so the resulting rate is a truer reflection of the railroad's efforts to control the delays that are controllable. The goal is to use this information to ultimately improve service. And, we believe this approach provides us with relevant information to measure how we are doing and where we need to improve."[37]

42. Likewise, Metra sets a 95 percent on-time goal rather than a 100 percent goal for the same reasons: because delays are inevitable no matter how hard railroads try to perform perfectly. Again, quoting Metra's website:

> "[T]here will always be variations that can cause trains to be delayed.
>
> "That's because Metra's schedules are designed to be most successful in 'best case,' normal operating conditions. In other words, if Metra picked up the exact same number of people every day, from the same exact location, and they all used the exact same doors, in the same weather, with the same equipment, etc., then it would be easy to stay on schedule and hit every stop within a minute of the schedule. To not design schedules based on these conditions would result in increased idling time in between stations and longer overall train trips on days when conditions are normal.
>
> "Unfortunately, every day, there are scores of unpredictable variations from those perfect conditions that can have small but cascading impacts on Metra's schedule. These variations can occur for a host of reasons – from the need to deploy a wheelchair lift, to an unusual number of riders at one or more stops to a medical emergency. Other factors that impact schedules include rain and snow, which can easily slow boarding, freight interference issues and mechanical problems. The list goes on."[38]

43. Using Metra's train performance data, it is easy to assess how many delays Metra's MD-W trains would have experienced had Metra just achieved its 95 percent on-time

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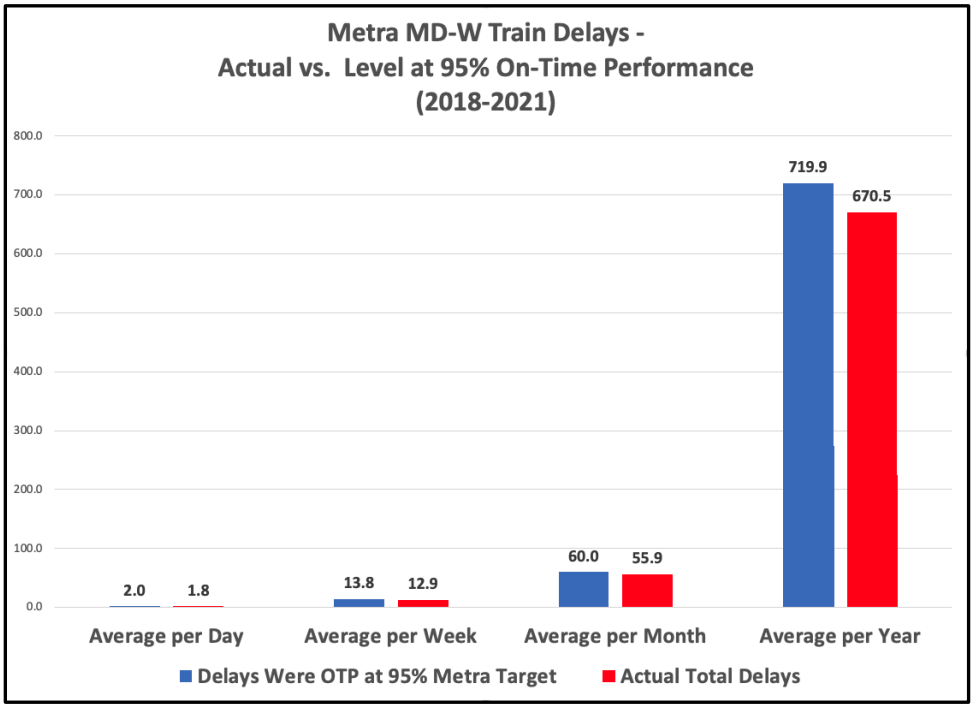
[37] METRA WEBSITE, https://metra.com/time-performance-reports#Metra_and_On_Time_Performance (Exhibit 8 hereto).

[38] *Id.*

goal, and then to compare that amount of delay with what Metra experienced. Figure 10 below presents that comparison. With the 57,591 trains Metra scheduled on the MD-W line between 2018 and 2021 (*i.e.*, 40+ trains every weekday), Metra's own 95% on-time performance goal acknowledges that one would expect delays every single day, week in and week out, totaling up to 719 delayed trains annually. CP's dispatching allowed Metra's trains to realize *fewer actual delays* than they would have had Metra's 95 percent on-time goal been met precisely.

FIGURE 10[39]
FEWER DELAYS TO METRA MD-W TRAINS 2018-2021 THAN IF OTP HAD BEEN 95%

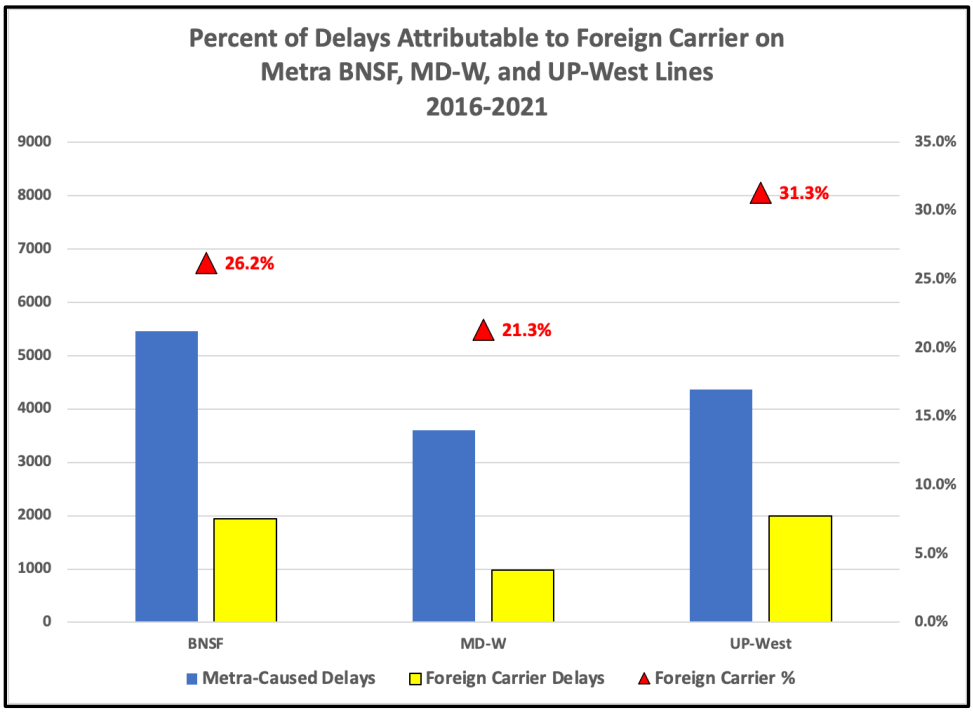


44. Metra's data also confirms that Metra's MD-W trains perform well in comparison with Metra trains operating on other Metra routes that are dispatched by freight railroads. Though it is hard to draw conclusions from the relative number or percentages of delays on different Metra lines, given the inherently different operating conditions, it is worth noting that

[39] *See* "Metra Data Workpaper" Tab "Fig 9."

the portion of total delays to MD-W trains that Metra attributes to CP is meaningfully lower than the portion of delays it attributes to UP or BNSF on nearby lines that those railroads dispatch for Metra, as shown in Figure 11 below.

FIGURE 11[40]
PORTION OF DELAYS ATTRIBUTABLE TO "FOREIGN CARRIER



45. My review of the objective performance data should demonstrate that the specific examples of "freight interference" that Metra presents are just the anecdotal illustrations of the reasons why things do not always go as well *as they almost always do*. Those examples merely reflect normal railroading, not bad dispatching.

C. Metra's Complaint About Trains Dispatched on the "Wrong Tracks" Is Misguided and Unfair

46. One set of Metra's complaints about CP's dispatching has nothing to do with keeping Metra trains on schedule, but with the claim that CP "regularly dispatches Metra trains

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40 "Metra Data Workpaper" Tab "Fig 10."

on different main line tracks from the ones that Metra has identified for use by its passengers heading in a specified direction." METR-7 at 27. According to Metra, this "regular" practice results in dangerous situations where "passengers must get to the opposite side of the tracks, often by darting across the tracks in the face of an oncoming freight train, or around a stationary one." *Id.* at 28.

47. This complaint is misguided and unfair. First of all, Metra's MD-W and MD-N infrastructure is *designed* to support trains in any direction on any track. Both lines are high-speed, double-track railroad, with multiple high-speed cross-overs permitting trains to operate in either direction on both tracks. This configuration helps ensure that there is ample ability to maintain Metra schedules in the presence of other Metra trains, Amtrak trains, and CP freight trains. Metra's station platforms are likewise set up to allow Metra trains moving in either direction to embark and disembark safely no matter which track the train is operating on.

48. Second, Metra's Comments make it sound like CP dispatchers disregard Metra's desire for its trains to use certain tracks as a matter of routine. That is not so. CP's dispatching practice is to run Metra and CP trains in a current of flow consistent with U.S. highways – in other words, on the right-hand track in double-track territory. This means that on the MD-W line, inbound Metra trains normally operate on the southern mainline track (which we call Track 2). Contrary to Metra's implication, CP does not seek to dispatch CP freight trains on the "wrong" track, forcing Metra's trains heading in the other direction to also operate on the wrong track. It is telling that Metra does not attempt to provide any quantification of how often its trains are dispatched in a way that has them arriving at certain stations on a different track from what commuters might expect, because it a relatively rare exception and not the norm.

49. Metra cites a few examples of Metra riders complaining in social media posts about freight trains passing through stations while passenger trains were about to load or unload passengers. METR-7 at 28-29. Examining the photos in those posts, however, provides no indication whether the Metra trains were operating on the "wrong" track, just that freight trains passed by.[41] In fact, all four posts were taken from locations that have level crossings over tracks that passengers must wait at and cross to get to the opposite platform; thus the customers were most likely complaining about having to cross the level crossing *not* that a train was operating on the "wrong" track. It also bears mentioning that these posts depict freight trains operating *outside Metra's peak periods not during them*; Metra's claim to the contrary failed to adjust the timestamps of the posts to account for local Chicago time.[42] As such, nothing about these posts implies anything different from normal operations.

50. Third, when CP's dispatchers send Metra trains onto the opposite track from what commuters might expect, there are good reasons for it, and there is nothing unsafe about it. Running an express Metra train around slower local trains, or running Metra trains around slower CP freight trains are good examples of why a Metra train might end up on the "wrong" track for some of its station stops. This is *good dispatching*, aimed at ensuring that Metra trains maintain their schedules while simultaneously accommodating other operations on the line. Metra wants CP dispatchers to do this.[43]

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41 *Id.*; *see also* Metra, Objections and Responses to Applicants' First Requests at 5-6 (Exhibit 1) (Apr. 11, 2022) ("Metra does not possess this information [concerning] . . . which railroad's freight trains are purportedly obstructing Metra's trains in the social media posts.").

42 METR-7 at 28 n.98.

43 Oppenheim Dep. Tr., at 252:4-9 (Q: "[T]he right dispatching move is to cross the Metra train from track 2 to track 1 to avoid delay; isn't that right?" A: "No, if that is the only way – the only option that you have to run, yes.").

51. If there were a rule that prohibited using both tracks, it would interfere with the fluid operations of the line. The result would be a significant loss in the capacity of the MD-W and MD-N lines, and situations that could bring all operations to a halt. Metra knows this, as shown by its request for a condition requiring CP to *add several crossovers* on the MD-W line.[44] Those crossovers would make sense only if they allowed trains – including Metra trains – to cross from one mainline track to the other. And that means that at some stations, those Metra trains would arrive on the "wrong" track.

52. There is absolutely nothing unsafe about Metra trains arriving on different tracks from the norm when good dispatching calls for it. As noted, Metra's stations have multiple platforms that are set up to allow this. From a passenger's standpoint, crossing the tracks is a routine part of their daily commute. Whichever platform a train is going to use, the passengers that arrive at the station from the "other side" of the tracks (where they park their car, arrive on foot, or whatever) will have to cross the tracks to get to their train, almost always at a level crossing.[45]

53. In addition, Metra's stations are equipped with loudspeakers that provide advance announcements regarding arriving trains and the tracks they will be on, giving passengers ample time to get to the correct platform. Standard train operating practice is for arriving trains to come into the station at slow speeds, in order to ensure that they can stop short if pedestrians are crossing in front of the train.

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[44] METR-7 at 22, 70.

[45] Oppenheim Dep. Tr., at 151:23-24 ("I would say that on a regular basis, passengers do cross the tracks.").

D. Developments Independent of the Transaction Will Further Improve the Performance of Metra's Trains on Lines Shared with CP

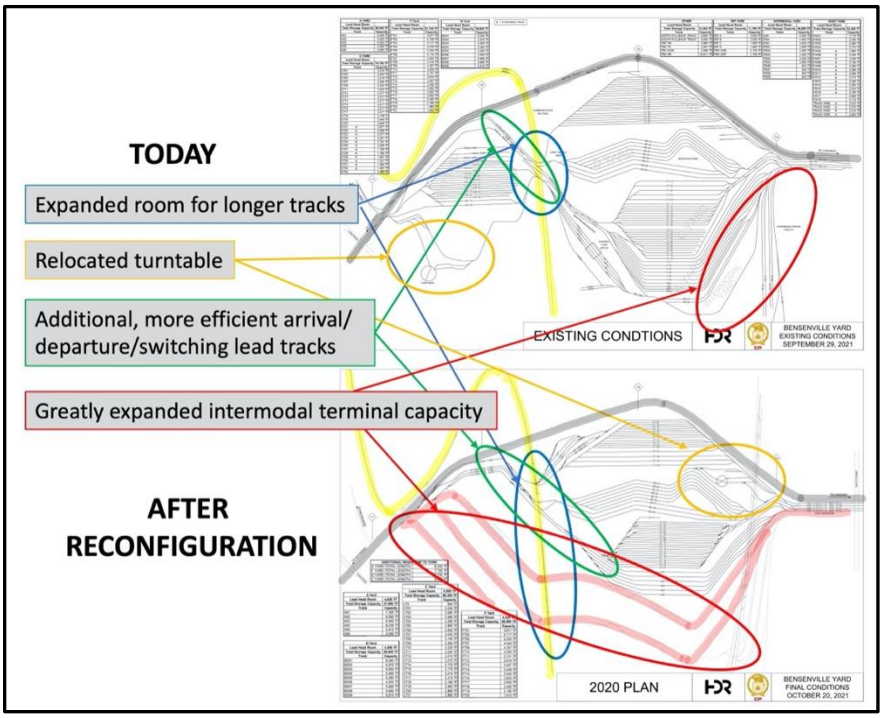
54. I have examined the examples of delays that Metra cites, and one thing that stands out is that a significant portion of those delays relate to freight trains entering and exiting CP's Bensenville Yard. As explained in the Application, independent of the CP/KCS Transaction CP is embarking on a major reconfiguration of Bensenville Yard that will dramatically improve the ability of this facility to receive and depart trains efficiently, sharply reducing the occasions when Metra trains will realize these sorts of delays.

55. Bensenville is CP's only major yard in the Chicago area. It sits at the apex of CP's lines to the Twin Cities (via Milwaukee) and Kansas City, and connects those lines with other railroads at Chicago and with CP's routes to Detroit and Eastern Canada. Figure 12 below presents schematics of the Bensenville Yard before and after the planned reconfiguration. As indicated on the "before" schematic, the intermodal facility in the southeast corner of the yard is physically constrained and requires that cuts of intermodal cars be pulled east of the yard and backed into the ramp tracks. In addition, the yard does not have sufficient numbers of long departure and receiving tracks to support the arrival and departure of multiple long trains. These conditions result from the narrow "waist" in the yard created by the embankment that supports UP's mainline line between Milwaukee and UP's Proviso Yard to the south (circled in blue on Figure 11). In addition, the location of the turntable in the southwest corner of the yard (circled in yellow) typically requires power for eastbound trains moving to/from the turntable to traverse the interlocking at Tower B17 (at the west end of the yard), potentially conflicting with through movements at that location.

56. These physical shortcomings occasionally lead to conflicts between CP's freight operations and Metra's operations today. Although Metra operates over two mainline tracks that

bypass the yard, CP's freight trains to/from Milwaukee must cross those tracks. Trains to/from Kansas City operate over tracks shared with Metra west of Tower B17. And intermodal trains entering and exiting the intermodal facility on the east end of the yard often need to use mainline tracks shared with Metra.

FIGURE 12
BENSENVILLE YARD RECONFIGURATION



57. The reconfiguration is made possible by the elimination of the UP embankment, in favor of a series of bridges, that will unlock a much wider footprint supporting longer yard tracks. The intermodal facility will be moved and allow for the straight-ahead movement of intermodal trains into and out of the yard. The much greater capacity of the new facility will allow for the repurposing of the nearby Schiller Park terminal, eliminating the movement of intermodal trains to and from that facility (across tracks shared with Metra). The turntable will be relocated to the east side of the yard, where it will be accessible to both ends of the yard without requiring locomotives to move through the B17 interlocking switches. Likewise,

Walker R.V.S. at 33

additional, more efficient manifest receiving and departure tracks will be added. Even with increased numbers of trains between Bensenville Yard and points west resulting from the CP/KCS Transaction, opportunities for delays to Metra operations will be significantly reduced.

58. When this work is complete, many (perhaps the vast majority) of the situations that in the past led to conflicts between CP freight trains and Metra passenger trains will no longer occur.

E. The Vast Majority of the Historical Delays Metra Complains About Are Not Relevant to the Potential Impact of the CP/KCS Transaction

59. The vast majority of the "delays" and supposed dispatching issues that Metra's witnesses identify and complain about have no relationship at all to any effects of the CP/KCS Transaction. As Mr. Elphick explains in more detail, the only part of the lines CP shares with Metra where the Transaction will lead to an increased number of freight trains is the double-track mainline between the west end of Bensenville Yard and Big Timber Road as the west end of the MD-W line. This line has tremendous capacity, and Metra's schedules leave numerous slots throughout the day (both mid-day between the morning and evening commuter ("peak period") windows and overnight) when it will be easy to dispatch CPKC freight trains without causing any interference to Metra trains whatsoever. In fact, I understand that Metra's witness Oppenheim maintains a document reflecting his view of these freight operating windows on the MD-W line, and that document (a copy of which is attached as Exhibit 9 to my Statement)[46] shows numerous periods during which freight trains can move without interfering with Metra's trains: he shows 11 windows of 40-100 minutes in duration during the day on weekdays

[46] *See* "B17 and B12 – Freight windows – A – Referenced in Deposition Held on 06-07-2022.xls" (Exhibit 9). Mr. Oppenheim explains this document in his deposition. Oppenheim Dep. Tr., at 175:4-13; Mr. Elphick discusses the freight capacity associated with these extensive operating windows in his Reply Verified Statement. Elphick R.V.S. at ¶¶ 19-21.

(between 8am and 9am, between 9am and 10am, between 11am and 1pm), and a six hour period overnight. He even shows a window of time during the morning peak period when CP trains can operate.

60. Dispatching other parts of the lines CP shares with Metra can be more complex, especially where there is a need to interface with other railroads in order to move trains off of Metra trackage. For example, at Tower A20 on the MD-N Line, CP freights heading to Bensenville Yard from the north (or coming from Bensenville heading north) must enter or exit UP trackage. Also at Tower B17, freight trains heading north from Bensenville (or south from Bensenville) must enter or leave UP-dispatched trackage, and at Tower B12, CP freights to and from eastern carriers must gain access to trackage dispatched by the Indiana Harbor Belt or Belt Railway of Chicago. CP dispatchers do a good job at managing these interfaces, but delays can occur as Metra's witnesses point out. But my point is that none of this will be affected by the CP/KCS Transaction because the Transaction will not result in CPKC operating more trains through these interfaces than CP does pre-Transaction.

61. Mr. Oppenheim's list of the most important "issues with CP's joint operation and dispatching" (which is at pages 11-12 of his Verified Statement) identifies categories of concerns about dispatching that have nothing to do with the Transaction. At least three of his categories (items (2)-(4)) involve issues relating to Bensenville Yard that will be addressed by the reconfiguration I summarize above. The other four (items (1) and (5)-(7)) involve issues on the MD-N line,[47] or on the UP segment connecting the MD-N line with Bensenville Yard. As I have

[47] Mr. Oppenheim mistakenly states that trains between Rondout and Tower A20 are on the MD-W line. That is incorrect; they are on the MD-N line.

explained, the CP/KCS Transaction *will not increase train counts* on the MD-N line or the UP segment connecting MD-N with Bensenville Yard.

62. I understand that Mr. Oppenheim may have been under the misimpression that the Transaction would increase the number of CPKC trains moving between Bensenville and the north (on the MD-N line) because Metra's consultants suggested that CPKC would divert Kansas City-St. Paul trains off of the Marquette Subdivision and through Chicago, which Mr. Oppenheim testified would cause growth in "trains between Kansas City and St. Paul that operate via Chicago," and "trains between points north of Chicago and Kansas City."[48] But as Mr. Elphick explains, that is just not the case. Those trains will not come through Chicago (except perhaps in emergencies).

63. A review of the delay data put forward by Metra's other witnesses confirms that Mr. Oppenheim's catalog of the areas raising the most issues was correct. The available information reflecting the location and cause of delays to Metra's trains confirms that the vast majority relate to the categories Mr. Oppenheim lists, none of which involve CP operations that will be affected by the Transaction. At his deposition, Metra witness Rodriguez confirmed that the delay spreadsheet he prepared shows delays that occurred in connection with CP operations that will not be impacted by the Transaction.[49]

II. CP RESPONSIBILITY FOR DISPATCHING IS CRITICAL TO FREIGHT OPERATIONS AND BENEFITS METRA

64. Metra's request for a condition compelling CP to relinquish responsibility for dispatching to Metra, contrary to the governing trackage rights agreement between CP and

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48 Oppenheim Dep. Tr., at 95:4-100:1.

49 *See* Rodriguez Dep. Tr. at 96:22-99:9.

Metra, would be both unwarranted and affirmatively detrimental to efficient rail operations for both CP's freight trains and Metra's commuter trains, as well as for the Amtrak trains that also operate over the MD-W line. Shifting dispatching makes no sense given the strong performance CP has proven year in and year out. In addition, a shift of dispatching responsibility would harm overall rail operations: (a) it would replace CP's 24/7/365 dispatchers who are focused on around-the-clock rail operations with Metra dispatchers who would be focused on the operation of passenger trains between the early morning hours and late evening hours; and (b) it would undermine the efficient coordination of freight and passenger operations on the lines shared by CP and Metra and divide responsibility for dispatching CP's lines to/from Chicago into two separately accountable groups, undermining coordination and thus creating a greater potential for interference between freight and passenger trains.

A. CP Dispatchers Are Attentive to Rail Operations Around the Clock

65. Like most commuter operations, Metra does not operate trains on the MD-W and MD-N lines around the clock. Its first weekday trains are scheduled to depart at 4:52 AM on the MD-W line and 4:46 AM on the MD-N line. And its last weekday trains are scheduled to arrive at their destinations at 12:05 AM and 12:12 AM, respectively. Between the last train of the night and the first train of the morning, Metra's operations go dark. On weekends and holidays this dark period is even longer.

66. CP's freight operation, by contrast operates around the clock, 365 days a year, and its dispatching center is staffed to support this cadence. There are no gaps in coverage. Giving Metra responsibility for dispatching would risk degrading freight operations during these overnight hours, when Metra's dispatching center would be reduced to a skeleton staff to support only CP's freight trains during the overnight hours.

67. Finally, there is good reason to be concerned that Metra does not appreciate the greater complexity associated with dispatching freight operations relative to scheduled commuter trains. For one, Metra's dispatchers do not look at the broader CP network on a day-to-day basis and do not interact with the conditions of Bensenville Yard, despite Metra's acknowledgment that the appropriate dispatching decision in a particular case needs to consider the implications of a particular move on the entire network, not just for one train.[50] Moreover, in contrast to scheduled commuter trains, freight trains do not adhere to schedules as precisely, must be received by yard tracks that are available to handle them, must meet one another at sidings that are the proper length to handle them, operate at more varied speeds, and encounter a far more diverse array of potential conditions (broken knuckles, overheated bearings, etc.) that disrupt operations on lines of road. Metra's dispatchers would need to develop the experience and expertise to handle all of these conditions, but would start out far behind CP's dispatchers on the learning curve.

68. While Metra dispatchers have some experience dispatching a handful of freight trains on other lines in the Chicago area, they lack the experience of CP's dispatchers. In response to discovery requests, Metra was able to identify only "Metra's Rock Island Line and portions of the Southwest Service Line" as lines where its dispatchers "dispatch both passenger and freight trains."[51] On the Rock Island Line, Metra dispatches only about "four daily freight trains," and on the Southwest Service Line it dispatches only "one Norfolk Southern train along the entire length of the line."[52] Metra did also note that its dispatchers dispatch freight train

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50 *See* Godfrey Dep. Tr., at 122:2-122:23 and 83:25-86:10.

51 Metra, Objections and Responses to Applicants' First Requests at 4 (Apr. 11, 2022). See

52 *Id.*

traffic on the MD-W, MD-N, and Waukesha Subdivisions,[53] but in reality what Metra is describing is the work of former tower operators – which Metra now calls "dispatchers" – whose job is to line switches and signals in order to implement the dispatching judgments made by CP.[54] This inexperience would inevitably jeopardize efficient rail operations on the lines CP and Metra share, as well as disrupting CP's freight operation far beyond the boundaries of those lines.

69. It is not surprising to me that all of the lines over which Metra operates that have the largest volumes of freight traffic are dispatched by the freight railroad operator, not by Metra. BNSF dispatches Metra's BNSF line, UP dispatches Metra's UP-West line, CN dispatches Metra's Heritage Corridor and North Central Service north of Tower B12, and as we have seen CP dispatches Metra's MD-N and MD-W lines. That allocation makes good sense from the standpoint of ensuring the most efficient operation of the railroad for the benefit of all users, freight and passenger alike.

B. CP Dispatching Enables More Efficient Coordination of Freight and Passenger Operations

70. Apart from the greater experience and acumen of CP's dispatchers, CP's responsibility for dispatching enables far greater operational efficiency on the MD-W and MD-N lines than could be achieved were Metra responsible for dispatching. This is because CP's dispatchers have visibility across the network and can coordinate activities that affect the efficiency of freight and passenger operations alike.

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53 *Id.*

54 Godfrey Dep. Tr., at 116:11-117:9.

71. Good dispatching requires broad awareness of all parts of the rail network that could affect future operations over the line being dispatched. Mr. Oppenheim, at his deposition, objected to giving Metra dispatching rights over only half the MD-W line because the MD-W line is "a through operation" and "needs to be handled as such."[55] He explained that "[s]ituations occur on one . . . side of the dividing line that would have to be rectified on the other side of the dividing line," so it "would just be very awkward" for Metra "trying to hand things off" on the other side of the line.[56] But Metra has not explained why this principle should not apply more broadly than just the MD-W line—why a dispatcher on the MD-W line should not have awareness of issues that occur outside the dividing line that would have to be rectified on the MD-W line.

72. In fact, the efficient dispatching of freight and passenger operations on the Metra MD-W and MD-N lines require awareness and coordination of operating conditions well beyond the boundaries of those lines. CP dispatchers must interface with UP, IHB, BRC, and other dispatchers controlling freight lines in the Chicago terminal. They must coordinate with CP's Bensenville yard operations, and they must coordinate with CP freight operations as far away as Kansas City and St. Paul, MN. CP responsibility for dispatching delivers this coordination. Metra responsibility would bring a much narrower perspective, jeopardizing operations on the lines CP shares with Metra and far beyond. The different perspectives are depicted in Figure 13 below.

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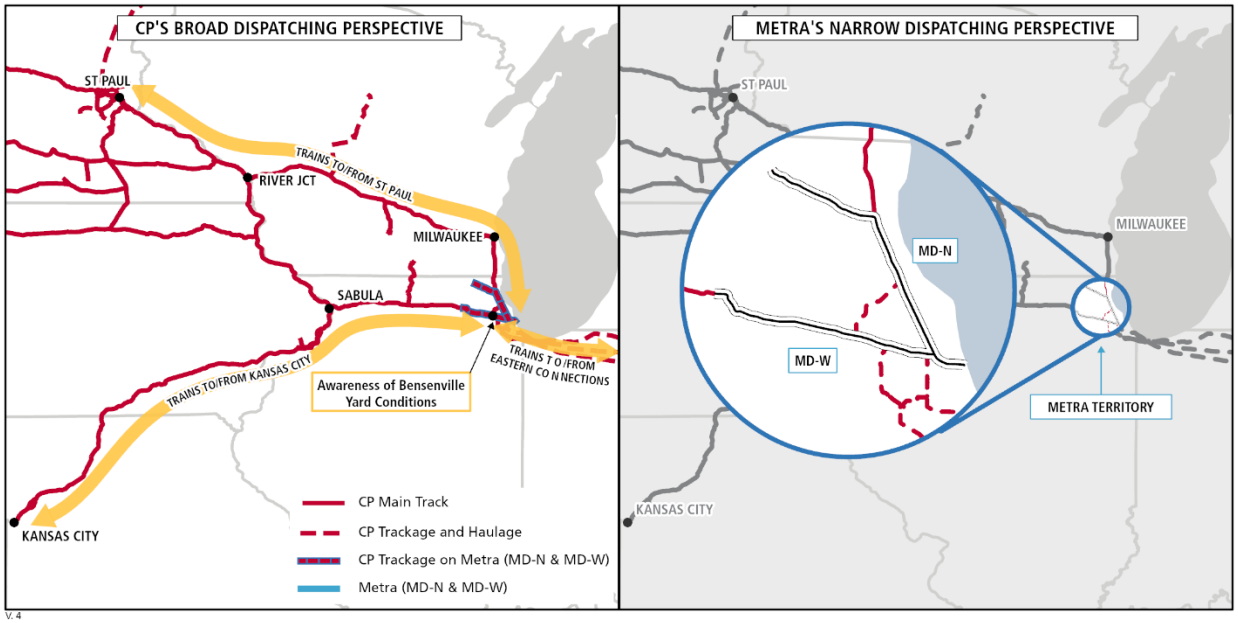
55 Oppenheim Dep. Tr., at 292:8-17.

56 *Id.*

FIGURE 13
DIFFERENT PERSPECTIVES OF CP AND METRA DISPATCHERS



73. As Figure 13 tries to depict, CP's dispatchers dispatching CP's freight trains and Metra's passenger trains in the Chicago area can focus in on the specific trains needing attention, but they bring to that effort a broader awareness of conditions across the railroad that can improve decision-making. This perspective lets them see in multiple dimensions (in terms of a broader geography and a broader temporal scope – *i.e.*, what will conditions look like later if I make a different decision now), rather than being myopically focused on resolving individual train conflicts as they arise.

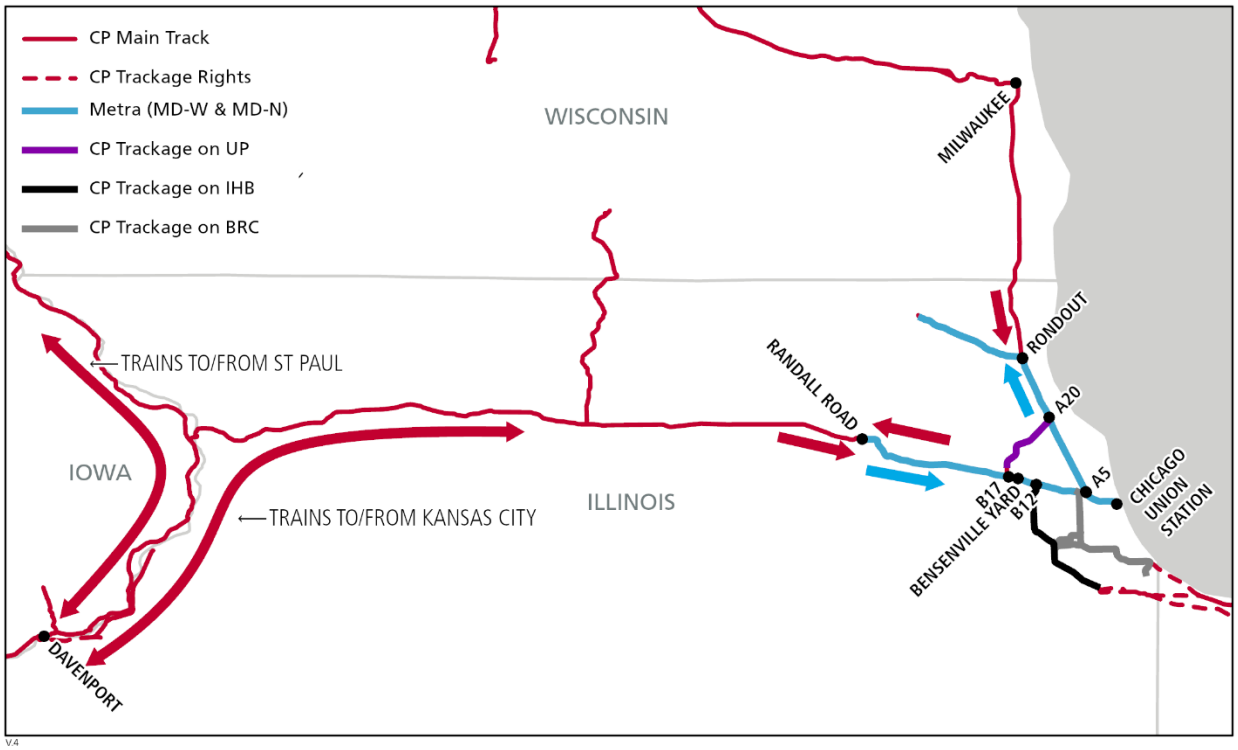
74. I will illustrate this point with a few real-world examples.

75. First, consider a CP freight train heading toward Chicago from Kansas City. A CP dispatcher responsible for dispatching across the entire territory will have awareness of Metra operations, the availability of open tracks in Bensenville Yard to receive the train, and many other conditions affecting fluid operations. That dispatcher can stage Chicago-bound freights at

appropriate locations west of the MD-W line both to avoid interference with Metra's operations as well as avoid blocking CP freight trains heading north or west from Chicago.

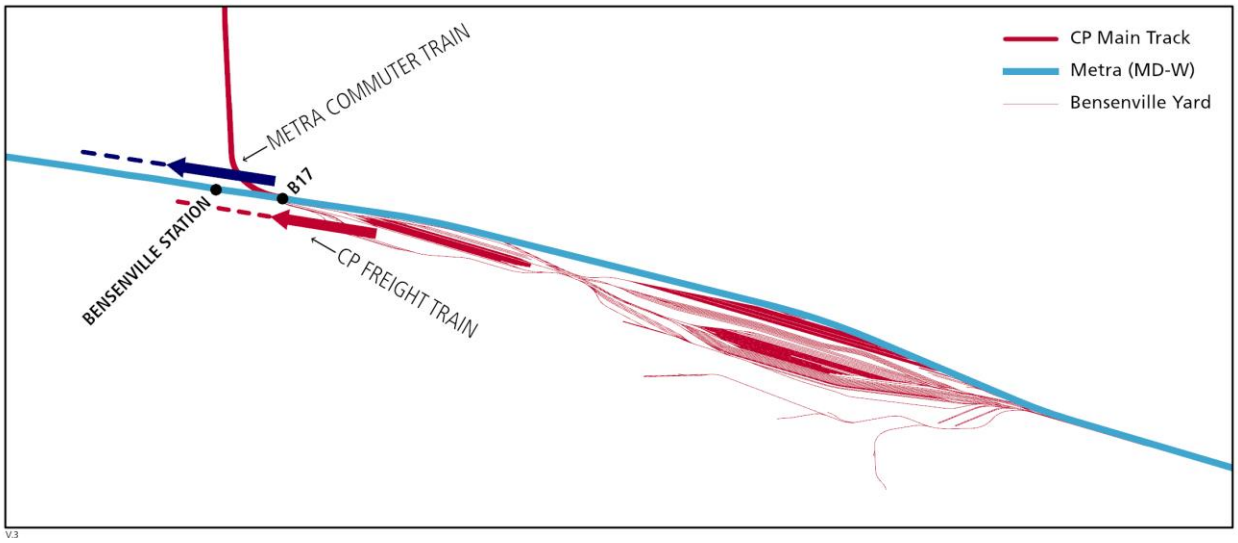
76. Were dispatching divided between Metra (on just the MD-W lines) and CP (on CP's lines west of Randall Road), this efficient coordination would be curtailed. CP dispatchers would no longer be able to coordinate the flow of Chicago-bound trains in a way that optimized operations in light of conditions on the MD-W line. Because CP's dispatchers would not know whether or when a Metra dispatcher would allow the train onto the MD-W line, those trains could end up arriving at the west end of the MD-W line too early, thus blocking westbound freights, or too late because they held far from Chicago. A coordinated flow would be replaced with a queuing system (as shown in Figure 14 below) that would consume capacity and likely be inferior from Metra's perspective as well because westbound freight trains would be affected along with the eastbounds. The disruption would be exacerbated by Metra's peak windows during which Metra dispatchers would refuse access to the MD-W line regardless of whether there was room to move an arriving freight.

FIGURE 14
COORDINATION OF TRAINS BOTH ON AND OFF METRA LINES



77. Second, consider a CP freight train originating at Bensenville Yard and heading west toward Kansas City during the mid-day hours between Metra's peak period operating windows. Today, it is standard practice for CP's dispatcher to depart such a train immediately after an outbound Metra train clears Tower B17 at the west end of Bensenville Yard. By doing this, the freight train will stay behind the commuter train and have no difficulty reaching the west end of Metra's double-track line (at Randall Road) long before the next outbound commuter train catches up. This supports efficient freight operations while also avoiding interference with Metra. This sequence is shown in Figure 15, below.

FIGURE 15
COORDINATION OF CP YARD ACTIVITY WITH METRA TRAIN MOVEMENTS



78. But to make this work requires a lot of coordination between the CP dispatcher and CP's operating personnel at Bensenville. Long before the outbound Metra train gets to B17, the dispatcher must coordinate with the CP trainmaster and train crew to ensure that the westbound freight is made up, has completed any required brake tests, and is ready to go. The CP dispatcher will be proactively monitoring the activity associated with preparing that freight train for departure – making sure there are no crew issues, no power issues, no miscommunications, no paperwork issues, and nothing else that could delay its departure. Then when the Metra train passes B17, stops to discharge passengers at Bensenville station, and starts to pull out of the station, the CP dispatcher can give the CP freight the green light to proceed so that it reaches the end of Metra's line with plenty of time to spare ahead of the next Metra train (usually an hour later). Without all of this coordination – which could not possibly work as smoothly were Metra responsible for dispatching – this coordination would break down and either Metra would hold CP trains for long periods of time inefficiently, or the risk of freight train interference would increase rather than decrease. This would be particularly

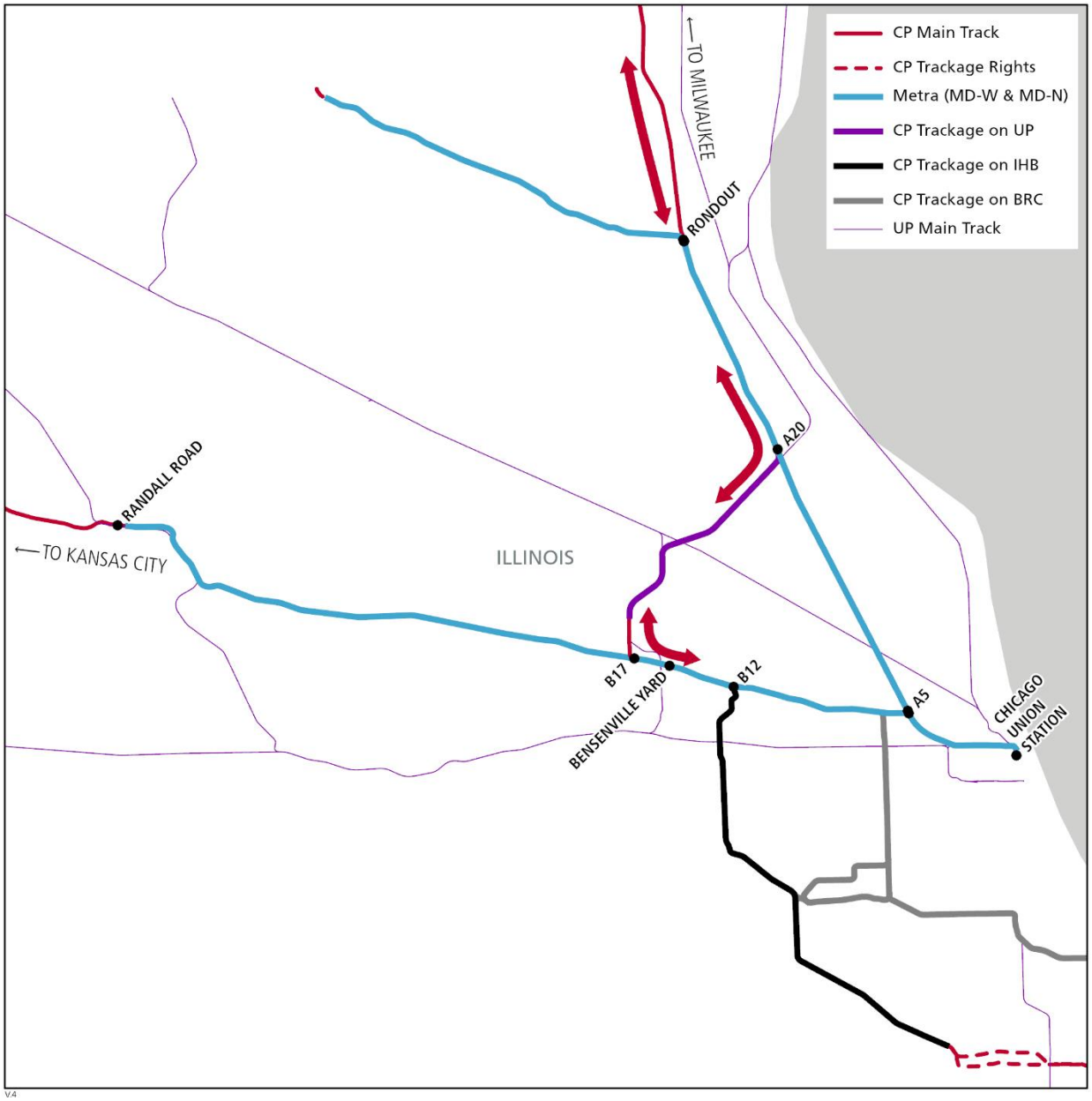
counterproductive with the increased number of freight trains that CP anticipates operating over this line as a result of the CP/KCS Transaction.

79. Third, consider CP freight trains operating between Bensenville Yard and Milwaukee. The CP/KCS Transaction will not affect operations or train counts on this route, but Metra's dispatching could disrupt operations severely. As shown in Figure 16 below, the typical path these trains take is to depart the west end of Bensenville Yard, cross the MD-W line at Tower B17, operate on UP trackage rights to Tower A20, and then traverse the MD-N line to Rondout. Southbound trains operate in the reverse direction.

80. Dispatching these trains requires the same kind of coordination between CP dispatchers and Bensenville Yard operations, and in addition close coordination with UP dispatchers who are responsible for the segment between Tower A20 and Tower B17. CP dispatchers have visibility into both ends of the UP segment, as well as the CP line beyond Rondout. CP dispatchers are also able to coordinate with UP Proviso Yard, which also provides key planning inputs daily. Transferring responsibility for the MD-N and MD-W lines to Metra would multiply the complexity associated with this coordination, and inevitably result in CP freight trains stranded at A20 (either on the UP or MD-W line), CP trains held up in Bensenville Yard, reduced capacity to move other trains into the yard, and any number of other bad outcomes.

81. This track configuration is shown in Figure 16 below.

FIGURE 16
COORDINATION OF TRAINS MOVING ACROSS UP TRACKAGE
BETWEEN BENSENVILLE AND POINTS NORTH



82. I could offer a nearly endless series of additional examples. Good dispatching requires broad and holistic awareness of, and close communication with, all of the parts of the rail network that could affect future operations over the line being dispatched. CP dispatchers have that vantage and communicate hourly with other freight railroads and Metra about the ebb

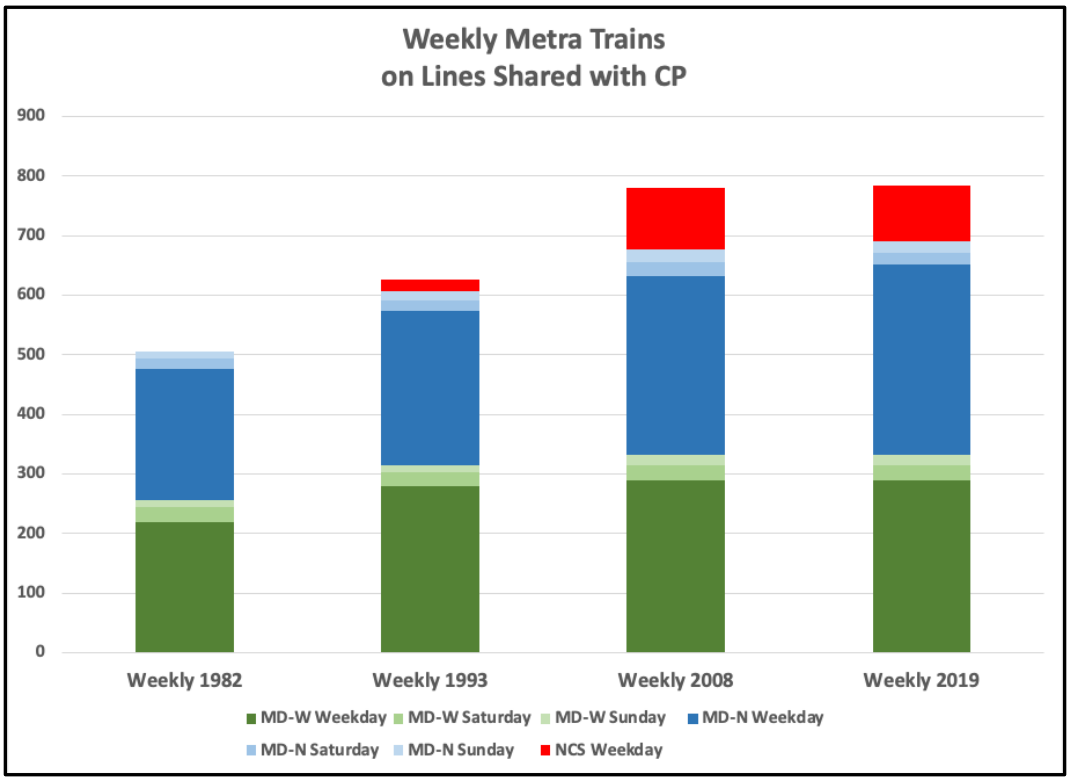
and flow of freight operations in and affecting Chicago. That awareness benefits Metra's operations by keeping the MD-N and MD-W lines fluid. Metra dispatching could not match this performance.

III. CP HAS CONSISTENTLY SUPPORTED GROWTH IN METRA OPERATIONS ON MD-N AND MD-W LINES

83. Metra's operations on lines shared with CP have grown significantly since their inception. When Metra first began operating commuter trains on Milwaukee Road's lines in 1982, the governing trackage rights agreement – entered into between Metra and Milwaukee's bankruptcy trustee – spelled out separate weekday and weekend train schedules, with a total of 44 daily trains on weekdays, 24 on Saturdays, and 12 on Sundays on the MD-W line and a total of 44 daily trains on weekdays, 18 on Saturdays, and 12 on Sundays on the MD-N line. When CP assumed Milwaukee's freight operations on the MD-W and MD-N lines in 1986, Metra's schedules remained the same.

84. By the end of 2019, prior to Metra's COVID-related service reductions, the number of trains on the MD-W and MD-N lines had grown tremendously, all with the support of CP, as shown in Figure 17 below.

FIGURE 17[57]
EXPANSION OF METRA SERVICE ON LINES SHARED WITH CP



85. In 1993, CP agreed to support significant increases in the number of Metra trains on both the MD-W and MD-N lines. In addition, CP supported adding Metra trains on the portion of the MD-W line east of Tower B12 (just east of Bensenville Yard) to support Metra's new "North Central Service," which diverges at Tower B12 onto CN's former Wisconsin Central mainline to Antioch, IL. In addition, CP allowed for a 45-minute extension of peak period for westbound trains from Chicago Union Station to Elgin from 5:30 AM to 8:00 AM to 5:15 AM to 8:30 AM.

86. I understand that Metra has expressed frustration with correspondence from CP in April 2019 regarding Metra's proposed addition of several off-peak trains on the MD-N line. Metra claims that it "sought CP's consent (which cannot be unreasonably withheld)" to

[57] "Metra Data Workpaper," Tab "Fig. 16."

Walker R.V.S. at 48

"*reinstate* four Saturday and two Sunday commuter trains that were eliminated in 2018 due to budgetary issues."[58] It asserts "CP refused, stating that there was limited or no capacity on the line, even though these slots were not being used for freight." *Id.* Similarly, in March 2019, Metra proposed "the addition of 4 non-peak trains," and Metra now asserts CP denied this addition even though "time slots were empty," because of similar capacity issues.[59] At the outset, I note that Metra may not add non-peak trains "without CP's prior written consent," and one reasonable basis for CP to withhold consent is if the added trains will "materially interfere with freight operations."[60]

87. I was involved in CP's consideration of Metra's 2019 proposals, and can make several points. First, CP did not decline to agree to the addition of these additional Metra trains because there would have been insufficient capacity on this line. As Metra itself pointed out, CP had previously operated up to ten additional trains per day on the MD-W and MD-N lines without affecting Metra.[61]

88. Second, based on my direct communications with Metra at the time, Metra's proposal to add four non-peak trains stemmed from its plan to experiment with "reverse commuter trains" designed to take workers from their homes in downtown Chicago to their jobs in the northern suburbs. The additional trains would have been just outside Metra's existing peak periods.

89. My analysis of the situation was that adding these additional trains just outside Metra's peak periods, without reducing the number of off-peak trains operated at other times,

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58 METR-7 at 42.

59 *Id.*

60 METR-7, Ex. A-3.

61 Metra Comments, Vol. 2, Exh. H-1 (Mar. 26, 2019 letter)

would have in effect extended those peak periods when CP's freight operations are almost entirely shut down for an additional hour and forty-five minutes each morning and evening. That would have effectively squeezed all CP freight operations – which must coexist with off-peak Metra trains as well as Amtrak trains on the MD-N line – into shorter and inflexible operating periods. With uncertainty at the time about the future expansion in Amtrak service on this line and CP's at-the-time recent experience of very heavy train traffic from North Dakota and Alberta destined for interchange with other carriers at Chicago, we were reluctant to agree to a permanent reduction in the period during the day when we could operate freight trains. We offered to let Metra add as many new reverse-commute trains as they wished by *shifting their peak* windows to include these proposed trains (leaving the windows the same duration but ending later or starting earlier), but we did not want to forever relinquish the ability to run our trains when Metra's added trains would be entitled to priority.

90. Metra's April 2019 proposal to add six weekend trains to the MD-N line on a "trial basis" got caught up in the same discussion with Metra about accommodating the needs of CP, Amtrak, and Metra on this line. Freight operations had changed since Metra had removed those trains from its schedule in early 2018, and as noted the potential need to accommodate increased Amtrak trains also needed to be considered. CP was not intending to tell Metra that it could never add additional off-peak trains to the lines CP shares with Metra. At the time, the weekend trains Metra was already operating on the line were not running at or even near capacity. In requesting to add additional Metra trains, Metra was unable to provide any reason to think there was demand for these additional trains; rather Metra just wanted to experiment. CP was not telling Metra that it could never add additional off-peak trains to the lines CP shares with Metra, but CP felt it could not agree to add these trains without a more involved assessment of

their impacts on CP's future operation flexibility and a further consideration of available alternatives.

IV. METRA'S COMPLAINTS ABOUT CP'S PTC IMPLEMENTATION ON LINES SHARED WITH METRA ARE NOT WELL FOUNDED

91. Metra also criticizes the fact that Metra and PTC have had to work together to implement new dispatching software to support positive train control ("PTC") on the lines CP and Metra share. I am baffled by this critique, which seems entirely contrived to bolster Metra's misguided effort to force a shift in dispatching responsibility to Metra. In fact, CP cooperated closely with Metra and Metra's software vendor ("Wabtec") to implement Metra's TMDS software on CP's dispatching systems, so that Metra could be the party responsible for PTC on the lines CP and Metra share.

92. CP went to considerable expense to accommodate Metra, and to the extent there were delays and occasional glitches associated with that implementation, they were no different in kind or extent from the hard work all railroads have endured implementing PTC and fine-tuning the various operational aspects of PTC, such as delays by vendors in releasing the original software and software updates, defects found in the host company's software, the various challenges of integrating, testing and validating vendor software and interoperability between the host and tenant railroad software.[62]

93. To the extent Metra is suggesting that forcing a shift in dispatching authority would simplify Metra's own PTC implementation, that is not correct. First of all, the work of integrating TMDS into CP's dispatching systems is already substantially complete. In addition,

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[62] CP and Metra were far from the only rail companies to experience these problems. *See* United States Government Accountability Office, Positive Train Control: As Implementation Progresses, Focus Turns to the Complexities of Achieving System Interoperability (July 31, 2019), available at https://www.gao.gov/assets/gao-19-693t.pdf.

no matter who has "control" of dispatching, CP freight trains controlled by PTC would still need to transition safely between CP-owned and dispatched trackage (where CP deploys CTC, OCS and TGBO dispatching software) and Metra-owned (and Metra-dispatched were the Board to force a shift) trackage where Metra's TMDS system would need to accommodate safe and efficient handoffs. Maintaining a safe and efficient PTC system that accommodates handoffs and shared use of trackage by multiple railroads is intrinsically burdensome, and Metra dispatching would not make these issues go away.

Walker R.V.S. at 52

VERIFICATION

I, Nicholas C. Walker, declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this statement.

Executed on this 12th day of July, 2022.

Nicholas C. Walker
Vice-President Operations Western Region
Canadian Pacific Railway Limited

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36500

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

WALKER R.V.S. EXHIBIT 1

METRA, OBJECTIONS AND RESPONSES TO APPLICANTS' FIRST REQUESTS AT 6-9, 14-16 (APR. 11, 2022)

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

OBJECTIONS AND RESPONES BY COMMUTER RAIL DIVISION OF THE REGIONAL TRANSPORTATION AUTHORITY D/B/A METRA TO INTERROGATORIES, REQUESTS FOR PRODUCTION OF DOCUMENTS, AND REQUESTS FOR ADMISSION FORM APPLICANTS CANADIAN PACIFIC RAILWAY LIMITED, *ET AL.*

The Commuter Rail Division of the Regional Transportation Authority d/b/a Metra ("Metra"), by and through counsel, hereby responds and objects as follows to the First Set of Interrogatories, Requests for Production of Documents, and Requests for Admission served March 25, 2022 ("Discovery Requests"), submitted by 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").

GENERAL OBJECTIONS

Each and every one of Metra's responses to the Discovery Requests is subject to and incorporates the following general objections, as applicable. These objections are set forth here to avoid the duplication and repetition of restating them for each request. Some general objections may be referred to in a given answer for purposes of clarity. The failure to list a particular general objection in a given answer should not be construed as a waiver of that objection.

1. Metra objects to these Discovery Requests to the extent that they call for the disclosure of information protected by the attorney-client privilege, the common-interest privilege, or other privilege and/or the right of privacy.

2. Metra objects to these Discovery Requests to the extent that they call for the disclosure of information protected by the attorney work-product privilege.

3. Metra objects to these Discovery Requests to the extent that they impose any obligations on Metra beyond those imposed by the Code of Federal Regulations, the United States Code, or order of the Surface Transportation Board ("STB").

4. Metra objects to these Discovery Requests to the extent that they call for information that neither is relevant to the subject matter of the pending proceedings, nor appears reasonably calculated to lead to the discovery of admissible evidence. The issue before the STB as relevant to Metra is whether Applicants' proposed merger is in the public interest. Discovery regarding other matters is not relevant to this matter and is not likely to be reasonably calculated to lead to the discovery of admissible evidence.

5. Metra objects to these Discovery Requests to the extent that they request information that is publicly available, or that either previously originated from or was received by Applicants on the basis that such a request serves only to annoy the party burdened with producing the documents.

6. Metra objects to these Discovery Requests to the extent that they are unduly burdensome, and the time and effort required to attempt to compile all responsive information or documents outweighs the potential discoverability or probative value thereof.

7. Metra objects to these Discovery Requests to the extent that they are designed to cause undue annoyance, harassment, or oppression.

8. Metra objects to these Discovery Requests to the extent that they are overly broad with respect to scope, context, and/or time period.

9. Metra objects to these Discovery Requests to the extent that they are vague, indefinite, or ambiguous, and as such would require Metra to speculate as to the meaning or scope of the discovery request and potentially responsive information.

10. Notwithstanding these objections, Metra's responses to these Discovery Requests are based upon a diligent search by Metra and its counsel. Discovery and other investigation and research concerning these proceedings are continuing. Metra, therefore, reserves the right to amend or supplement its responses at any time in light of deposition testimony, further investigation, research, or analysis, to the extent permitted or required by law, and to introduce any and all evidence in these proceedings.

RESPONSES TO INTERROGATORIES

Interrogatory No. 1:

Describe Metra's dispatching practices for any line for which it dispatches both commuter and freight trains, including but not limited to (i) whether Metra's dispatchers on such lines are available 24 hours a day to dispatch freight trains overnight, (ii) how many freight trains a day Metra dispatches on such lines, (iii) Metra's dispatchers' interaction process with other Class I railroads that have dispatching authority over adjacent or nearby subdivisions, and (v) which subdivisions Metra's dispatchers monitor and factor into their dispatching decisions.

Response to Interrogatory No. 1:

Metra specifically objects to this request on the basis that it is unduly burdensome and not proportional to the scope of the issues raised in this proceeding, and to the extent that it requests information that is not in Metra's possession or would be unduly burdensome for Metra to produce.

Subject to and without waiving the above General Objections and specific objections raised, Metra responds by stating that its dispatchers currently dispatch both passenger and freight trains on the Metra's Rock Island Line and portions of the Southwest Service Line. In addition, Metra's dispatchers working under the supervision of CP's dispatching control station dispatch freight train traffic operating on Metra's MD-W and MD-N on CN's Waukesha Subdivision where it crosses MD-W. Metra's dispatchers on these lines are available 24 hours a day to dispatch freight trains overnight.

On Metra's Rock Island Line, Metra dispatches approximately four daily freight trains—two CSX trains and two Iowa Interstate trains. Metra's dispatching of this line also requires it to

handle approximately 8-10 daily freight train crossings at the Canadian National Railway's Leighton Subdivision crossing east of Joliet.

On Metra's Southwest Service Line, Metra dispatches one Norfolk Southern train along the entire length of the line, as well as approximately 8 daily Norfolk Southern freight trains on this line between a connection at 59th Street and a connection with the BRC at 74th Street, and between 4 and 8 daily trains on another segment between Chicago Ridge and Landers. Metra's dispatchers are also involved in handling approximately 20 daily trains on 5 crossings along the segment between 59th Street and 74th Street.

On Metra's MD-N Line at Control Tower A5, Metra's dispatchers control dispatching under supervision and authority of CP's dispatching center and dispatch all freight and passenger traffic crossing that tower for both CP's C&M and Elgin Subdivisions. On Metra's MD-W Line at Control Tower B12, Metra's dispatchers control dispatching under supervision and authority of CP's dispatching center and dispatch all freight and passenger traffic crossing that tower for CP's Elgin Subdivision as well as the Galewood East and Cicero West (connection with Belt Railway Company of Chicago ("BRC")) Control Points. Under CP dispatcher authority, they also control movements in and out of the east end of Bensenville Yard through the Control Point Franklin Park West, as well as movements to and from the Indiana Harbor Belt Railway at the Control Point Edgington.

Interrogatory No. 2:

Identify which railroad's freight trains are purportedly obstructing Metra's trains in the social media posts in Figure 4 of Metra's Comments and Request for Conditions filed on March

15, 2022, and the direction of travel and track on which the depicted Metra and freight trains were operating. Produce all Documents in support of that identification.

Response to Interrogatory No. 2:

Metra specifically objects to this request on the basis that it requests information that is not in Metra's possession or would require Metra to conduct unduly burdensome additional research.

Subject to and without waiving the above General Objections and specific objections raised, Metra responds by stating that Metra does not possess this information.

Interrogatory No. 3:

Describe in detail each instance in which Greg Godfrey and his staff allegedly "witnessed CP dispatchers who [were] able to prioritize or avoid delay to Metra being directly told by senior management to move CP trains, regardless of the impact on the network" and that "sometimes Metra train dispatchers are even forced and required by CP to follow these instructions to display signals for freight trains ahead of Metra trains" as asserted on page six of the Verified Statement of Greg Godfrey (Exhibit E to Metra's Comments and Request for Conditions filed on March 15, 2022) and, for each such instance, identify (i) the date and time it occurred and (ii) the Metra employees, the CP dispatchers and the CP senior management personnel who were allegedly involved.

Response to Interrogatory No. 3:

Metra specifically objects to this request on the basis that it is unduly burdensome and not proportional to the scope of the issues raised in this proceeding, and to the extent that it

requests information that Metra has already provided to Applicants, that is not in Metra's possession, or would be unduly burdensome for Metra to produce.

Subject to and without waiving the above General Objections and specific objections raised, Metra responds by stating that it has already produced this information. These instances are discussed in detail in the documents already provided to Applicants attached to Metra's Comments. *See*, *e.g.*, METR-7, Ex. B-2 at 204, 252-53, 256, 291, 331.

Interrogatory No. 4:

Identify the "daily operations decisions" that CP dispatchers make which "clearly favor their freight operations, both in and outside of the peak-periods" as asserted on page 10 of the Verified Statement of Richard P. Oppenheim (Exhibit B to Metra's Comments and Request for Conditions filed on March 15, 2022), including but not limited to specific examples and the dates and times of those actions.

Response to Interrogatory No. 4:

Metra specifically objects to this request on the basis that it is unduly burdensome and not proportional to the scope of the issues raised in this proceeding, and to the extent that it requests information that Metra has already provided to Applicants, that is not in Metra's possession, or would be unduly burdensome for Metra to produce.

Subject to and without waiving the above General Objections and specific objections raised, Metra responds by stating it has already provided this information to Applicants. This is discussed in the documents already provided to Applicants attached to Metra's Comments. *See*, *e.g.*, METR-7, Ex. B at 11-12; *id*. Ex. B-2 at 1-333. Further information regarding specific

examples with dates and times is also provided in the additional documentation produced in response to Applicants' Request for Production No. 4, below.

Interrogatory No. 5.:

Explain in detail how CP "could schedule night service to avoid interference with Metra's trains" as asserted on page 10 of the Verified Statement of Richard P. Oppenheim (Exhibit B to Metra's Comments and Request for Conditions filed on March 15, 2022), including but not limited to how such a practice would work under current operating procedures.

Response to Interrogatory No. 5:

Metra specifically objects to this request on the basis that it is unduly burdensome and not proportional to the scope of the issues raised in this proceeding, and to the extent that it requests information that Metra has already provided to Applicants, that is not in Metra's possession, or would be unduly burdensome for Metra to produce.

Subject to and without waiving the above General Objections and specific objections raised, Metra responds by stating that, as discussed in Metra's Comments, Metra operates dozens of passenger trains on MD-W and MD-N. None of Metra's inbound trains operate scheduled service for over seven hours between 9:45 pm and 4:52 am during the week, and none of its outbound trains operate scheduled service for over six hours between 12:05 am and 6:21 am during the week. *See* https://schedules.metrarail.com/pdf/alternative/MD-W.pdf and https://schedules.metrarail.com/pdf/alternative/MD-N.pdf. These windows, which are similar during the weekend, constitute a significant proportion of time available for freight movements that are not appropriate for passenger service. Typically, the only CP freight train that operates

during this night-time window on the C&M Sub is a 471 (now relabeled 255) train. On the Elgin Subdivision, sporadic movements between Bensenville Yard and the BRC connection at Cicero West could easily be augmented with additional freight traffic. The rest of CP's freight trains regularly operate during the times when Metra trains also operate.

Interrogatory No. 6:

Describe in detail each instance in which CP dispatchers have allegedly "ignored or disabled the hot line, leaving [Mr. Oppenheim] and [his] staff without expeditious recourse when CP dispatching decisions are either the cause of CP-related issues on Metra's lines or CP-related issues could be resolved or mitigated through dispatching" as asserted on page 17 of the Verified Statement of Richard P. Oppenheim (Exhibit B to Metra's Comments and Request for Conditions filed on March 15, 2022) and, for each such instance, identify (i) the date and time it occurred and (ii) the Metra employees and CP employees who were allegedly involved.

Response to Interrogatory No. 6:

Metra specifically objects to this request on the basis that it is unduly burdensome and not proportional to the scope of the issues raised in this proceeding, and to the extent that it requests information that Metra has already provided to Applicants, that is not in Metra's possession, or would be unduly burdensome for Metra to produce.

Subject to and without waiving the above General Objections and specific objections raised, Metra responds by stating that Metra has already provided this information to Applicants. This is discussed in detail in the documents already provided to Applicants attached to Metra's Comments. *See*, *e.g.*, METR-7, Ex. B-2 at 29, 252-54.

Interrogatory No. 7:

Describe in detail each instance in which CP's dispatchers have allegedly "require[d] passengers to cross tracks unnecessarily, dodge on-coming freight trains, or circumnavigate idling freight trains at Metra stations" as asserted on page 25 of Metra's Comments and Request for Conditions filed on March 15, 2022, and identify the date and time of each such instance.

Response to Interrogatory No. 7:

Metra specifically objects to this request on the basis that it is unduly burdensome and not proportional to the scope of the issues raised in this proceeding, and to the extent that it requests information that Metra has already provided to Applicants, that is not in Metra's possession, or would be unduly burdensome for Metra to produce.

Subject to and without waiving the above General Objections and specific objections raised, Metra responds by stating that Metra has already produced this information to Applicants. CP dispatchers create this dangerous and inconvenient situation on a constant basis in the process of rerouting Metra trains around or past freight trains. This occurs often and Metra does not have a specific count of the times it has occurred. However, Metra has documented a number of these events, which are discussed in detail in the documents already provided to Applicants attached to Metra's Comments. *See*, *e.g.*, METR-7, Ex. B-2 at 21, 28, 34, 41, 48, 54, 55, 56, 57, 58, 59, 62, 65, 75, 78, 85, 86, 95, 115, 131, 139, 140, 141, 147, 160, 220, 231, 233, 235, 238, 239, 293, 295, 299, 301, 308, 312, 314, 317, 328, 332.

Interrogatory No. 8:

Describe in detail each instance in which CP has allegedly "demonstrated a lack of regard for constrains on its operating and dispatching authority for the MD-W and MD-N" as asserted on page 79 of Metra's Comments and Request for Conditions filed on March 15, 2022 and, for each such instance, identify (i) the date and time it occurred and (ii) the Metra employees and CP employees who were allegedly involved.

Response to Interrogatory No. 8:

Metra specifically objects to this request on the basis that it is unduly burdensome and not proportional to the scope of the issues raised in this proceeding, and to the extent that it requests information that Metra has already provided to Applicants, that is not in Metra's possession, or would be unduly burdensome for Metra to produce.

Subject to and without waiving the above General Objections and specific objections raised, Metra responds by stating this is discussed in detail in the documents already provided to Applicants attached to Metra's Comments. *See*, *e.g.*, METR-7, Verified Statement of Richard Oppenheim, Ex. B at 11-12; *id*. Ex. B-2 at 1-333. Further information regarding specific examples with dates and times is also provided in the additional documentation produced in response to Applicants' Request for Production No. 4, below.

Interrogatory No. 9:

For the period from January 1, 2016 until February 28, 2022, describe in detail each instance in which CP has "dispatche[d] Metra trains on different main line tracks from the ones that Metra has identified for use by its passengers heading in a specified direction" as asserted on

page 27 of Metra's Comments and Request for Conditions filed on March 15, 2022, and, for each such instance, identify (i) the date and time it occurred and (ii) the reason it occurred.

Response to Interrogatory No. 9:

Metra specifically objects to this request on the basis that it is unduly burdensome and not proportional to the scope of the issues raised in this proceeding, and to the extent that it requests information that Metra has already provided to Applicants, that is not in Metra's possession, or would be unduly burdensome for Metra to produce.

Subject to and without waiving the above General Objections and specific objections raised, Metra responds by stating that CP dispatchers dispatch Metra trains on different main line tracks from the ones that Metra has identified for use by its passengers heading in a specified direction on a constant basis in the process of rerouting Metra trains around or past freight trains. This occurs often and Metra does not have a specific count of the times it has occurred. However, Metra has documented a number of these events, which are discussed in detail in the documents already provided to Applicants attached to Metra's Comments. *See*, *e.g.*, METR-7, Ex. B-2 at 21, 28, 34, 41, 48, 54, 55, 56, 57, 58, 59, 62, 65, 75, 78, 85, 86, 95, 115, 131, 139, 140, 141, 147, 160, 220, 231, 233, 235, 238, 239, 293, 295, 299, 301, 308, 312, 314, 317, 328, 332.

RESPONSES TO REQUESTS FOR PRODUCTION

Request No. 1:

Please produce the workpaper titled "GG-CP-Analysis-FINAL-3-15-2022 MDDATA" in Excel (or other) native format.

Response to Request No. 1:

Metra specifically objects to this request on the basis that it is unduly burdensome and not proportional to the scope of the issues raised in this proceeding, and to the extent that it requests information that Metra has already provided to Applicants, that is not in Metra's possession, or would be unduly burdensome for Metra to produce.

Subject to and without waiving the above General Objections and specific objections raised, Metra responds by stating that Metra will produce this document in native format in its virtual document room.

Request No. 2.

Produce data showing 100% of the trains operated on the lines and for the periods covered in the workpaper titled "GG-CP-Analysis-FINAL-3-15-2022 MDDATA".

Response to Request No. 2:

Metra specifically objects to this request on the basis that it is overly broad, unduly burdensome, and not proportional to the scope of the issues raised in this proceeding. Metra also objects on the basis to the extent that this request requires Metra to conduct a special study to obtain this data.

Subject to and without waiving the above General Objections and specific objections raised, Metra responds by stating that it has already produced data for "100% of the trains operated on the lines" within the parameters and purposes for which the data was used, i.e. Metra trains delayed due to CP's dispatching and operations.

Request No. 3:

Produce all Documents providing support for the assertions made on page six of the Verified Statement of Greg Godfrey (Exhibit E to Metra's Comments and Request for Conditions filed on March 15, 2022) that "[o]n a number of recent occasions [Godfrey's] staff and [he] have witnessed CP dispatchers who are able to prioritize or avoid delay to Metra being directly told by senior management to move CP trains, regardless of the impact on the network" and that "sometimes Metra train dispatchers are even forced and required by CP to follow these instructions to display signals for freight trains ahead of Metra trains."

Response to Request No. 3:

Metra specifically objects to this request on the basis that it is unduly burdensome and not proportional to the scope of the issues raised in this proceeding, and to the extent that it requests information that Metra has already provided to Applicants, that is not in Metra's possession, or would be unduly burdensome for Metra to produce.

Subject to and without waiving the above General Objections and specific objections raised, Metra responds by stating that Metra has already produced the documents requested. *See* METR-7, Exs. B-2 and B-3.

Request No. 4:

Produce all Documents providing support for the assertion made on page 10 of the Verified Statement of Richard P. Oppenheim (Exhibit B to Metra's Comments and Request for Conditions filed on March 15, 2022) that "CP dispatchers make daily operations decisions which clearly favor their freight operations, both in and outside of the peak-periods."

Response to Request No. 4:

Metra specifically objects to this request on the basis that it is unduly burdensome and not proportional to the scope of the issues raised in this proceeding, and to the extent that it requests information that Metra has already provided to Applicants, that is not in Metra's possession, or would be unduly burdensome for Metra to produce.

Subject to and without waiving the above General Objections and specific objections raised, Metra responds by stating that Metra has already produced the documents requested. *See* METR-7, Exs. B-2 and B-3; *id.*, Ex. D-1. In addition, Metra is producing additional documents documenting details regarding specific occurrences in its virtual document room.

Request No. 5:

Produce all Documents providing support for the assertion made on page 10 of the Verified Statement of Richard P. Oppenheim (Exhibit B to Metra's Comments and Request for Conditions filed on March 15, 2022) that CP "could schedule night service to avoid interference with Metra's trains."

Response to Request No. 5:

Metra specifically objects to this request on the basis that it is unduly burdensome and not proportional to the scope of the issues raised in this proceeding, and to the extent that it requests information that Metra has already provided to Applicants, that is not in Metra's possession, or would be unduly burdensome for Metra to produce.

Subject to and without waiving the above General Objections and specific objections raised, Metra responds by stating that the Documents that Metra possesses supporting this

statement are already publicly available. *See* https://schedules.metrarail.com/pdf/alternative/MD-W.pdf and https://schedules.metrarail.com/pdf/alternative/MD-N.pdf.

Request No. 6:

Produce all Documents providing support for the assertion made on page 17 of the Verified Statement of Richard P. Oppenheim (Exhibit B to Metra's Comments and Request for Conditions filed on March 15, 2022) that "CP dispatchers have at times ignored or disabled the hot line, leaving [Mr. Oppenheim] and [his] staff without expeditious recourse when CP dispatching decisions are either the cause of CP-related issues on Metra's lines or CP-related issues could be resolved or mitigated through dispatching."

Response to Request No. 6:

Metra specifically objects to this request on the basis that it is unduly burdensome and not proportional to the scope of the issues raised in this proceeding, and to the extent that it requests information that Metra has already provided to Applicants, that is not in Metra's possession, or would be unduly burdensome for Metra to produce.

Subject to and without waiving the above General Objections and specific objections raised, Metra responds by stating that Metra has already produced the documents requested. *See*, *e.g.*, METR-7, Ex. B-2 at 29, 252-54.

Request No. 7:

Produce all Documents providing support for the assertion made on page 19 of Metra's Comments and Request for Conditions filed on March 15, 2022, that Metra encounters "regular interference" during peak periods.

Response to Request No. 7:

Metra specifically objects to this request on the basis that it is unduly burdensome and not proportional to the scope of the issues raised in this proceeding, and to the extent that it requests information that Metra has already provided to Applicants, that is not in Metra's possession, or would be unduly burdensome for Metra to produce.

Subject to and without waiving the above General Objections and specific objections raised, Metra responds by stating that Metra has already produced the documents requested. *See* METR-7, Exs. B-2 and B-3; *id.*, Ex. D-1. *See also* the additional documentation provided in response to Request No. 4.

Request No. 8:

Produce all Documents providing support for the assertion made on page 25 of Metra's Comments and Request for Conditions filed on March 15, 2022, that "CP's dispatching decisions too often require passengers to cross tracks unnecessarily, dodge on-coming freight trains, or circumnavigate idling freight trains at Metra stations."

Response to Request No. 8:

Metra specifically objects to this request on the basis that it is unduly burdensome and not proportional to the scope of the issues raised in this proceeding, and to the extent that it requests information that Metra has already provided to Applicants, that is not in Metra's possession, or would be unduly burdensome for Metra to produce.

Subject to and without waiving the above General Objections and specific objections raised, Metra responds by stating that it has already provided this information to Applicants. This

occurs often and Metra does not have a specific count of the times it has occurred. However, Metra has documented a number of these events, which are discussed in detail in the documents already provided to Applicants attached to Metra's Comments. *See*, *e.g.*, METR-7, Ex. B-2 at 21, 28, 34, 41, 48, 54, 55, 56, 57, 58, 59, 62, 65, 75, 78, 85, 86, 95, 115, 131, 139, 140, 141, 147, 160, 220, 231, 233, 235, 238, 239, 293, 295, 299, 301, 308, 312, 314, 317, 328, 332.

Request No. 9:

Produce all Documents providing support for the assertion made on page 79 of Metra's Comments and Request for Conditions filed on March 15, 2022, that "CP has in the past demonstrated a lack of regard for constraints on its operating and dispatching authority for the MD-W and MD-N."

Response to Request No. 9:

Metra specifically objects to this request on the basis that it is unduly burdensome and not proportional to the scope of the issues raised in this proceeding, and to the extent that it requests information that Metra has already provided to Applicants, that is not in Metra's possession, or would be unduly burdensome for Metra to produce.

Subject to and without waiving the above General Objections and specific objections raised, Metra responds by stating that Metra has already produced the documents requested. METR-7, Exs. B-2 and B-3; *id.*, Ex. D-1. *See also* the additional documentation provided in response to Request No. 4.

Request No. 10:

Produce all Documents providing support for the assertion made on page 27 of Metra's Comments and Request for Conditions filed on March 15, 2022, that "CP regularly dispatches Metra trains on different main line tracks from the ones that Metra has identified for use by its passengers heading in a specified direction."

Response to Request No. 10:

Metra specifically objects to this request on the basis that it is unduly burdensome and not proportional to the scope of the issues raised in this proceeding, and to the extent that it requests information that Metra has already provided to Applicants, that is not in Metra's possession, or would be unduly burdensome for Metra to produce.

Subject to and without waiving the above General Objections and specific objections raised, Metra responds by stating that it has already provided this information. This occurs often and Metra does not have a specific count of the times it has occurred. However, Metra has documented a number of these events, which are discussed in detail in the documents already provided to Applicants attached to Metra's Comments. *See*, *e.g.*, METR-7, Ex. B-2 at 21, 28, 34, 41, 48, 54, 55, 56, 57, 58, 59, 62, 65, 75, 78, 85, 86, 95, 115, 131, 139, 140, 141, 147, 160, 220, 231, 233, 235, 238, 239, 293, 295, 299, 301, 308, 312, 314, 317, 328, 332.

Request No. 11:

Produce all Documents relating to any proceeding before the Interstate Commerce Commission or the Surface Transportation Board concerning Metra's acquisition of ownership of the MD-W Line.

Response to Request No. 11:

Metra specifically objects to this request on the basis that the word "concerning" is vague, indefinite and ambiguous. Additionally, Metra objects on the basis that this request is unduly burdensome and not proportional to the scope of the issues raised in this proceeding, and to the extent that it requests information that Metra has already provided to Applicants, that is not in Metra's possession, or would be unduly burdensome for Metra to produce when it is already readily available to Applicants through publicly accessible means.

Subject to and without waiving the above General Objections and specific objections raised, Metra responds by stating that Metra has no Documents responsive to this request.

Request No. 12:

Produce all Documents reflecting the transfer of ownership of the MD-W Line to Metra.

Response to Request No: 12:

Metra specifically objects to this request on the basis that it is unduly burdensome and not proportional to the scope of the issues raised in this proceeding, and to the extent that it requests information that Metra has already provided to Applicants, that is not in Metra's possession, or would be unduly burdensome for Metra to produce.

Subject to and without waiving the above General Objections and specific objections raised, Metra responds by stating that Metra is producing responsive documents in its virtual document room.

Request No. 13:

Produce all Documents studying, analyzing, discussing, or reflecting CP's common carrier obligations with respect to the MD-W Line.

Response to Request No. 13:

Metra specifically objects to this request on the basis that it is unduly burdensome and not proportional to the scope of the issues raised in this proceeding, and to the extent that it requests information that Metra has already provided to Applicants, that is not in Metra's possession, or would be unduly burdensome for Metra to produce.

Subject to and without waiving the above General Objections and specific objections raised, Metra responds by stating that Metra has no Documents responsive to this request.

RESPONSES TO APPLICANTS' REQUESTS FOR ADMISSION

Request for Admission No. 1:

Admit or deny that Metra is not a freight common carrier with respect to any part of the MD-W Line.

Response to Request for Admission No. 1:

Admit.

Request for Admission No. 2:

Admit or deny that CP is a freight common carrier possessing a common carrier obligation with respect to the MD-W Line.

Response to Request for Admission No. 2:

Metra objects on the basis that responding to this request requires Metra to reach a legal conclusion. Subject to this objection and without waiving its right to respond further regarding this request, Metra admits.

Request for Admission No. 3:

Admit or deny that CP is the only freight common carrier with the right to operate its locomotives over the MD-W Line.

Response to Request for Admission No. 3:

Deny.

Request for Admission No. 4:

Admit or deny that the rights that CP possesses under its agreements with Metra governing CP's operations over the MD-W Line support CP's discharge of its common carrier obligations with respect to the MD-W Line.

Response to Request for Admission No. 4:

Admit.

Respectfully Submitted,

COMMUTER RAIL DIVISION OF THE
REGIONAL TRANSPORTATION
AUTHORTIY D/B/A/ METRA
By Counsel

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Date: April 11, 2022

CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of April, 2022, I caused the foregoing Response to Applicants' Interrogatories, Requests for Production of Documents, and Requests for Admission by Metra to be served on the following parties and upon all parties of record in this proceeding.

Charles A. Spitulnik

The Secretary of the U.S. Department of Transportation
1200 New Jersey Avenue, S.E.
Washington, DC 20590

Brad Chase
1001 Sherwin Road
Winnipeg, MB R3H 0T8
Canada

Timothy O. Nugent
98 East Third Street
Manteno, IL 60950

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36500

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

WALKER R.V.S. EXHIBIT 2

METRA, "ON-TIME PERFORMANCE - DECEMBER 2021" (EXCERPTS)

On-Time Performance

December 2021

Metra

Prepared by the Division of Strategic Planning & Performance

On-Time Performance
December 2021

This report presents an analysis of December 2021 train delays as reported for Metra's eleven rail lines. On-time is defined, for this analysis, as those regularly scheduled trains arriving at their last station stop less than six minutes behind schedule. Trains that are six minutes or more behind schedule, including annulled trains (trains that do not complete their scheduled runs), are regarded as late. “Extra” trains (trains added to handle special events but not shown in the regularly published timetables) are excluded from on-time performance calculations unless shown in special-event schedules that include all intermediate station stop times and are distributed publicly via Metra's website or on paper flyers. Cancelled (not annulled) trains and non-revenue trains are also excluded from on-time performance calculations.

On-Time Performance Tables

Table 1 shows the total number of scheduled and delayed trains for each line by service period for the current month and year-to-date.

Table 2 lists on-time percentages by line for each month and year since 2016.

Table 3 lists each weekday train that was less than 85% on-time for the current month, in order of line, train, and dates delayed. The codes in the *Delay Code* column of Table 3 are defined and shown sorted by cause category and carrier designation in Table 4. Effective January 1, 2020, and November 1, 2021, Metra is using an updated set of delay codes and delay cause categories. Changes to the delay cause categories used for Tables 5 through 7 have been applied retroactively to prior year data; totals by cause category for prior years may not match what was previously reported.

Table 5 shows the number of delays by cause and line for the current month, including a 5-year average. The table highlights the top two delay causes for each line.

Table 6 shows the number of delays by cause and line for year-to-date, including a 5-year average. The table highlights the top two delay causes for each line.

Table 7 shows the number of delays by cause and month for the current year and prior year. The table highlights the top two delay causes for each month.

For Tables 5 through 7, delays by cause are separated into *Metra/PSA* and *Foreign* designations, where applicable. *Metra/PSA* refers to delays that may be directly or indirectly attributed to Metra or Metra Purchase of Service Agreement partners (BNSF and UP) in commuter rail operation. *Foreign* refers to delays that may be directly or indirectly attributed to other carriers, including freight carriers, Amtrak, and NICTD, that affect Metra trains. *Foreign* also includes delays attributable to BNSF and Union Pacific freight operations. See Table 4 for a detailed breakdown of delay codes by cause category and carrier designation.

Table 8 shows the number of delays by duration and service period for each line.

Table 9 shows the annual number of train delays and annual on-time performance by line for the past five years. Table 9 is only included in the December monthly report.

Table 10 shows the annual number of train delays by cause and line for the past five years. Table 10 is only included in the December monthly report.

Reporting Calculations for Temporary Schedules and Special Events

Planned construction projects or special events can adversely affect on-time performance. Metra occasionally publishes full temporary schedules, which supersede the standard published schedules, to inform riders of possible delays or modifications to regular service. Metra also may publish informational notices to accompany temporary schedules. On-time performance is calculated using the temporary schedules and any accompanying notices.

Alternate Service Schedules due to the Coronavirus (COVID-19) Pandemic

On Monday, March 23, 2020, Metra began operating alternate weekday schedules on all lines, except the Heritage Corridor (HC), to adjust for the reduced number of riders due to school closures, work-from-home mandates and other consequences of the coronavirus pandemic. Through the month of April Metra continued to operate regularly scheduled weekday service on the HC Line as well as normal weekend service. On May 4 Metra reduced weekday service on the HC, North Central Service (NCS) and SouthWest Service (SWS) lines, and on May 9 reduced Saturday service to Sunday service levels on all lines except the Metra Electric (ME), thus eliminating all SWS Saturday service. Metra increased weekday service on the ME on May 18 as required for implementation of the Positive Train Control (PTC) safety system on that line. Metra increased weekday service on the RI on June 15 and on the HC, NCS and SWS on June 29. As of July 4, Metra decreased Saturday service on the ME to match Sunday service, thus eliminating Saturday service on the ME Blue Island Branch. Beginning August 3, Metra added two weekday BNSF trains and four weekday RI trains. Metra added four weekday UP-N trains and six weekday UP-NW trains on November 2.

On January 11, 2021, Metra added two weekday MD-N trains and four weekday MD-W trains, and on February 1 added 10 weekday RI trains. Metra added four weekday BNSF and MD-N trains and two NCS trains on April 12. Metra added four weekday ME trains on May 10, four Saturday ME trains on May 15 and four Sunday ME trains on May 16. On May 29 Metra restored Saturday service on the BNSF, MD-N, MD-W, RI, UP-N, UP-NW, and UP-W lines, resulting in an increase of 46 Saturday revenue trains systemwide.

In July, Metra launched pilot schedules on the BNSF, ME and UP-N (July 12), and the RI (July 19) that added off-peak options to meet post-COVID needs for riders. Metra also implemented minor weekday peak-period service increases on all other lines and restored ME Saturday service effective July 12. These changes resulted in an increase of 148 weekday trains and 38 Saturday trains systemwide in July. Schedule adjustments on September 13 resulted two fewer weekday trains on both the UP-N and UP-W. A schedule adjustment on November 15 resulted in eight fewer weekday BNSF trains. There were no schedule adjustments in December.

Under these pilot and alternate schedules Metra operated 558 regularly scheduled revenue trains each weekday in December, which is a 19 percent reduction from Metra's pre-pandemic weekday service of 692 scheduled revenue trains. Metra operated 269 regularly scheduled revenue trains each Saturday in December, which is a one percent reduction from the 273 Saturday trains Metra operated pre-pandemic. Metra operated 185 regularly scheduled revenue trains each Sunday in December, which is a two percent increase from the 181 Sunday revenue trains Metra operated pre-pandemic. As a result of the changes under these alternative and pilot schedules, Metra operated about 16 percent fewer total revenue trains in December 2021 than in December 2019, but about 36 percent more total revenue trains than in December 2020.

Metra has developed a set of service restoration principles to guide schedule design as service is added back. These principles will help Metra meet the needs of riders as travel demand approaches a new normal. Metra will continue to monitor ridership and will add service back incrementally throughout the system to stay ahead of the ridership growth curve and ensure that adequate service is in place to provide social distancing and encourage ridership.

Table 1.a: Scheduled Trains, Delayed Trains, and On-Time Performance by Service Period and Line
December 2021

	Weekdays									Weekends						Total		
	Peak*			Off-Peak**			Total			Saturdays			Sundays & Holidays					
	Trains Scheduled	Trains Late	Percent On-Time	Trains Scheduled	Trains Late	Percent On-Time	Trains Scheduled	Trains Late	Percent On-Time	Trains Scheduled	Trains Late	Percent On-Time	Trains Scheduled	Trains Late	Percent On-Time	Trains Scheduled	Trains Late	Percent On-Time
BNSF	861	1	99.9%	945	11	98.8%	1,806	12	99.3%	150	5	96.7%	100	3	97.0%	2,056	20	99.0%
ME-ML	483	10	97.9%	882	16	98.2%	1,365	26	98.1%	210	4	98.1%	121	1	99.2%	1,696	31	98.2%
ME-BI	147	6	95.9%	231	4	98.3%	378	10	97.4%	40	0	100.0%		--		418	10	97.6%
ME-SC	231	10	95.7%	651	18	97.2%	882	28	96.8%	160	4	97.5%	100	0	100.0%	1,142	32	97.2%
Subtotal	861	26	97.0%	1,764	38	97.8%	2,625	64	97.6%	410	8	98.0%	221	1	99.5%	3,256	73	97.8%
HC	105	11	89.5%	21	3	85.7%	126	14	88.9%		--			--		126	14	88.9%
MD-N	378	24	93.7%	420	14	96.7%	798	38	95.2%	100	12	88.0%	90	9	90.0%	988	59	94.0%
MD-W	399	26	93.5%	441	22	95.0%	840	48	94.3%	120	18	85.0%	90	10	88.9%	1,050	76	92.8%
Subtotal	777	50	93.6%	861	36	95.8%	1,638	86	94.7%	220	30	86.4%	180	19	89.4%	2,038	135	93.4%
NCS	168	12	92.9%	84	6	92.9%	252	18	92.9%		--			--		252	18	92.9%
RI	651	9	98.6%	1,029	30	97.1%	1,680	39	97.7%	165	2	98.8%	140	9	93.6%	1,985	50	97.5%
SWS	189	18	90.5%	63	12	81.0%	252	30	88.1%		--			--		252	30	88.1%
UP-N	462	21	95.5%	1,092	56	94.9%	1,554	77	95.0%	130	1	99.2%	90	3	96.7%	1,774	81	95.4%
UP-NW	441	30	93.2%	504	24	95.2%	945	54	94.3%	170	4	97.6%	105	4	96.2%	1,220	62	94.9%
UP-W	336	27	92.0%	504	57	88.7%	840	84	90.0%	100	6	94.0%	90	12	86.7%	1,030	102	90.1%
Subtotal	1,239	78	93.7%	2,100	137	93.5%	3,339	215	93.6%	400	11	97.3%	285	19	93.3%	4,024	245	93.9%
System	4,851	205	95.8%	6,867	273	96.0%	11,718	478	95.9%	1,345	56	95.8%	926	51	94.5%	13,989	585	95.8%

*Includes peak direction trains operating during weekday peak periods. **Includes all other weekday trains.
Delays data for most recent month is final (01/14/2022) version from TOPS.

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36500

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

WALKER R.V.S. EXHIBIT 3

METRA, "ON-TIME PERFORMANCE - DECEMBER 2020" (EXCERPTS)

On-Time Performance

December 2020

Metra

Prepared by the Division of Strategic Planning & Performance

On-Time Performance
December 2020

This report presents an analysis of December 2020 train delays as reported for Metra's eleven rail lines. On-time is defined, for this analysis, as those regularly scheduled trains arriving at their last station stop less than six minutes behind schedule. Trains that are six minutes or more behind schedule, including annulled trains (trains that do not complete their scheduled runs), are regarded as late. "Extra" trains (trains added to handle special events but not shown in the regularly published timetables) are excluded from on-time performance calculations unless shown in special-event schedules that include all intermediate station stop times and are distributed publicly via Metra's website or on paper flyers. Cancelled (not annulled) trains and non-revenue trains are also excluded from on-time performance calculations.

On-Time Performance Tables

Table 1 shows the total number of scheduled and delayed trains for each line by service period for the current month and year-to-date.

Table 2 lists on-time percentages by line for each month and year since 2015.

Table 3 lists each weekday train that was less than 85% on-time for the current month, in order of line, train, and dates delayed. The codes in the *Delay Code* column of Table 3 are defined and shown sorted by cause category and carrier designation in Table 4. Effective January 1, 2020, Metra is using an updated set of delay codes and delay cause categories. Changes to the delay cause categories used for Tables 5 through 7 have been applied retroactively to prior year data; totals by cause category for prior years may not match what was previously reported.

Table 5 shows the number of delays by cause and line for the current month, including a 5-year average. The table highlights the top two delay causes for each line.

Table 6 shows the number of delays by cause and line for year-to-date, including a 5-year average. The table highlights the top two delay causes for each line.

Table 7 shows the number of delays by cause and month for the current year and prior year. The table highlights the top two delay causes for each month.

For Tables 5 through 7, delays by cause are separated into *Metra/PSA* and *Foreign* designations, where applicable. *Metra/PSA* refers to delays that may be directly or indirectly attributed to Metra or Metra Purchase of Service Agreement partners (BNSF and UP) in commuter rail operation. *Foreign* refers to delays that may be directly or indirectly attributed to other carriers, including freight carriers, Amtrak, and NICTD, that affect Metra trains. *Foreign* also includes delays attributable to BNSF and Union Pacific freight operations. See Table 4 for a detailed breakdown of delay codes by cause category and carrier designation.

Table 8 shows the number of delays by duration and service period for each line.

Table 9 shows the annual number of train delays and annual on-time performance by line for the past five years. Table 9 is only included in the December monthly report.

Table 10 shows the annual number of train delays by cause and line for the past five years. Table 10 is only included in the December monthly report.

Reporting Calculations for Temporary Schedules and Special Events

Planned construction projects or special events can adversely affect on-time performance. Metra occasionally publishes full temporary schedules, which supersede the standard published schedules, to inform riders of possible delays or modifications to regular service. Metra also may publish informational notices to accompany temporary schedules. On-time performance is calculated using the temporary schedules and any accompanying notices.

Alternate Service Schedules due to the Coronavirus (COVID-19) Pandemic

On Monday, March 23, Metra began operating alternate weekday schedules on all lines, except the Heritage Corridor (HC), to adjust for the reduced number of riders due to school closures, work-from-home mandates and other consequences of the coronavirus pandemic. Through the month of April Metra continued to operate regularly scheduled weekday service on the HC Line as well as normal weekend service. On May 4 Metra reduced weekday service on the HC, North Central Service (NCS) and SouthWest Service (SWS) lines, and on May 9 reduced Saturday service to Sunday service levels on all lines except the Metra Electric (ME), thus eliminating all SWS Saturday service. Metra increased weekday service on the ME on May 18 as required for implementation of the Positive Train Control (PTC) safety system on that line. Metra increased weekday service on the RI on June 15 and on the HC, NCS and SWS on June 29. As of July 4, Metra decreased Saturday service on the ME to match Sunday service, thus eliminating Saturday service on the ME Blue Island Branch. Beginning August 3, Metra added two weekday BNSF trains and four weekday RI trains. There was no change in the number of daily scheduled trains in September or October. Metra added four weekday UP-N trains and six weekday UP-NW trains on November 2. There was no change in the number of daily scheduled trains in December.

Under these alternate schedules, Metra operated 392 scheduled revenue trains each weekday in December, which is a 43 percent reduction from Metra's normal weekday service of 692 scheduled revenue trains. Metra operated 181 revenue trains each Saturday in December, which is a 34 percent reduction from the 273 Saturday trains Metra normally operates. There has been no change in the number of Sunday trains. As a result of these reductions under the alternative schedules, Metra operated about 39 percent fewer revenue trains in December 2020 than in December 2019. The reduced schedules will remain in effect until health officials deem the crisis has passed and/or ridership begins to return to normal. Metra will continue to monitor ridership and may adjust service levels on a line-by-line basis to meet the ridership demands.

Table 1.a: Scheduled Trains, Delayed Trains, and On-Time Performance by Service Period and Line
December 2020

	Weekdays									Weekends						Total		
	Peak*			Off-Peak**			Total			Saturdays			Sundays & Holidays					
	Trains Scheduled	Trains Late	Percent On-Time	Trains Scheduled	Trains Late	Percent On-Time	Trains Scheduled	Trains Late	Percent On-Time	Trains Scheduled	Trains Late	Percent On-Time	Trains Scheduled	Trains Late	Percent On-Time	Trains Scheduled	Trains Late	Percent On-Time
BNSF	528	5	99.1%	418	0	100.0%	946	5	99.5%	80	1	98.8%	100	0	100.0%	1,126	6	99.5%
ME-ML	440	4	99.1%	748	10	98.7%	1,188	14	98.8%	80	0	100.0%	100	0	100.0%	1,368	14	99.0%
ME-BI	154	0	100.0%	242	0	100.0%	396	0	100.0%		--			--		396	0	100.0%
ME-SC	242	4	98.3%	594	1	99.8%	836	5	99.4%	80	4	95.0%	100	1	99.0%	1,016	10	99.0%
Subtotal	836	8	99.0%	1,584	11	99.3%	2,420	19	99.2%	160	4	97.5%	200	1	99.5%	2,780	24	99.1%
HC	88	2	97.7%		--		88	2	97.7%		--			--		88	2	97.7%
MD-N	308	11	96.4%	308	20	93.5%	616	31	95.0%	72	6	91.7%	90	2	97.8%	778	39	95.0%
MD-W	286	20	93.0%	418	24	94.3%	704	44	93.8%	72	13	81.9%	90	9	90.0%	866	66	92.4%
Subtotal	594	31	94.8%	726	44	93.9%	1,320	75	94.3%	144	19	86.8%	180	11	93.9%	1,644	105	93.6%
NCS	88	4	95.5%		--		88	4	95.5%		--			--		88	4	95.5%
RI	330	10	97.0%	638	9	98.6%	968	19	98.0%	112	0	100.0%	140	0	100.0%	1,220	19	98.4%
SWS	154	4	97.4%	66	4	93.9%	220	8	96.4%		--			--		220	8	96.4%
UP-N	264	4	98.5%	616	3	99.5%	880	7	99.2%	72	2	97.2%	90	2	97.8%	1,042	11	98.9%
UP-NW	418	9	97.8%	528	2	99.6%	946	11	98.8%	84	1	98.8%	105	0	100.0%	1,135	12	98.9%
UP-W	264	20	92.4%	484	36	92.6%	748	56	92.5%	72	5	93.1%	90	0	100.0%	910	61	93.3%
Subtotal	946	33	96.5%	1,628	41	97.5%	2,574	74	97.1%	228	8	96.5%	285	2	99.3%	3,087	84	97.3%
System	3,564	97	97.3%	5,060	109	97.8%	8,624	206	97.6%	724	32	95.6%	905	14	98.5%	10,253	252	97.5%

*Includes peak direction trains operating during weekday peak periods. **Includes all other weekday trains.
Delays data for most recent month is final (01/15/2021) version from TOPS.

Table 1.b: Scheduled Trains, Delayed Trains, and On-Time Performance by Service Period and Line
January - December 2020

	Weekdays									Weekends						Total		
	Peak*			Off-Peak**			Total			Saturdays			Sundays & Holidays					
	Trains Scheduled	Trains Late	Percent On-Time	Trains Scheduled	Trains Late	Percent On-Time	Trains Scheduled	Trains Late	Percent On-Time	Trains Scheduled	Trains Late	Percent On-Time	Trains Scheduled	Trains Late	Percent On-Time	Trains Scheduled	Trains Late	Percent On-Time
BNSF	7,673	144	98.1%	6,077	115	98.1%	13,750	259	98.1%	1,216	45	96.3%	1,156	40	96.5%	16,122	344	97.9%
ME-ML	6,001	133	97.8%	8,976	240	97.3%	14,977	373	97.5%	1,538	56	96.4%	1,158	41	96.5%	17,673	470	97.3%
ME-BI	1,939	46	97.6%	2,772	36	98.7%	4,711	82	98.3%	240	11	95.4%	40	3	92.5%	4,991	96	98.1%
ME-SC	2,727	45	98.3%	7,007	106	98.5%	9,734	151	98.4%	1,338	39	97.1%	1,158	32	97.2%	12,230	222	98.2%
Subtotal	10,667	224	97.9%	18,755	382	98.0%	29,422	606	97.9%	3,116	106	96.6%	2,356	76	96.8%	34,894	788	97.7%
HC	1,110	118	89.4%	87	7	92.0%	1,197	125	89.6%		--			--		1,197	125	89.6%
MD-N	4,210	174	95.9%	4,861	193	96.0%	9,071	367	96.0%	970	56	94.2%	1,042	40	96.2%	11,083	463	95.8%
MD-W	4,070	193	95.3%	5,492	305	94.4%	9,562	498	94.8%	1,042	83	92.0%	1,042	33	96.8%	11,646	614	94.7%
Subtotal	8,280	367	95.6%	10,353	498	95.2%	18,633	865	95.4%	2,012	139	93.1%	2,084	73	96.5%	22,729	1,077	95.3%
NCS	1,311	120	90.8%	837	59	93.0%	2,148	179	91.7%		--			--		2,148	179	91.7%
RI	4,693	234	95.0%	7,345	307	95.8%	12,038	541	95.5%	1,558	50	96.8%	1,636	56	96.6%	15,232	647	95.8%
SWS	1,883	107	94.3%	1,863	118	93.7%	3,746	225	94.0%	108	6	94.4%		--		3,854	231	94.0%
UP-N	3,898	67	98.3%	7,292	124	98.3%	11,190	191	98.3%	1,078	26	97.6%	1,042	35	96.6%	13,310	252	98.1%
UP-NW	5,126	202	96.1%	6,056	166	97.3%	11,182	368	96.7%	1,324	36	97.3%	1,216	43	96.5%	13,722	447	96.7%
UP-W	3,876	175	95.5%	6,131	357	94.2%	10,007	532	94.7%	970	36	96.3%	1,042	47	95.5%	12,019	615	94.9%
Subtotal	12,900	444	96.6%	19,479	647	96.7%	32,379	1,091	96.6%	3,372	98	97.1%	3,300	125	96.2%	39,051	1,314	96.6%
System	48,517	1,758	96.4%	64,796	2,133	96.7%	113,313	3,891	96.6%	11,382	444	96.1%	10,532	370	96.5%	135,227	4,705	96.5%

*Includes peak direction trains operating during weekday peak periods. **Includes all other weekday trains.

Delays data for most recent month is final (01/15/2021) version from TOPS.

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36500

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

WALKER R.V.S. EXHIBIT 4

METRA, "ON-TIME PERFORMANCE - DECEMBER 2019" (EXCERPTS)

On-Time Performance

December 2019

Metra

Prepared by the Division of Strategic Planning & Performance

On-Time Performance
December 2019

This report presents an analysis of December 2019 train delays as reported for Metra's eleven rail lines. On-time is defined, for this analysis, as those regularly scheduled trains arriving at their last station stop less than six minutes behind schedule. Trains that are six minutes or more behind schedule, including annulled trains (trains that do not complete their scheduled runs), are regarded as late. "Extra" trains (trains added to handle special events but not shown in the regularly published timetables) are excluded from on-time performance calculations unless shown in special-event schedules that include all intermediate station stop times and are distributed publicly via Metra's website or on paper flyers. Cancelled (not annulled) trains and non-revenue trains are also excluded from on-time performance calculations.

On-Time Performance Tables

Table 1 shows the total number of scheduled and delayed trains for each line by service period for the current month and year-to-date.

Table 2 lists on-time percentages by line for each month and year since 2014.

Table 3 lists each weekday train that was less than 85% on-time for the current month, in order of line, train, and dates delayed. The codes in the *Delay Code* column of Table 3 are defined and shown sorted by cause category and carrier designation in Table 4.

Table 5 shows the number of delays by cause and line for the current month, including a 5-year average. The table highlights the top two delay causes for each line.

Table 6 shows the number of delays by cause and line for year-to-date, including a 5-year average. The table highlights the top two delay causes for each line.

Table 7 shows the number of delays by cause and month for the current year and prior year. The table highlights the top two delay causes for each month.

For Tables 5 through 7, delays by cause are separated into *Metra/PSA* and *Foreign* designations, where applicable. *Metra/PSA* refers to delays that may be directly or indirectly attributed to Metra or Metra Purchase of Service Agreement partners (BNSF and UP) in commuter rail operation. *Foreign* refers to delays that may be directly or indirectly attributed to other carriers, including freight carriers, Amtrak, and NICTD, that affect Metra trains. *Foreign* also includes delays attributable to BNSF and Union Pacific freight operations. See Table 4 for a detailed breakdown of delay codes by cause category and carrier designation.

Table 8 shows the number of delays by duration and service period for each line.

Table 9 shows the annual number of train delays and annual on-time performance by line for the past five years. Table 9 is only included in the December monthly report.

Table 10 shows the annual number of train delays and annual on-time performance by cause and line for the past five years. Table 10 is only included in the December monthly report.

Reporting Calculations for Temporary Schedules & Special Events

Planned construction projects or special events can adversely affect on-time performance. Metra occasionally publishes full temporary schedules, which supersede the standard published schedules, to inform riders of possible delays or modifications to regular service. Metra also may publish informational notices to accompany temporary schedules. On-time performance is calculated using the temporary schedules and any accompanying notices.

Table 1.a: Scheduled Trains, Delayed Trains, and On-Time Performance by Service Period and Line
December 2019

	Weekdays									Weekends						Total		
	Peak*			Off-Peak**			Total			Saturdays			Sundays & Holidays					
	Trains Scheduled	Trains Late	Percent On-Time	Trains Scheduled	Trains Late	Percent On-Time	Trains Scheduled	Trains Late	Percent On-Time	Trains Scheduled	Trains Late	Percent On-Time	Trains Scheduled	Trains Late	Percent On-Time	Trains Scheduled	Trains Late	Percent On-Time
BNSF	1,170	27	97.7%	873	19	97.8%	2,043	46	97.7%	120	1	99.2%	120	6	95.0%	2,283	53	97.7%
Elec -ML	870	18	97.9%	894	13	98.5%	1,764	31	98.2%	160	1	99.4%	120	0	100.0%	2,044	32	98.4%
-BI	273	4	98.5%	294	2	99.3%	567	6	98.9%	32	2	93.8%		--		599	8	98.7%
-SC	273	4	98.5%	652	13	98.0%	925	17	98.2%	128	0	100.0%	120	0	100.0%	1,173	17	98.6%
Subtotal	1,416	26	98.2%	1,840	28	98.5%	3,256	54	98.3%	320	3	99.1%	240	0	100.0%	3,816	57	98.5%
Heritage	126	6	95.2%	21	0	100.0%	147	6	95.9%		--			--		147	6	95.9%
Milw -N	542	24	95.6%	781	30	96.2%	1,323	54	95.9%	80	9	88.8%	108	11	89.8%	1,511	74	95.1%
-W	559	15	97.3%	659	36	94.5%	1,218	51	95.8%	96	0	100.0%	108	5	95.4%	1,422	56	96.1%
Subtotal	1,101	39	96.5%	1,440	66	95.4%	2,541	105	95.9%	176	9	94.9%	216	16	92.6%	2,933	130	95.6%
NCS	185	2	98.9%	235	12	94.9%	420	14	96.7%		--			--		420	14	96.7%
RI	756	30	96.0%	681	50	92.7%	1,437	80	94.4%	132	8	93.9%	168	15	91.1%	1,737	103	94.1%
SWS	231	8	96.5%	399	30	92.5%	630	38	94.0%	24	0	100.0%		--		654	38	94.2%
UP -N	622	5	99.2%	848	4	99.5%	1,470	9	99.4%	104	2	98.1%	108	1	99.1%	1,682	12	99.3%
-NW	677	34	95.0%	680	25	96.3%	1,357	59	95.7%	136	4	97.1%	126	12	90.5%	1,619	75	95.4%
-W	563	15	97.3%	676	39	94.2%	1,239	54	95.6%	80	1	98.8%	108	3	97.2%	1,427	58	95.9%
Subtotal	1,862	54	97.1%	2,204	68	96.9%	4,066	122	97.0%	320	7	97.8%	342	16	95.3%	4,728	145	96.9%
System	6,847	192	97.2%	7,693	273	96.5%	14,540	465	96.8%	1,092	28	97.4%	1,086	53	95.1%	16,718	546	96.7%

*Includes peak direction trains operating during weekday peak periods. **Includes all other weekday trains.

Delays data for most recent month is final (01/15/20) version from TOPS.

Table 1.b: Scheduled Trains, Delayed Trains, and On-Time Performance by Service Period and Line
January - December 2019

	Weekdays									Weekends						Total		
	Peak*			Off-Peak**			Total			Saturdays			Sundays & Holidays					
	Trains Scheduled	Trains Late	Percent On-Time	Trains Scheduled	Trains Late	Percent On-Time	Trains Scheduled	Trains Late	Percent On-Time	Trains Scheduled	Trains Late	Percent On-Time	Trains Scheduled	Trains Late	Percent On-Time	Trains Scheduled	Trains Late	Percent On-Time
BNSF	13,995	768	94.5%	10,467	488	95.3%	24,462	1,256	94.9%	1,549	60	96.1%	1,138	36	96.8%	27,149	1,352	95.0%
Elec -ML	10,549	250	97.6%	10,608	217	98.0%	21,157	467	97.8%	2,038	68	96.7%	1,167	11	99.1%	24,362	546	97.8%
-BI	3,279	79	97.6%	3,535	69	98.0%	6,814	148	97.8%	448	4	99.1%	40	0	100.0%	7,302	152	97.9%
-SC	3,282	60	98.2%	7,839	113	98.6%	11,121	173	98.4%	1,632	7	99.6%	1,160	12	99.0%	13,913	192	98.6%
Subtotal	17,110	389	97.7%	21,982	399	98.2%	39,092	788	98.0%	4,118	79	98.1%	2,367	23	99.0%	45,577	890	98.0%
Heritage	1,530	176	88.5%	255	40	84.3%	1,785	216	87.9%		--			--		1,785	216	87.9%
Milw -N	6,556	539	91.8%	9,319	658	92.9%	15,875	1,197	92.5%	1,052	154	85.4%	1,049	97	90.8%	17,976	1,448	91.9%
-W	6,845	369	94.6%	7,900	372	95.3%	14,745	741	95.0%	1,258	53	95.8%	1,047	47	95.5%	17,050	841	95.1%
Subtotal	13,401	908	93.2%	17,219	1,030	94.0%	30,620	1,938	93.7%	2,310	207	91.0%	2,096	144	93.1%	35,026	2,289	93.5%
NCS	2,286	112	95.1%	2,802	180	93.6%	5,088	292	94.3%		--			--		5,088	292	94.3%
RI	9,150	803	91.2%	8,150	682	91.6%	17,300	1,485	91.4%	1,876	117	93.8%	1,645	66	96.0%	20,821	1,668	92.0%
SWS	2,799	181	93.5%	4,840	366	92.4%	7,639	547	92.8%	312	8	97.4%		--		7,951	555	93.0%
UP -N	7,598	419	94.5%	10,186	340	96.7%	17,784	759	95.7%	1,375	130	90.5%	1,066	66	93.8%	20,225	955	95.3%
-NW	8,377	716	91.5%	8,169	397	95.1%	16,546	1,113	93.3%	1,566	108	93.1%	1,086	125	88.5%	19,198	1,346	93.0%
-W	6,869	556	91.9%	8,165	647	92.1%	15,034	1,203	92.0%	1,056	69	93.5%	1,056	56	94.7%	17,146	1,328	92.3%
Subtotal	22,844	1,691	92.6%	26,520	1,384	94.8%	49,364	3,075	93.8%	3,997	307	92.3%	3,208	247	92.3%	56,569	3,629	93.6%
System	83,115	5,028	94.0%	92,235	4,569	95.0%	175,350	9,597	94.5%	14,162	778	94.5%	10,454	516	95.1%	199,966	10,891	94.6%

*Includes peak direction trains operating during weekday peak periods. **Includes all other weekday trains.

Delays data for most recent month is final (01/15/20) version from TOPS.

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36500

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

WALKER R.V.S. EXHIBIT 5

METRA, "ON-TIME PERFORMANCE - DECEMBER 2018 (REVISED)" (EXCERPTS)

On-Time Performance

December 2018

(Revised)

Metra

Prepared by the Division of Strategic Capital Planning

On-Time Performance
December 2018

This report presents an analysis of December 2018 train delays as reported for Metra's eleven rail lines. On-time is defined, for this analysis, as those regularly scheduled trains arriving at their last station stop less than six minutes behind schedule. Trains that are six minutes or more behind schedule, including annulled trains (trains that do not complete their scheduled runs), are regarded as late. "Extra" trains (trains added to handle special events but not shown in the regularly published timetables) are excluded from on-time performance calculations unless shown in special-event schedules that include all intermediate station stop times and are distributed publicly via Metra's website or on paper flyers. Cancelled (not annulled) trains and non-revenue trains are also excluded from on-time performance calculations.

On-Time Performance Tables

Table 1 shows the total number of scheduled and delayed trains for each line by service period for the current month and year-to-date.

Table 2 lists on-time percentages by line for each month and year since 2013.

Table 3 lists each weekday train that was less than 85% on-time for the current month, in order of line, train, and dates delayed. The codes in the *Delay Code* column of Table 3 are defined and shown sorted by cause category and carrier designation in Table 4.

Table 5 shows the number of delays by cause and line for the current month, including a 5-year average. The table highlights the top two delay causes for each line.

Table 6 shows the number of delays by cause and line for year-to-date, including a 5-year average. The table highlights the top two delay causes for each line.

Table 7 shows the number of delays by cause and month for the current year and prior year. The table highlights the top two delay causes for each month.

For Tables 5 through 7, delays by cause are separated into *Metra/PSA* and *Foreign* designations, where applicable. *Metra/PSA* refers to delays that may be directly or indirectly attributed to Metra or Metra Purchase of Service Agreement partners (BNSF and UP) in commuter rail operation. *Foreign* refers to delays that may be directly or indirectly attributed to other carriers, including freight carriers, Amtrak, and NICTD, that affect Metra trains. *Foreign* also includes delays attributable to BNSF and Union Pacific freight operations. See Table 4 for a detailed breakdown of delay codes by cause category and carrier designation.

Table 8 shows the number of delays by duration and service period for each line.

Table 9 shows the annual number of train delays and annual on-time performance by line for the past five years. Table 9 is only included in the December monthly report.

Table 10 shows the annual number of train delays and annual on-time performance by cause and line for the past five years. Table 10 is only included in the December monthly report.

Reporting Calculations for Temporary Schedules & Special Events

Planned construction projects or special events can adversely affect on-time performance. Metra occasionally publishes full temporary schedules, which supersede the standard published schedules, to inform riders of possible delays or modifications to regular service. Metra also may publish informational notices to accompany temporary schedules. On-time performance is calculated using the temporary schedules and any accompanying notices.

Changes in Reporting

In continued efforts to streamline and enhance the information provided in this report, Metra staff modified or removed the following tables effective with the March 2018 Report:

- *Table 1: Scheduled and Delayed Trains, and On-Time Performance by Service Period and Line* – Modified to include a year-to-date time period.
- *Table 2: On-Time Performance by Line and Branch* – Made minor formatting changes.
- *Table 3: List of Weekday Trains less than 85% On-Time* – Made minor formatting changes.
- *Table 4: Delay Incident Codes and Definitions* – Removed
- *Table 5: Delay Incident Codes Sorted by Cause Category & Carrier Designation* – Made minor formatting changes. Changed table number and title to *Table 4: Delay Codes by Cause Category & Carrier*.
- *Table 6: Frequency of Train Delays by Control and Line* – Removed
- *Table 7: Number of Delays by Date* – Removed
- *Table 8: Frequency of Train Delays by Cause and Line* – Added shading to highlight the top two delay causes for each line. Changed table number and title to *Table 5: Train Delays by Cause and Line*.
- *Table 9: Frequency of Train Delays by Cause and Line* – Added shading to highlight the top two delay causes for each line. Changed table number and title to *Table 6: Train Delays by Cause & Line – YTD*.
- *Table 10: Frequency of Train Delays by Cause & Month* - Added shading to highlight the top two delay causes for each month. Changed table number and title to *Table 7: Train Delays by Cause & Month*.
- *Table 11*: *Freight Delays* – Removed
- *Table 12: Frequency of Lift-Deployment Train Delays by Line & Month* - Removed
- *Table 13: Frequency of Train Delays by Duration* – Included delay information for the Saturday and Sunday service periods. Changed table number and title to *Table 8: Train Delays by Duration*.
- *Table 14: Average Length of Delay by Service Period, in Minutes* – Removed
- *(December monthly report only) Table 15: Annual Train Delays and On-Time Performance* – Made minor formatting changes. Changed table number and title to *Table 9: Annual Train Delays and On-Time Performance*.
- *(December monthly report only) Table 16: Frequency of Train Delays by Cause and Line* – Removed

- *(December monthly report only) Table 17: Annual System Causes of Delay* – Made minor formatting changes. Changed table number and title to *Table 10: Annual System Causes of Train Delays*.
- *(December monthly report only) Table 18: Frequency of Train Delays by Duration* – Removed
- *(December monthly report only) Table 19: Frequency of Train Delays by Duration and Line* – Removed

Table 1.a: Scheduled Trains, Delayed Trains, and On-Time Performance by Service Period and Line
December 2018

	Weekdays									Weekends						Total		
	Peak*			Off-Peak**			Total			Saturdays			Sundays & Holidays					
	Trains Scheduled	Trains Late	Percent On-Time	Trains Scheduled	Trains Late	Percent On-Time	Trains Scheduled	Trains Late	Percent On-Time	Trains Scheduled	Trains Late	Percent On-Time	Trains Scheduled	Trains Late	Percent On-Time	Trains Scheduled	Trains Late	Percent On-Time
BNSF	1,074	75	93.0%	832	25	97.0%	1,906	100	94.8%	140	6	95.7%	108	0	100.0%	2,154	106	95.1%
Elec -ML	828	64	92.3%	852	27	96.8%	1,680	91	94.6%	200	6	97.0%	122	1	99.2%	2,002	98	95.1%
-BI	260	19	92.7%	280	13	95.4%	540	32	94.1%	40	1	97.5%		--		580	33	94.3%
-SC	260	7	97.3%	620	9	98.5%	880	16	98.2%	160	1	99.4%	118	4	96.6%	1,158	21	98.2%
Subtotal	1,348	90	93.3%	1,752	49	97.2%	3,100	139	95.5%	400	8	98.0%	240	5	97.9%	3,740	152	95.9%
Heritage	120	11	90.8%	20	2	90.0%	140	13	90.7%		--			--		140	13	90.7%
Milw -N	496	16	96.8%	704	49	93.0%	1,200	65	94.6%	100	11	89.0%	108	4	96.3%	1,408	80	94.3%
-W	532	20	96.2%	628	23	96.3%	1,160	43	96.3%	120	2	98.3%	108	2	98.1%	1,388	47	96.6%
Subtotal	1,028	36	96.5%	1,332	72	94.6%	2,360	108	95.4%	220	13	94.1%	216	6	97.2%	2,796	127	95.5%
NCS	176	15	91.5%	224	31	86.2%	400	46	88.5%		--			--		400	46	88.5%
RI	712	38	94.7%	628	27	95.7%	1,340	65	95.1%	160	9	94.4%	168	2	98.8%	1,668	76	95.4%
SWS	220	9	95.9%	380	20	94.7%	600	29	95.2%	30	1	96.7%		--		630	30	95.2%
UP -N	576	34	94.1%	808	41	94.9%	1,384	75	94.6%	130	6	95.4%	108	3	97.2%	1,622	84	94.8%
-NW	636	28	95.6%	648	28	95.7%	1,284	56	95.6%	120	11	90.8%	90	9	90.0%	1,494	76	94.9%
-W	528	54	89.8%	652	97	85.1%	1,180	151	87.2%	100	5	95.0%	108	4	96.3%	1,388	160	88.5%
Subtotal	1,740	116	93.3%	2,108	166	92.1%	3,848	282	92.7%	350	22	93.7%	306	16	94.8%	4,504	320	92.9%
System	6,418	390	93.9%	7,276	392	94.6%	13,694	782	94.3%	1,300	59	95.5%	1,038	29	97.2%	16,032	870	94.6%

*Includes peak direction trains operating during weekday peak periods. **Includes all other weekday trains.

Delays data for most recent month is final (01/28/19) version from TOPS.

REDACTED PUBLIC RECORD VERSION

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36500

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

WALKER R.V.S. EXHIBIT 6

METRA, "COMMUTER RAIL SYSTEM ON-TIME PERFORMANCE REPORT - DECEMBER 2017"

(EXCERPTS)

COMMUTER RAIL SYSTEM

ON-TIME PERFORMANCE REPORT

December 2017

Metra

Division of Strategic Capital Planning **February 2018**

COMMUTER RAIL ON-TIME PERFORMANCE
December 2017

This report presents an analysis of the December 2017 train delays as reported for Metra's eleven commuter rail lines. On-time is defined, for this analysis, as those regularly scheduled trains arriving at their last station stop less than six minutes behind schedule. Trains that are six minutes or more behind schedule, including annulled trains (trains that do not complete their scheduled runs), are regarded as late. "Extra" trains (trains added to handle special events but not shown in the regularly published timetables) are excluded from on-time performance calculations unless shown in special-event schedules that include all intermediate station stop times and are distributed publicly via Metra's website or on paper flyers. Cancelled (not annulled) trains and non-revenue trains are also excluded from on-time performance calculations.

On-Time Performance Tables

Table 1 presents the number of train delays by rail line and service period. During December 2017, Metra operated 16,184 scheduled trains, including scheduled "extras", if any. 989 of these trains were delayed (late or annulled), representing an on-time performance rate of 93.9%. Table 2 lists on-time percentages by line for each month and year since 2012.

Table 3 lists each train that was on time for less than 85% of its weekday runs in December 2017, in order of line, train, and dates delayed. The codes in the 'Delay Code' column of Table 3 are defined in Table 4 and shown sorted by delay-cause category and carrier designation in Table 5. Effective January 1, 2012, January 1, 2014, and July 1, 2016, Metra is using an expanded set of delay codes, to provide more detail about the cause of and responsibility for each train delay.

Table 6.a shows the frequency of train delays by delay-cause control and by line during December 2017. Of the 989 delays systemwide in December 2017, all but 513 (52%) were beyond Metra's control. Table 6.b shows the average frequencies over the previous five Decembers, and Table 6.c shows the differences between Table 6.a and Table 6.b., illustrating that in December 2017, 237 more delays than the average over the previous five Decembers were controllable. Table 6.d shows the delay-cause control frequencies since the beginning of the year. Of the 8,541 delays in 2017, all but 4,242 (50%) were beyond Metra's control.

Table 7 provides a daily listing of the number of delays by line and branch for December 2017.

Table 8.a shows the frequency of train delays by delay-cause category and by line during December 2017. Table 8.b shows the average frequencies over the previous five Decembers, and Table 8.c shows the differences between Table 8.a and Table 8.b. There were 989 delays systemwide in December 2017, 301 more than the average over the previous five Decembers. Table 9.a shows delays from the beginning of the year through December 2017. Table 9.b shows the average frequencies from the beginning of the year through December of each of the previous five years, and Table 9.c shows the differences between Table 9.a and Table 9.b. Tables 10.a and 10.b display the systemwide frequency of train delays by cause and by month, for 2017 and 2016 respectively, and Table 10.c shows the difference between the two. From January through December of 2017, a total of 8,541 trains were delayed, compared to 8,053 trains delayed in the same twelve months of 2016.

In Tables 8 through 10, delays by cause are separated into 'Metra/PSA' and 'Foreign' designations, where applicable. 'Metra/PSA' refers to delays that may be directly or indirectly attributed to Metra or Metra Purchase of Service Agreement partners (BNSF and UP) in commuter rail operation. 'Foreign' refers to

delays that may be directly or indirectly attributed to other carriers, including freight carriers, Amtrak, and NICTD, that affect Metra trains. 'Foreign' also includes delays attributable to BNSF and Union Pacific freight operations. See Table 5 for a detailed breakdown of delay codes by cause category and carrier designation.

Table 11 shows, by line and month, all train delays caused by freight operations over the past 24 months. In December 2017 freight operations delayed 110 trains systemwide, compared to 94 a year earlier. Tables 12.a and 12.b display the frequency of lift-deployment train delays by line and month, for 2017 and 2016 respectively. A total of 28 trains were delayed by lift deployment in December 2017.

A review of December 2017 late trains by duration of delay is shown in Table 13. The range with the greatest number of delays was, as usual, six-to-ten minutes, accounting for 45.8% of all late trains. Table 14 shows that the average length of delay was 15.9 minutes in December 2017. It should be noted that these averages relate only to reportable delays (i.e., trains late by six minutes or more).

Tables 15 to 19 report year-end statistics. Table 15 presents annual train delays and on-time performance by line. Table 16 displays the frequency of 2017 annual train delays by cause and by line. The top two causes for each line are highlighted. Annual system causes of delay for 2012 to 2017 are shown in Table 17. The annual frequencies of train delays by duration for the Metra system are shown in Table 18, and for each line in Table 19.

Changes in On-Time Performance Reporting Calculations

“Extra” Trains

“Extra” trains (trains added to handle special events but not shown in the regularly published schedules) are excluded from on-time performance calculations, except for those “extra” trains whose special-event schedules include all intermediate station stop times and are distributed publicly via Metra's website or on paper flyers.

Intermediate station departure times and final station arrival times for some “extra” trains are either unknown (departures of some “extra” trains are held until after the completion of the respective special event) or not published. On-time performance for these two types of “extra” trains cannot be calculated, as arrival times are not known ahead of time; these trains are therefore excluded from on-time performance calculations. However, on-time performance can be calculated for “extra” trains that have full published schedules.

Temporary Schedules and Notices, for Construction and Special Events

Planned construction projects or special events can adversely affect on-time performance. Metra occasionally publishes full temporary schedules, which supersede the standard published schedules, to inform riders of possible delays or modifications to regular service. Metra also may publish informational notices to accompany temporary schedules. On-time performance is calculated using the temporary schedules and any accompanying notices.

TABLE 1: SCHEDULED AND DELAYED TRAINS, AND ON-TIME PERFORMANCE BY SERVICE PERIOD AND LINE
December 2017

	Weekdays									Weekends						Total		
	Peak*			Off-Peak**			Total			Saturdays			Sundays & Holidays					
	Trains Scheduled	Trains Late	Percent On-Time	Trains Scheduled	Trains Late	Percent On-Time	Trains Scheduled	Trains Late	Percent On-Time	Trains Scheduled	Trains Late	Percent On-Time	Trains Scheduled	Trains Late	Percent On-Time	Trains Scheduled	Trains Late	Percent On-Time
BNSF	1,078	113	89.5%	814	54	93.4%	1,892	167	91.2%	140	1	99.3%	108	0	100.0%	2,140	168	92.1%
Elec -ML	834	9	98.9%	846	12	98.6%	1,680	21	98.8%	200	0	100.0%	122	8	93.4%	2,002	29	98.6%
-BI	260	7	97.3%	280	2	99.3%	540	9	98.3%	40	1	97.5%		--		580	10	98.3%
-SC	280	4	98.6%	620	5	99.2%	900	9	99.0%	160	6	96.3%	120	6	95.0%	1,180	21	98.2%
Subtotal	1,374	20	98.5%	1,746	19	98.9%	3,120	39	98.8%	400	7	98.3%	242	14	94.2%	3,762	60	98.4%
Heritage	120	10	91.7%	20	3	85.0%	140	13	90.7%		--			--		140	13	90.7%
Milw -N	497	31	93.8%	703	76	89.2%	1,200	107	91.1%	120	1	99.2%	120	2	98.3%	1,440	110	92.4%
-W	536	63	88.2%	624	70	88.8%	1,160	133	88.5%	120	11	90.8%	108	20	81.5%	1,388	164	88.2%
Subtotal	1,033	94	90.9%	1,327	146	89.0%	2,360	240	89.8%	240	12	95.0%	228	22	90.4%	2,828	274	90.3%
NCS	218	17	92.2%	222	18	91.9%	440	35	92.0%		--			--		440	35	92.0%
RI	715	65	90.9%	685	53	92.3%	1,400	118	91.6%	160	2	98.8%	168	4	97.6%	1,728	124	92.8%
SWS	220	11	95.0%	380	28	92.6%	600	39	93.5%	30	0	100.0%		--		630	39	93.8%
UP -N	584	27	95.4%	808	24	97.0%	1,392	51	96.3%	130	10	92.3%	108	5	95.4%	1,630	66	96.0%
-NW	640	52	91.9%	648	20	96.9%	1,288	72	94.4%	120	8	93.3%	90	1	98.9%	1,498	81	94.6%
-W	532	62	88.3%	648	63	90.3%	1,180	125	89.4%	100	0	100.0%	108	4	96.3%	1,388	129	90.7%
Subtotal	1,756	141	92.0%	2,104	107	94.9%	3,860	248	93.6%	350	18	94.9%	306	10	96.7%	4,516	276	93.9%
SYSTEM	6,514	471	92.8%	7,298	428	94.1%	13,812	899	93.5%	1,320	40	97.0%	1,052	50	95.2%	16,184	989	93.9%

*Includes peak direction trains operating during weekday peak periods. **Includes all other weekday trains.

Delays data for most recent month is final (01/25/18) version from TOPS.

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TABLE 2: ON-TIME PERFORMANCE BY LINE/BRANCH

LINE	YEAR	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	JAN-DEC	AVG
BNSF	**2012**	94.4	97.3	95.2	98.4	97.2	91.8	95.0	94.2	98.0	96.9	95.0	98.5	96.0%	96.0%
	2013	95.8	93.9	94.6	93.3	96.0	88.5	95.2	97.1	97.2	94.0	95.8	92.2	94.5%	94.5%
	2014	78.6	84.6	95.6	92.0	82.2	82.0	94.1	91.4	94.1	92.2	95.2	94.1	89.7%	89.7%
	2015	90.9	90.1	96.8	97.5	96.6	92.4	93.0	95.4	95.8	93.6	93.5	97.4	94.4%	94.4%
	2016	93.2	93.8	95.9	96.8	94.0	93.5	93.8	91.4	91.3	95.2	95.4	93.1	94.0%	94.0%
	2017	95.9	95.6	96.2	96.3	95.4	93.7	96.2	94.4	92.7	93.8	91.8	92.1	94.5%	94.5%
2012-2016 average		90.5	92.0	95.6	95.6	93.2	89.7	94.2	93.9	95.2	94.4	95.0	95.1	93.7%	93.7%
Electric	**2012**	93.7	98.4	97.9	98.7	98.0	97.0	97.3	97.7	97.5	96.6	97.1	98.2	97.3%	97.3%
	2013	98.1	99.0	98.5	98.0	98.0	98.3	92.4	96.4	97.2	97.3	96.9	97.0	97.2%	97.2%
	2014	93.7	95.3	97.7	98.8	98.3	97.4	96.7	98.1	98.7	98.4	98.6	98.7	97.5%	97.5%
	2015	96.3	95.4	98.4	98.4	98.3	97.7	96.5	98.2	97.9	97.8	97.8	99.0	97.6%	97.6%
	2016	98.0	98.6	98.8	98.9	98.9	96.5	97.9	98.5	97.1	98.6	97.7	97.7	98.1%	98.1%
	2017	95.6	98.9	98.3	98.9	98.7	97.1	98.7	98.5	98.2	98.3	97.8	98.4	98.1%	98.1%
2012-2016 average		95.9	97.4	98.3	98.5	98.3	97.4	96.1	97.8	97.7	97.7	97.6	98.1	97.6%	97.6%
Heritage	**2012**	95.2	99.2	94.7	98.4	97.7	92.1	91.3	95.7	98.2	94.9	92.9	96.7	95.6%	95.6%
	2013	97.0	99.2	94.4	97.7	94.7	92.5	97.7	99.2	97.5	96.4	98.3	92.1	96.4%	96.4%
	2014	79.5	75.8	88.1	93.2	92.1	94.4	94.7	93.7	92.1	97.8	96.5	98.5	91.4%	91.4%
	2015	92.1	90.0	96.2	88.6	85.8	89.4	92.0	85.7	86.5	98.5	85.0	90.9	90.2%	90.2%
	2016	90.0	92.9	97.4	97.3	95.2	94.8	87.9	94.4	94.6	98.0	94.6	91.8	94.2%	94.2%
	2017	93.9	94.3	96.9	96.4	94.2	89.0	90.7	97.5	95.7	90.3	88.4	90.7	93.2%	93.2%
2012-2016 average		90.7	91.5	94.3	95.1	93.3	92.7	92.7	93.9	93.7	97.1	93.5	93.9	93.6%	93.6%
Milw - N	**2012**	95.1	96.4	94.0	95.3	93.5	93.2	84.8	92.9	94.3	94.9	95.4	95.5	93.8%	93.8%
	2013	95.5	92.4	94.1	95.7	95.3	89.6	92.8	93.6	94.4	93.3	95.7	87.5	93.3%	93.3%
	2014	73.1	81.9	89.5	97.9	95.1	91.1	96.0	95.2	95.5	96.2	95.4	93.5	91.7%	91.7%
	2015	91.8	87.9	93.5	95.1	95.4	94.8	97.1	94.9	95.6	97.9	97.0	96.8	94.9%	94.9%
	2016	95.3	94.2	95.7	96.8	92.5	92.9	95.0	93.1	93.8	97.5	95.1	93.8	94.6%	94.6%
	2017	95.3	95.6	96.5	96.1	95.9	93.4	88.4	93.1	90.4	93.9	94.8	92.4	93.8%	93.8%
2012-2016 average		90.1	90.6	93.4	96.2	94.4	92.3	93.2	93.9	94.7	95.9	95.7	93.4	93.7%	93.7%
Milw - W	**2012**	94.4	95.1	95.3	97.5	97.1	95.6	93.7	94.1	89.3	93.9	94.6	95.5	94.7%	94.7%
	2013	96.6	91.3	96.3	95.8	96.2	90.9	93.2	93.2	92.6	96.5	93.9	93.7	94.2%	94.2%
	2014	84.8	88.4	91.4	97.6	95.9	92.2	94.0	93.5	96.7	95.5	97.7	94.6	93.5%	93.5%
	2015	93.6	93.0	94.8	97.7	97.2	95.4	96.6	96.8	97.8	99.0	98.2	96.5	96.4%	96.4%
	2016	94.0	95.3	94.4	96.0	94.9	93.6	92.1	95.2	97.4	97.0	95.6	93.3	94.9%	94.9%
	2017	96.9	95.2	95.2	95.6	97.5	95.8	96.3	96.3	95.5	96.7	96.9	88.2	95.5%	95.5%
2012-2016 average		92.7	92.7	94.4	96.9	96.2	93.5	94.0	94.6	94.8	96.4	96.0	94.7	94.7%	94.7%
NCS	**2012**	94.8	94.4	94.4	85.1	95.2	94.8	82.5	91.9	95.7	93.9	92.0	94.8	92.4%	92.4%
	2013	95.0	87.5	93.7	90.9	94.0	92.7	93.6	95.0	92.5	93.1	90.0	87.4	92.2%	92.2%
	2014	76.0	81.1	88.5	96.3	88.5	89.2	94.0	88.5	95.2	90.9	97.8	91.9	89.9%	89.9%
	2015	93.9	82.5	92.6	94.8	95.7	94.8	96.0	92.6	95.2	97.1	96.1	93.6	93.8%	93.8%
	2016	92.3	95.5	91.7	93.3	94.4	96.3	95.0	96.4	96.1	95.5	95.2	92.6	94.5%	94.5%
	2017	92.6	91.6	95.1	95.2	95.5	95.7	94.8	98.0	92.7	91.9	92.6	92.0	94.0%	94.0%
2012-2016 average		90.4	88.3	92.2	92.1	93.6	93.6	92.3	93.0	95.0	94.0	94.2	92.1	92.6%	92.6%

TABLE 2 (continued): ON-TIME PERFORMANCE BY LINE/BRANCH

LINE	YEAR	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	JAN-DEC	AVG
RI	**2012**	94.3	96.8	94.8	96.1	95.8	94.1	92.9	93.7	96.8	95.6	97.1	96.4	95.3%	95.3%
	2013	96.5	98.1	97.9	94.0	95.5	91.5	93.6	95.5	98.3	96.5	91.7	94.0	95.3%	95.3%
	2014	82.5	83.4	93.4	95.3	95.7	92.5	95.1	97.2	96.6	97.3	97.9	98.6	93.8%	93.8%
	2015	97.4	95.3	98.9	98.7	97.8	97.4	94.2	97.0	96.3	97.3	97.1	97.4	97.1%	97.1%
	2016	92.6	96.2	95.8	96.5	97.9	96.2	93.5	96.3	96.0	98.2	97.9	95.3	96.1%	96.1%
	2017	95.2	97.1	97.8	98.0	94.6	96.0	95.3	95.2	95.7	95.9	94.0	92.8	95.7%	95.7%
	2012-2016 average	92.6	94.0	96.2	96.1	96.5	94.4	93.9	96.0	96.8	97.0	96.4	96.3	95.5%	95.5%
SWS	**2012**	94.2	96.6	94.8	95.3	95.8	93.2	95.3	94.5	93.8	94.3	93.7	96.3	94.8%	94.8%
	2013	94.7	97.1	97.3	97.7	95.0	91.0	98.0	96.8	97.1	98.2	93.2	91.1	95.6%	95.6%
	2014	83.0	92.0	93.5	94.9	93.2	92.8	93.9	95.2	94.2	92.0	90.2	96.2	92.6%	92.6%
	2015	94.7	89.7	95.6	96.1	96.3	91.1	92.4	93.8	97.6	96.8	96.0	94.4	94.5%	94.5%
	2016	95.6	97.2	97.8	95.6	91.9	95.3	94.1	93.3	91.6	97.4	96.6	96.2	95.2%	95.2%
	2017	96.2	94.1	96.4	97.3	92.8	97.1	97.1	94.3	96.3	93.7	90.1	93.8	94.9%	94.9%
	2012-2016 average	92.4	94.6	95.8	95.9	94.4	92.7	94.7	94.7	94.9	95.7	94.0	94.9	94.6%	94.6%
UP - N	**2012**	94.6	98.4	97.9	98.1	95.1	95.1	95.9	95.1	96.3	97.3	96.6	95.8	96.4%	96.4%
	2013	98.3	97.3	97.9	96.6	96.7	93.0	96.0	94.9	97.0	96.5	96.9	98.0	96.6%	96.6%
	2014	91.2	92.1	97.4	97.8	97.4	97.2	97.6	98.1	97.6	97.4	97.8	98.3	96.7%	96.7%
	2015	98.6	95.6	98.3	97.1	97.7	98.2	97.0	95.9	98.2	97.0	97.6	98.4	97.5%	97.5%
	2016	96.9	98.6	97.1	98.3	98.3	98.2	97.0	96.0	98.1	99.1	98.0	98.1	97.8%	97.8%
	2017	95.6	99.0	98.3	97.0	97.3	97.3	95.6	97.7	96.9	98.1	96.9	96.0	97.2%	97.2%
	2012-2016 average	95.9	96.4	97.7	97.6	97.0	96.4	96.7	96.0	97.4	97.4	97.4	97.7	97.0%	97.0%
UP - NW	**2012**	95.9	98.6	96.4	98.9	95.9	96.0	94.8	96.7	97.8	94.2	94.6	96.6	96.3%	96.3%
	2013	96.3	97.7	96.0	95.1	93.3	89.2	93.9	93.7	96.3	94.6	94.6	94.2	94.6%	94.6%
	2014	86.6	91.1	96.3	98.6	95.6	95.2	94.7	97.4	98.3	95.0	97.1	96.2	95.2%	95.2%
	2015	96.0	91.6	97.6	96.3	96.9	96.8	94.1	96.5	96.1	97.5	96.7	97.5	96.2%	96.2%
	2016	97.0	98.1	97.8	98.1	96.0	96.6	94.9	96.8	96.9	96.5	93.2	93.4	96.3%	96.3%
	2017	96.2	97.4	98.1	93.7	97.2	93.3	92.2	94.6	93.8	94.8	95.6	94.6	95.1%	95.1%
	2012-2016 average	94.3	95.5	96.8	97.4	95.5	94.8	94.5	96.2	97.1	95.6	95.2	95.6	95.7%	95.7%
UP - W	**2012**	93.1	97.1	95.2	95.5	95.6	92.4	93.8	94.3	97.2	97.2	96.0	96.4	95.3%	95.3%
	2013	96.5	96.2	96.9	94.4	93.7	89.2	95.0	93.0	96.6	96.6	94.0	91.5	94.5%	94.5%
	2014	85.9	90.9	94.4	96.7	96.4	94.8	96.4	94.3	96.7	94.6	95.9	96.2	94.4%	94.4%
	2015	93.9	91.1	96.1	96.3	97.5	93.9	93.9	95.9	96.0	96.1	97.3	96.8	95.4%	95.4%
	2016	97.8	93.4	97.2	96.7	90.1	94.4	96.6	96.0	96.2	95.6	94.0	92.9	95.1%	95.1%
	2017	95.0	96.5	96.1	92.9	93.8	92.4	94.8	94.3	94.7	92.9	94.8	90.7	94.1%	94.1%
	2012-2016 average	93.4	93.7	96.0	95.9	94.6	93.0	95.1	94.7	96.5	96.0	95.4	94.7	94.9%	94.9%
SYSTEM excluding South Shore	**2012**	94.3	97.4	96.1	97.2	96.3	94.7	94.0	95.2	96.2	95.9	95.8	96.9	95.8%	95.8%
	2013	96.8	96.1	96.7	95.7	95.9	92.4	94.0	95.2	96.4	95.9	95.1	93.8	95.4%	95.4%
	2014	85.6	89.3	94.9	96.8	94.5	93.1	95.6	95.7	96.8	95.9	96.9	96.5	94.3%	94.3%
	2015	94.9	92.5	97.0	97.2	97.2	95.8	95.3	96.3	96.8	97.0	96.8	97.5	96.2%	96.2%
	2016	95.8	96.4	96.8	97.4	95.8	95.5	95.4	95.7	95.7	97.4	96.2	95.2	96.1%	96.1%
	2017	95.6	96.9	97.2	96.6	96.5	95.3	95.5	96.0	95.2	95.7	95.2	93.9	95.8%	95.8%
	2012-2016 average	93.4	94.4	96.3	96.9	96.0	94.3	94.9	95.6	96.4	96.4	96.2	96.0	95.6%	95.6%

Delays data for most recent month is final (01/25/18) version from TOPS. P:\ONTIME\report\[Delays&TrainsByServPeriod.xls]OTPbyLine&Month 1/26/2018

'2012-2016 average' calculated by summing the delays over the five years, summing the trains run over the five years, and calculating their ratio.

TABLE 3: LIST OF WEEKDAY TRAINS LESS THAN 85% ON-TIME
December 2017

Line	Train	Date	Minutes Late	Delay Code	Delay Explanation
BNSF	1234	Mon, Dec 04	8	G1	2B SW @ BERWYN
70% OT		Tue, Dec 05	8	UF1	LATE FLIP FROM 1206
		Thu, Dec 07	12	FW1	FOLLOWING 1232
		Mon, Dec 18	0	E1	METX 199
		Tue, Dec 26	7	G1	BROKEN RETIRED IJ
		Fri, Dec 29	21	H1	LATE TURN FROM 1207 DUE TO 1204 MECH ISSUE.
BNSF	1238	Thu, Dec 07	10	UF1	WAITING ON TRAFFIC AT FAIRVIEW
80% OT		Mon, Dec 18	8	E1	ADDED 1234 STOPS
		Tue, Dec 26	15	G1	BROKEN RETIRED IJ
		Fri, Dec 29	18	H1	LATE TURN FROM 1209 DUE TO 1204 MECHANICAL ISSUE.
BNSF	1242	Mon, Dec 04	9	U	ADA PASSENGER HANDLING
70% OT		Thu, Dec 07	11	UF1	STUCK BEHIND 1236
		Thu, Dec 14	0	XFW	CAR WOULD NOT SET UP
		Tue, Dec 19	8	RA	ROUTED INTO 4
		Tue, Dec 26	10	G	BROKEN RETIRED IJ
		Fri, Dec 29	18	RF1	STOPPED AT CPK BEHIND OUT OF SLOT TRAINS.
BNSF	1248	Mon, Dec 04	6	G1	CONGESTION FROM EARLIER SWITCH FAILURE.
60% OT		Thu, Dec 07	7	UF1	FOLLOWING TRAFFIC AHEAD
		Fri, Dec 15	6	D1	FOLLOWING TRAFFIC AHEAD, SWS810 WAS LATE
		Mon, Dec 18	7	E1	LATE FLIP/EARLIER MECH DELAYS
		Tue, Dec 19	6	RA1	TRAFFIC AHEAD 1242 MISROUTED
		Tue, Dec 26	12	G1	FAILED RETIRED IJ
		Wed, Dec 27	8	GA	SWITCH FAILURE 818 SWITCH.
		Fri, Dec 29	18	RF1	TRAFFIC FROM EARLIER DELAYS
BNSF	1250	Mon, Dec 11	9	G	4B SW WOULD NOT NORMAL
75% OT		Mon, Dec 18	16	E1	EARLIER DELAYS
		Tue, Dec 26	15	G1	BROKEN RETIRED IJ
		Wed, Dec 27	7	GA1	FOLLOWING 1250
		Fri, Dec 29	17	RF1	DELAYED FROM 1213
BNSF	1254	Mon, Dec 11	9	E1	CAB SIGNAL PROBLEMS 1223
80% OT		Fri, Dec 22	10	RF	MIROUTED BY UNION AVE DS
		Tue, Dec 26	12	G1	BROKEN RETIRED IJ
		Fri, Dec 29	11	RF1	LATE FLIP AT CPK DUE TO TRAFFIC JAM.
BNSF	1256	Fri, Dec 08	17	E1	LATE FLIP BEHIND 1219
80% OT		Mon, Dec 18	16	E1	LATE FLIP
		Tue, Dec 26	9	G1	BROKEN RETIRED IJ
		Fri, Dec 29	9	RF1	FOLLOWING DELAYED 1254
BNSF	1258	Fri, Dec 08	18	E1	LATE FLIP FROM 1219
80% OT		Mon, Dec 18	7	E1	LATE FLIP
		Tue, Dec 26	23	G1	RETIRED IJ FAILED
		Fri, Dec 29	6	RF1	FOLLOWING TRAFFIC AHEAD
BNSF	1269	Mon, Dec 04	11	G	HELD ON MT2 FOR 1265 TO CROSSOVER AND CLEARING FOR CROSSING MALFUCTIONS
80% OT		Tue, Dec 05	9	G	SIGNAL / SWITCH FAILURE TALKED BY SIGNAL AT LAVERGNE
		Mon, Dec 11	12	E	NO HEP TRYING TO DEPART CUS AND DEPARTS 7 LATE. MECHANICAL RESPONDED AND MADE REPAIRS WITH TLC
		Fri, Dec 29	7	E1	WAITING ON DELAYED 1261
BNSF	1271	Mon, Dec 04	15	G	MAPLE, MAIN, PRAIRIE GATE WIRE MALFUNCTION
78% OT		Tue, Dec 05	12	G1	FOLLOWING 1269
		Tue, Dec 26	0	E1	CANCELLED ACCT OPERATED 1275 FROM CUS ACCT METX 125 WATER LEAK
		Fri, Dec 29	6	E1	SLOW UNLOADING, WEATHER
BNSF	1279	Fri, Dec 01	8	DD	DELAYED DUE TO FGP1101 ROUTED THRU THE PARADE BY EE DS
75% OT		Mon, Dec 04	16	G1	FOLLOWING TRAFFIC FROM EARLIER, MULTIPLE XING FAILURES GATE WIRE MALFUNCTION
		Tue, Dec 05	10	G1	TRAFFIC CONGESTION FROM EARLIER DELAYS
		Mon, Dec 11	8	RF	MISROUTE AT FAIRVIEW AVE.
		Fri, Dec 29	7	IW	SLOW UNLOADING, WEATHER
BNSF	1288	Fri, Dec 01	11	DD1	DELAYED DUE TO FGP1101 ROUTED THRU THE PARADE BY EE DS
80% OT		Wed, Dec 13	10	VE1	LATE FLIP FROM 1243
		Thu, Dec 28	12	IW	DEPART 10" LATE FROM AURORA. 1288 5" LATE DUE TO WEATHER.
		Fri, Dec 29	21	UF1	LATE TURN FROM 1243, ADA ISSUE
BNSF	1373	Mon, Dec 04	7	G	MAPLE, MAIN, PRAIRIE GATE WIRE MALFUNCTION
83% OT		Tue, Dec 05	15	G1	FOLLOWING 1281 AND 1285 FROM EARLIER DELAY
		Tue, Dec 12	9	CW	BROKEN RAIL MT2 BERWYN CAUSING 6 BOX 2S
HC	918	Thu, Dec 07	14	D	18M DELAY CORWITH AACT X-TRAFFIC
80% OT		Mon, Dec 11	7	D	10M DELAY CORWITH ACCT. X-TRAFFIC, NO ANSEWER FROM BN
		Thu, Dec 21	11	D	11M DELAY CORWITH , X-TRAFFIC, NO ANSWER FROM BN
		Thu, Dec 28	17	GF	20M MEETING AMT301, SINGLE TRACKING ACCT SWITCH PROBLEMS.

TABLE 3 (continued): LIST OF WEEKDAY TRAINS LESS THAN 85% ON-TIME
December 2017

Line	Train	Date	Minutes Late	Delay Code	Delay Explanation
MN	2125	Wed, Dec 06	10	CH	10" SIGNAL & POWER FAILURES, CP CANAL ST-CP MORGAN
80% OT		Fri, Dec 22	9	H	7" GETTING LOCO TIED ON @ CUS; 4" APPROACH/STOPPED, MAYFAIR
		Tue, Dec 26	8	J1	10" STOPPED @ MORTON GROBVE & X/O TO 2MT GOING AROUND #2123; 3" STOPPED, A-20 X/O BACK TO 1MT; 2" LOOSE HOSE ON ENGINE AIR LEAK
		Fri, Dec 29	16	I	14" 9 CAR TRAIN; 2" STOPPED, RONDOUT
MN	2135	Wed, Dec 06	11	CH	12" SIGNAL & POWER FAILURES, CP CANAL ST-CP MORGAN
78% OT		Thu, Dec 07	6	A	4" X-TRAFFIC, MAYFAIR; FOLLOWING #2133; 3" ADA, LIBERTYVILLE
		Tue, Dec 12	7	U	3" ADA, LIBERTYVILLE; 4" PASSENGER LOADING
		Thu, Dec 21	26	JM	33" FEMALE PASSENGER EXPRERIENCED A DIABETIC MEDICAL EMERGENCY ON BOARD, WAIT FOR MEDICS TO TREAT & REMOVE
MN	2140	Wed, Dec 06	11	CH	18" SIGNAL & POWER FAILURES, CP CANAL ST-CP MORGAN
65% OT		Wed, Dec 13	10	G1	EN ROUTE DEERFIELD-BROKEN TRACK CIRCUIT WIRE AT DUNDEE ROAD
		Mon, Dec 18	8	KD	10" STRUCK OBJECT, WALKED TRAIN LOOK FOR OBJECT, ROUND LAKE
		Thu, Dec 21	7	I	8" HEAVY PASSENGER LOADING, ALL STOPS; 2" STOPPED, MAYFAIR
		Fri, Dec 22	10	I	3" WAIT FOR #2119, GRAYSLAKE; 3" HEAVY PASSENGER LOADING, ALL STOPS; 3" STOPPED, MAYFAIR
		Thu, Dec 28	9	G	SIGNAL SWITCH MALFUNCTION
		Fri, Dec 29	9	I	8" HEAVY PASSENGER LOADING, ENROUTE; 2" STOP INDICATION WAITINGON AMTRAK #8, A20.
MN	2145	Tue, Dec 05	20	E1	20" HOLDING @ MORTON GROVE FOR #2152 TO SASHAY AROUND #2150
80% OT		Wed, Dec 06	34	CH	34" SIGNAL & POWER FAILURES, CP CANAL ST-CP MORGAN
		Fri, Dec 08	18	I1	18" LATE TURN FROM #2146.
		Mon, Dec 11	11	RF1	11" LATE TURN FROM #2146
MN	2146	Wed, Dec 06	17	CH	17" SIGNAL & POWER FAILURES, CP CANAL ST-CP MORGAN
75% OT		Fri, Dec 08	14	I	8" HOLIDAY PASSENGER LOADING, ENROUTE; 5" LATE TURN FROM #2121; 4" CROSS TRAFFIC, MAYFAIR.
		Mon, Dec 11	8	U1	6" LATE TURN FROM #2121; 5" ADA, NORTHBROOK
		Wed, Dec 20	6	D1	6" LATE ARRIVAL OF #2121
		Fri, Dec 29	7	I	6" SLOW PASSENGER LOADING AND UNLOADING, ENROUTE; 1" NO REASON GIVEN, ENROUTE.
MN	2147	Tue, Dec 05	17	E1	17" FOLLOWING #2145
75% OT		Wed, Dec 06	15	CH	15" SIGNAL & POWER FAILURES, CP CANAL ST-CP MORGAN
		Fri, Dec 08	11	I1	12" FOLLOWING LATE TRAIN #2145, ENROUTE.
		Mon, Dec 11	12	RF1	5" LATE TURN FROM #2148 & FOLLOWING #2145
		Tue, Dec 12	0	XE	ANNULLED LOCO 216 DEVELOPED A WATER LEAK, GLENVIEW
MN	2148	Fri, Dec 01	7	CC1	2" LATE TURN FROM #2127; 5" WAITING ON LATE #2146; 3" HEAVY PASSENGER LOADING
80% OT		Tue, Dec 05	7	E1	7" #2150 ANNULLED DUE TO MECHANICAL ISSUES
		Mon, Dec 11	7	U1	7" LATE TURN FROM #2127
		Wed, Dec 13	6	A1	6" LATE TURN FROM #2127, DEERFIELD
MN	2149	Tue, Dec 05	0	E1	ANNULLED ACCT #2150 MECHANICAL ISSUES @ GOLF
75% OT		Wed, Dec 06	10	CH	10" SIGNAL & POWER FAILURES, CP CANAL ST-CP MORGAN
		Mon, Dec 11	20	RF1	18" WAIT ON #2156; 4" STOP SIGNAL, CN
		Tue, Dec 12	57	E1	57" TIED ONTO #2147 & SHOVED TO FOX LAKE
		Tue, Dec 26	70	GW	64" WAIT ON #2156 & 2158 TO CLEAR RONDOUT; 6" STOPPED SIGNAL/SWITCH PROBLEMS, CN XING
MN	2150	Tue, Dec 05	0	XE	ANNULLED, LOCO 103 STOPPED LOADING, GOLF
80% OT		Wed, Dec 06	14	CH	14" SIGNAL & POWER FAILURES, CP CANAL ST-CP MORGAN
		Fri, Dec 08	6	A1	10" LATE TURN FROM #2133.
		Mon, Dec 18	0	E1	EXPRESSED FROM DEERFIELD ACCT LACK OF POWER IN COACHES (NO LIGHTS, ETC) NO HEP
MN	2151	Tue, Dec 05	10	E1	10" WAITING ON LATE #2158
70% OT		Wed, Dec 06	21	CH	21" SIGNAL & POWER FAILURES, CP CANAL ST-CP MORGAN
		Mon, Dec 11	20	RF1	20" WAIT ON #2158
		Tue, Dec 12	31	E1	32" FOLLOWING #2147/2149
		Mon, Dec 18	11	E1	11" HOLD FOR LATE I/B & SLOW PASSENGERS
		Tue, Dec 26	44	GW1	44" WAIT FOR #2156 & 258 TO CLEAR, RONDOUT THEN FOLLOWED #2149 TO FOX LAKE
MN	2154	Tue, Dec 05	15	E1	15" LATE TURN FROM #2145, DEERFIELD
75% OT		Wed, Dec 06	37	CH	33" SIGNAL & POWER FAILURES, CP CANAL ST-CP MORGAN
		Fri, Dec 08	19	I1	19" LATE TURN FROM #2145.
		Mon, Dec 11	12	RF1	13" LATE TURN FROM #2145
		Fri, Dec 22	7	I1	10" LATE DEPARTING CHANGING ENDS & BRAKE TEST
MN	2155	Tue, Dec 05	9	E1	6" LATE TURN FROM #2158, CUS
75% OT		Wed, Dec 06	7	CH	7" SIGNAL & POWER FAILURES, CP CANAL ST-CP MORGAN
		Tue, Dec 12	13	E1	13" MEET #2158, FOREST GLEN
		Tue, Dec 26	10	GW1	8" LATE TURN FROM #2158, CUS
		Fri, Dec 29	9	I	9" PASSEGNER LOADING, EN ROUTE
MN	2156	Tue, Dec 05	7	E1	9" WAIT ON LATE #2147; 5" MEETING LATE TRAINS, EN ROUTE
80% OT		Wed, Dec 06	10	CH	10" SIGNAL & POWER FAILURES, CP CANAL ST-CP MORGAN
		Mon, Dec 11	15	RF1	15" LATE TURN FROM #2147; 6" STOP SIGNAL RESTRICTED SPEED, CN
		Tue, Dec 26	42	GW	42" SIGNAL/SWITCH PROBLEMS, CN XING

TABLE 3 (continued): LIST OF WEEKDAY TRAINS LESS THAN 85% ON-TIME
December 2017

Line	Train	Date	Minutes Late	Delay Code	Delay Explanation
MN	2158	Tue, Dec 05	10	E1	10" #2150 ANNULLED DUE TO MECHANICAL ISSUES @ GOLF
75% OT		Wed, Dec 06	30	CH	30" SIGNAL & POWER FAILURES, CP CANAL ST-CP MORGAN
		Mon, Dec 11	26	RF1	26" WAIT ON #2149
		Tue, Dec 12	65	E1	65" WAITING ON #2149/2147 & 2151
		Tue, Dec 26	15	GW	20" SIGNAL/SWITCH PROBLEMS, CN XING
MN	2160	Wed, Dec 06	11	CH	11" LATE TURN FROM #2153, FOX LAKE
75% OT		Thu, Dec 07	8	D	10" FREIGHT, CN XING
		Tue, Dec 26	13	GW1	12" LATE TURN FROM #2153, FOX LAKE
		Wed, Dec 27	10	RO	7" LATE TURN FROM #2153; 5" OPERATOR ERROR, RED SIGNAL, GRAYLAND; 1" STOP, WESTERN
		Fri, Dec 29	6	I1	6" LATE DEPARTING CHANGING ENDS
MW	2205	Tue, Dec 12	21	EW1	20" LATE TURN FROM #2206, CUS
80% OT		Tue, Dec 26	20	G	30" SIGNAL PROBLEMS B-35 TO SPAULDING; LATE TURN FROM # 2204 ; LATA SYSTEM SHOW TIME UP TO ELGIN
		Wed, Dec 27	13	G1	11" LATE TURN FROM #2206
		Fri, Dec 29	7	G	7" SIGNAL PROBLEMS DARK SIGNAL RESTRICTED SPEED, MANNHEIM TO BENSENVILLE; SIGNAL PROBLEMS, ELGIN/B-35
MW	2208	Thu, Dec 07	8	GT	8" SIGNAL PROBLEMS, TRACK CIRCUIT, RESTRICTING SIGNALS, ROSELLE-ITASCA
75% OT		Tue, Dec 12	23	EW1	15" FOLLOWING #2206
		Tue, Dec 26	38	G1	40" OPERATING ON RESTRICTING SIGNALS ELGIN COACH YARD TO A-5; FOLLOWING TRAINS AHEAD DUE TO SIGNAL PROBLEMS @ B-35
		Wed, Dec 27	15	G	15" 3 ITEM2' ELGIN; RED SIGNAL B-35; BROKEN RAIL/3 MORE ITEM 2'S
		Thu, Dec 28	10	G	11" SIGNAL PROBLEMS, ELGIN
MW	2212	Thu, Dec 07	7	GT	8" SIGNAL PROBLEMS, TRACK CIRCUIT, RESTRICTING SIGNALS, ROSELLE-ITASCA
80% OT		Tue, Dec 12	14	GW	25" SIGNAL PROBLEMS, ROSELLE WEST-ITASCA; FLAGGED BY VERBAL PERMISSION PAST SIGNAL, RESTRICTED SPEED
		Tue, Dec 26	0	G1	ANNULLED UESD EQUIPMENT FROM #2220; #104 ACCOMMODATED PASSENGERS
		Wed, Dec 27	9	CW	10" BROKEN RAIL & 3 ITEM 2'S
MW	2214	Thu, Dec 07	8	GT	8" SIGNAL PROBLEMS, TRACK CIRCUIT, RSETRICTING SIGNALS, ROSELLE-ITASCA
80% OT		Tue, Dec 12	10	GW	10" SIGNAL PROBLEMS, ROSELLE WEST-ITASCA; FLAGGED BY VERBAL PERMISSION PAST SIGNAL, RESTRICTED SPEED FOLLOWING #2212
		Tue, Dec 26	14	G	9" SIGNAL PROBLEMS, ELGION; 2 ITEM 2'S; 2" STOP SIGNAL, CANAL ST
		Fri, Dec 29	7	R	10" WAITING ON ENGINEER, ELGIN
MW	2216	Thu, Dec 07	7	GT	7" SIGNAL PROBLEMS, TRACK CIRCUIT, RESTRICTING SIGNALS, ROSELLE-ITASCA
75% OT		Tue, Dec 12	15	GW	15" SIGNAL PROBLEMS ROSELLE WEST-ITASCA; FLAGGED BY VERBAL PERMISSION PAST SIGNAL, RESTRICTED SPEED
		Tue, Dec 26	15	G	15" SIGNAL PROBLEMS, B-35 TO SPAULDING
		Wed, Dec 27	7	CW	8" BROKEN RAIL & 3 ITEM 2'S
		Fri, Dec 29	8	G	4" SIGNAL PROBLEMS, B-35; 4" DARK SIGNAL, AUGUSTA
MW	2220	Tue, Dec 12	8	GW	8" SIGNAL PROBLEMS ROSELLE WEST-ITASCA; FLAGED BY VARBAL PERMISSION PAST SIGNAL, RESTRICTED SPEED
80% OT		Tue, Dec 26	33	G	33" SIGNAL PROBLEMS, B-35 TO SPAULDING
		Wed, Dec 27	18	CW	18" BROKEN RAIL & 3 ITEM 2'S
		Fri, Dec 29	8	G1	8" WAIT ON #2218. WEST ROSELLE; DOOR PROBLEMS SNOW/FROZEN CAR 8255 & 8257; STOP SIGNAL, LAKE ST
MW	2221	Wed, Dec 06	14	CH	18" SIGNAL & POWER FAILURE, CP CANAL ST-CP MORGAN
80% OT		Tue, Dec 12	10	G	4" STOP SIGNAL, B-35;2" NEAR MISS, MARS(DUMPED AIR AT MONT CLAIRE)2" TRK 3 TO TRK 1 TO B-6, A-5;2" YARD DROP OFF 2223 ENGINEER.
		Wed, Dec 27	8	G	8" SIGNAL PROBLEMS/ITEM 2, B-35;2" NO LINEUP, CUS;2" YARD DROP OFF # 2223 ENGINEER;2" 3 MAIN TO 1 MAIN, A5-B6.
		Thu, Dec 28	12	G	6" SIGNAL ISSUES & ITEM 2'S, B-35; 2" YARD DROP OFF OF #2223 ENGINEER; 2" X/O 3-1 @ A-5/B-6; 3" SLOW LOADING ENG 413
MW	2224	Tue, Dec 12	11	GW1	12" LATE TURN FROM #7241; #7241 DEPARTED CUS 17" LATE DUE TO LATE ARRIVAL OF #2208
80% OT		Tue, Dec 26	20	G	20" SIGNAL PROBLEMS, B-35 TO SPAULDING
		Wed, Dec 27	18	G1	15" LATE ARRIVAL OF #7241 ACCT #2208 DELAY
		Thu, Dec 28	9	G1	10" LATE TURN FROM #7241, FRANKLIN PARK
MW	2228	Tue, Dec 12	23	EW1	24" LATE TURN FROM #2205, BIG TIMBER
80% OT		Wed, Dec 27	16	G1	13" LATE TURN FROM #2205
		Thu, Dec 28	6	G1	5" LATE TURN FROM #2205 EARLIER SIGNAL PROBLEMS @ ELGIN
		Fri, Dec 29	9	G1	7" LATE TURN FROM #2205; SIGNAL PROBLEMS, ELGIN/B-35
MW	2231	Wed, Dec 06	12	CH	10" SIGNAL & POWER FAILURES, CP CANAL ST-CP MORGAN
80% OT		Thu, Dec 14	8	I1	7" WAITING ON I/B TRAIN TO CLEAR, CUS
		Tue, Dec 26	7	G	7" STOPPED, B-35; 3" ITEM 2
		Thu, Dec 28	10	H1	7" X-TRAFFIC CUS ACCT #919 INCIDENT, CUS; 5"FOLLOWING TRAINS AHEAD TO A-5; 3" SIGNAL PROBLEMS, B-35
MW	2242	Wed, Dec 06	24	CH	24" SIGNAL & POWER FAILURES, CP CANAL ST-CP MORGAN
80% OT		Tue, Dec 26	8	G1	8" PERMISSION BY B-35 ON 2MT
		Wed, Dec 27	10	G	10" PERMISSION BY B-35 ON 2MT.
		Thu, Dec 28	7	G	SIGNAL

TABLE 3 (continued): LIST OF WEEKDAY TRAINS LESS THAN 85% ON-TIME
December 2017

Line	Train	Date	Minutes Late	Delay Code	Delay Explanation
MW	2251	Wed, Dec 06	13	CH	13" SIGNAL & POWER FAILURES, CP CANAL ST-CP MORGAN
75% OT		Tue, Dec 26	16	G1	11" LATE TURN FROM #2250
		Wed, Dec 27	12	G	13" SIGNAL PROBLEMS, B-35
		Thu, Dec 28	8	G1	13" LATE TURN FROM #2250
		Fri, Dec 29	10	G	10" SIGNAL PROBLEMS, B-35
MW	2254	Thu, Dec 14	16	D	15" WAIT FOR CP FREIGHT TO CLEAR INTO YARD, B-12 CP141 747 101 CARS 7658 LENGTH
75% OT		Tue, Dec 26	12	G1	12" LATE TURN FROM #2249
		Wed, Dec 27	37	G1	20" LATE TURN FROM #2249; 7" SIGNAL PROBLEMS, B-35; 10" 3 DISRUPTIVE PASSENGERS REMOVED, WESTERN
		Thu, Dec 28	14	G	7" LATE TURN FROM #2249; 7" SIGNAL PROBLEMS, B-35
		Fri, Dec 29	15	G1	15" LATE TURN FROM #2249 & SIGNAL PROBLEMS, B-35
MW	2255	Thu, Dec 14	11	D1	13" LATE TURN FROM #2254, CUS
75% OT		Tue, Dec 26	13	G1	10" LATE TURN FROM #2254
		Wed, Dec 27	40	G1	36" LATE TURN FROM #2254
		Thu, Dec 28	18	G1	14" LATE TURN FROM #2254
		Fri, Dec 29	19	G1	21" LATE TURN FROM #2254 & SIGNAL PROBLEMS, B-35
NCS	118	Wed, Dec 06	10	CH	10" SIGNAL & POWER FAILURES, CP CANAL ST-CP MORGAN
80% OT		Tue, Dec 19	20	D1	20" STOPPED @ PRAIRIE VIEW WAIT FOR #111 & #113 TO X/O DUE TO FREIGHT INTERFERENCE
		Tue, Dec 26	6	IW	PASSENGER LOADING
		Fri, Dec 29	10	D	9" N/B FREIGHT, LAKE VILLA
NCS	119	Wed, Dec 06	8	CH	8" SIGNAL & POWER FAILURES, CP CANAL ST-CP MORGAN
65% OT		Thu, Dec 07	7	D	3" RED DUE TO X-TRAFFIC, GRAYSLAKE.
		Mon, Dec 11	10	GF1	10" STOP SIGNAL RESTRICTED SPEED, GRAYSLAKE
		Tue, Dec 19	7	D1	8" LATE TURN FROM #118, CUS
		Fri, Dec 22	13	D	20" S/B FREIGHT, LOMOND
		Tue, Dec 26	20	GW1	23" WAIT FOR #2156 TO HADN LINE ROUTE, GRAYSLAKE, THEN TALKED BY SIGNAL RESTRICTED SPEED
		Fri, Dec 29	12	E1	13" FOLLOWING #2247 THAT WAS EXPERIENCEING ENGINE PROBLEMS
RI	401	Wed, Dec 06	6	G	7M TRAVELING RESTRICTED SPEED FROM 35.5 TO EJE DUE TO SIGNAL PROBLEMS AT 35.5
75% OT		Thu, Dec 14	12	R1	12M AT RICHARDS WAITING ON LATE TRAINS AHEAD.
		Tue, Dec 26	40	GW1	40M.HAD TO BE FLAGGED BY PERSHING DUE TO #1SW OUT OF CORRESPONDANCE. ALSO AND CP 81ST DUE TO #3 SWITCH OUT OF CORRESPONDANCE.
		Wed, Dec 27	8	EW1	8M LATE ENROUTE MAKING MEETS W/E/B TRAINS
		Fri, Dec 29	13	G	10M B/W GRESHAM AND 99TH DUE TO TRACK CIRCUIT AND GOING AT RESTRICTED SPEED.
RI	416	Mon, Dec 04	45	M	45M 29TH @ MP 3.50 STRUCK A TRESPASSER/INDIVIDUAL WAS TAKEN THE THE HOSPITAL . CAB CAR#8570
80% OT		Tue, Dec 26	46	GW1	46M LATE DEPARTING JUD DUE TO SWITCH FAILURES @ CP PERSHING & CP 81ST. THE CONDUCTOR HAD TO HAND LINE SWITCHES @ CP81ST ST
		Wed, Dec 27	15	IW	5M LATE DEPARTING JUD DUE TO LATE TURN OF EQUIP AS RI401/10M LATE ENROUTE ACCOMMODATING PASSENGERS & WAITING ON W/B TRAINS
		Fri, Dec 29	15	G1	9M LATE DEPARTING RICHARDS DUE TO LATE TURN OF EQUIPMENT. 6M ENROUTE FOLLOWING RI616 OUT OF GRESHAM
RI	419	Mon, Dec 04	26	T1	DEPARTED LSS 29M LATE ACCT LATE TURN FROM 422 AND MECHANICAL LOOKING FOR CAUSE OF HEAVY SMOKE
75% OT		Mon, Dec 11	7	KW	7M ENROUTE DUE TO WHEEL SLIPPAGE DUE TO WEATHER
		Tue, Dec 26	14	GW1	1M LSS LATE PASSENGER. 3M IN ROUTE FOR DOOR ISSUES. 7M FROM 31.9 TO EJ&E FOLLOWING TRAINS AHEAD. 8M EJ&E WAITING FOR TRAINS TO YARD.
		Thu, Dec 28	9	G	HAD TO BE TALKED PASSED SIGNAL DUE TO TRACK CIRCUT/UNABLE TO GET SIGNAL 1 TO 1 WEST (10 MIN AT GRESHAM)
		Fri, Dec 29	11	D1	11M LATE INTO JOLIET DUE TO LATE FLIP
RI	509	Tue, Dec 26	16	CW1	12M LATE DEPARTIKNG LSS WAITING ON MTR TO CLEAR FOUL TIME @ CP PERSHING DUE TO INTERMITTENT TRACK CIRCUIT ON TK#1 OVE #3 SW
80% OT		Wed, Dec 27	8	IW	8M ENROUTE FULL CONSIST & ACCOMODATING PASSENGERS
		Thu, Dec 28	6	IW	6M LATE ENROUTE ACCOMMODATING PASSENGER AND FULL CONSIST
		Fri, Dec 29	6	I	10 EN ROUTE TRAVELLING WITH FULL CONSIST AND HEAVY PASSENGER LOADING/UNLOADING
RI	512	Thu, Dec 07	6	D	10M AT EJE DUE TO CROSS TRAFFIC. CNL508 TAKING HEAD ROOM AND NOT BEING ABLE TO CLEAR.
70% OT		Tue, Dec 12	7	CF	3 MIN AT ROBBINS GOING THROUGH CROSSOVERS AND 4 MIN GOING THROUGH FORM B LIMITS COULD NOT GET AHOLD OF FOREMAN
		Thu, Dec 14	9	I	HEAVY PASSANGER LOADING
		Fri, Dec 22	7	I	7M LATE DUE TO HEAVY LOADING & FULL CONSIST
		Tue, Dec 26	6	IW	5M LATE ENROUTE DUE COLD WEATHER RESTRICTION
		Thu, Dec 28	6	IW	6M ENROUTE ACCOMMODATIONG PASSENGES AND FULL CONSIST
RI	527	Thu, Dec 07	8	D	11 MIN @ EJE DUE TO RB DISPATCHER DELAYING THE MOVEMENT IA500BROUGHT UP TO RICHARDS ON 1, Q314 GOING EAST ON 2, RB HAD ALREADY ACCEPTED IA.
80% OT		Fri, Dec 22	0	XE	LOST COMPLETE POWER @ NEW LENOX AND TRAIN ANNULLED
		Wed, Dec 27	0	DE1	ANNULLED FREIGHT BLOCKING 16TH ST.
		Thu, Dec 28	9	RD	7 MIN WAITING ON A SIGNAL

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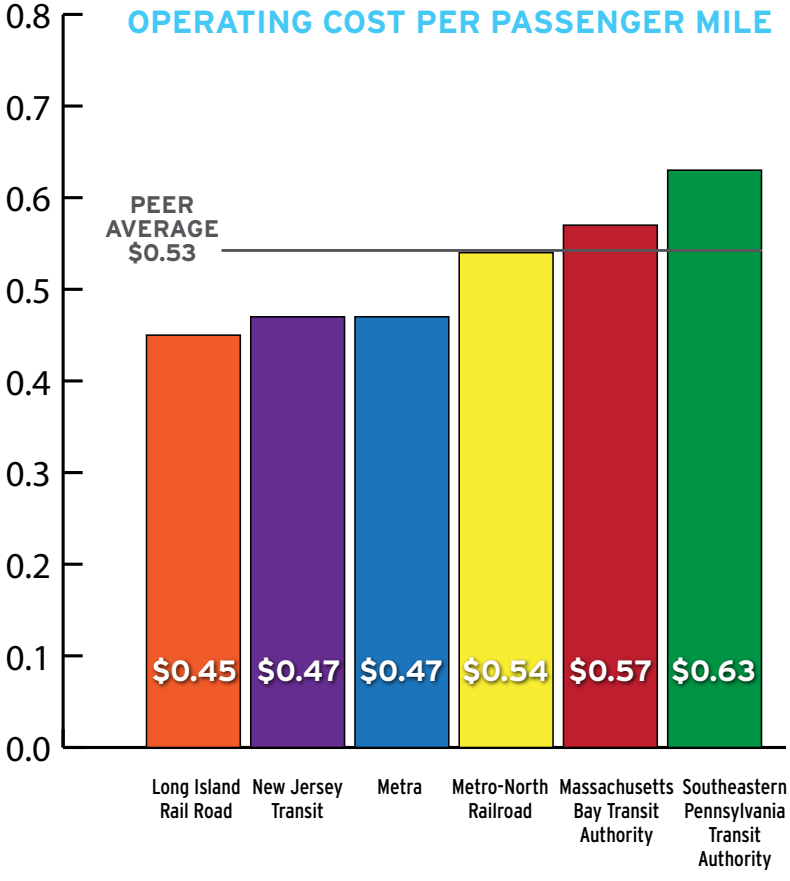
WALKER R.V.S. EXHIBIT 7

METRA,"METRA 2019 FACT BOOK"
(EXCERPTS)

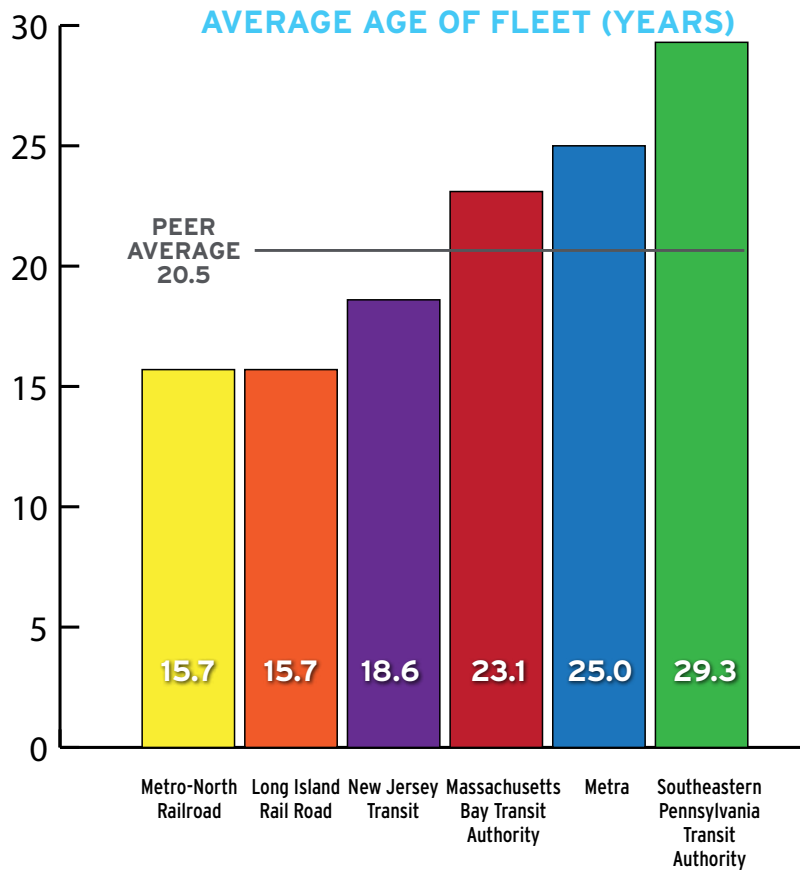
METRA FACT BOOK 2019

Norman Carlson, Chairman
Jim Derwinski, CEO/Executive Director

HOW WE COMPARE to OTHER RAILROADS

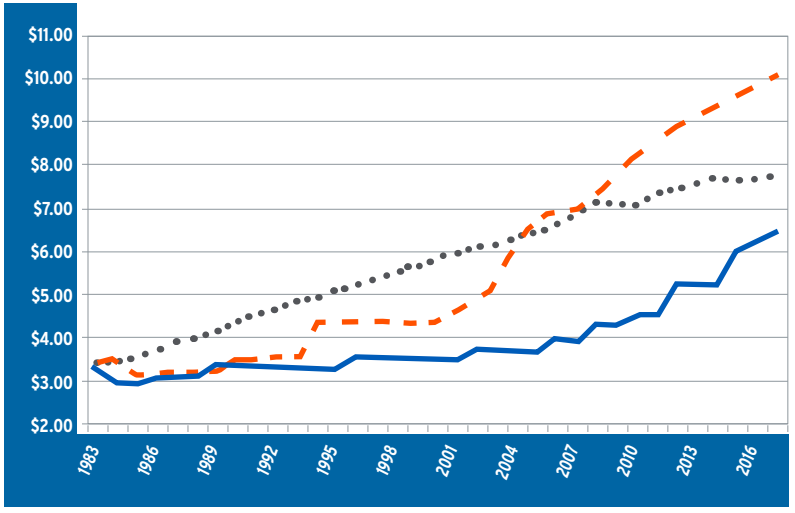


* 2017 National Transit Database



* 2017 National Transit Database

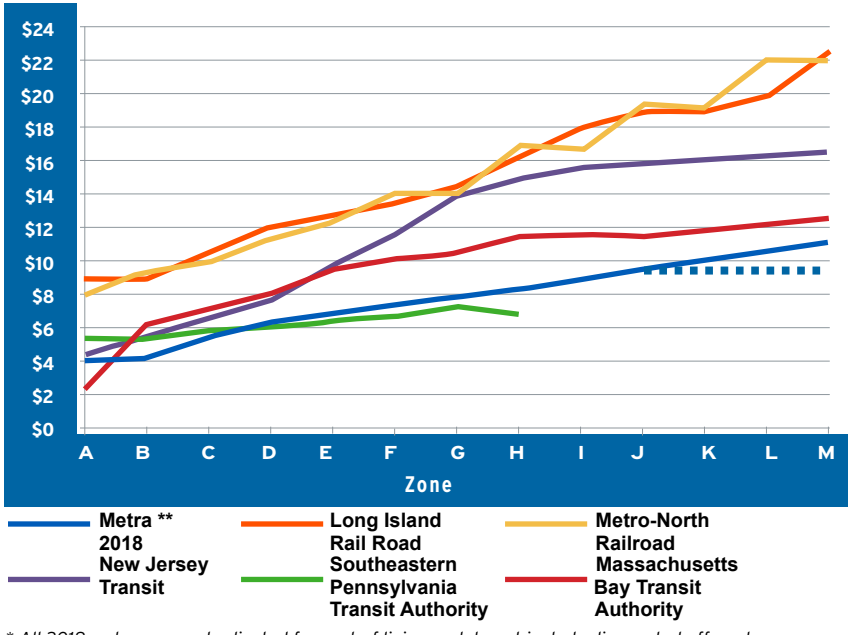
METRA ONE-WAY FARES* vs. CPI and PEERS



Average Peer Fare includes MBTA (Boston), LIRR & Metro-North Railroad (New York), New Jersey Transit (New Jersey), and SEPTA (Philadelphia), CPI data U.S. Burea of Labor Statistics. Data not available for all peers in all years. Consumer Price Index (CPI) and Peer Fares collected from June of each year.

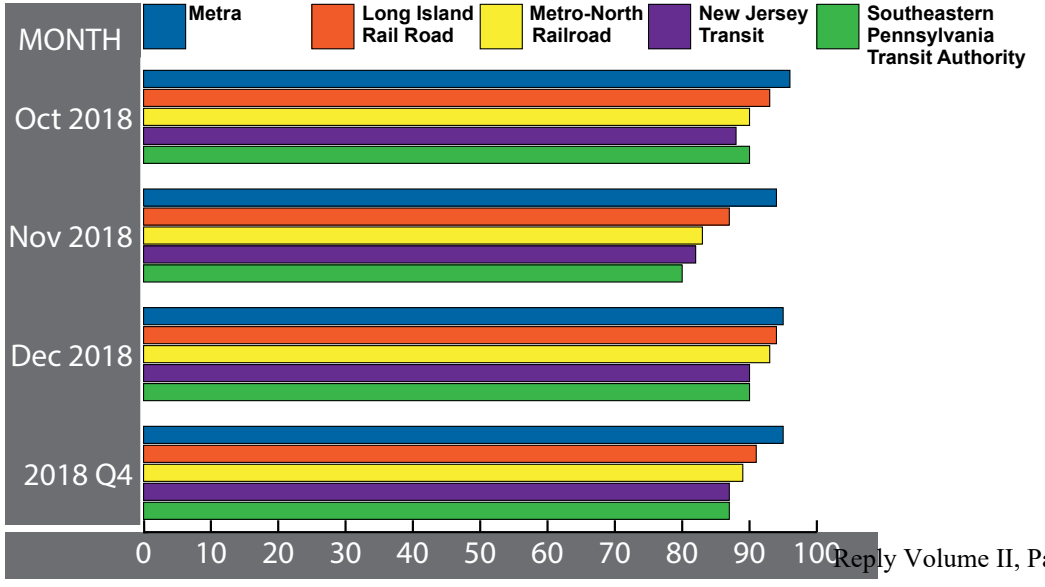
** Zone E Average*

METRA vs. PEER AGENCY PEAK ONE-WAY FARES*



** All 2018; values are not adjusted for cost of living and do not include discounted off-peak or intermediate fares offered by peers but not Metra.*
*** Metra Zones K-M consolidated into Zone J under Fare Pilot Program, effective July 15, 2018.*

METRA ON-TIME PERFORMANCE vs. PEERS



Metra

547 West Jackson Blvd.
Chicago, Illinois 60661
metrarail.com

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WALKER R.V.S. EXHIBIT 8

METRA WEBSITE, HTTPS://METRA.COM/TIME-PERFORMANCE-REPORTS#METRA_AND_ON_TIME_PERFORMANCE

On-Time Performance Reports

Metra and On-Time Performance

While safety will always be Metra's highest priority, on-time performance is a close second. We understand that our customers expect the highest levels of service and are dedicated to doing all we can to deliver them to their destinations on time, every time. We are very proud that we continue to achieve on-time performance goals that have been standard in the railroad industry for longer than Metra has existed.

How We Schedule Our Trains

For Metra and other commuter railroads, developing train schedules is not an exact science. We don't always get it right. That's why we periodically adjust schedules to better reflect actual operating conditions. In the months ahead, we expect to use real-time data that is now available to us to help design the best schedules possible. However, there will always be variations that can cause trains to be delayed.

That's because Metra's schedules are designed to be most successful in "best case," normal operating conditions. In other words, if Metra picked up the exact same number of people every day, from the same exact location, and they all used the exact same doors, in the same weather, with the same equipment, etc., then it would be easy to stay on schedule and hit every stop within a minute of the schedule. To not design schedules based on these conditions would result in increased idling time in between stations and longer overall train trips on days when conditions are normal.

Unfortunately, every day, there are scores of unpredictable variations from those perfect conditions that can have small but cascading impacts on Metra's schedule. These variations can occur for a host of reasons – from the need to deploy a wheelchair lift, to an unusual number of riders at one or more stops to a medical emergency. Other factors that impact schedules include rain and snow, which can easily slow boarding, freight interference issues and mechanical problems. The list goes on.

How We Measure Delays

Like other commuter railroads, Metra considers a train to have operated on time if it reaches its final destination within five minutes and 59 seconds of its scheduled arrival. That standard filters out some of the delays that are beyond a railroad's control, so the resulting rate is a truer reflection of the railroad's efforts to control the delays that are controllable. The goal is to use this information to ultimately improve service. And, we believe this approach provides us with relevant information to measure how we are doing and where we need to improve.

But that doesn't mean that we don't strive to keep on schedule at all of our stations and stops. We understand that delays at intermediate stops can be just as important to our customers as our ability deliver a train to its final destination on time.

How We Work to Keep Customers Informed

Our goal is to work as hard as we can to provide safe, reliable and comfortable service, while providing honest and accurate information to our customers about the status of their trains.

That is one of the reasons Metra has made significant investments in technology aimed at helping our customers access the real-time data they need to make informed travel decisions. Today, our customers have a variety of ways to learn if their train is on time.

Our email alerts allow customers to select a window during which they want to receive real-time information about operational issues. The Ventra app features transit trackers for all three agencies, providing real-time information about Metra trains, CTA buses and trains and Pace buses. Our customers can follow each of Metra's 11 rail lines on Twitter and get up-to-the-minute status updates on their train schedule. And, of course, customers can call Passenger Services at 312-322-6777 weekdays from 8 a.m. to 5 p.m. with questions about their train schedule.

The Monthly On-Time Performance Report provides an analysis of train delays as reported for all Metra commuter rail lines. On-time is defined for this analysis as those regularly scheduled trains arriving at their last station stop less than six minutes behind schedule. Trains that are six minutes or more behind schedule, including annulled trains (trains that do not complete their scheduled runs), are regarded as late. "Extra" trains (trains that are added to handle special events but not shown in the regularly published timetables) are excluded from on-time performance calculations unless shown in the special-event schedules that include all intermediate station stop times and are distributed publicly via Metra's website or on paper flyers. Cancelled (not annulled) trains and non-revenue trains are also excluded from on-time performance calculations.

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WALKER R.V.S. EXHIBIT 9

B17 AND B12 – FREIGHT WINDOWS – A – REFERENCED IN DEPOSITION HELD ON 06-07-2022.XLS

TOWER B17 - WEEKDAYS

REDACTED PUBLIC RECORD VERSION

	MILW-E		MILW-W				WINDOWS		
		0113	**2725 (Mon only)**				**0001-0520**	**(Clear 0110 MON)**	
	2202	0528							
	2204	0611					**0535-0605**		
	2206	0628							
	2208	0636							
	2210	0656							
		0659	**2203**						
	2212	0709					**0713-0733**		
	2216	0737							
	2222	0756							
		0806	**2205**						
	2226	0809					**0812-0900**		
	2228	0905							
		0906	**2209**				**0910-1000**		
	2230	1005					**1010-1100**		
		1103	**2213**						
	2232	1105					**1110-1300**		
		1303	**2217**						
	2236	1305					**1310-1405**		
		1413	**2219**				**1420-1500**		
		1503	**2221**						
	2240	1505					**1510-1600**		
	2242	1605							
		1607	**2223**				**1610-1635**		
		1638	**2225**						
	2244	1705							
		1707	**2227**						
		1723	**2233**						
		1737	**2235**						
		1750	**2237**						
	2246	1805							
		1815	**2239**				**1817-1835**		
		1838	**2243**						
	2248	1905					**1840-1900**		
		1915	**2247**				**1920-2010**		
		2015	**2249**				**2020-2100**		
	2252	2105							
		2115	**2251**				**2120-2310**		
		2313	**2255**				**2320-0520**	clear 0110 MON	

TOWER B12 - WEEKDAYS

PUBLIC RECORD VERSION

MILW-E		MILW-W	B12-GW			WINDOWS		
	0108	**2725 (Mon only)**				**0001-0530**	**(Clear 0105 MON)**	
2202	0535		**#3 MT**					
2204	0616							
NC-100	***0629***							
2206	0635					**0540-0630**		
2208	0643		**#3 MT**					
NC-102	***0708***							
	0652	**2203**						
2210	0701							
2212	0716		**#3 MT**			***0720-0735***	*(15 min)*	
NC-108	***0738***							
2216	0743							
	0800	**2205**						
2222	0801							
NC-110	***0812***							
2226	0816		**#3 MT**			**0820-0855**		
	0900	**2209**						
2228	0911		**#3 MT**			**0915-1005**		
2230	1011		**#3 MT**			**1015-1050**		
	1057	**2213**						
2232	1111		**#3 MT**			**1115-1250**		
	1258	**2217**				**1315-1405**		
2236	1311		**#3 MT**					
	1408	**2219**				**1410-1450**		
	1458	**2221**						
2240	1511		**#3 MT**					
	1600	**2223**						
2242	1605		**#3 MT**			**1610-1630**		
	1632	**2225**						
NC-116	***1644***							
	1649	***NC-109***						
	1652	**2227**						
2244	1705		**#3 MT**					
	1709	***2229***						
	1717	**2233**						
2404	1723							
	1724	***NC-113***						
	1732	**2235**						
	1744	**2237**						
	1757	***NC-115***				**1835-1905**		
	1810	**2239**						
2246	1811		**#3 MT**			**1915-2005**		
	1822	***NC-117***				**2015-2105**		
	1837	**2243**						
	1910	**2247**				**2115-2305**		
2248	1912		**#3 MT**			**2300-0530**	clear 0105 MON	
	2010	**2249**						
	2110	**2251**						

TOWER B12 - WEEKDAYS

REDACTED Public Record Version

	2252	2112		**#3 MT**						
		2308	**2255**							

TOWER B17 – SATURDAYS and SUNDAYS

REDACTED PUBLIC DOCUMENT VERSION

	MILW-E		MILW-W				WINDOWS		
		0113	***Sun-Mon only***				**0001-0625**	**(Clear 0110 SUN)**	
	2700	0632							
	2704	0832					**0635-0825**		
		0903	**2703**				**0835-0855**		
	2708	1032					**0905-1025**		
		1103	**2707**				**1035-1055**		
	2714	1232					**1105-1225**		
		1303	**2709**				**1235-1255**		
	2716	1432					**1305-1425**		
		1503	**2711**				**1435-1455**		
	2718	1632					**1635-1655**		
		1703	**2715**				**1705-1825**		
	2720	1832					**1835-1910**		
		1913	**2719**				**1915-2040**		
	2722	2047					**2050-2105**		
		2113	**2721**				**2115-2240**		
	2724	2247					**2250-2310**		
		2313	**2723**				**2315-0110**		
Sun-Mon only		**0113**	**2725**				**0115-0525**	**0625 SUN, 0525 MON**	
							1817-1835		
							1840-1900		
							1920-2010		
							2020-2100		
							2120-2310		
							2320-0520	clear 0110 MON	

TOWER B12 – SATURDAYS and SUNDAYS

REDACTED PUBLIC DOCUMENT VERSION

	MILW-E		MILW-W				WINDOWS		
		0108	***Sun-Mon only***				**0001-0635**	**(Clear 0110 SUN)**	
	2700	0639							
	2704	0839					**0645-0830**		
		0858	**2703**				***0840-0855***	***15 min***	
	2708	1039					**0900-1030**		
		1058	**2707**				***1040-1055***	***15 min***	
	2714	1239					**1100-1230**		
		1258	**2709**				***1240-1255***	***15 min***	
	2716	1439					**1300-1430**		
		1458	**2711**				***1440-1455***	***15 min***	
	2718	1639					**1500-1630**		
		1658	**2715**				***1640-1655***	***15 min***	
	2720	1839					**1700-1830**		
		1908	**2719**				**1840-1905**		
	2722	2049					**1910-2040**		
		2108	**2721**				***2040-2055***	***15 min***	
	2724	2249					**2110-2240**		
		2308	**2723**				***2240-2255***	***15 min***	
Sun-Mon only		**0108**	**2725**				**2310-0105**		
							0110-0525	**0625 SUN, 0525 MON**	
							1510-1600		

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EXHIBIT M

REPLY VERIFIED STATEMENT OF ADOLPH GAMEIRO

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36500

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

REPLY VERIFIED STATEMENT OF ADOLPH GAMEIRO

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II. BNSF'S SUGGESTION THAT IT MAY SEEK TRACKAGE RIGHTS OVER CPKC BETWEEN CLINTON, IA AND SAVANNA, IL IS OVERREACHING 13

EXHIBITS

EXHIBIT 1: THE "1982 TRACKAGE AGREEMENT" - TRACKAGE AGREEMENT BETWEEN RICHARD B. OGILVIE, TRUSTEE OF THE PROPERTY OF THE CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD COMPANY, DEBTOR AND THE REGIONAL TRANSPORTATION AUTHORITY (SEPT. 16, 1982) (ALSO METRA COMMENTS EXH. A-1)

EXHIBIT 2: THE "1984 ASSET PURCHASE AGREEMENT" - ASSET PURCHASE AGREEMENT BETWEEN SOO LINE RAILROAD COMPANY AND SLRCO, INC, ON THE ONE HAND, AND RICHARD B. OGILVIE, TRUSTEE OF THE PROPERTY OF THE CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD COMPANY (APR. 6, 1984)

EXHIBIT 3: *IN THE MATTER OF CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC R.R.*, R.R., REORGANIZATION NO. 77 B 8999, ORDER NO. 809 (N.D. ILL. FEB. 19, 1985)

EXHIBIT 4: THE "1985 TRACKAGE AGREEMENT" - TRACKAGE AGREEMENT BETWEEN RICHARD B. OGILVIE, TRUSTEE OF THE PROPERTY OF THE CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD COMPANY, DEBTOR AND SLRCO, INC. (FEB. 19, 1985) (ALSO METRA COMMENTS EXH. A-2)

EXHIBIT 5: *IN THE MATTER OF CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC R.R.*, R.R. REORGANIZATION, NO. 77 B 8999, STIPULATION (N.D. ILL. SEPT. 3, 1987) (METR_FD36500_012882-928) (EXCERPTS)

EXHIBIT 6: THE 1993 SOO-METRA SUPPLEMENTAL AGREEMENT – SUPPLEMENTAL AGREEMENT BETWEEN COMMUTER RAIL DIVISION OF THE REGIONAL TRANSPORTATION AUTHORITY AND SOO LINE RAILROAD COMPANY (MAY 27, 1993) (ALSO METRA COMMENTS EXH. A-3)

EXHIBIT 7: THE 2003 SOO-METRA AMENDMENT AGREEMENT – AMENDMENT AGREEMENT BETWEEN COMMUTER RAIL DIVISION OF THE REGIONAL TRANSPORTATION AUTHORITY AND SOO LINE RAILROAD COMPANY (APR. 1, 2003) (ALSO METRA COMMENTS EXH. A-4)

1. I am Adolph Gameiro. I am the Managing Director Interline and Network Strategy at Canadian Pacific. I have held that role since April 2021. Prior to this role, I served as Director Interline Agreements since 2011. I am responsible for CP's trackage rights and other joint facility agreements with other railroads and commuter rail agencies in the United States and Canada.

2. The purpose of this Verified Statement is to address (a) assertions made by Metra regarding the contractual relationship between CP and Metra concerning the Chicago area trackage that CP and Metra share and (b) assertions by BNSF that it may in the future ask the Board to grant new trackage rights for BNSF to operate over CP trackage between Savanna, IL and Clinton, IA.

3. As I explain below, the trackage that CP and Metra share was part of Milwaukee Road's network. CP's affiliate Soo Line Railroad Company ("Soo Line") acquired the core Milwaukee Road network, including its access to Chicago via the shared lines. CP's rights over those lines were and remain governed by agreements entered into in connection with the transfer of Milwaukee Road's assets, and subsequently renegotiated multiple times between CP and Metra. I will discuss the significance of these agreements in more detail in this statement.

I. THE GOVERNING CONTRACTS REQUIRE METRA TO SHARE ITS LINES WITH CP'S FREIGHT TRAFFIC

4. The governing agreements grant CP the right to operate freight trains on Metra's MD-W and MD-N lines. The agreements place no limit on the number of freight trains CP may operate, provided that CP's trains may not interfere with Metra's passenger operations during specified peak periods. Conversely, the agreements preclude Metra from adding non-peak trains that would materially interfere with CP's freight operations. Changes in commuter train schedules, including the addition of new train service, required the Milwaukee Road's consent

and likewise now require CP's consent. The agreements also preserve freight railroad control (with CP as successor to Milwaukee Road), including the right to dispatch all freight and passenger operations on the lines.

5. I review the history of these rights and the ways that Metra's proposals in this proceeding would override specific contractual provisions that are important to CP's ability to conduct freight operations.

A. Milwaukee Road's Bankruptcy Led to the Bifurcation of Freight Operating Rights and Commuter Agency Ownership

6. The Milwaukee Road declared bankruptcy in 1977, and was ceasing its commuter operations in Chicago soon thereafter. This led to a series of transactions that split freight and commuter operating rights in order to continue both sets of transportation services.

7. First, to continue commuter service, the Milwaukee Road bankruptcy trustee entered into a Trackage Agreement in 1982 with the Regional Transportation Authority (the commuter rail operating division of which is Metra) granting it the right to operate commuter trains on the Milwaukee Road lines that had hosted commuter trains. The 1982 Agreement is attached to Metra's submission, as Exhibit A-1 to the Verified Statement of Rocio Gentil. For convenience, I reattach excerpts from this Agreement as Exhibit 1 hereto. Under the 1982 Agreement, the Milwaukee Road maintained control and dispatch of the Joint Line, had rights to run unlimited numbers of freight trains over the lines, and recognized the priority of commuter trains only during specified peak periods.

8. Second, the Milwaukee Trustee developed a plan for preserving freight service on the viable portions of the Milwaukee Road system, essentially the lines east of Kansas City and the Twin Cities. This part of the network, of course, included Milwaukee Road's essential freight operations to and from the Chicago gateway via both the Chicago and Milwaukee

Subdivision (between Milwaukee and Chicago) and the Elgin and Chicago Subdivisions (between Chicago and Savanna, Illinois). After a vigorous bidding war for these assets and dueling applications at the Interstate Commerce Commission, in 1984 the ICC approved Soo Line's proposal.[1]

9. In 1984, the Trustee obtained the approval of the federal bankruptcy court handling the matter to convey Milwaukee Road's freight assets to Soo Line.[2] The Trustee and Soo Line entered into an Asset Purchase Agreement ("APA") that provided for Soo Line's acquisition of those assets. Excerpts from this Agreement are Exhibit 2 hereto. The Trustee retained ownership of Milwaukee's "Commuter Service Properties," namely the lines over which Metra operates. Notably, the Commuter Assets expressly excluded Milwaukee Road's (now CP's) Bensenville Yard. *See* APA, Exhibit C-1.

10. But the Trustee conveyed to Soo Line all of the rights other than ownership that Milwaukee Road had possessed under the 1982 Trackage Agreement relative to the excluded Commuter Assets. This kept in place the integral nature of the Milwaukee Road network, preserving its connection to the vital Chicago gateway. Specifically, the APA provided that Soo Line would be granted "*permanent* trackage rights in and over the Commuter Service Properties substantially in the form attached as Exhibit G to this Agreement." APA § 15(d) (emphasis added). "Exhibit G" in turn stated that the agreement itself was "[to be furnished]" but made clear that the agreement would "provide for Soo and SLRCO's use of the Commuter Service

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[1] *Chicago, Milwaukee, St. Paul & Pacific R.R. – Reorganization – Acquisition by Grand Trunk Corp.*, 2 I.C.C.2d 161, 274 (1984).

[2] The formal acquirer of the Milwaukee Road assets under the APA was SLRCO, Inc., an affiliate of Soo Line.

Properties on terms no less favorable to Soo and SLRCO than those under which the Trustee [*i.e.,* Milwaukee Road] currently operates over such trackage." *Id.*, Exh. G.

11. This Agreement was expressly approved by the Bankruptcy Court's Order No. 809, entered February 19, 1985, a copy of which is attached as Exhibit 3.

12. In 1985, Soo Line's SLRCO affiliate and the Trustee entered into a Trackage Agreement granting precisely these rights. Although the 1985 Trackage Agreement terminates in 2083, the conveyance of Milwaukee Road's assets, including rights to the "Commuter Service Properties," was permanent as noted in the previous paragraph. In addition, as the Board knows, under the "*Tex Mex* Doctrine," CP's rights could not be discontinued or abandoned without an order of the Board authorizing such a discontinuation. The 1985 Trackage Agreement is attached to Metra's submission, as Exhibit A-2 to the Verified Statement of Rocio Gentil. For convenience, I reattach excerpts from the 1985 Trackage Agreement as Exhibit 4 hereto. I discuss the significance of the terms of this Agreement below.

13. A few years later, in 1987, the Trustee conveyed Milwaukee's "Commuter Service Properties" to Metra in a condemnation sale. That conveyance, of course, was subject to the permanent rights granted to Soo Line in 1985. It is noteworthy that Metra did not seek authorization from the ICC to acquire ownership of these former-Milwaukee Road rail lines. Instead, Metra indemnified the Trustee's successor from any liability associated with "the absence of a request for ICC approval of, or the lack of ICC approval of, the condemnation of the Acquired Property." Stipulation in Condemnation Matter, § 10.1(c) (METR_FD36500_012882) (Excerpts are Exhibit 5 hereto). Metra's decision not to seek ICC approval is another indication that Metra understood that the rights granted to Soo Line in the 1985 Trackage Agreement ensured that Metra's acquisition would not have any effect on – and not interfere in any way

with – Soo Line's freight operations or dispatching on the line in the discharge of Soo Line's common carrier obligations.

14. In 1993, CP and Metra supplemented the 1985 Trackage Agreement to make clear that CP was the successor to SLRCO under that agreement, to give Metra responsibility for maintaining the line, and to incorporate certain concepts from the 1982 Trackage Agreement that had been left out of the 1985 Trackage Agreement – namely the existence of "peak period" windows during which Metra trains would have priority and provisions addressing processes for Metra to alter its schedules or to add trains. The core provisions of the 1985 Trackage Agreement giving Soo Line unrestricted rights to conduct freight operations (subject to avoiding interference with Metra during peak periods) and to dispatch all freight and passenger trains on the line remained intact. The 1993 Supplemental Agreement is attached to Metra's submission, as Exhibit A-3 to the Verified Statement of Rocio Gentil. For convenience, I reattach excerpts from this Agreement as Exhibit 6 hereto.

15. In 2003, when CP admitted the Iowa, Chicago & Eastern Railroad to operate freight trains over a portion of Metra's MD-W line (west of Bensenville), CP and Metra comprehensively renegotiated the compensation terms governing CP's use of the Metra-owned lines over which it operates and amended the 1995 Trackage Agreement. The 2003 Amendment Agreement is attached to Metra's submission, as Exhibit A-4 to the Verified Statement of Rocio Gentil. For convenience, I reattach excerpts from this Agreement as Exhibit 7 hereto.

B. The 1985 Trackage Agreement Grants CP Rights that Are the Equivalent to Those Milwaukee Had When It Owned the Metra Lines

16. Consistent with the clear statement in the 1984 Asset Purchase Agreement that Soo's permanent rights to operate on the Metra-owned lines would be "no less favorable to Soo … than those under which the Trustee [*i.e.*, Milwaukee Road] currently operates over such

trackage," the 1985 Trackage Agreement, as supplemented by the 1993 Supplemental Agreement, preserved the key attributes of the 1982 Trackage Agreement allowing Metra to operate over Milwaukee Road. Table 1 below compares the key provisions of these agreements that bear on the rights of the freight railroad (Milwaukee in 1982 and CP today) to operate in conjunction with Metra's commuter operations.

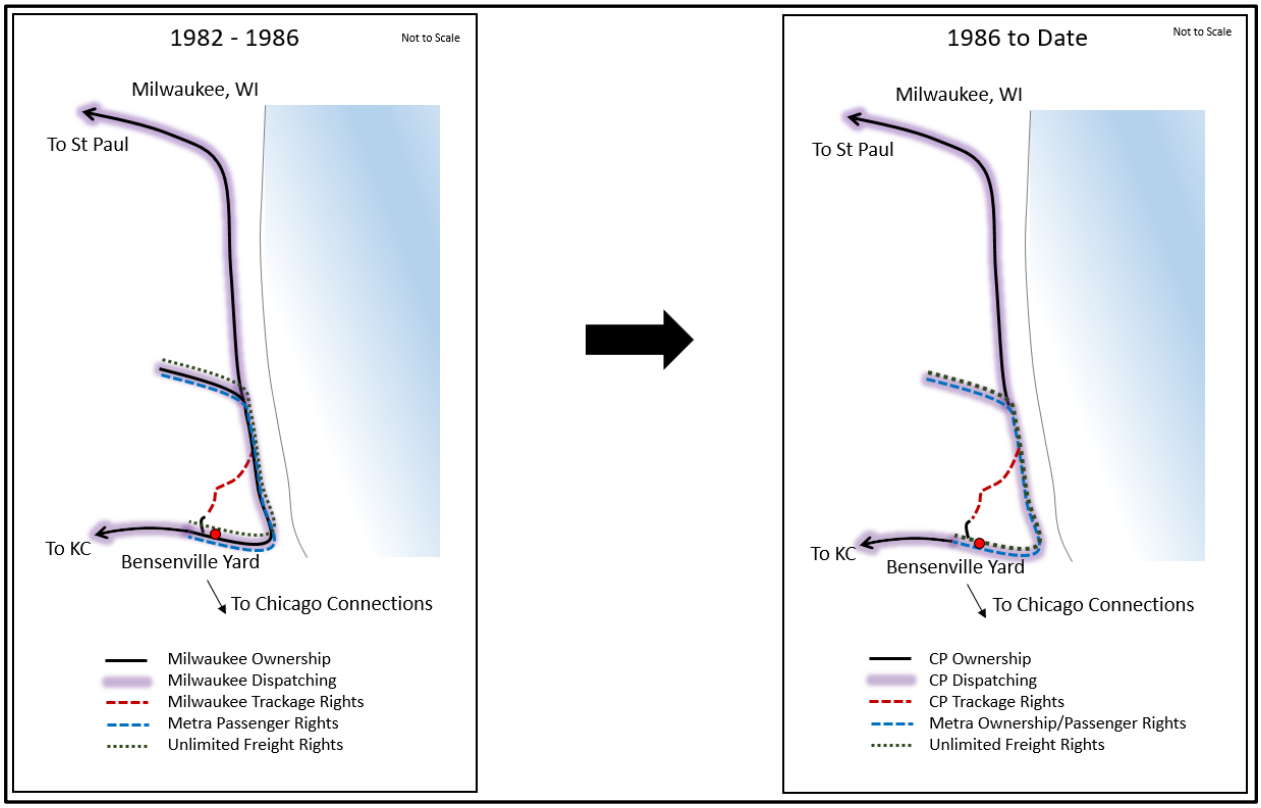
TABLE 1
KEY TERMS OF 1982 AND 1985/1993 TRACKAGE AGREEMENTS

RIGHTS	1982 AGREEMENT	1985 AND 1993 AGREEMENTS
Owner of Track Assets	Freight RR	Metra
Freight railroad responsible for directing the movement of all freight and passenger trains (i.e., dispatching)	☑ § 9.1	☑ 1985 § 8.1
Operation of all freight and passenger trains over the line subject to freight railroad direction	☑ § 9.2	☑ 1985 § 8.2
No limit on growth in freight operations	☑	☑
Addition of sidings necessitated by increased traffic left to judgment of freight railroad	☑ § 4.1	☑ 1985 § 3.1
Freight railroad consent required to add trains beyond those specifically provided for by agreement	☑ § 9.8	☑ 1993 § 8.16
Priority given to commuter trains during defined peak periods	☑ § 9.8	☑ 1993 § 8.15
Freight railroad shall not "unreasonably disrupt or delay" non-peak period commuter trains	☑ § 9.8	☑ 1993 § 8.15

17. As summarized in Figure 1 below, the only fundamental change is a shift of ownership from Milwaukee Road to Metra, and not any alteration in the freight railroad's rights to add freight trains to the lines and dispatch all operations on the lines (again with priority for commuter trains only during peak periods).

Gameiro R.V.S. at 8

FIGURE 1
METRA'S PURCHASE OF THE MD-W AND MD-N LINES
HAD NO EFFECT ON CP'S FREIGHT OPERATING RIGHTS



C. Metra's Proposed Conditions Would Disrupt the Permanent Contractual Rights Granted to CP

18. Several of the conditions that Metra seeks in this proceeding would significantly alter the contractual rights set forth in the governing agreements between CP and Metra.

19. First, Metra asks for a condition requiring that CP "amend its Trackage Agreement with Metra to transfer dispatching control to Metra." METR-7 at 70-73. This on its face would alter CP's contractual rights, which by their express terms give CP complete operational control over all freight and passenger trains on the MD-W and MD-N lines in perpetuity. The importance of CP retaining these rights is discussed in the Reply Verified Statement of Nick Walker.

20. To the extent Metra has complaints about how CP dispatches Metra trains, the existing agreements provide Metra with contractual rights that it can seek to enforce if it chooses to do so, including through specific performance in certain circumstances. *See* 1985 Trackage Agreement, § 17.5.

21. Second, Metra seeks a condition imposing a "standard and process for Metra schedule changes and new trains" based on the claim that Metra has a "right to use capacity on MD-W and MD-N, which it owns." METR-7 at 74. With respect, although Metra does own the track assets associated with the MD-W and MD-N lines, as I have explained the longstanding agreements between CP and Metra do not give Metra "ownership of the operational capacity" on these lines any more than they give such ownership to CP. Rather, they provide for a set of capacity-allocation rules that vary between (a) Metra's peak periods, during which CP may not interfere with Metra and Metra is free to add trains without limitation beyond the physical capabilities of the infrastructure, and (b) all other times of the day and night, when the agreements provide for an agreed number of Metra trains and a set schedule for those trains, devoting all remaining capacity to CP's freight operations (so long as those trains do not unreasonably disrupt or delay Metra trains) and requiring CP consent (not to be unreasonably withheld) for changes to Metra's schedules or the addition of new Metra trains.

22. By requesting a "binding mechanism" for adding trains, Metra is saying that it should have the contractual entitlement to add trains regardless of the physical capabilities of the infrastructure and the demands placed on that infrastructure by CP's freight operation. In effect, Metra is seeking to extend its peak period windows across the entire day. This concept is fundamentally at odds with the rights CP purchased (and which the ICC authorized and the Bankruptcy Court approved) to increase its freight operations so long as doing so did not

interfere with Metra during its peak periods or "unreasonably disrupt or delay" non-peak period commuter trains.

23. Third, Metra proposes a blizzard of conditions addressing so-called "financial" issues, including a condition requiring CP to pay for the full cost of capital projects on the MD-W and MD-N lines "if increases in its traffic volume, weight, and frequency, as well as the length of trains, is the reason that the capital project is pursued," a requirement to "compensate Metra for maintenance … by changing CP's maintenance contribution from a flat fee to a fee based on train counts and gross ton miles," and a "change on CP's rental terms from a flat fee to a dollar per car mile." METR-7 at 77-78. All of these requests would alter the economic terms and basic structure of the agreements. In addition, Metra proposes to insert into those agreements a variety of new "performance penalties" that are not contained in the existing agreements. *Id.* at 78.

24. Metra also appears to ignore the fact that the agreement (as amended in 2003) already contains mechanisms for adjusting compensation based on increases in CP freight traffic. *See* 2003 Amendment Agreement (Exh. 7 hereto), §§ 6, 19. Metra is asking the Board to grant it terms it did not negotiate, and without which Metra has nonetheless expanded its service over the years.

25. These requests reflect a one-way demand to renegotiate the governing agreements in Metra's favor, despite the fact that nothing about the CP/KCS Transaction requires any adjustment to those agreements. Again, the agreements allow for CP to increase its freight traffic on the lines without restriction. If they did not, they would have interfered with CP's common carrier rights and obligations, and required Metra to get the Board's (or ICC's) approval to acquire the MD-W and MD-N lines from the Milwaukee Road Trustee.

26. Metra's request to change the compensation formulas in the agreements is particularly one-sided and ill-considered. The flat fee approach of the existing agreements makes sense given that Metra has been and will remain by far the dominant user on these lines, and its high-speed, precisely-scheduled passenger service drives significantly greater costs for capital and maintenance on the lines. In addition, passenger trains consume considerably greater line capacity than do freight trains, a feature that is reflected in the compensation structure of the existing agreement. (The difference between freight needs and passenger needs is even acknowledged in the 1993 Supplemental Agreement, at Section 7.6).

27. Metra's dissatisfaction with the existing compensation terms appears to be that CP's freight operations will be growing as a share of total traffic on the MD-W line (though no change is anticipated on the MD-N line). But Metra appears to be ignoring that when these compensation terms were established, freight trains accounted for a higher share of traffic than CP trains will represent even after the full implementation of the CPKCS transaction. During the 1980s and 1990s, there were approximately 12 scheduled freight trains on the MD-W line west of Bensenville Yard daily, plus locals.[3] The CP/KCS transaction will yield only about the same number.[4] Meanwhile, Metra's train counts have increased tremendously, as Mr. Walker explains in his Reply Verified Statement. These circumstances make it even less appropriate for Metra to request an order requiring the revisions to the compensation terms of the CP-Metra agreements.

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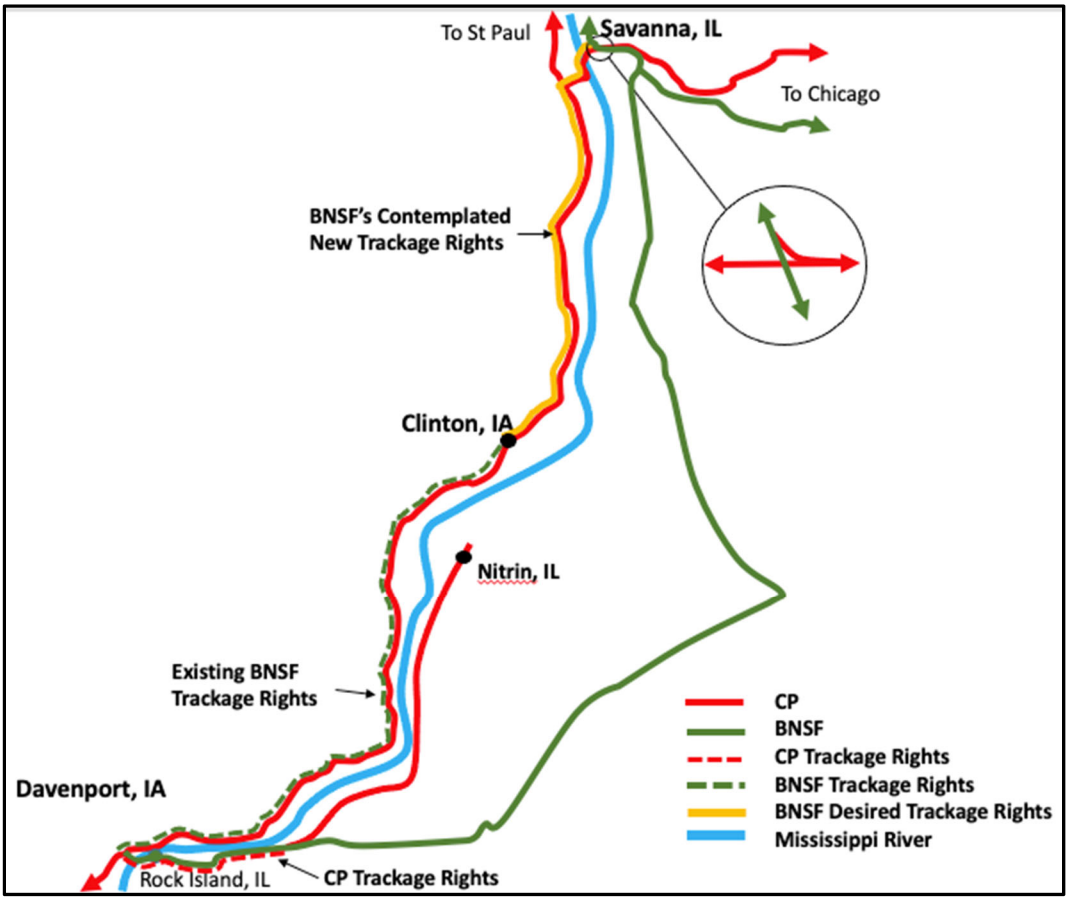
[3] This is borne out both by the deposition testimony of Metra's witness Oppenheim (Tr. at {22:13-21) and records of Milwaukee Road train schedules (which I am including with my workpapers).

[4] *See* Amended Operating Plan, App. T at 6 (segment 81).

II. BNSF'S SUGGESTION THAT IT MAY SEEK TRACKAGE RIGHTS OVER CPKC BETWEEN CLINTON, IA AND SAVANNA, IL IS OVERREACHING

28. Today, BNSF has trackage and solicitation rights over CP's trackage along the west side of the Mississippi River between Davenport, IA, and Clinton, IA. BNSF's trackage rights over CP were granted as part of a reciprocal exchange of rights in 1995 that gave CP trackage and solicitation rights over BNSF trackage along the east side of the Mississippi at Rock Island, IL, Moline IL, and other points. Both BNSF and CP reach their rights via the Crescent Bridge, which is a weight-restricted bridge over the Mississippi River at Davenport. These existing rights are shown in the map set forth as Figure 2 below.

FIGURE 2
MAP OF CP AND BNSF LINES DAVENPORT TO SAVANNA



Gameiro R.V.S. at 13

29. In discussions with CP, BNSF has long sought trackage rights allowing it to reach Clinton (and points south) via a connection with CP at Savanna rather than Davenport. I personally met with BNSF in Calgary to discuss this BNSF request in 2011.

30. CP has not been willing to grant such rights. Among other things, there is no connection between CP and BNSF at Savanna that would allow "straight ahead" operation of BNSF trains. The only connection is in the northeast quadrant of the at-grade crossing at Savanna, meaning that BNSF trains would have to perform a backing move on CP mainline trackage there, which would disrupt mainline operations. In addition, were BNSF to access its Clinton-Davenport rights via Savanna, BNSF trains would operate over an additional 19.6 miles of CP mainline trackage, introducing additional operational complexity there and fundamentally altering the reciprocal nature of the rights exchanged in 1995.

31. Were CP to agree to grant BNSF such rights, it would only be part of a mutually agreeable negotiated outcome that provided benefits to both parties, not just BNSF.

VERIFICATION

I, Adolph Gameiro, declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this statement.

Executed on this 12 day of July, 2022.

Adolph Gameiro

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36500

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

GAMEIRO R.V.S. EXHIBIT 1

THE "1982 TRACKAGE AGREEMENT" - TRACKAGE AGREEMENT BETWEEN RICHARD B. OGILVIE, TRUSTEE OF THE PROPERTY OF THE CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD COMPANY, DEBTOR AND THE REGIONAL TRANSPORTATION AUTHORITY (SEPT. 16, 1982) (EXCERPTS) (ALSO METRA COMMENTS EXH. A-1)

EXHIBIT A-1

RTA 1982 Trackage Agreement

TRACKAGE AGREEMENT

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TRACKAGE AGREEMENT

THIS AGREEMENT, made and entered into this 16th day of September, 1982, by and between RICHARD B. OGILVIE, TRUSTEE OF THE PROPERTY OF CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, DEBTOR ("Milwaukee"), and the REGIONAL TRANSPORTATION AUTHORITY, a municipal corporation organized under the provisions of the Regional Transportation Authority Act of the State of Illinois ("Authority").

W I T N E S S E T H:

WHEREAS, Milwaukee owns and operates lines of railroad between Chicago and Fox Lake, Illinois and between Chicago and Almora, Illinois, which lines of railroad are shown on Exhibit A; and

WHEREAS, Milwaukee has discontinued the rail passenger commuter service over such lines; and

WHEREAS, the Authority believes that the continuance of rail passenger commuter service is in the public interest; and

WHEREAS, the Authority is willing to commence operations of the rail passenger commuter service discontinued by the Milwaukee over trackage facilities owned or used by the Milwaukee on the terms and conditions contained herein;

NOW THEREFORE, the parties hereto agree as follows:

ARTICLE I.

JOINT LINE DEFINED

1.1 The term "Joint Line" refers to the following trackage, as shown in approximation on Exhibit A, and ancillary facilities between Madison Street, Chicago, Illinois (Mile Post 0.2) and Fox Lake, Illinois (Mile Post 49.79) ("North Line") and between Tower A-5 (Mile Post 5.26) and Almora, Illinois (Mile Post 40.26) ("West Line"): (a) the right of way and improvements thereto, including, but not limited to, rails, ties, ballast, switches, turnouts, wyes, crossovers, bridges, culverts, fills, cuts, right of way fences, embankments, tunnels and grade crossings and grade crossing signals; (b) sidings and spurs, except industry spurs; (c) signals and communication facilities; (d) interlocking devices; (e) towers, sheds, buildings and structures; and (f) such other property, equipment and facilities necessary to the provision of Commuter Service on the North line and West Line and used by the Milwaukee in the normal course of providing Commuter Service in the past 3 years. The Joint Line shall not include air rights (except for such air rights as have been necessary to the operation of the Commuter Service in the past 3 years).

1.2 For the purposes of equitably dividing the monthly expenses for billing purposes between the two parties, the Joint Line shall be divided on a zone basis as follows:

a. North Line

Zone 1 (1 main). Between Fox Lake, Illinois (Mile Post 49.79) and Rondout, Illinois (Mile Post 32.25).

Zone 2 (1 and 2 mains). Between Rondout, Illinois (Mile Post 32.25) and Deerfield, Illinois (Mile Post 24.58).

Zone 3 (1 and 2 mains). Between Deerfield, Illinois (Mile Post 24.58) and Tower A-20, Techny, Illinois (Mile Post 20.63).

Zone 4 (1 and 2 mains). Between Tower A-20, Techny, Illinois (Mile Post 20.63) and Tower A-5, Chicago, Illinois (Mile Post 5.85).

Zone 5 (1, 2 and 3 mains). Between Tower A-5, Chicago, Illinois (Mile Post 5.85) and Tower A-2, Chicago, Illinois (Mile Post 3.02).

Zone 6 (1, 2 and 3 mains). Between Tower A-2, Chicago, Illinois (Mile Post 3.02) and Canal Street, Chicago, Illinois (Mile Post 0.57), such mains being jointly owned by Milwaukee and The Consolidated Rail Corporation ("Conrail") under an Agreement dated February 7, 1873, as amended.

Zone 7 (1 and 2 mains). Between Lake Street, Chicago, Illinois (Mile Post 0.55) and Madison Street, Chicago, Illinois (Mile Post 0.20), such mains being jointly owned by Milwaukee and Conrail under an Agreement dated February 7, 1873, as amended.

b. West Line (1 and 2 Mains)

Zone 8. Between Almora, Illinois (Mile Post 40.26) and Elgin, Illinois (Mile Post 36.64).

Zone 9. Between Elgin, Illinois (Mile Post 36.64) and Spaulding, Illinois (Mile Post 32.75).

Zone 10. Between Spaulding, Illinois (Mile Post 32.75) and Tower B-17, Bensenville, Illinois (Mile Post 16.87).

Zone 11. Between Tower B-17, Bensenville, Illinois (Mile Post 16.87) and Tower B-12, Franklin Park, Illinois (Mile Post 12.82).

Zone 12. Between Tower B-12, Franklin Park, Illinois (Mile Post 12.82) and Tower A-5, Chicago, Illinois (Mile Post 5.11).

ARTICLE II.

GRANT FOR OPERATION OF AUTHORITY TRAINS

2.1 Milwaukee grants to the Authority the non-exclusive right to use the Joint Line solely for the purpose of operating Commuter Service (as defined in the Transition Agreement between the Milwaukee and the Authority dated August __, 1982) over the Joint Line. The Authority's right to use the Joint Line shall be in common with the Milwaukee and such other railroad company or companies previously or subsequently admitted to the use of any part of the Joint Line; provided that:

(a) The Milwaukee shall not operate, and shall not cause or allow any third party to operate, Commuter Service over the Joint Line; provided, however, nothing in

this Trackage Agreement shall be construed to limit the right of the National Railroad Passenger Corporation, its successors and assigns, to provide intercity rail passenger service over the Joint Line under the provisions of any law or agreement. For purposes of this Agreement, "intercity rail passenger service" means rail passenger service other than commuter and short-haul service in metropolitan and suburban areas, which commuter and short-haul service is usually characterized by reduced fare, multiple-ride and commutation tickets and by morning and evening peak period operations.

(b) Except for (1) FRA track inspections, (2) emergencies and (3) temporary detour usage of less than 30 days in a 12 month period, the Milwaukee shall not admit any third party to the use of any part of the Joint Line ("Third Party Use") if:

(A) such Third Party Use interferes with the Authority's use of the Joint Line as contemplated by this Agreement, or

(B) with respect to Joint Line facilities which were paid for in whole or in part by or through the Authority, such Third Party Use may result in deterioration of such facilities in excess of the deterioration which could be expected if such Third Party Use were not allowed, unless (i) with respect to fixed facilities subject to the Fixed Facili-

ties Agreements (as defined in Section 7A of the Transition Agreement), the Authority is compensated in accordance with the provisions of section 7.B.6 of the Transition Agreement, or (ii) the Authority is compensated pursuant to a separate agreement with respect to such Third Party Use.

(c) The Authority shall not permit any third party to use or detour over any portion of the Joint Line or agree to operate on the Joint Line the trains, engines and cars which in the normal course of business would not be considered the trains, engines or cars of the Authority engaged in Commuter Service; provided, however, that the Authority may move Commuter Service trains, engines and cars of other railroads over Zones 5, 6 and 7 of the Joint Line for the purpose of maintenance, repair, rebuilding and storage of cars and engines at the Western Avenue Coach Yard.

2.2 The Authority may ingress and egress to and from the Joint Line at the following connections only: (a) the Western Avenue Coach yard, (b) the Fox Lake yard, (c) Chicago Union Station, (d) the Elgin yard, and (e) any yard or station built at Almora or Spaulding.

2.3 The rights herein granted to the Authority to use the Joint Line are limited solely to the operation of Commuter Service; nothing in this Agreement shall be construed to give the Authority or any third party the right to

operate freight or intercity passenger service trains over the Joint Line.

2.4 If necessary to the safe and efficient operation of the Commuter Service due to an emergency, construction or repair work, the Authority may set out, use or operate trains, engines and cars on non-Joint Line tracks, yards or other facilities as may be designated by and under direction of Milwaukee's train dispatcher. All terms and conditions of this Trackage Agreement shall be applicable to such use or operation by the Authority as though such tracks, yards or other facilities were part of the Joint Line.

ARTICLE III.

CONNECTION TRACKS

3.1 The Milwaukee shall, upon the request of the Authority and at the Authority's sole cost, construct such connecting tracks as may be necessary or useful to the operation of Commuter Service conducted by the Authority; provided that connecting tracks shall not unreasonably interfere with the Milwaukee's operations over the Joint Line. Any such connecting tracks shall be the property of the Authority, but shall, upon the request of the Authority, be maintained, repaired and renewed by the Milwaukee at the Authority's sole expense.

ARTICLE IV.

CONSTRUCTION OF ADDITIONAL SIDINGS

4.1 As of the date of this Agreement, the sidings which exist on the Joint Line are sufficient to permit safe and efficient operation of the existing level of Commuter Service, intercity passenger service and freight rail traffic over the Joint Line. The Milwaukee shall construct any additional sidings which are made necessary in its judgment by increased levels of traffic over the Joint Line or which are requested by the Authority. The costs of the construction of these additional sidings shall be paid by:

(a) the Authority, if the sidings are made necessary solely due to an increase in the operations of the Authority or are requested by the Authority;

(b) the Milwaukee, if the sidings are made necessary solely due to increases in the operations of the Milwaukee or in the operations of a third party admitted to the use of the Joint Line;

(c) both parties pursuant to a separate agreement allocating such costs if the sidings are made necessary by increases in the operations of both (i) the Authority and (ii) the Milwaukee or any third party admitted to the use of the Joint Line.

4.2 Additional sidings constructed under this Agreement shall be considered personal property and title to an additional siding shall vest in the Milwaukee and the

Authority in proportion to the costs paid by each party for the construction. The additional sidings shall be maintained, repaired and renewed by the Milwaukee but the costs therefor shall be allocated in the proportion to the costs of construction paid by each party.

ARTICLE V.

RADIO COMMUNICATIONS EQUIPMENT

5.1 As of the date of this Agreement the radio communications equipment on or in the Authority's trains, engines and cars is sufficient for their safe and efficient operation on the Joint Line. The cost of installation and maintenance of additional radio communications equipment on the Authority's trains, engines and cars shall be paid by Milwaukee if the additional radio communications equipment is required by the Milwaukee, or shall be paid by the Authority if the additional radio communications equipment is requested by the Authority or is required by federal, state or local law or regulation.

5.2 The Authority shall, at its sole expense, maintain, repair and replace, as necessary, all radio communications equipment on its trains, engines and cars to permit safe and efficient operation on the Joint Line. The Authority shall comply with the plans and specifications which are reasonably required by the party requiring the purchase, installation and maintenance of such radio communications equipment.

5.3 The radio communications equipment shall become the property of the party paying for such equipment.

ARTICLE VI.

PAYMENT BY AUTHORITY

6.1 The Authority shall pay to the Milwaukee the amounts described in this Article VI. Payment shall be made in accordance with Article VII.

6.2 As used in this Agreement, the following terms shall have the meanings ascribed to them:

(a) Estimated RTA Summary Expense Bill -- the Milwaukee's reasonable and good faith estimate of the Authority's proportionate share of Reimbursable Expenses for a calendar month.

(b) RTA Summary Expense Bill -- the monthly bill submitted by the Milwaukee to the Authority for the Authority's proportion of Reimbursable Expenses for a calendar month, as computed pursuant to Section 6.5.

(c) Property Tax Bill -- the annual bill submitted by the Milwaukee to the Authority for the payment of Authority's proportionate share computed pursuant to Section 6.4 for general real estate taxes with respect to the Joint Line and the property leased to the Authority in the counties of Cook, Lake, DuPage and Kane within the State of Illinois.

(d) Gross Ton Mile Proportion -- the ratio determined by dividing the gross ton miles generated by all

trains, engines, cars and contents (including passengers) by or on behalf of the Authority in each zone of the Joint Line during a calendar month by the total number of gross ton miles generated by all trains, engines, cars and contents (including passengers) by or on behalf of the Milwaukee, the Authority and any third parties in each zone during that month. Deadhead, backup and industry switching movements shall be excluded in determining Gross Ton Miles Proportion except deadhead movements initiated by the Authority after the Commencement Date (as defined in the Transition Agreement) in excess of 51 per week-day shall be used in determining gross ton miles. The number of passengers on each Authority or third party train during a month shall be determined on the basis of an annual joint study of the Authority and the Milwaukee.

(e) Train Count Proportion -- the ratio determined by dividing the number of trains operated by or on behalf of the Authority in each zone of the Joint Line during a calendar month by the total number of all trains operated by or on behalf of the Milwaukee, the Authority and any third parties in each zone during that month. Deadhead, backup and industry switching movements shall be excluded in determining the train count proportion except deadhead movements initiated by the Authority after the Commencement Date in excess of 51 per week-day shall be included.

(f) Reimbursable Expenses -- Reimbursable Expenses means the following expenses incurred by the Milwaukee:

(1) the expenses are incurred during, and attributable to, the Agreement term as recorded in the Milwaukee's accounts;

(2) the expenses are properly chargeable to the zones defined in Section 1.2 of this Agreement;

(3) the expenses are incurred for material, labor, health and welfare benefit, fuel, equipment rentals, payroll taxes (including "head" taxes), sales taxes, use taxes and excise taxes and miscellaneous expenses in maintaining, operating, repairing and renewing the Joint Line.

Reimbursable Expenses shall be accounted for by the accrual method of accounting in the Milwaukee's accounts, consistently applied, in accordance with the Uniform System of Accounts prescibed by 49 CFR Part 1201. Except as required by applicable ICC regulations, changes made by the Milwaukee in its accounting system shall not affect the timing of recognition of Reimbursable Expenses under this Agreement.

6.3 The Authority shall pay the Milwaukee a fixed rental each month during the term of this Agreement as follows:

(a) From the date the Authority commences operations of rail passenger commuter service on the Joint Line through December 31, 1983, the fixed rental shall be $51,743.31 each month.

(b) Beginning January 1, 1984, the fixed rental described in subparagraph 6.3(a) shall be increased by the percentage increase in the Consumer Price Index ("CPI") for

the City of Chicago of the Bureau of Labor Statistics, U.S. Dept. of Labor, from October, 1982 through November, 1983.

(c) The fixed rental for February, 1984 shall be increased or decreased from the rental for January, 1984 by the percentage increase or decrease in the CPI between November, 1983 and December, 1983. The fixed rental for each succeeding month shall be determined by the same method, that is; the fixed rental shall increase or decrease on the first day of each subsequent month after February, 1984 during the term of the Agreement, by the same percentage as the CPI for the most recently reported month shall have increased or decreased from the CPI used in determining the prior month's fixed rental, provided that the fixed rental shall never be reduced below $51,743.31 per month. In the event that the CPI as hereinabove defined ceases to exist, then the Milwaukee shall substitute therefor the index replacing the CPI and if none is available, a comparable index based upon changes in the cost of living or purchasing power of the consumer dollar published by an appropriate U.S. governmental agency.

(d) The fixed rental shall be adjusted pro-rata for partial months at the beginning and termination of this Agreement.

6.4 General real estate taxes with respect to the Joint Line and the premises leased to the Authority referred to in the Transition Agreement for Cook, Kane, DuPage and Lake counties shall be based on the total real estate taxes

levied against all property of the Milwaukee located within those counties. These taxes shall be allocated to the Joint Line and the premises leased to the Authority referred to in the Transition Agreement, separately, for each county, on the basis of the ratio of the Joint Line route miles within each county to the total Milwaukee owned route miles within the county. The Authority's proportion of this allocation shall be determined by the ratio of the unit-miles of the locomotives, cars and cabooses operated by or on behalf of the Authority over the entire Joint Line during a calendar year to the unit-miles of all locomotives, cars and cabooses operated over the entire Joint Line during that year. Each yearly Property Tax Bill shall be initially based on the tax bills for the preceding year for which a definite tax bill is available and movements for the preceding year, and shall be adjusted, based on actual movements and actual tax bills, within 30 days of receipt of the actual tax bills for each year during the term of this Trackage Agreement. The Property Tax Bill for each year shall be submitted by the Milwaukee to the Authority on or after August 1 of the year to which it applies, beginning with the year 1982 (for 1982 taxes), payable by the 15th day of the month after the month of receipt of the bill. The Property Tax Bill shall be pro-rated for a partial year; such prorations shall be made within 30 days after definite data requiring the proration becomes available.

The Milwaukee shall pay any balances due pursuant to such adjustment or proration within 30 days of an adjustment or proration; the Authority shall pay any balance due pursuant to an adjustment or proration within 30 days after receipt of an invoice from the Milwaukee.

Any special assessments levied against the Joint Line shall be amortized over the useful life of the facility for the construction or improvement of which the special assessment was levied. The amount of such special assessment applicable to each calendar year of this Agreement shall be allocated between the parties, billed, paid, prorated and adjusted on the same basis as general real estate taxes.

6.5 The Authority shall pay its proportion of Reimbursable Expenses as follows:

(a) Maintenance of way and structures expenses incurred for each zone of the Joint Line shall be allocated on a monthly basis between the parties on the Gross Ton Mile Proportion. These expenses are currently accounted for in the Milwaukee's primary accounts reflected in Exhibit B.

(b) Transportation, signal and communication systems expenses and maintenance expenses of non-Milwaukee owned equipment incurred for each zone of the Joint Line shall be allocated on a monthly basis between the parties on a Train Count Proportion. These expenses are currently accounted for in the Milwaukee's primary accounts reflected in Exhibit C.

(c) Expenses for train dispatchers (currently primary account numbers 372, 409 and 532) incurred in operating the Joint Line shall be allocated on a monthly basis by the average of the Train Count Proportions for all zones of the Joint Line.

(d) The Authority's monthly allocated share of labor and fringe benefits expenses (including payroll taxes) determined in accordance with subparagraphs (a) through (c) above shall be increased for administrative overhead and vacation and holidays in accordance with Exhibit D.

(e) Monthly expenses incurred for joint facilities which are part of the Joint Line not solely owned by the Milwaukee, identified in Exhibit E, shall be allocated on a Train Count Proportion in the zone in which each facility is located.

(f) Rental rates for the use on the Joint Line of equipment and vehicles which equipment and vehicles are owned by the Milwaukee or leased to the Milwaukee under a lease with a term of at least 12 months will be charged at the rates prescribed in accordance with the Milwaukee Comptroller's Circular Number 41, in effect at the time incurred (but not in excess of the General Managers' Association of Chicago's (GMA) rates if any for specific equipment).

(g) Monthly expenses for material allocated to the Authority under subparagraphs (a) through (c) above shall be increased by an amount calculated in accordance with Exhibit F.

(h) The expenses referred to in subparagraphs (a) through (e) above are recorded in the Milwaukee's primary accounts prescribed by the Interstate Commerce Commission's Uniform System of Accounts in effect on December 31, 1977 ("old U.S.O.A."). If the Milwaukee changes its accounting system to the Interstate Commerce Commission's Uniform System of Accounts in effect January 1, 1978 ("new U.S.O.A.") the old U.S.O.A. will be converted to the new U.S.O.A. on the basis prescribed in 49 CFR part 1201.

6.6 All amounts to be paid by either party under this Agreement shall bear interest from the date the amount was due in accordance with this Agreement until paid, at a rate equal to the lesser of: (a) the maximum rate permitted by law to be paid by the Authority, or (b) the prime commercial rate in effect at the time the amount was originally due. "Prime commercial rate" means the interest rate publicly announced by the largest commercial banking institution located in Illinois (measured in terms of total assets) for 90 day unsecured borrowings by its most credit worthy commercial customers.

6.7 The Authority shall not be obligated to pay: (a) any part of the Capital Expenditures (as defined in 49 CFR part 1201) of the Milwaukee with respect to the Joint Line, except as otherwise specifically provided in Articles III, IV and VIII hereof; (b) any expenses incurred with respect to additions, betterments, improvements, or maintenance to the Joint Line contributed or paid by any third

party and not required to be repaid by the Milwaukee; (c) expenses with respect to a particular matter to the extent the Milwaukee would recover from the Authority and other sources more than 100% of its expenses; or (d) amounts covering expenses of the Milwaukee for which the Authority has been billed by the Milwaukee pursuant to another provision of this Agreement.

6.8 The Authority shall have no liability for any payments or other obligations arising out of its use of the Joint Line pursuant to this Agreement except as provided in this Article VI or specifically provided in another provision of this Agreement.

6.9 At the end of each calendar year (or for the lesser period from Commencement Date to December 31, 1982 and any lesser period in the event of the termination or expiration of this Agreement (hereinafter "lesser period")), the Milwaukee shall recalculate the Authority's proportion of the charges set forth in section 6.5 on the basis of the Authority's gross ton mile proportion and train count proportion for such calendar year (or lesser period). Such recalculation shall be computed within 45 days after the expiration of such calendar year (or lesser period).

In the event that the Authority's proportion of such charges for such calendar year (or lesser period) exceeds the sum of the Authority's proportion of such charges for each of the individual months during such calendar year (or the individual months during a lesser period), the

Authority shall pay the Milwaukee such difference within 30 days of such recalculation; and in the event that the Authority's proportion of such charges for such calendar year (or lesser period) is less than the sum of the Authority's proportion of such charges computed for each of the individual months during such calendar year (or the individual months during a lesser period), the Milwaukee shall pay the Authority such difference within 30 days of such recalculation or credit the Authority with such amount in the next Estimated RTA Summary Expense Bill.

ARTICLE VII.

MANNER OF PAYMENT -- INSPECTION OF RECORDS

7.1 The Authority shall pay on the fifteenth day of each month the fixed monthly rent defined in Section 6.3.

7.2 The Authority shall pay the annual Property Tax Bill on or before the 15th day of the month following the month in which it was received.

7.3 On the first day of each calendar month the Milwaukee shall submit to the Authority an Estimated RTA Summary Expense Bill for that month, due within 15 days of receipt. The Milwaukee shall submit to the Authority within 45 days after the end of each calendar month the RTA Summary Expense Bill for that month. If the Estimated RTA Summary Expense Bill exceeds the RTA Summary Expense Bill, the Milwaukee shall credit the Authority with the excess in the

following month's Estimated RTA Summary Expense Bill or pay the excess to the Authority within 15 days. If the Estimated RTA Summary Expense Bill is less than the RTA Summary Expense Bill, the Authority shall pay the difference by the 15th day of the month following the month in which the RTA Summary Expense Bill is received.

7.4 The Authority shall furnish to Milwaukee, within 15 days after the end of each calendar month during the term of this Agreement, a statement showing for that month: (a) the train count for the trains operated by or on behalf of the Authority over each zone of the Joint Line; and (b) the gross ton miles generated by the trains, engines and cars and contents operated by or on behalf of the Authority over each zone of the Joint Line. Deadhead movements in in excess of 51 per weekday shall be reported by the Authority for (a) and (b) above. The statement shall be subject to verification and correction by the Milwaukee. If the Authority fails to furnish the statement within the 15 day period, the Milwaukee may submit an RTA Summary Expense bill for that month based on to the Gross Ton Proportion and Train Count Proportion during the preceding 12 month period. That bill shall be adjusted upon receipt of the required statement from the Authority.

7.5 The Authority's portion of the costs of the projects described in sections 3.1, 4.1(a), 4.1(c), 8.4(b) 8.4(c) and 8.4(d), shall be billed as incurred and paid on the 15th day of the month following the month in which the

bill is received, subject to verification of the costs and progress of the work.

7.6 The Authority may deduct from any payments due to Milwaukee under this Agreement any undisputed amounts which are due and payable to Authority from the Milwaukee under this Agreement, the Transition Agreement or the Agreements contemplated by the Transition Agreement. In making such deductions, the Authority shall comply with the following procedure: (a) the Authority shall send a written bill to the Milwaukee itemizing the amounts due and payable to the Authority and the reasons for such charges; (b) the Milwaukee shall have 21 days from receipt of a bill from the Authority to send to the Authority a written Notice of Objection to all or a portion of a bill from the Authority which Notice shall set forth the Milwaukee's objections on a detailed basis; and (c) if the Authority receives no Notice of Objection or a Notice objecting to only a portion of the amounts contained in a bill from the Authority within 21 days after receipt by the Milwaukee of a bill sent by the Authority, then the Authority shall have the right to deduct the amounts set forth in the bill or any portions thereof to which the Milwaukee has not objected from its next payment due to the Milwaukee provided that the Authority shall at the time of making such payment or at the time such payment is due, if no payment is made, notify the Milwaukee of what amounts are being deducted and identify the bill containing such amounts and the items giving rise to such amounts. The

Authority may not deduct or offset from any amount due under this Agreement any amounts due to Authority under any other agreement or arrangement (other than the Transition Agreement or the Agreements contemplated by the Transition Agreement).

7.7 No payment shall be delayed because of an error or dispute in a bill. Errors of less than $5,000 shall be adjusted in the next Estimated or Summary Expense Bill. Bills containing errors or disputed items in excess of $5,000 may be reduced by the amount of the disputed item.

7.8 The amounts required to be paid by the Authority shall be paid by check or by wire transfer to the Trustee's account #50-30048 at The First National Bank of Chicago or another account designated by the Milwaukee.

7.9 Except as otherwise provided in this Agreement all payments under this Agreement are due and payable within 30 days of receipt of the bill or invoice.

7.10 Records of each party reasonably relating to payment or allocation of expenses under this Agreement shall be open to inspection during regular business hours. Each party shall provide sufficient office space for these inspections together with reasonable assistance in conducting an inspection. Records shall be closed to audit, and no bills as to which no exception has been taken shall be adjusted, after three (3) years from December 31 of the year of the invoice date.

7.11 The amounts reflected in audit exceptions made by the Authority and overpayments by the Authority to

the Milwaukee which in each case are not resolved within 30 days after furnished or claimed in writing to the Milwaukee shall if resolved in favor of the Authority bear interest at the rate specified in Section 6.6 from the expiration of the 30 day period until paid or credited.

ARTICLE VIII.

JOINT LINE CAPITAL EXPENDITURES

8.1 The Milwaukee may effect capital projects, including significant maintenance projects, in the Joint Line necessary or desirable for the economical and safe operation of trains, engines or cars over the Joint Line, or which are required by applicable law or regulations.

8.2 A report reflecting such capital projects, including significant maintenance projects, for the Joint Line for the periods April-September and October-March shall be furnished by the Milwaukee to the Authority within 60 days after execution of the Transition Agreement and thereafter on February 1 and August 1 of each year during the Agreement Term. This report shall show in reasonable detail new projects, progress on existing projects, an estimate of the Authority's share of the project costs and estimated completion dates. Except in emergencies the Milwaukee shall give 60 days prior notice to the Authority of substantial changes to previously reported projects and previously unreported new projects which the Milwaukee anticipates will

be commenced prior to the submission of the next semi-annual report.

8.3 The Milwaukee shall not charge to the Authority the costs of a capital project, including a significant maintenance project, for which the Authority is liable to pay in the aggregate in excess of $15,000 unless the Authority has consented in writing to such project; provided the Milwaukee may upon sixty days notice to the Authority (or upon reasonable notice of less than 60 days where a 60 day notice period is not possible) effect without the consent of the Authority any such project to comply with the directive of a government agency having jurisdiction.

8.4 The costs of capital projects, including significant maintenance projects, shall be paid by:

(a) the Milwaukee, if required solely by the operations of the Milwaukee or of third parties admitted to the use of the Joint Line by the Milwaukee;

(b) the Authority, if required solely by the operations of the Authority and the requirements of Section 8.3 have been met;

(c) both parties, in accordance with the allocation formulas for operating expense contained in Section 6.5 applied to capitalized expenses, for projects required by the operations of both the Authority and the Milwaukee or third parties admitted to the use of the Joint Line by the Milwaukee which projects are accounted for in the Milwaukee's accounts described in Exhibit I, and with respect to which

the Authority's share of the allocated costs shall not exceed $15,000 for a single project or the Authority has consented pursuant to Section 8.3 above;

(d) both parties pursuant to a separate fixed facilities agreement allocating such costs, if the provisions of subsection (c) are inapplicable and if the project is required by the operations of both the Authority and the Milwaukee or third parties admitted to the use of the Joint Line by the Milwaukee.

8.5 The Milwaukee shall determine whether a capital project, including a significant maintenance project, constructed pursuant to this Section is required by the operations of the Authority, the Milwaukee or a third party.

8.6 The Milwaukee shall effect capital projects, including significant maintenance projects, requested by and at the sole expense of the Authority unless such projects would substantially interfere with the Milwaukee's operations over the Joint Line or the rights of a third party admitted to the use of the Joint Line.

8.7 Capital projects, including significant maintenance projects, effected pursuant to this Section shall be considered personal property and title to such projects shall vest in the Authority and Milwaukee in proportion to the costs paid by each party.

ARTICLE IX.

OPERATION AND MAINTENANCE OF JOINT LINE

9.1 The Milwaukee shall control and manage the Joint Line and shall direct the movement of all trains, engines, cars and inspection vehicles over the Joint Line. All track, bridge, signal and communication work, materials and track operated machinery and equipment used will be in accordance with the Milwaukee's standards, specifications and procedures, which shall be consistent with industry standards.

9.2 The operation of trains over the Joint Line by or on behalf of the Authority is subject to the direction and control of the Milwaukee, and shall at all times be in accordance with reasonable safety and operating rules, regulations and operating timetables prescribed by the Milwaukee. The management of the Authority's Commuter Service is vested solely in the Authority and Authority's trains, engines and cars shall be operated solely by the Authority's employees or agents and at the Authority's sole expense.

9.3 The Milwaukee shall maintain the Joint Line with its own supervision and labor in accordance with the terms and conditions of this Agreement. The Milwaukee shall maintain the track structure of the Joint Line to the level of FRA Class III in accordance with the applicable standards of the Federal Railroad Administration, or any successor

agency, so as to permit operation of commuter trains at a speed of not less than 60 miles per hour. If the Authority withholds its consent to financial participation in any capital or maintenance project required to maintain the track structure to these standards, the Milwaukee shall be relieved to that extent of its obligation under this Section 9.3. The Milwaukee shall maintain minimum clearances on the Joint Line to tolerances in effect as of the date the Authority commences operations of rail passenger commuter service on the Joint Line.

9.4 A report reflecting significant maintenance projects for the Joint Line for the periods April-September and October-March will be furnished by the Milwaukee to the Authority within 60 days after execution of the Transition Agreement and thereafter on February 1 and August 1 of each year during the term of this Agreement. This report shall show in reasonable detail new projects, progress on existing projects, an estimate of the Authority's share of these projects and estimated completion dates. Except for emergencies, the Milwaukee shall give 60 days prior written notice to the Authority of substantial changes to significant maintenance projects and previously unreported new projects which the Milwaukee anticipates will be commenced prior to the submission of the next semi-annual report.

9.5 If the use of or traffic over the Joint Line is interrupted or delayed at any time, the Milwaukee shall expeditiously restore the line for the passage of trains and

if reasonably feasible under the circumstances, prior to the scheduled departures of the peak period trains (defined in Section 9.8, below) immediately following the disruption or delay. Any train, engine or car derailed or damaged on the Joint Line shall be expeditiously picked up or removed by the Milwaukee or its emergency service contractor. The expenses incurred in picking up and removing derailed or damaged trains and the cost of restoration of the Joint Line resulting from a derailment or accident shall be paid by the party whose train was involved in the derailment or accident and shared equally if the trains of both parties are involved. If a minor derailment on the Joint Line to an Authority train, engine or car occurs which can be promptly corrected solely by rerailers and blocking carried on the derailed train, the Authority may with the permission of the Milwaukee train dispatcher rerail the derailed equipment at its expense.

9.6 If the Milwaukee fails to maintain the Joint Line in accordance with Section 9.4 or fails to restore the Joint Line in accordance with Section 9.5, the Authority may on notice to the Milwaukee, subject to the Milwaukee's reasonable direction and subject to non-interference with the Milwaukee's labor arrangements and practices, correct the defects or restore the Joint Line required to maintain and continue the commuter operations contemplated by and in accordance with the schedules provided for in this Agreement. The reasonable costs incurred by the Authority in making the correction or restoration shall be allocated in

accordance with Article VI and to the extent applicable, Section 9.5, above. The provisions of this section shall not be construed to impose any obligation on the Authority to repair, restore or maintain the Joint Line.

9.7 The Milwaukee shall (a) maintain all joint facility agreements, interlocking agreements and similar arrangements necessary to the operations of the Commuter Service over the Joint Line contemplated by this Agreement; (b) pay and discharge when due and payable all lawful governmental charges or levies imposed with respect to the Joint Line (except to the extent and while the validity thereof is contested by appropriate proceedings or when deferred pursuant to an order of the Reorganization Court having jurisdiction over the Milwaukee); (c) provide for utility services necessary to the operations of Commuter Service over the Joint Line; and (d) take all other action necessary to permit the Joint Line to be used for Commuter Service by the Authority.

9.8 The Milwaukee recognizes the priority of Commuter Service operations on the Joint Line on Monday through Friday, inclusive, with respect to trains which depart from their originating stations during the times and in the zones identified below and maintain timetable schedule (the "peak period trains"):

Elgin to CUS -- eastbound

5:30 a.m. - 8:00 a.m.
4:30 p.m. - 6:30 p.m.

CUS to Elgin -- westbound

5:30 a.m. - 8:30 a.m.
4:00 p.m. - 6:15 p.m.

Rondout to CUS -- southbound

6:00 a.m. - 7:50 a.m.
4:20 p.m. - 6:00 p.m.

CUS to A-20 -- northbound

6:25 a.m. - 8:45 a.m.
4:15 p.m. - 6:10 p.m.

A-20 to Rondout -- northbound

7:00 a.m. - 8:15 a.m.
4:30 p.m. - 6:20 p.m.

Fox Lake to Rondout -- southbound

5:00 a.m. - 8:30 a.m.

Rondout to Fox Lake -- northbound

4:30 p.m. - 6:45 p.m.

Except as required by an emergency, the Milwaukee shall not interfere or permit any third party to interfere with peak period trains. The Milwaukee shall not object to the Authority's operations of peak period trains on the grounds that those operations unreasonably interfere with the Milwaukee's or third parties' ability to provide efficient freight or intercity passenger service. The Milwaukee may make reasonable adjustments to the operations of traffic on the Joint Line which do not unreasonably disrupt or delay trains which are not peak period trains.

9.9 Except as provided in this section 9.9, the operation of the Commuter Service on the Joint Line shall be

subject to the schedule attached to this Agreement as Exhibit G. The Authority may not change the schedule without the Milwaukee's prior written consent, except that: (a) the Authority may upon 45 days prior written notice, change the schedules during peak period, subject to the intercity passenger service schedule then in effect; (b) during the term of this Agreement, upon 45 days prior written notice the Authority may add not more than eight (8) trains as follows: (i) one morning peak period train in each direction on the West Line; (ii) one evening peak period train in each direction on the West Line; (iii) one morning peak period train in each direction on the North Line; and (iv) one evening peak period train in each direction on the North Line; and (c) at any time upon 10 days prior written notice decrease the number of Commuter Service trains.

ARTICLE X.

EXAMINATION OF AUTHORITY EMPLOYEES

10.1 All employees of the Authority engaged in or connected with Commuter Service over the Joint Line shall at all times comply with the Milwaukee safety and operating rules operating timetable special instructions and shall be required to pass periodic examinations on the rules annd regulations of the Milwaukee.

10.2 An officer of Milwaukee shall conduct examinations every two years on the consolidated code of operating

rules and Milwaukee safety rules of the Authority's principal operating officers. These Authority offficers in turn shall test Authority employees. Testing of Authority employees may be audited by the Milwaukee.

10.3 The Authority shall bar from the Joint Line any Authority employee who does not comply with the Milwaukee's safety and operating rules or who fails to pass required examinations. If the Authority fails to bar such employee from the Joint Line, the Milwaukee may bar that Authority employee from the Joint Line.

ARTICLE XI.

SWITCH KEYS AND RULE BOOKS

11.1 The Milwaukee shall supply the employees of the Authority with necessary books of rules and switch keys. The Authority shall deposit with Milwaukee $3.00 for each book of rules and each switch key supplied. This deposit shall be refunded upon the return of such books of rules or switch keys.

ARTICLE XII.

TIME TABLES

12.1 The expenses, including costs of composition, printing, binding and distribution, incurred by Milwaukee in the issuance of revised operating time tables required by

changes in the operations of the Authority, the Milwaukee or third parties shall be allocated proportionately among the parties whose operations required the change, except that the incremental cost of changes made by the Milwaukee with respect to its freight or intercity passenger service in connection with a revision required by the Authority shall be paid by the Milwaukee.

ARTICLE XIII.

COMPLIANCE WITH LAWS AND OTHER PUBLIC REGULATIONS

13.1 Each party shall comply with all applicable federal, state and local laws, regulations and rules with respect to the use of and the conduct of its operations over the Joint Line. If a party's non-compliance results in any fine, penalty, cost or charge being imposed or assessed on or against the other party, the non-complying party shall defend on notice from the other party, and shall promptly reimburse and indemnify the other party for or on account of such fine, penalty, cost or charge and all expenses and attorneys' fees incurred in defending, any action which may be brought against the other party on account thereof.

ARTICLE XIV.

INSURANCE: PROPERTY DAMAGE AND CONSEQUENTIAL DAMAGE WAIVERS: FORCE MAJEURE

14.1 The Authority waives and shall require its insurers to waive all rights of recovery from the Milwaukee

for direct physical loss of all property of the Authority located or occurring on the Joint Line during the term of this Agreement. The Authority shall either (a) require third parties whose property is on the Joint Line by permission of the Authority to waive and their insurers to waive all rights of recovery from the Milwaukee for direct physical loss to all property of such third parties (including luggage) located or occurring on the Joint Line during the term of this Agreement; or (b) indemnify the Milwaukee for such loss paid by the Milwaukee.

14.2 The Milwaukee waives and shall require its insurers to waive all rights of recovery from the Authority for direct physical loss to all property of the Milwaukee (including cargo) located or occurring on the Joint Line during the term of this Agreement. The Milwaukee shall either (a) require third parties whose property is on the Joint Line by permission of the Milwaukee to waive and their insurers to waive all rights of recovery from the Authority for direct physical loss to all property of such third parties (including cargo) located or occurring on the Joint Line during the term of this Agreement; or (b) indemnify the Authority for such loss paid by the Authority.

14.3 Neither the Authority nor the Milwaukee shall be liable to the other or any third party for delays, interruptions or the failure to perform its obligations under this Agreement due to causes beyond their reasonable control, including: acts of God; any act, delay or failure to act on

the part of any governmental authority or agency (other than the Authority); insurrection or riot; fires; strikes; work stoppages; wrecks; major equipment breakdowns; failure or delay beyond the control of the Authority or the Milwaukee in obtaining necessary labor, materials or manufacturing facilities or acts of the other party.

14.4 Neither the Milwaukee nor the Authority shall be liable to the other in contract or in tort (including negligence) under any theory of strict liability, or otherwise, for any special, incidental or consequential loss or damage of any nature arising at any time or from any cause under or related to the performance of this Agreement.

14.5 Except as expressly provided in Sections 14.1 and 14.2 hereof, nothing in this Agreement shall be construed as affecting or impairing any rights of the Milwaukee or the Authority to contribution or indemnity arising out of claims of third parties.

14.6 During the term of this Agreement, the Milwaukee and the Authority shall each provide and maintain in effect with respect to the Joint Line and the respective operations of each on and affecting the Joint Line contemplated by this Agreement minimum insurance coverage as follows:

Type of Coverage	Limits of Liability
Third Party Liability Insurance including FELA coverage	$50,000,000 per occurrence

Deductibles and coinsurance provisions with respect to the above policies shall be determined by and shall be assumed by the party furnishing the policy; provided that the deductible portion with respect to such coverage shall not be greater than $2,000,000.

14.7 The Authority and the Milwaukee shall give each other notice of any proposed settlement of claims involving joint liability, and the party proposing to enter into a settlement agreement shall make itself reasonably available to meet with the other before entering into such settlement agreement.

ARTICLE XV.

CLAIMS AND REPORTS

15.1 If a claim is made by a third party against the Milwaukee or the Authority for which the other may be liable, in whole or in part, the party against whom the claim is made shall give prompt notice to the other.

15.2 Initial reports of all injuries to or death of persons and loss or destruction of or damage to property on the Joint Line resulting from occurrences involving either party shall be made by that party and a copy furnished to the other party within twenty four (24) hours of the occurrence.

15.3 All claims involving personal injury or death of an employee or property damage of either party shall be

investigated by the party whose employee is injured or whose property is damaged. If employees or property of both parties are involved, the parties shall agree which one of them shall make the investigation.

ARTICLE XVI.

SECURITY DEPOSIT; DEFAULT; REMEDIES

16.1 The Authority shall, on the Commencement Date of this Agreement, deposit the sum of Five Hundred Thousand Dollars ($500,000) ("deposit") in a separate escrow account in a bank of the Authority's choice pursuant to the form of escrow agreement attached to this Agreement as Exhibit H. The deposit shall be held for the benefit of and disbursed under the terms of this Agreement. Interest on the $500,000 shall belong to the Authority and shall not be held for the benefit of or disbursed to Milwaukee; such interest may be withdrawn at any time by the Authority. The unused portion of the deposit (plus interest) shall be returned to the Authority on termination of this Agreement.

16.2 If the Authority fails to make any payment due to the Milwaukee under this Agreement within 90 days of the due date, the Milwaukee may withdraw in accordance with the terms of the Escrow Agreement, the amount due plus any interest on such amount due from the escrow account established under Section 16.1. This withdrawal shall constitute payment of the amount due to the extent of the withdrawal.

16.3 If (a) the principal balance of the escrow account is less than $500,000 for a period of more than 10 days and (b) payment of outstanding bills owed to the Milwaukee under this Agreement are not made within 30 days of their respective due dates and cannot be satisfied in full from the escrow account, the Milwaukee may terminate its obligations under this Agreement on 10 days written notice to the Authority unless the Authority prior to the expiration of the 10 day period both restores the escrow account principal balance to $500,000 and satisfies all outstanding amounts owed to the Authority which are overdue by more than 30 days at the end of the 10 day period.

ARTICLE XVII.

EFFECTIVE DATE AND DURATION

17.1 This Agreement shall become effective on the date established in Section 3 of the Transition Agreement.

17.2 This Agreement shall terminate on December 31, 1984; provided that if the Authority files prior to January 1, 1985 an eminent domain action against the Milwaukee with respect to all or substantially all of the Joint Line, either for the taking of an easement or license for the use of or the taking of the Milwaukee's entire interest, this Agreement shall be extended ("Extended Term") from the period January 1, 1985 through the earlier of (a) the date on which the Authority makes payment for the interest in the

Premises taken in the eminent domain action, or (b) December 31, 1988, subject in each case to the following modifications and conditions:

(a) Prior to January 1, 1985 the Authority shall discharge in full all amounts owed to the Milwaukee under the terms of the Trackage Agreement which have not been paid within 30 days from the invoice date.

(b) If the Reorganization Court has jurisdiction over the Milwaukee at the time an eminent domain action is to be filed which would extend the Trackage Agreement, the Authority shall file that action in the reorganization proceeding, subject to the jurisdiction of the Reorganization Court.

17.3 Upon the termination of this Agreement, the Authority may: (a) remove its rolling stock from the Joint Line; and (b) remove the fixed facilities and equipment, title to which is vested in whole or in part in the Authority, provided that the Milwaukee may, at its option, pay the Authority the value of the Authority's portion of such fixed facilities and equipment determined on the basis of net depreciated cost using a straight line basis.

ARTICLE XVIII.

ABANDONMENT BY EITHER PARTY OF ITS OPERATION OVER THE JOINT LINE

18.1 The Authority may at any time abandon or discontinue its operation over the Joint Line, and on 60 day

prior written notice may terminate this Agreement as of the date the abandonment or discontinuance becomes effective.

18.2 If the Milwaukee abandons, embargoes or discontinues its common carrier operations over the Joint Line or the Reorganization Court orders the liquidation of the Joint Line, the Milwaukee shall use its best efforts to sell or transfer its interest in the Joint Line for continued use as railroad property.

18.3 The Trustee waives any right to reject or disaffirm this Trackage Agreement and agrees that any sale or transfer of any part of the Joint Line to any purchaser other than the Authority, its successors or affiliates, shall be subject to the rights of the Authority under this Agreement.

ARTICLE XIX.

NOTICES -- HOW GIVEN

19.1 All requests, notices, demands, authorizations, directions, consents or waivers or other documents required or permitted under this Agreement shall be in writing and shall be delivered in person to, or deposited postage pre-paid in the registered or certified mails of the United States addressed to the Authority at:

Contract Manager
Regional Transportation Authority
300 North State Street
Chicago, Illinois 60610

or to the Milwaukee at:

Trustee
Chicago, Milwaukee, St. Paul and
Pacific Railroad Company
874 Union Station Building
516 West Jackson Boulevard
Chicago, Illinois 60606

or at such other address as either party may at any time or from time to time designate by notice to the other.

ARTICLE XX.

SECTION HEADINGS

20.1 Section headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

ARTICLE XXI.

NOT FOR BENEFIT OF THIRD PARTIES

21.1 The provisions of this Agreement, are intended for the exclusive benefit of the Milwaukee and the Authority and not for the benefit of any third party.

ARTICLE XXII.

SUCCESSORS AND ASSIGNS; ASSIGNMENT

22.1 This Agreement shall be binding upon the successors of the parties hereto. The respective rights and

obligations the Authority under this Agreement may not be assigned or delegated without the written consent of the Milwaukee except to the Northeast Illinois Regional Commuter Railroad Corporation.

ARTICLE XXIII.

AGREEMENT LIMITATIONS ON TRUSTEE

23.1 This Agreement is binding on Richard B. Ogilvie, not as an individual, but solely in his capacity as Trustee of the property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor.

ARTICLE XXIV.

EQUAL EMPLOYMENT OPPORTUNITY

24.1 It is understood and agreed that the parties hereto are subject to, and that to the extent applicable, will comply with all federal and state laws and regulations relating to equal employment opportunity for all persons without regard to race, color, creed, sex, or national origin, and those federal laws and regulations relating to non-segregated facilities, minority business enterprises, the employment of veterans and handicapped persons, including, without limitations, Executive Order No. 11246, 41 CFR Part 60-1, et seq., 41 CFR Part 1-1.1310-2, 41 CFR Part 60-741 et seq., Executive Order No. 11701, and 41 CFR Part

60-250.1 et seq. and 49 CFR Part 265, and the Illinois Human Rights Act, 1981 Ill. Rev. Stat., Ch. 68, §1-101 et seq.

ARTICLE XXV.

OTHER MISCELLANEOUS PROVISIONS

25.1 No modification, addition or amendment to this Agreement shall be effective unless in writing executed by the authorized officers or agents of each party.

25.2 This Agreement shall be governed by the laws of the State of Illinois.

25.3 The provisions of this Agreement shall be interpreted where possible in a manner necessary to sustain their legality and enforceability. The unenforceability of any provision of this Agreement in a specific situation shall not affect the enforceability of: (a) that provision in another situation; or (b) the other provisions of this Agreement if such other provisions could then continue to conform with the purposes of this Agreement and the terms and requirements of applicable law.

25.4 The Milwaukee warrants and represents that it has not paid and agrees not to pay any bonus, commission, fee or gratuity to any employee or official of the Authority for the purpose of obtaining this Agreement. In addition to the obligations imposed by Section 3 of "An Act to Prevent Fraudulent and Corrupt Practices in the Making or Accepting of Official Appointments and Contracts by Public Officers,"

approved April 9, 1872, as amended (1981 Ill. Rev. Stat. Ch. 102, §3), no officer, director, employee or professional consultant or advisor of or to the Authority shall be admitted by Milwaukee to any financial share of this Agreement or to any financial benefit arising therefrom.

25.5 The failure of the Authority or the Milwaukee to insist upon strict performance by the other of its obligations under this Agreement or the failure or delay in exercising any rights or remedies provided under this Agreement or at law shall not be deemed or construed as a waiver of any claims or rights. No waiver of a breach of any provision of this Agreement shall constitute or be construed as a waiver of any other breach or of that provision.

25.6 All obligations of the Authority which may, from time to time, be incurred by it under provisions of the Regional Transportation Authority Act which authorize secured, unsecured, short term, long term, equipment trust certificate or other borrowing shall be superior to and have priority over any and all obligations of the Authority under this Agreement.

25.7 Nothing in this Agreement shall in any way either authorize the Authority to exercise or preclude the Authority from exercising any of its powers of eminent domain.

25.8 If the Milwaukee or the Authority refuses to perform its obligations under this Agreement in accordance with its terms and that action results in the inability of

either the Milwaukee or the Authority to use the Joint Line substantially on the terms contemplated by this Agreement, the non-defaulting party shall, in addition to the remedies available to it at law, be entitled to specific performance of the affected provisions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this document to be executed in at least quadruplicate as of the day and year first hereinabove written.

WITNESS

Carlisle C. Stone

RICHARD B. OGILVIE
TRUSTEE OF THE PROPERTY OF THE
CHICAGO, MILWAUKEE, ST. PAUL
AND PACIFIC RAILROAD COMPANY, DEBTOR

Richard B. Ogilvie

ATTEST:

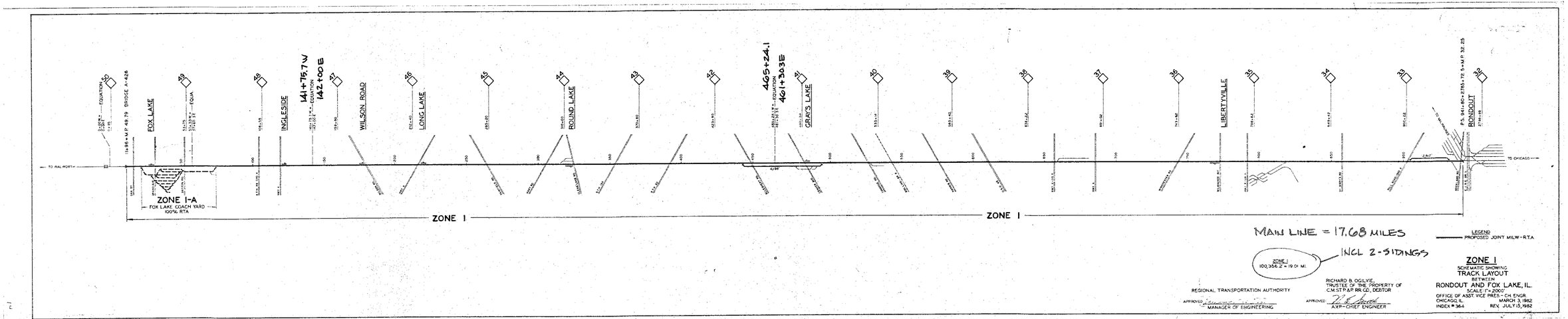
Edmund J. Wolf Jr.
SECRETARY SEP 16 1982

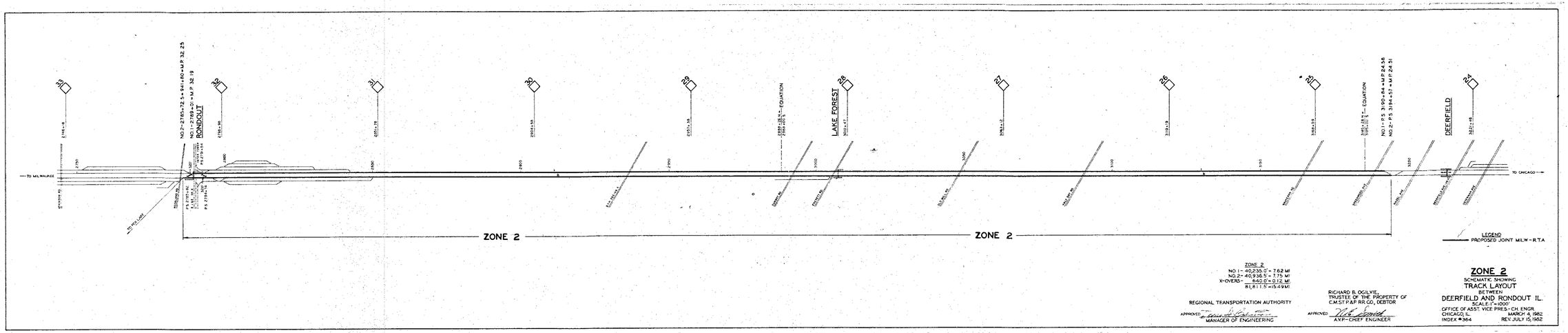
REGIONAL TRANSPORTATION
AUTHORITY

By
Chairman

TRACKAGE AGREEMENT EXHIBITS

Exhibit A	Location of joint lines (maps of 12 zones)
Exhibit B	Maintenance of Way and Structures Expenses
Exhibit C	Transportation, Signal, and Communication system expenses
Exhibit D	Administration, overhead, vacation, and holiday expenses
Exhibit E	Joint Facilities
Exhibit F	Material
Exhibit G	Commuter Service Schedule
Exhibit H	Escrow Agreement
Exhibit I	Primary Accounts


TO RAIL NORTH
FOX LAKE
INGLESIDE
WILSON ROAD
LONG LAKE
ROUND LAKE
GRAY'S LAKE
LIBERTYVILLE
RONDOUT
TO CHICAGO
141+75.7 W
142+00.8 E
465+24.1
461+30.3 E
ZONE 1-A
FOX LAKE COACH YARD
100% RTA
ZONE 1
ZONE 1
MAIN LINE = 17.68 MILES
INCL 2-SIDINGS
LEGEND
PROPOSED JOINT MILW-R.T.A.
ZONE 1
100,358.2' = 19.01 MI.
REGIONAL TRANSPORTATION AUTHORITY
APPROVED
MANAGER OF ENGINEERING
RICHARD B. OGILVIE,
TRUSTEE OF THE PROPERTY OF
C.M.ST.P.&P. RR CO., DEBTOR
APPROVED
AVP-CHIEF ENGINEER
ZONE 1
SCHEMATIC SHOWING
TRACK LAYOUT
BETWEEN
RONDOUT AND FOX LAKE, IL.
SCALE: 1" = 2000'
OFFICE OF ASST. VICE PRES. - CH. ENGR.
CHICAGO, IL.
MARCH 3, 1982
INDEX # 364
REV. JULY 15, 1982

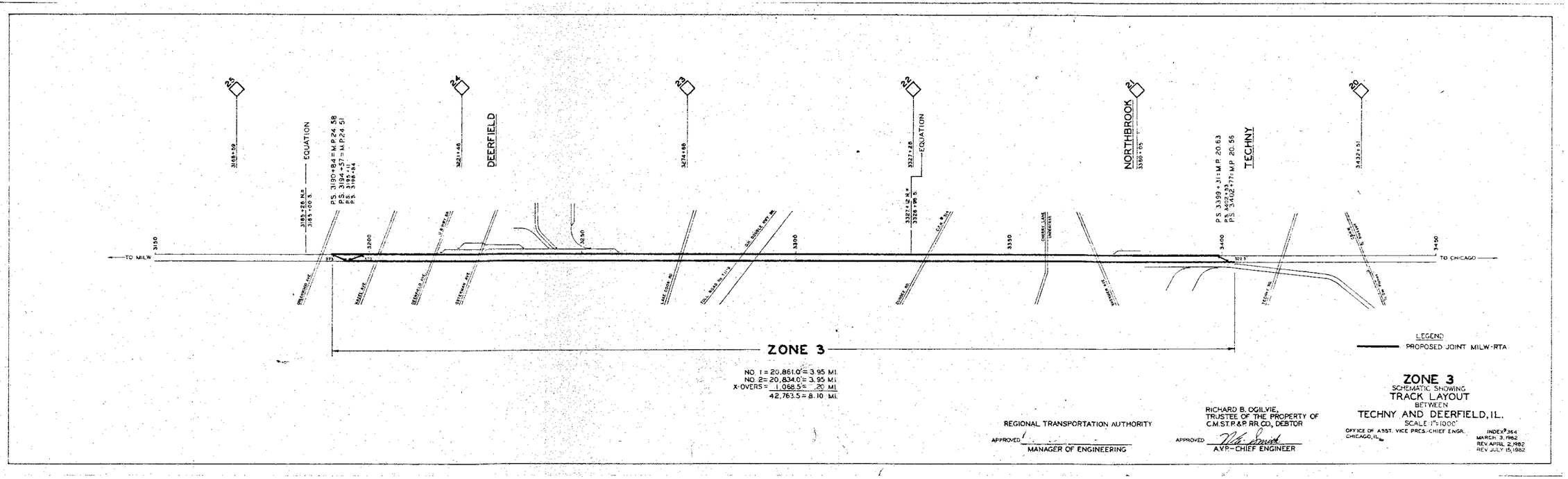


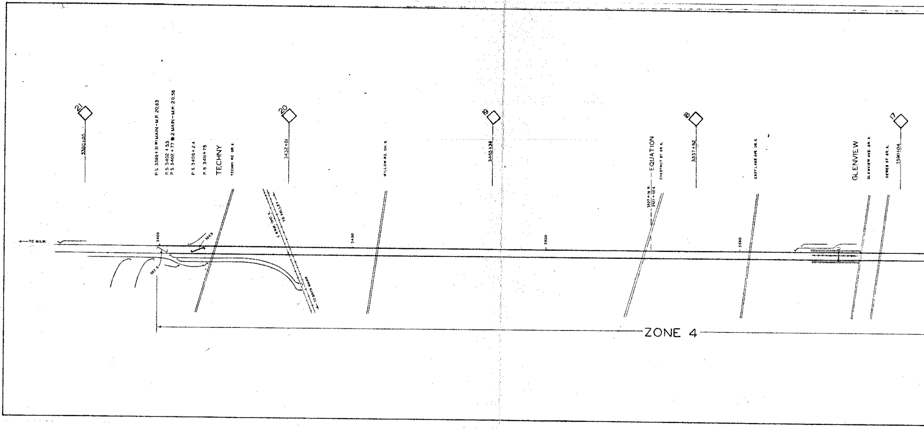
ZONE 2
NO.1 - 40,235.0' = 7.62 MI
NO.2 - 40,936.5' = 7.75 MI
X-OVERS - 640.0' = 0.12 MI
81,811.5 = 15.49 MI

REGIONAL TRANSPORTATION AUTHORITY
APPROVED _____
MANAGER OF ENGINEERING

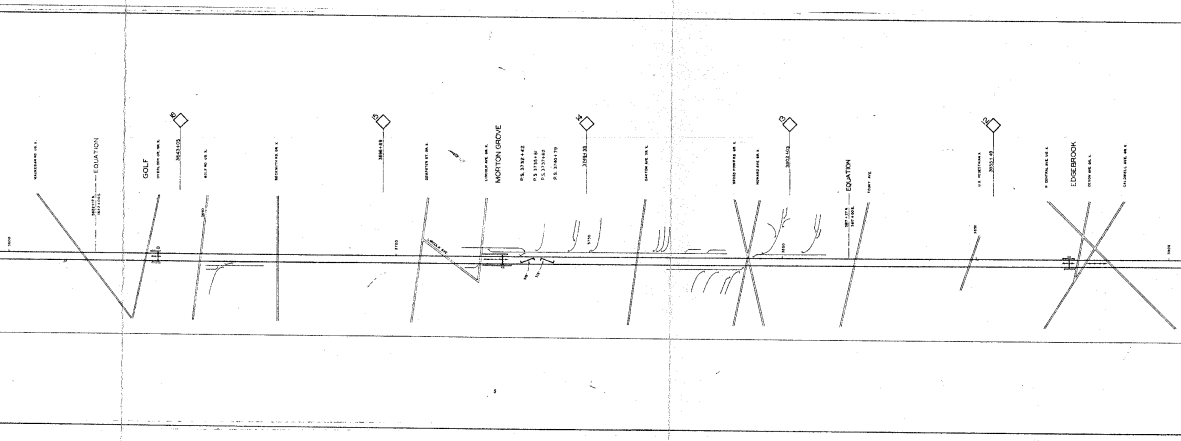
RICHARD B. OGILVIE,
TRUSTEE OF THE PROPERTY OF
C.M.ST.P.&P. RR.CO., DEBTOR
APPROVED _____
A.V.P.-CHIEF ENGINEER

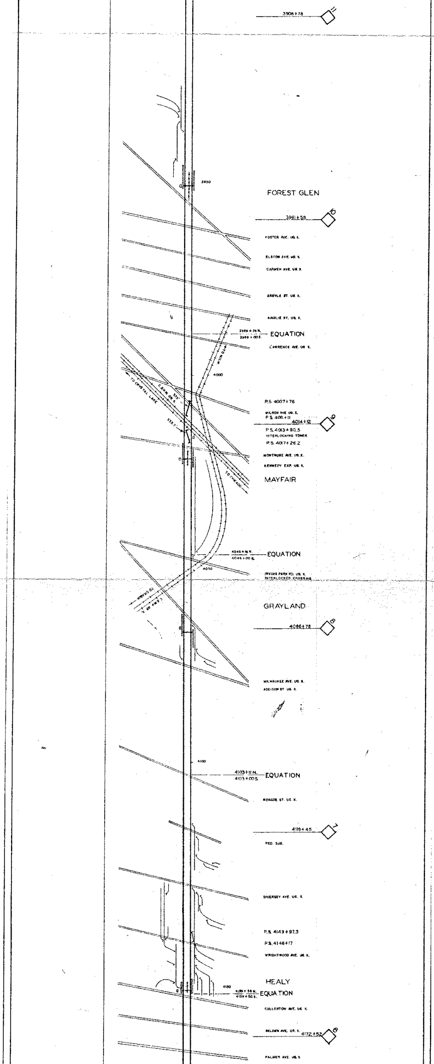
ZONE 2
SCHEMATIC SHOWING
TRACK LAYOUT
BETWEEN
DEERFIELD AND RONDOUT IL.
SCALE 1" = 1000'
OFFICE OF ASST. VICE PRES.-CH. ENGR.
CHICAGO, IL. MARCH 4, 1982
INDEX #364 REV. JULY 15, 1982

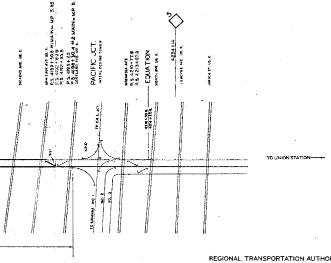

25
3168+59
EQUATION
3185+28 N.≠
3185+00 S.
P.S. 3190+84 = M.P. 24.58
P.S. 3194+57 = M.P. 24.51
P.S. 3198+11
P.S. 3198+44
24
3221+46
DEERFIELD
23
3274+60
22
3327+26
EQUATION
3327+42 N.≠
3328+98 S.
NORTHBROOK 21
3386+05
P.S. 3399+31 = M.P. 20.63
P.S. 3402+33
P.S. 3402+77 = M.P. 20.56
TECHNY
20
3432+51
TO MILW
TO CHICAGO
3150
3200
3250
3300
3350
3400
3450
ZONE 3
NO. 1 = 20,861.0' = 3.95 MI.
NO. 2 = 20,834.0' = 3.95 MI.
X-OVERS = 1,068.5' = .20 MI.
42,763.5 = 8.10 MI.
LEGEND
PROPOSED JOINT MILW-RTA
ZONE 3
SCHEMATIC SHOWING
TRACK LAYOUT
BETWEEN
TECHNY AND DEERFIELD, IL.
SCALE 1"=1000'
OFFICE OF ASST. VICE PRES.-CHIEF ENGR.
CHICAGO, IL.
INDEX 2364
MARCH 3, 1982
REV APRIL 2, 1982
REV JULY 15, 1982
REGIONAL TRANSPORTATION AUTHORITY
APPROVED
MANAGER OF ENGINEERING
RICHARD B. OGILVIE,
TRUSTEE OF THE PROPERTY OF
C.M.ST.P.&P. RR.CO., DEBTOR
APPROVED
AVP-CHIEF ENGINEER


21
3380+05
P.S. 3399+31 #1 MAIN–M.P. 20.83
P.S. 3402 + 53
P.S. 3402 + 77 #2 MAIN–M.P. 20.56
P.S. 3408+2.4
P.S. 3411+75
TECHNY
TECHNY RD GR. X.
20
3432+51
19
3485+38
18
3537+92
17
3590+04
WILLOW RD. OH. X.
EQUATION
CHESTNUT ST GR. X.
3527+16 N.
3527+00 S.
EAST LAKE AVE UG. X.
GLENVIEW
GLENVIEW AVE. GR. X.
DEWES ST. GR. X.
TO MILW.
3400
3450
3500
3550
322.5
322.5
C.&N.W. OVD. X.
TO VALLEY
TO BRYN MAWR
ZONE 4

REDACTED PUBLIC RECORD VERSION


3600
WAUKEGAN RD. UG. X.
EQUATION
3622+17 N.
3622+00 S.
GOLF
OVERLOOK DR. GR. X.
16
3643+05
GOLF RD. UG. X.
3650
BECKWITH RD. GR. X.
15
3696+69
3700
DEMPSTER ST. GR. X.
LINCOLN AVE
LINCOLN AVE. GR. X.
MORTON GROVE
P.S. 3732+42
P.S. 3735+61
P.S. 3737+60
P.S. 3740+79
14
3749+35
3750
OAKTON AVE. GR. X.
CROSS POINT RD. GR. X.
HOWARD AVE. GR. X.
13
3802+03
3800
EQUATION
3817+27 N.
3817+00 S.
TOUHY AVE.
U.G. PEDESTRIAN X.
12
3855+49
3850
N. CENTRAL AVE. UG. X.
EDGEBROOK
DEVON AVE. GR. X.
CALDWELL AVE. GR. X.
3900


11
3906+78
3950
FOREST GLEN
10
3961+58
FOSTER AVE. UG. X.
ELSTON AVE. UG. X.
CARMEN AVE. UG. X.
ARGYLE ST. UG. X.
AINSLIE ST. UG. X.
3989+26 N.
3989+00 S.
EQUATION
LAWRENCE AVE. UG. X.
TO MILW.
4000
TO CRYSTAL LAKE
C.&N.W. OR X.
335'
333.7'
P.S. 4007+76
WILSON AVE UG. X.
P.S. 4011+11
9
4014+12
P.S. 4013+90.5
INTERLOCKING TOWER
P.S. 4017+26.2
MONTROSE AVE. UG. X.
KENNEDY EXP. UG. X.
TO CHICAGO
MAYFAIR
4046+16 N.
4046+00 S.
EQUATION
4050
IRVING PARK RD. UG. X.
INTERLOCKED CROSSING
TO CHICAGO
C.&N.W. OR X.
GRAYLAND
8
4060+76
MILWAUKEE AVE. UG. X.
ADDISON ST. UG. X.
4100
4103+11 N.
4103+00 S.
EQUATION
ROSCOE ST. UG. X.
7
4119+45
PED. SUB.
DIVERSEY AVE. UG. X.
P.S. 4143+97.3
P.S. 4146+17
WRIGHTWOOD AVE. UG. X.
HEALY
4150
4159+58 N.
4159+50 S.
EQUATION
CULLERTON AVE. UG. X.
BELDEN AVE. UG. X.
6
4172+52
PALMER AVE. UG. X.


DICKENS AVE. UG. X.
ARMITAGE AVE UG. X.
P.S. 4189+50.8 #1 MAIN= M.P. 5.85
P.S. 4192+69.8
P.S. 4192+93.8
P.S. 4195+20
P.S. 4196+30.4 #2 MAIN= M.P. 5.72
CORTLAND AVE UG. X.
PACIFIC JCT.
INTERL OCKING TOWER
WABANSIA AVE
P.S. 4210+77.9
P.S. 4213+07.9
EQUATION
4216+30.%
4214+85.5
NORTH AVE. UG. X.
5
4234+14
LEMOYNE AVE. UG. X.
HIRSCH ST. UG. X.
TO C.& E. JCT.
4191
4200
TO UNION STATION
TO SAVANNA NO. 1
NO. 2
NO. 3

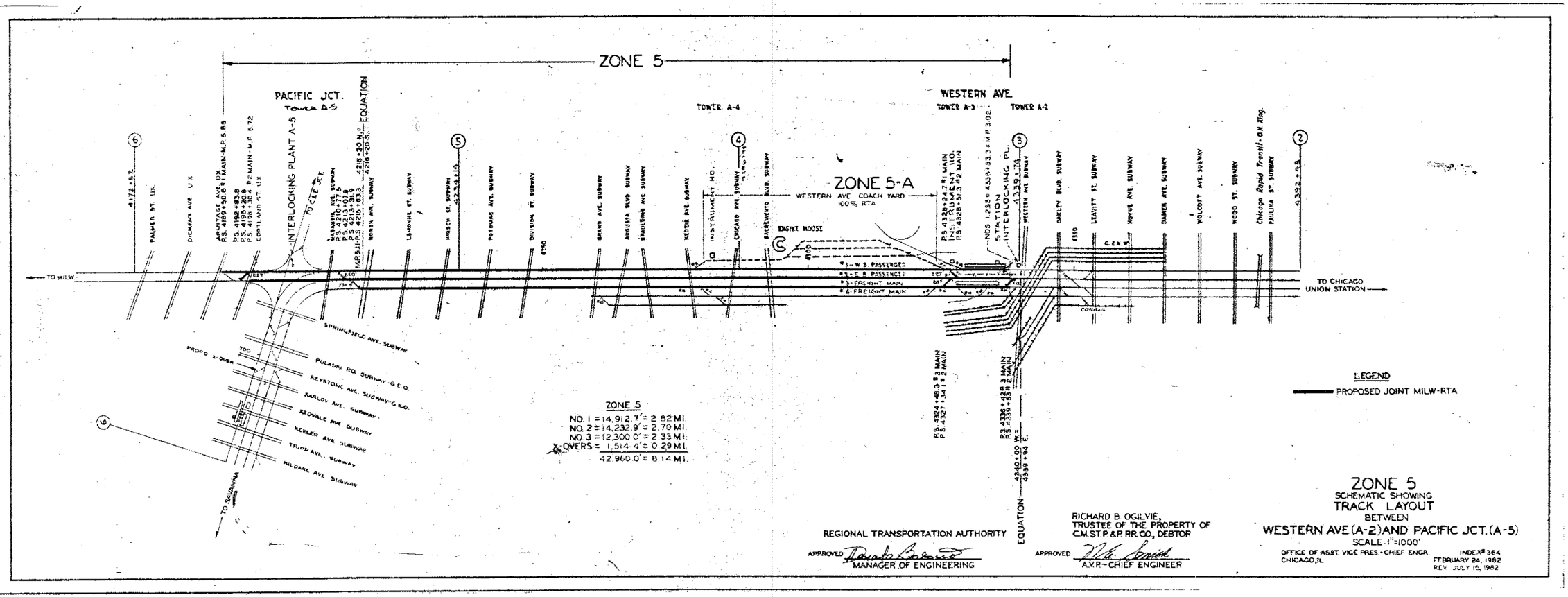
LEGEND
——— PROPOSED JOINT MILW.-R.T.A.

ZONE 4
NO. 1=79,140.6'=14.99 MI.
NO. 2=79,474.4'=15.05 MI.
X-OVERS= 1950.2'= 0.37 MI.
TOTAL 180565.2'=30.41 MI.

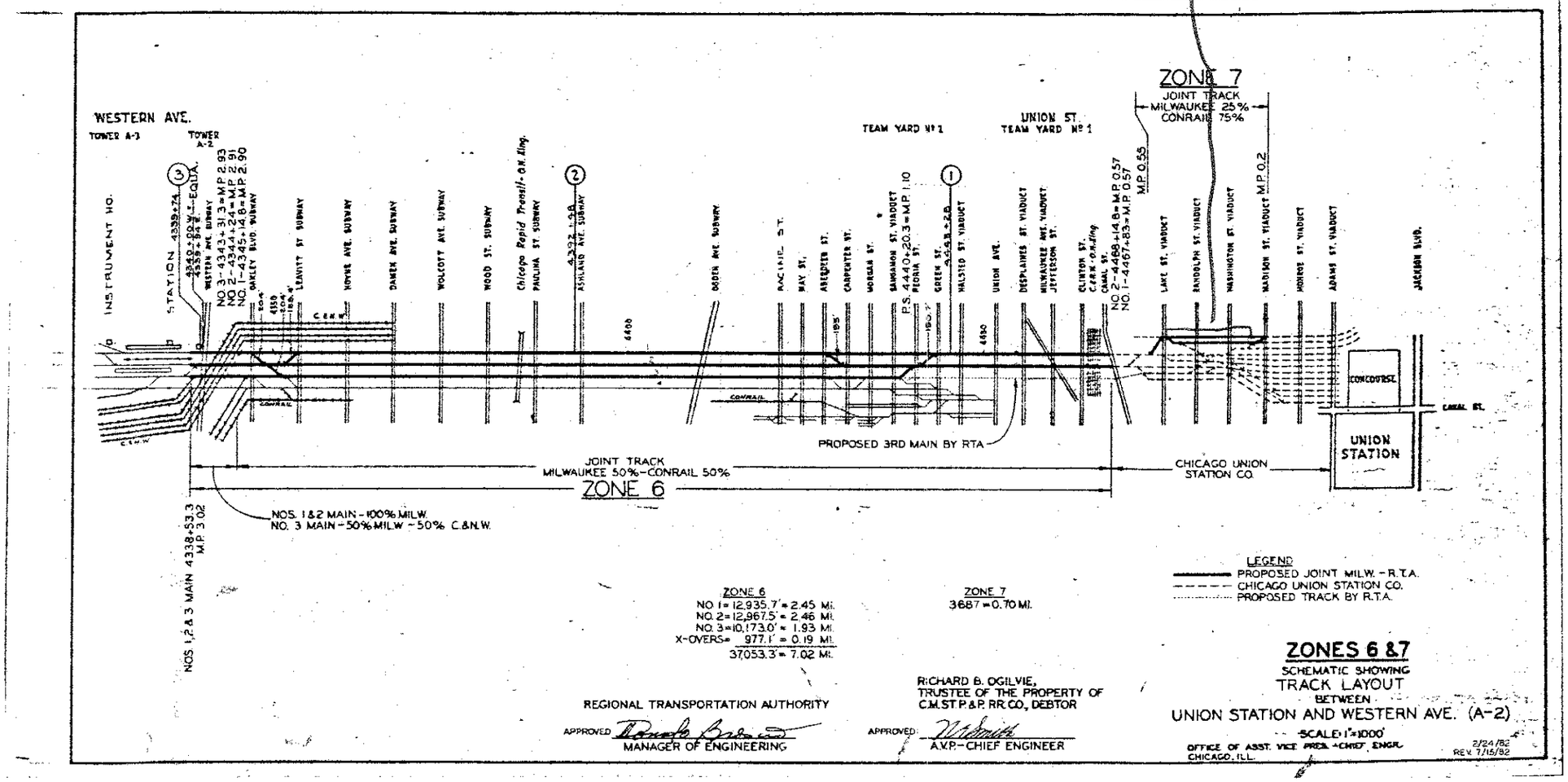
REGIONAL TRANSPORTATION AUTHORITY
APPROVED
MANAGER OF ENGINEERING

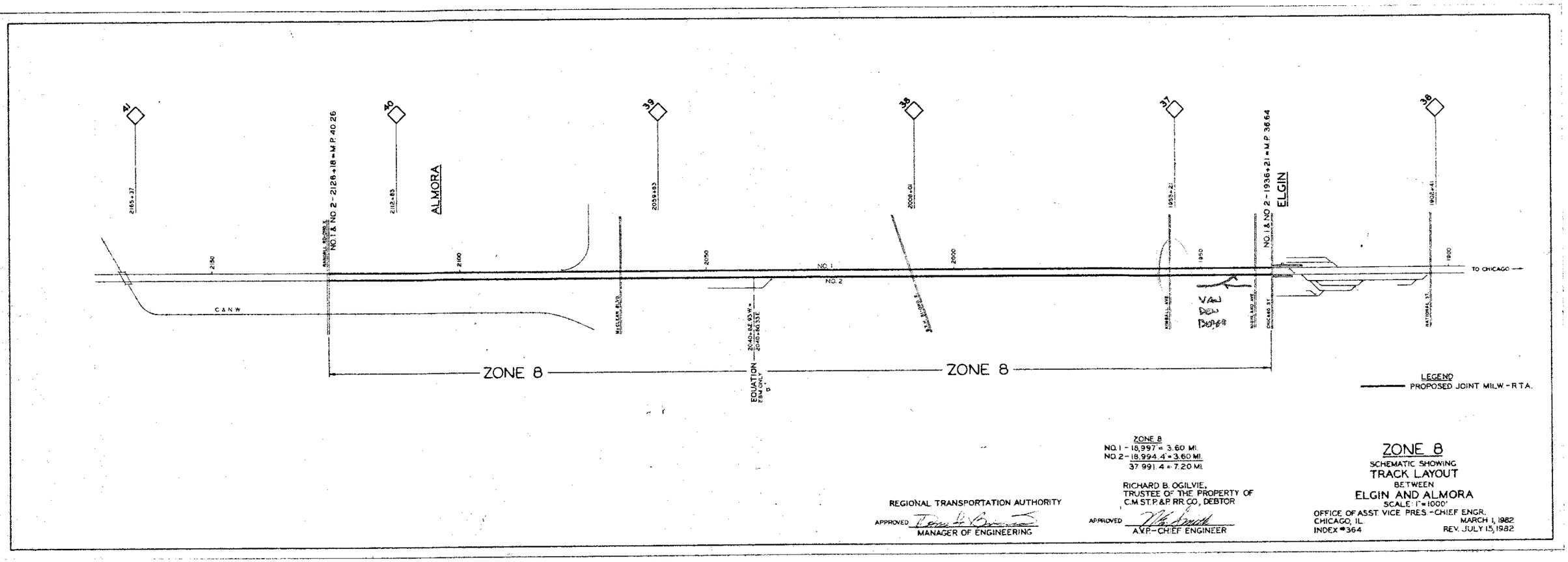
RICHARD B. OGILVIE,
TRUSTEE OF THE PROPERTY OF
C.M.ST.P.&P. RR.CO., DEBTOR
APPROVED
A.V.P.-CHIEF ENGINEER

ZONE 4
SCHEMATIC SHOWING
TRACK LAYOUT
BETWEEN
PACIFIC JCT.(A-5) AND TECHNY (A-20)
SCALE: 1"=1000'
OFFICE OF ASST. VICE PRES.-CHIEF ENGR.
CHICAGO, IL. INDEX #364 MARCH 1, 1982 REV. 4-2-82


ZONE 5
PACIFIC JCT.
Tower A-5
INTERLOCKING PLANT A-5
TO CRESCENT
WESTERN AVE.
TOWER A-4
TOWER A-3
TOWER A-2
ZONE 5-A
WESTERN AVE COACH YARD
100% RTA
ENGINE HOUSE
TO MILW.
TO CHICAGO UNION STATION
#1 - W.B. PASSENGER
#2 - E.B. PASSENGER
#3 - FREIGHT MAIN
#4 - FREIGHT MAIN
PALMER ST. U.X.
DICKENS AVE. U.X.
ARMITAGE AVE. U.X.
P.S. 4189+30.8 1 MAIN-M.P. 5.85
P.S. 4192+83.8
P.S. 4195+20.8
P.S. 4198+30.4 2 MAIN-M.P. 5.72
CONTL.NOR.ST. U.X.
SPAULDING AVE. SUBWAY
P.S. 4210+77.5
P.S. 4212+00.8
P.S. 4213+31.9
P.S. 4215+83.3
NORTH AVE. SUBWAY
4216+30 N.= EQUATION
4218+20 S.
LEAVITT ST. SUBWAY
HOYNE ST. SUBWAY
POTOMAC AVE. SUBWAY
DIVISION ST. SUBWAY
4150
GRAND AVE. SUBWAY
AUGUSTA BLVD. SUBWAY
MADISON AVE. SUBWAY
KEDZIE AVE. SUBWAY
INSTRUMENT HO.
CHICAGO AVE. SUBWAY
BACKENSETO BLVD. SUBWAY
4100
P.S. 4320+24.7 #1 MAIN
INSTRUMENT HO.
P.S. 4325+51.3 #2 MAIN
N.D.S. 1283+4339+93.3=M.P. 3.02
STATION
INTERLOCKING PL.
4329.1 ft.
WESTERN AVE SUBWAY
OAKLEY BLVD. SUBWAY
4150
LEAVITT ST. SUBWAY
C.E.N.
HOYNE AVE. SUBWAY
DAMEN AVE. SUBWAY
WOLCOTT AVE. SUBWAY
WOOD ST. SUBWAY
Chicago Rapid Transit-O.H. Xing.
PAULINA ST. SUBWAY
4392+98
SPRINGFIELD AVE. SUBWAY
PROP'D X-OVER
300
PULASKI RD. SUBWAY-G.E.D.
KEYSTONE AVE. SUBWAY-G.E.D.
KARLOV AVE. SUBWAY
KEDVALE AVE. SUBWAY
KEELER AVE. SUBWAY
TRIPP AVE. SUBWAY
KILDARE AVE. SUBWAY
TO SAGANNA
P.S. 4324+48.3 3 MAIN
P.S. 4327+34.1 # 2 MAIN
P.S. 4338+42.8 3 MAIN
P.S. 4339+55.8 2 MAIN
4340+00 W.=
4339+44 E.
EQUATION
ZONE 5
NO. 1 = 14,912.7' = 2.82 MI.
NO. 2 = 14,232.9' = 2.70 MI.
NO. 3 = 12,300.0' = 2.33 MI.
OVERS = 1,514.4' = 0.29 MI.
42,960.0' = 8.14 MI.
LEGEND
PROPOSED JOINT MILW-RTA
REGIONAL TRANSPORTATION AUTHORITY
APPROVED
MANAGER OF ENGINEERING
RICHARD B. OGILVIE,
TRUSTEE OF THE PROPERTY OF
C.M.ST.P.&P. RR.CO., DEBTOR
APPROVED
A.V.P.-CHIEF ENGINEER
ZONE 5
SCHEMATIC SHOWING
TRACK LAYOUT
BETWEEN
WESTERN AVE (A-2) AND PACIFIC JCT. (A-5)
SCALE - 1" = 1000'
OFFICE OF ASST VICE PRES.-CHIEF ENGR.
CHICAGO, IL.
INDEX # 364
FEBRUARY 26, 1982
REV. JULY 15, 1982

Lake - Washington
and Fulton Sts
APRIL, 1986



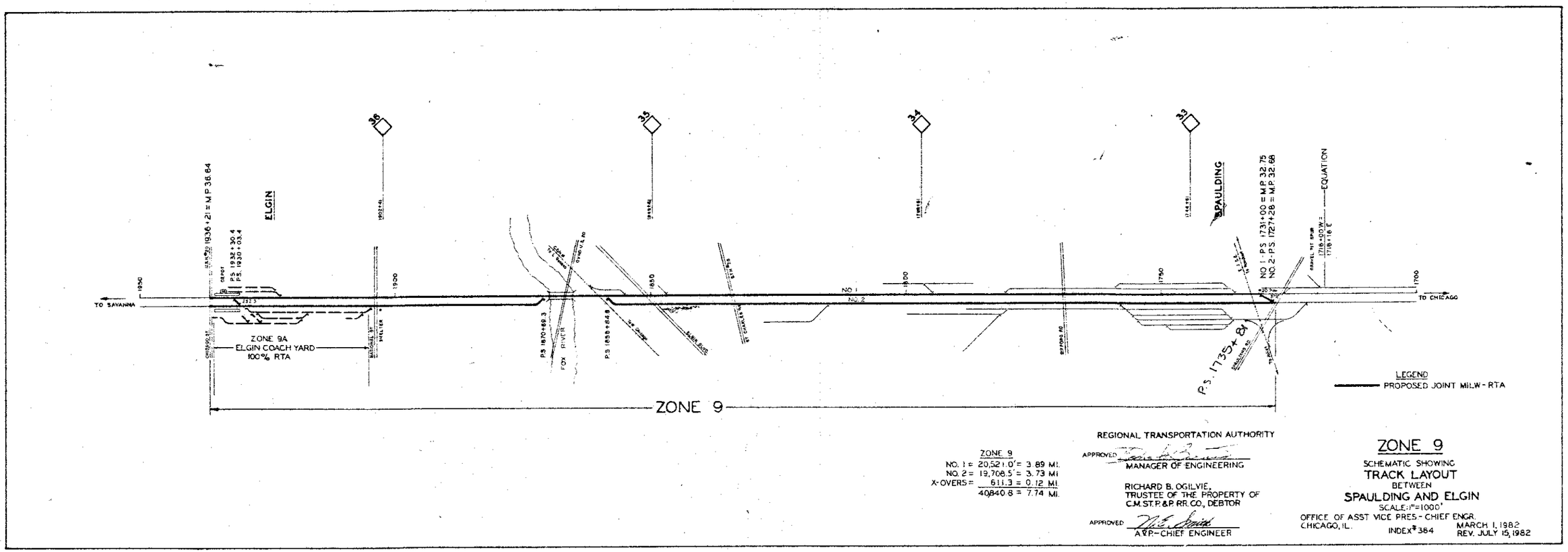


ZONE 8
NO. 1 - 18,997' = 3.60 MI.
NO. 2 - 18,994.4' = 3.60 MI.
37,991.4' = 7.20 MI.

REGIONAL TRANSPORTATION AUTHORITY
APPROVED _____
MANAGER OF ENGINEERING

RICHARD B. OGILVIE,
TRUSTEE OF THE PROPERTY OF
C.M.ST.P.&P. RR.CO., DEBTOR
APPROVED _____
A.V.P.-CHIEF ENGINEER

ZONE 8
SCHEMATIC SHOWING
TRACK LAYOUT
BETWEEN
ELGIN AND ALMORA
SCALE: 1" = 1000'
OFFICE OF ASST. VICE PRES.-CHIEF ENGR.
CHICAGO, IL. MARCH 1, 1982
INDEX #364 REV. JULY 15, 1982

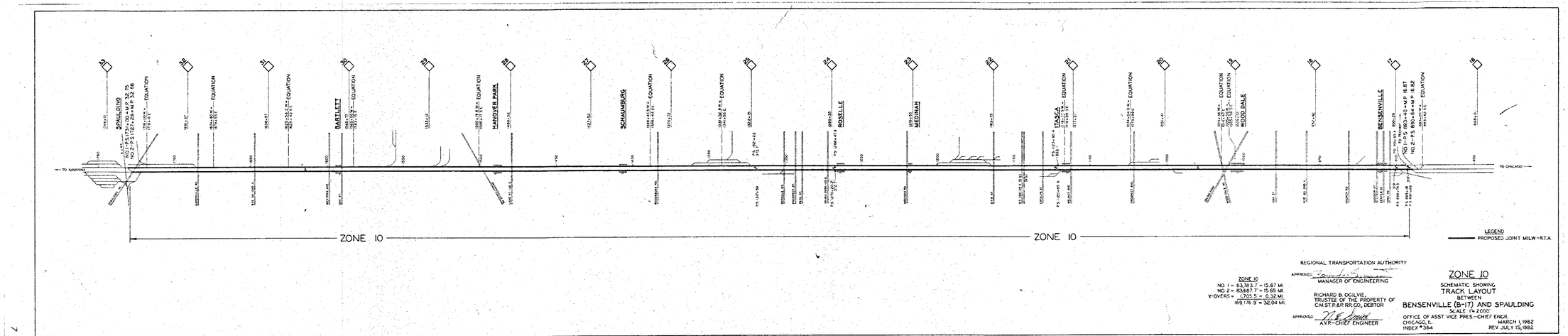


ZONE 9
NO. 1 = 20,521.0' = 3.89 MI.
NO. 2 = 19,708.5' = 3.73 MI.
X-OVERS = 611.3 = 0.12 MI.
40,840.8 = 7.74 MI.

REGIONAL TRANSPORTATION AUTHORITY
APPROVED _____
MANAGER OF ENGINEERING

RICHARD B. OGILVIE,
TRUSTEE OF THE PROPERTY OF
C.M.ST.P.&P. RR. CO., DEBTOR
APPROVED _____
A.V.P.-CHIEF ENGINEER

ZONE 9
SCHEMATIC SHOWING
TRACK LAYOUT
BETWEEN
SPAULDING AND ELGIN
SCALE: 1"=1000'
OFFICE OF ASST VICE PRES.-CHIEF ENGR.
CHICAGO, IL. INDEX # 384 MARCH 1, 1982
REV. JULY 15, 1982

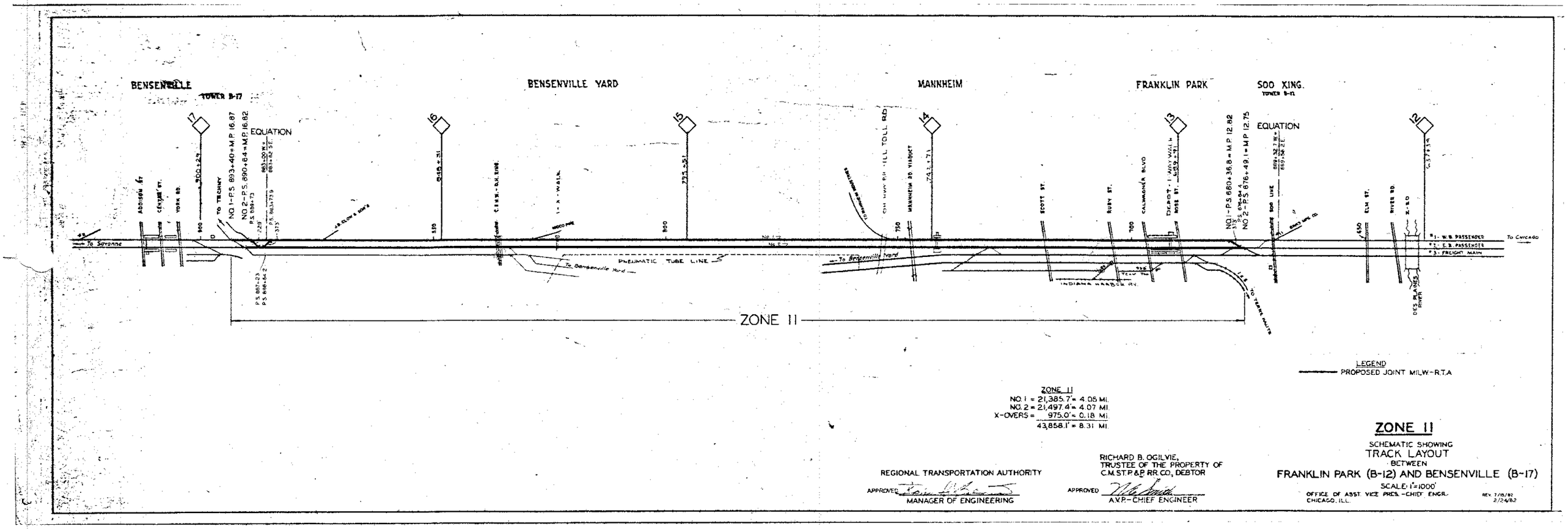


ZONE 10
NO. 1 = 83,783.7' = 15.87 MI.
NO. 2 = 83,687.7' = 15.85 MI.
Y-OVERS = 1,705.5 = 0.32 MI.
169,176.9' = 32.04 MI.

REGIONAL TRANSPORTATION AUTHORITY
APPROVED _____
MANAGER OF ENGINEERING

RICHARD B. OGILVIE,
TRUSTEE OF THE PROPERTY OF
C.M.ST.P.&P.R.R.CO., DEBTOR
APPROVED _____
A.V.P.-CHIEF ENGINEER

ZONE 10
SCHEMATIC SHOWING
TRACK LAYOUT
BETWEEN
BENSENVILLE (B-17) AND SPAULDING
SCALE 1" = 2000'
OFFICE OF ASST. VICE PRES.-CHIEF ENGR.
CHICAGO, IL. MARCH 1, 1982
INDEX # 364 REV. JULY 15, 1982



LEGEND
PROPOSED JOINT MILW-R.T.A

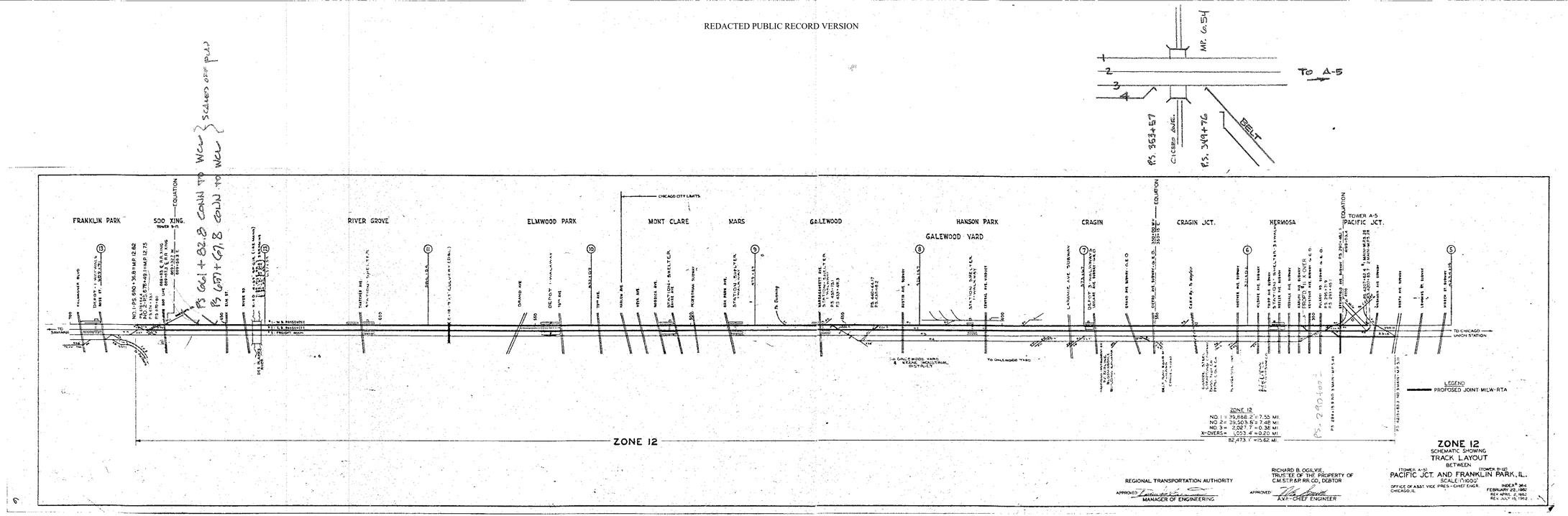
ZONE II
NO. 1 = 21,385.7' = 4.05 MI.
NO. 2 = 21,497.4' = 4.07 MI.
X-OVERS = 975.0' = 0.18 MI.
43,858.1' = 8.31 MI.

REGIONAL TRANSPORTATION AUTHORITY
APPROVED
MANAGER OF ENGINEERING

RICHARD B. OGILVIE,
TRUSTEE OF THE PROPERTY OF
C.M.ST.P.&P. RR.CO., DEBTOR
APPROVED
A.V.P.-CHIEF ENGINEER

ZONE II

SCHEMATIC SHOWING
TRACK LAYOUT
BETWEEN
FRANKLIN PARK (B-12) AND BENSENVILLE (B-17)
SCALE: 1"=1000'
OFFICE OF ASST. VICE PRES.-CHIEF ENGR.
CHICAGO, ILL.
REV. 7/16/82
2/24/82



~~3RD MAIN = 7.19 MI.~~

3RD MAIN = 7.93 MI. (P.S. 4215+63.3 – P.S. 676+49.1 @ B12)

Trackage Agreement
Exhibit B

Primary Accounts

Account Number	Description
202	Roadway maintenance
206	Tunnels and subways
208	Bridges, trestles and culverts
210	Elevated structures
212	Ties
214	Rails
216	Other track material
218	Ballast
220	Track laying and surfacing
221	Fences, snowsheds and signs
227	Station and office buildings
229	Roadway buildings
265	Miscellaneous structures
267	Retirements, road
269	Roadway machines*
270	Dismantling retired road property
271	Small tools and supplies
272	Removing snow, ice and sand
273	Public improvements; maintenance
274	Injuries to persons
276	Stationery and printing
281	Right-of-way expenses
282	Other expenses
277	Employees health and welfare benefits
532	Railway tax accruals

*Non-Milwaukee owned machines

Trackage Agreement
Exhibit C

Primary Accounts

Account Number	Description
326	Work equipment; repairs*
328	Miscellaneous equipment; repairs*
247	Communication systems
249	Signals and interlockers
253	Power plants
257	Power-transmission systems
373	Station employees
376	Station supplies and expenses
404	Signal and interlocker operation
405	Crossing protection
407	Communication system operation
410	Stationery and printing
411	Other expenses
415	Clearing wrecks
420	Injuries to persons
277	Employees health and welfare benefits
335	Employees health and welfare benefits
409	Employees health and welfare benefits
532	Railway tax accruals

*Non-Milwaukee owned equipment

TRACKAGE AGREEMENT

EXHIBIT D

EXHIBIT D

METHODOLOGY FOR ALLOCATION OF VACATION AND HOLIDAY EXPENSES

Expenses to be Allocated (A):

Vacation and holiday expenses properly distributed to operating expense accounts as prescribed by the Interstate Commerce Commission's Uniform System of Accounts in 49 CFR part 1201.

Expenses specifically not allocable:

Labor expenses of officers on the exempt payroll, separation allowance payments and productivity fund payments.

Labor Base to Which Vacation & Holiday Expenses are to be Applied (B):

Direct Labor, exclusive of vacation and holiday payments and other payments mentioned above; paid to all employees.

Procedure for Allocation:

Divide the expenses to be allocated (A) by the labor base to which vacation and holiday expenses apply (B). Multiply the resulting ratio by (1) the applicable labor and fringe benefits properly charged or allocated to each zone on the joint line for commuter service and (2) labor and fringe benefit expenses charged for dispatching on the joint line.

Example Allocation (Unaudited):

Vacation and holiday expenses = $14,891,180

Labor base = $154,624,225

Vacation and holiday expense ratio = $14,891,180 ÷ $154,624,225 = 9.631%

Labor and fringe benefit expenses allocated to zone of commuter line = $10,500

Vacation and holiday expenses allocated to zone = $10,500 x 9.631% = $1,011.26

Allocation Statistic Update Procedures:

Update annually in January utilizing data from previous calendar year.

METHODOLOGY FOR ALLOCATION OF ADMINISTRATIVE OVERHEAD EXPENSES

Labor Expenses to be Allocated (A):

Expenses for Superintendence and General Administration properly charged to operating expense accounts as prescribed by the Interstate Commerce Commission's Uniform System of Accounts in 49 CFR part 1201.

Expenses specifically not allocable:

Expenses properly chargeable to the following functional areas or accounts are specifically not allocable (B):

> Marketing, Car Management, Freight Claim Prevention, Customer Services, Freight Adjustment, Regional Accounting, Revenue/Interline Accounting, and operating expense accounts properly chargeable as shop and store expense.

Labor Base to Which Administrative Overhead Expenses are to be Applied (C):

Labor and vacation and holiday expenses properly charged to operating expense accounts as prescribed in 49 CRR part 1201 and excluding expenses reported in sections A and B.

Procedure for Allocation:

Divide the expenses to be allocated (A) by the labor base to which administative overhead expenses apply (C). Multiply the resulting ratio by (1) the applicable labor, vacation and holiday expenses, fringe benefits and miscellaneous expenses properly charged or allocated to each zone on the joint line for commuter service and (2) labor, vacation and holiday expenses, fringe benefits and miscellaneous expenses charged for dispatching on the joint line.

Example Allocation (Unaudited):

Administrative overhead expenses = $2,086,187

Labor base = $8,711,933

Administrative overhead expense ratio = 23.946%

Labor, vacation and holiday expenses, fringe benefits and miscellaneous expenses allocated to zone of commuter line = $11,511

Administrative overhead expenses allocated to zone = $2,756.42

Allocation Statistic Update Procedures:

Update monthly based on actual expenses.

TRACKAGE AGREEMENTS

JOINT FACILITY AGREEMENTS

EXHIBIT E

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JOINT FACILITY AGREEMENTS

ZONE LOCATION	RAILROAD	AGREEMENT DATE	DESCRIPTION	LOCATION
ONE	SOO LINE	8-15-99	AUTOMATIC INTERLOCKER	GRAYS LAKE
TWO	EJ&E RY.	8- 1-89	TOWER & INTERLOCKER	RONDOUT
FOUR	C&NW TRANSP.	1- 1-95	TOWER & INTERLOCKER	MAYFAIR - CHICAG
FOUR	C&NW TRANSP.	12-31-94	AUTOMATIC INTERLOCKER	GRAYLAND - CHICA
FIVE	C&NW TRANSP. CONRAIL	3-24-04	TOWER A-Z, TRACKS & SWITCHES, CROSSINGS	WESTERN AVE. - C
SIX	CONRAIL	2- 7-73	TRACKS & FACILITIES WESTERN AVE. TO CANAL ST.	CHICAGO
SEVEN	CONRAIL	2- 7-73	TRACKS & FACILITIES LAKE STREET TO MADISON STREET	CHICAGO
NINE	C&NW TRANSP.	6-11-10	REMOTE CONTROLLED INTERLOCKER	ELGIN
NINE	EJ&E RY.	8- 1-89	TOWER & INTERLOCKER	SPAULDING
ELEVEN	C&NW TRANSP.	4-18-10	OVERHEAD CROSSING	BENSENVILLE
ELEVEN	C&NW TRANSP.	6-26-12	OVERHEAD CROSSING	BENSENVILLE
ELEVEN	SOO LINE	12- 1-30	TOWER & INTERLOCKER	FRANKLIN PARK
TWELVE	I.H.B.R.R.	3- 1-32	REMOTE CONTROLLED INTERLOCKER	FRANKLIN PARK
TWELVE	C&NW TRANSP.	2- 1-05	REMOTE CONTROLLED INTERLOCKER PACIFIC JCT.	CRAIGIN JUNCTION CHICAGO

TRACKAGE AGREEMENT

EXHIBIT F

Exhibit F

(i) To the chargeout (including taxes and foreign line freight charges) of all items of material, fuel and supplies used (including working timetables and rule books), add 15% to cover inspection, accounting, purchasing, handling and transportation to point of use or point from which handled by work train.

(ii) In all cases of salvage credit in connection with the maintenance of operation, there shall first be deducted 15% to cover expenses in connection with accounting, handling and transportation of such salvaged material.

(iii) When a non-Joint Line track breaks out of a Joint Line track, the Joint Line track shall be charged with 50% of the cost of material to repair or renew the turnout. The material considered as part of the turnout is the frog, switch, guard rails, guard rail clamps, switch stand, switch lamps, switch ties, and ballast and track fastenings. The cost of rail shall be charged to the Joint Line on the same basis as material. Work train services shall be charged to the Joint Line on the same basis as labor.

(iv) Separation of material as between track and signal shall be based on the accounts to which the

material is charged under the ICC Classifications, that is, Maintenance Accounts "Ties," and "Other Track Material," shall be classed as track material and charged to whose track structure it is applied. Signal and interlocker material, and material for highway protection when part of the Joint Line interlocking plant, charged to Investment Account "Signals and Interlockers" and Maintenance Account "Signals and Interlockers" shall be classed as signal and interlocker material and charged to the Authority on bases provided in this Agreement.

Item of material considered as:

Track

° Switches and derails, derail points, switch points and moveable frog points with fastenings.

° Switches, derail and movable point frog timbers or ties.

° Guage or tie plates with or without insulation and with or without extensions, to tie operating or locking movements in relation to rail, together with fastenings.

° Toe or butt plates with fastenings.

° Rail braces with fastenings.

° Riser plates with fastenings.

° Transit or switch clips with fastenings.

° Switch rods with or without insulation with fastenings.

° Insulated rail joints.

° Head rod guides for derails with fastenings.

Signal and Interlocker

° Tie straps with fastenings.

° Front and lock rods with switch lugs or feet and fastenings.

° Throw rods, with switch adjustments and fastenings.

° Machine, tail or base plates with fastenings.

° All cranks and stands with fastenings.

° Switch circuit controllers with rods, point lugs and fastenings.

° Switch and lock movements with fastenings.

° Bolt locks with rods and fastenings.

° Bolt lock base plates with fastenings.

° Bond wires applied in connection with ordinary maintenance of plant, or construction of new plant. (Cost of bond wires or other items of signal material applied in connection with program of rail renewals or other track changes shall be apportioned on basis provided for Track material instead of Signal and Interlocker material.)

NORTH LINE between CHICAGO and FOX LAKE

NORTHBOUND

SATURDAY ONLY

	2109 AM	2111 AM	2115 PM	2601 PM	2121 PM	2603 PM	2607 PM	2609 PM	2147 AM
Lv UNION STATION	8.35	9.50	12.25	2.00	3.55	5.05	7.35	9.20	12.25
Western Ave.	8.43	9.58	12.33	2.08	4.03	5.13	7.42	9.28	12.33
Healy	8.48	10.04	12.38	2.13	4.08	5.19	7.47	9.33	12.38
Grayland	8.51	10.07	12.41	2.16	4.11	5.21	7.50	9.36	12.41
Mayfair	8.53	10.09	12.43	2.18	4.13	5.23	7.52	9.38	12.43
Forest Glen	8.56	10.12	12.46	2.21	4.16	5.26	7.55	9.41	12.46
Edgebrook	8.59	10.15	12.49	2.24	4.19	5.29	7.58	9.44	12.49
Morton Grove	9.03	10.19	12.53	2.28	4.24	5.33	8.03	9.48	12.53
Golf	9.06	10.22	12.56	2.31	4.27	5.36	8.06	9.51	12.56
Glenview	9.09	10.25	12.59	2.34	4.30	5.39	8.09	9.54	12.59
Northbrook	9.15	10.31	1.04	2.39	4.35	5.45	8.14	10.00	1.05
Deerfield	9.20	10.36	1.09	2.44	4.40	5.50	8.19	10.05	1.09
Lake Forest	9.25	10.41	1.14	2.49	4.45	5.55	8.24	10.10	1.14
Rondout	9.30	10.46	1.19	2.55	4.50	6.00	8.29	10.17	1.19
Libertyville	9.35	10.51	1.24	3.00	4.56	6.05	8.35	10.22	1.24
Grays Lake	9.42	10.58	1.31	3.07	5.04	6.12	8.43	10.29	1.31
Round Lake	9.46	11.02	1.35	3.11	5.09	6.16	8.48	10.33	1.36
Long Lake	9.50	11.06	1.39	3.14	5.12	6.20	8.52	10.37	1.40
Wilson Road	9.53	11.09	1.42	3.17	5.15	6.23	8.55	10.39	1.42
Ingleside		11.11	1.44	3.20	5.18	6.26	8.57	10.41	
Ar FOX LAKE	10.00 AM	11.15 AM	1.50 PM	3.25 PM	5.23 PM	6.30 PM	9.02 PM	10.45 PM	1.47 AM

WEST LINE between CHICAGO and ELGIN

EASTBOUND

MONDAY THROUGH FRIDAY

		Miles	2222 AM	2224 AM	*2226 PM	2228 PM	2230 PM	2232 PM	2236 PM	2244 PM	2246 PM	2248 PM	2250 PM
Lv	ELGIN	0.0	8.55	11.05	1.05	2.05	3.05	4.05	5.05		7.10	8.30	9.35
	Elgin (Nat'l St.)	0.6	8.57	11.07	1.07	2.07	3.07	4.07	5.07		7.12	8.32	9.37
	Bartlett	6.5	9.05	11.15	1.15	2.15	3.15	4.15	5.15		7.20	8.40	9.45
	Hanover Park	8.2	9.08	11.18	1.18	2.18	3.18	4.18	5.18		7.23	8.43	9.48
#	Schaumburg	10.1	9.11	11.21		2.21	3.21	4.21	5.21		7.26	8.46	9.49
	Roselle	12.7	9.14	11.24	1.24	2.24	3.24	4.24	5.24	6.45	7.29	8.49	9.52
	Medinah	13.6	9.17	11.27	1.27	2.27	3.27	4.27	5.27		7.32	8.52	9.54
	Itasca	15.6	9.20	11.30	1.30	2.30	3.30	4.30	5.30		7.35	8.55	9.57
	Wood Dale	17.5	9.23	11.33	1.33	2.33	3.33	4.33	5.33		7.38	8.58	9.59
	Bensenville	19.4	9.26	11.36	1.36	2.36	3.36	4.36	5.36	6.55	7.41	9.01	10.02
	Mannheim	22.6	9.32	11.42	1.42	2.42			5.42		7.47	9.07	10.07
	Franklin Park	23.4	9.34	11.43	1.43	2.44	3.44	4.42	5.44		7.49	9.09	10.09
	River Grove	25.2	9.37	11.47	1.47	2.47	3.47	4.45	5.47		7.52	9.12	10.12
	Elmwood Park	26.4	9.39	11.49	1.49	2.49	3.49	4.47	5.49		7.54	9.14	10.14
	Mont Clare	27.1	9.41	11.51	1.51	2.51	3.51	4.49	5.51		7.56	9.16	10.16
	Mars	27.5	9.43	11.53	1.53	2.53			5.53		7.58	9.18	10.18
	Galewood	28.0	9.45	11.55	1.55	2.55	3.55	4.53	5.55		8.00	9.20	10.20
	Hanson Park	28.9	9.48	11.58	1.58	2.58			5.58		8.03	9.23	10.23
	Cragin	29.6	9.51	12.01	2.01	3.00			6.00		8.05	9.25	10.26
	Hermosa	30.7	9.54	12.03	2.03	3.03	3.59	4.57	6.03		8.08	9.28	10.29
	Western Ave.	33.7	9.59	12.09	2.09	3.09	4.05	5.03	6.09	7.14	8.14	9.34	10.34
Ar	UNION STATION	36.6	10.10 AM	12.20 PM	2.20 PM	3.20 PM	4.15 PM	5.13 PM	6.20 PM	7.25 PM	8.25 PM	9.45 PM	10.45 PM

Service to this station will begin on or about November 1, 1982.

*Illinois Commerce Commission Docket No. 82-0169 - Train discontinued from April 16, 1982, to on or before November 1, 1982. Schedule as contained in Chicago, Milwaukee, St. Paul & Pacific Railroad Company Employee Timetable No. 2 dated April 25, 1982 shall remain in effect until service begins to the Schaumburg station.

REDACTED PUBLIC RECORD VERSION

WEST LINE between CHICAGO and ELGIN

WESTBOUND

MONDAY THROUGH FRIDAY

les	2207 AM	2209 AM	2213 AM	*2215 AM	2217 PM	2219 PM	2221 PM	2223 PM	2225 PM	2227 PM	2229 PM
0	6.30	7.15	9.35	11.35	12.35	1.50	2.40	3.40	4.10	4.35	4.55
9	6.38		9.43	11.43	12.43	1.58	2.48	3.48	4.18	4.43	5.02
9	6.44		9.48	11.48	12.48	2.04	2.53	3.54	4.23	4.49	
0	6.46		9.50	11.50	12.50		2.55	3.57	4.26	4.52	
7	6.48		9.52	11.52	12.52		2.57	3.59	4.28	4.54	
6	6.50		9.54	11.54	12.54		2.59	4.01	4.30	4.56	
1	6.51		9.55	11.55	12.55		3.01	4.03	4.31	4.58	
5	6.52		9.56	11.56	12.56		3.03	4.04	4.33	5.00	
2	6.54		9.58	11.58	12.58	2.10	3.05	4.06	4.35	5.02	
6	6.56		10.01	12.01	1.01	2.13	3.08	4.09	4.38	5.05	
2	6.59		10.05	12.05	1.05	2.17	3.12	4.13	4.41	5.08	
0	7.01		10.07	12.07	1.07		3.14	4.15	4.44	5.10	
2	7.07	7.40	10.13	12.13	1.13	2.22	3.20	4.22	4.50	5.15	5.21
1	7.10		10.16	12.16	1.16	2.25	3.23	4.25	4.53	5.18	5.24
0	7.13		10.19	12.19	1.19	2.28	3.26	4.28	4.56	5.21	5.28
0	7.16		10.22	12.22	1.22		3.29	4.31	5.00	5.25	
9	7.19		10.25	12.25	1.25	2.34	3.32	4.35	5.03	5.28	5.34
5	7.21		10.27		1.27	2.36	3.34	4.37	5.05	5.30	5.36
.4	7.26		10.32	12.31	1.32	2.41	3.39	4.42	5.10	5.35	5.41
.1	7.29		10.35	12.34	1.35	2.44	3.42	4.45	5.14	5.39	5.45
.0	7.43		10.46	12.45	1.46	2.53	3.53	4.53	5.21	5.48	
.6	7.47		10.50	12.48	1.50	2.57	3.57	4.57	5.27	5.52	
	AM	AM	AM	PM	PM	PM	PM	PM	PM	PM	PM

ll begin on or about November 1, 1982

ission Docket No. 82-0169 - Train discontinued from April 16, 1982, to on or before November 1, 1982.

hicago, Milwaukee, St. Paul & Pacific Railroad Comapny Employee Timetable No. 2 dated April 25, 1982 shall remain in
s to the Schaumburg station.

WEST LINE between CHICAGO and ELGIN

WESTBOUND

MONDAY THROUGH FRIDAY

Les	2231 PM	2233 PM	2235 PM	2237 PM	2239 PM	2241 PM	2243 PM	2245 PM	2247 PM	2249 PM	2251 AM
)	4.58	5.10	5.17	5.22	5.35	6.05	6.35	7.50	9.15	10.35	12.15
)		5.18	5.25	5.30	5.43	6.13	6.43	7.58	9.23	10.43	12.23
)				5.36	5.49	6.19	6.49	8.03	9.28	10.49	12.29
)				5.39	5.52	6.22	6.52	8.06	9.31	10.52	12.31
7					5.54	6.24	6.54	8.09	9.33	10.55	12.33
5				5.43	5.56	6.26	6.56	8.11	9.35	10.57	12.35
L					5.58	6.28	6.58	8.13	9.37	10.59	12.36
5	5.15			5.46	5.59	6.29	6.59	8.14	9.38	11.00	12.37
2	5.18			5.49	6.01	6.31	7.01	8.16	9.40	11.02	12.39
4	5.21			5.52	6.04	6.34	7.04	8.19	9.43	11.04	12.41
2	5.25			5.56	6.07	6.37	7.07	8.22	9.47	11.07	12.44
)					6.09		7.09	8.24	9.49	11.09	12.46
2			5.44	6.02	6.14	6.44	7.14	8.29	9.56	11.15	12.52
L			5.48	6.05	6.17	6.47	7.17	8.31	9.59	11.18	12.55
)			5.52	6.08	6.20	6.50	7.20	8.34	10.02	11.21	12.58
)		5.45		6.11	6.23	6.53	7.23	8.37	10.05	11.24	1.01
)		5.49		6.15	6.26	6.56	7.26	8.40	10.09	11.26	1.04
		5.51		6.17	6.28	6.58	7.28	8.42	10.11	11.28	1.07
4			6.03	6.22	6.34	7.04	7.34	8.48	10.16	11.33	1.11
1		6.01		6.25	6.38	7.08	7.38	8.51	10.19	11.36	1.14
0		6.11	6.16		6.48	7.18	7.48	9.03	10.28	11.46	1.23
6		6.14	6.19		6.52	7.22	7.52	9.07	10.32	11.50	1.27
	PM	PM	PM	PM	PM	PM	PM	PM	PM	PM	AM

ll begin on or about November 1, 1982.

Chicago, Milwaukee, St. Paul & Pacific Railroad Company Employee Timetable No. 2 dated April 25, 1982 shall remain in ns to the Schaumburg station.

EXHIBIT G

REDACTED PUBLIC RECORD VERSION

WEST LINE between CHICAGO and ELGIN

WESTBOUND

SATURDAY ONLY

	2207 AM	2209 AM	2213 AM	2217 PM	2701 PM	2703 PM	2223 PM	2227 PM	2239 PM	2243 PM	2247 PM	2251 AM
Lv UNION STATION	6.30	7.15	9.35	12.35	1.15	1.24	3.40	4.35	5.35	6.35	9.15	12.15
Western Ave.	6.38		9.43	12.43	1.23	1.32	3.48	4.43	5.43	6.43	9.23	12.23
Hermosa	6.44		9.48	12.48		1.38	3.54	4.49	5.49	6.49	9.28	12.29
Cragin	6.46		9.50	12.50		1.40	3.57	4.52	5.52	6.52	9.31	12.31
Hanson Park	6.48		9.52	12.52		1.42	3.59	4.54	5.54	6.54	9.33	12.33
Galewood	6.50		9.54	12.54		1.44	4.01	4.56	5.56	6.56	9.35	12.35
Mars	6.51		9.55	12.55		1.45	4.03	4.58	5.58	6.58	9.37	12.36
Mont Clare	6.52		9.56	12.56		1.46	4.04	5.00	5.59	6.59	9.38	12.37
Elmwood Park	6.54		9.58	12.58		1.49	4.06	5.02	6.01	7.01	9.40	12.39
River Grove	6.56		10.01	1.01		1.52	4.09	5.05	6.04	7.04	9.43	12.41
Franklin Park	6.59		10.05	1.05		1.56	4.13	5.08	6.07	7.07	9.47	12.44
Mannheim	7.01		10.07	1.07		1.58	4.15	5.10	6.09	7.09	9.49	12.46
Bensenville	7.07	7.40	10.13	1.13	1.40	2.05	4.22	5.15	6.14	7.14	9.56	12.52
Wood Dale	7.10		10.16	1.16	1.43		4.25	5.18	6.17	7.17	9.59	12.55
Itasca	7.13		10.19	1.19	1.46		4.28	5.21	6.20	7.20	10.02	12.58
Medinah	7.16		10.22	1.22	1.49		4.31	5.25	6.23	7.23	10.05	1.01
Roselle	7.19		10.25	1.25	1.52		4.35	5.28	6.26	7.26	10.09	1.04
# Schaumburg	7.21		10.27	1.27	1.54		4.37	5.30	6.28	7.28	10.11	1.07
Hanover Park	7.26		10.32	1.32	1.59		4.42	5.35	6.34	7.34	10.16	1.11
Bartlett	7.29		10.35	1.35	2.02		4.45	5.39	6.38	7.38	10.19	1.14
Elgin (Nat'l St.)	7.43		10.46	1.46	2.13		4.53	5.48	6.48	7.48	10.28	1.23
Ar ELGIN	7.47		10.50	1.50	2.17		4.57	5.52	6.52	7.52	10.32	1.27
	AM	AM	AM	PM	PM	PM	PM	PM	PM	PM	PM	AM

Service to this station will begin on or about November 1, 1982

Schedule as contained in Chicago, Milwaukee, St. Paul & Pacific Railroad Company Employee Timetable No. 2 dated April 25, 1982 shall remain in effect until service begins to the Schaumburg station.

EXHIBIT G

WEST LINE between CHICAGO and ELGIN

WESTBOUND

SUNDAY AND HOLIDAY

	2213 AM	2217 PM	2239 PM	2245 PM	2247 PM	2251 AM
Lv UNION STATION	9.35	12.35	5.35	7.50	9.15	12.15
Western Ave.	9.43	12.43	5.43	7.58	9.23	12.23
Hermosa	9.48	12.48	5.49	8.03	9.28	12.29
Cragin	9.50	12.50	5.52	8.06	9.31	12.31
Hanson Park	9.52	12.52	5.54	8.09	9.33	12.33
Galewood	9.54	12.54	5.56	8.11	9.35	12.35
Mars	9.55	12.55	5.58	8.13	9.37	12.36
Mont Clare	9.56	12.56	5.59	8.14	9.38	12.37
Elmwood Park	9.58	12.58	6.01	8.16	9.40	12.39
River Grove	10.01	1.01	6.04	8.19	9.43	12.41
Franklin Park	10.05	1.05	6.07	8.22	9.47	12.44
Mannheim	10.07	1.07	6.09	8.24	9.49	12.46
Bensenville	10.13	1.13	6.14	8.29	9.56	12.52
Wood Dale	10.16	1.16	6.17	8.31	9.59	12.55
Itasca	10.19	1.19	6.20	8.34	10.02	12.58
Medinah	10.22	1.22	6.23	8.37	10.05	1.01
Roselle	10.25	1.25	6.26	8.40	10.09	1.04
# Schaumburg	10.27	1.27	6.28	8.42	10.11	1.07
Hanover Park	10.32	1.32	6.34	8.48	10.16	1.11
Bartlett	10.41	1.35	6.38	8.51	10.19	1.14
Elgin (Nat'l St.)	10.46	1.46	6.48	9.03	10.28	1.23
Ar ELGIN	10.50	1.50	6.52	9.07	10.32	1.27
	AM	PM	PM	PM	PM	AM

Service to station to begin on or about November 1, 1982
Schedule as contained in Chicago, Milwaukee, St. Paul & Pacific Railroad Company Employee Timetable No. 2 dated April 25, 1982 shall remain in effect until service begins to the Schaumburg station.

NORTH LINE between CHICAGO and FOX LAKE

SOUTHBOUND

MONDAY THROUGH FRIDAY

	Miles	2100 AM	2102 AM	2104 AM	2106 AM	2108 AM	2110 AM	2112 AM	2114 AM	2116 AM	2118 AM
FOX LAKE	0.0	5.02	5.35	6.10	6.24	6.40	6.50	6.59		7.12	7.25
Ingleside	1.7	5.05	5.38			6.43					
Wilson Road	2.5	5.07	5.40			6.45				7.16	
Long Lake	3.5	5.10	5.43	6.15		6.47		7.04		7.19	
Round Lake	5.5	5.14	5.47	6.18	6.30		6.57	7.07			7.32
Grays Lake	8.5	5.19	5.52		6.35	6.53		7.11		7.26	
Libertyville	14.0	5.26	5.59	6.28	6.42	6.59	7.07			7.32	7.42
Rondout	17.2	5.32	6.05			7.05					
Lake Forest	21.5	5.37	6.10			7.10		7.27		7.43	
Deerfield	25.3	5.42	6.15	6.43	6.57	7.15		7.32	7.35	7.48	7.57
Northbrook	28.4	5.47	6.20	6.48	7.01	7.19	7.25		7.40	7.52	
Glenview	32.1	5.52	6.26	6.54	7.07		7.32	7.40	7.45	7.58	
Golf	33.3	5.55	6.29	6.57		7.25			7.48		
Morton Grove	35.2	5.58	6.32	7.00	7.11		7.36	7.44	7.50		8.09
Edgebrook	37.9	6.03	6.37	7.05	7.14			7.48	7.53	8.06	
Forest Glen	39.3	6.06	6.40	7.08		7.33			7.56		
Mayfair	40.5	6.09	6.43	7.11		7.36			7.58		
Grayland	41.3	6.11	6.45	7.14		7.39			8.00		
Healy	43.1	6.15	6.49	7.17	7.22	7.43	7.49	7.55	8.03	8.15	8.21
Western Ave.	46.6	6.20	6.53	7.22	7.27	7.48	7.54	8.00	8.08	8.19	8.26
Ar UNION STATION	49.5	6.30 AM	7.05 AM	7.33 AM	7.38 AM	8.00 AM	8.07 AM	8.10 AM	8.20 AM	8.30 AM	8.37 AM

NORTH LINE between CHICAGO and FOX LAKE

SOUTHBOUND

MONDAY THROUGH FRIDAY

	Miles	2120 AM	2124 AM	2126 AM	2128 AM	2130 PM	2132 PM	2136 PM	2138 PM	2140 PM	2142 PM	2146 PM
FOX LAKE	0.0		8.12	10.12	11.25	12.45	2.12	4.12			7.12	9.50
Ingleside	1.7		8.15	10.15	11.28	12.48	2.15	4.15			7.15	
Wilson Road	2.5		8.17	10.17	11.30	12.50	2.17	4.17			7.17	9.54
Long Lake	3.5		8.20	10.20	11.33	12.53	2.20	4.20			7.20	9.57
Round Lake	5.5		8.24	10.24	11.37	12.57	2.24	4.24			7.24	10.01
Grays Lake	8.5		8.29	10.29	11.42	1.02	2.29	4.29			7.29	10.06
Libertyville	14.0		8.36	10.36	11.49	1.09	2.36	4.36			7.36	10.13
Rondout	17.2		8.41	10.41	11.54	1.14	2.41				7.41	10.17
Lake Forest	21.5		8.46	10.46	11.59	1.19	2.46	4.46			7.46	10.23
Deerfield	25.3	8.08	8.52	10.52	12.05	1.25	2.52	4.52	5.52	6.52	7.52	10.28
Northbrook	28.4	8.13	8.57	10.57	12.10	1.30	2.57	4.57	5.57	6.57	7.57	10.33
Glenview	32.1	8.18	9.03	11.03	12.16	1.36	3.03	5.03	6.03	7.03	8.03	10.39
Golf	33.3	8.21	9.06	11.06	12.19	1.39	3.06	5.06	6.06		8.06	10.42
Morton Grove	35.2	8.24	9.09	11.09	12.22	1.42	3.09	5.09	6.09	7.09	8.09	10.45
Edgebrook	37.9	8.27	9.14	11.14	12.27	1.47	3.14	5.14	6.14	7.14	8.14	10.49
Forest Glen	39.3	8.32	9.17	11.17	12.30	1.50	3.17	5.17	6.17		8.17	10.53
Mayfair	40.5		9.20	11.20	12.33	1.53	3.20	5.20	6.20		8.20	10.56
Grayland	41.3		9.22	11.22	12.35	1.55	3.22	5.22	6.22		8.22	10.58
Healy	43.1	8.37	9.25	11.25	12.38	1.58	3.25	5.25	6.25		8.25	11.01
Western Ave.	46.6	8.42	9.30	11.30	12.43	2.03	3.30	5.30	6.30	7.25	8.30	11.06
Ar UNION STATION	49.5	8.52 AM	9.40 AM	11.40 AM	12.53 PM	2.13 PM	3.40 PM	5.40 PM	6.40 PM	7.35 PM	8.40 PM	11.15 PM

NORTH LINE between CHICAGO and FOX LAKE

NORTHBOUND

MONDAY THROUGH FRIDAY

	Miles	2103 AM	2109 AM	2111 AM	2113 AM	2115 PM	2117 PM	2121 PM	2123 PM	2125 PM	2127 PM
Lv UNION STATION	0.0	6.38	8.35	9.50	11.05	12.25	2.10	3.55	4.33	4.42	4.46
Western Ave.	2.9	6.46	8.43	9.58	11.13	12.33	2.18	4.03	4.40		4.54
Healy	6.4	6.51	8.48	10.04	11.18	12.38	2.23	4.08		4.54	4.59
Grayland	8.2	6.54	8.51	10.07	11.21	12.41		4.11			
Mayfair	9.0	6.56	8.53	10.09	11.23	12.43		4.13			
Forest Glen	10.2	6.59	8.56	10.12	11.26	12.46		4.16			
Edgebrook	11.6	7.02	8.59	10.15	11.29	12.49	2.30	4.19			
Morton Grove	14.3	7.06	9.03	10.19	11.33	12.53	2.34	4.24	4.55		
Golf	16.2	7.09	9.06	10.22	11.36	12.56	2.36	4.27	4.58		
Glenview	17.4	7.12	9.09	10.25	11.39	12.59	2.39	4.30	5.01		5.12
Northbrook	20.9	7.17	9.15	10.31	11.44	1.04	2.44	4.35	5.05	5.10	
Deerfield	23.9	7.23	9.20	10.36	11.49	1.09	2.49	4.40	5.10		5.21
Lake Forest	28.0		9.25	10.41	11.54	1.14	2.54	4.45		5.18	
Rondout	32.3		9.30	10.46	12.00	1.19	3.00	4.50			
Libertyville	35.5		9.35	10.51	12.05	1.24	3.05	4.56	5.24	5.29	5.35
Grays Lake	41.0		9.42	10.58	12.12	1.31	3.12	5.04	5.32		5.43
Round Lake	44.0		9.46	11.02	12.16	1.35	3.16	5.09	5.37	5.41	5.48
Long Lake	46.0		9.50	11.06	12.19	1.39	3.19	5.12			5.51
Wilson Road	47.0		9.53	11.09	12.22	1.42	3.22	5.15			5.54
Ingleside	47.8			11.11		1.44	3.25	5.18			5.56
Ar FOX LAKE	49.5		10.00 AM	11.15 AM	12.30 PM	1.50 PM	3.30 PM	5.23 PM	5.45 PM	5.50 PM	6.01 PM

NORTH LINE between CHICAGO and FOX LAKE

NORTHBOUND

MONDAY THROUGH FRIDAY

lles	2129 PM	2131 PM	2133 PM	2135 PM	2137 PM	2139 PM	2141 PM	2143 PM	2145 PM	2147 AM
0	4.48	5.08	5.20	5.25	5.48	5.55	6.55	8.20	10.05	12.25
9	4.56			5.33	5.56	6.03	7.03	8.27	10.13	12.33
4	5.01			5.38	6.01	6.08	7.08	8.33	10.18	12.38
2	5.04			5.41		6.11	7.11	8.35		12.41
0	5.06			5.43		6.13	7.13	8.37		12.43
2	5.09			5.46		6.16	7.16	8.40	10.24	12.46
6	5.12			5.49		6.19	7.19	8.43	10.27	12.49
3	5.17			5.54		6.24	7.24	8.47	10.32	12.53
2	5.20			5.57		6.27	7.27	8.50	10.35	12.56
4	5.23	5.34	5.43	6.00	6.14	6.30	7.30	8.53	10.38	12.59
9	5.27	5.39	5.49	6.04	6.20	6.35	7.35	8.59	10.44	1.05
9	5.32	5.44	5.54	6.09	6.25	6.42	7.40	9.04	10.49	1.09
0		5.50		6.14	6.31		7.45	9.09	10.54	1.14
3				6.20	6.37		7.50			1.19
5		6.00	6.08	6.25	6.42		7.56	9.20	11.04	1.24
0		6.07	6.16	6.33	6.50		8.04	9.27	11.12	1.31
0		6.11	6.21	6.38	6.55		8.09	9.31	11.17	1.36
0			6.24	6.41	6.58		8.12	9.35	11.20	1.40
0				6.44	7.01		8.15	9.37	11.22	1.42
8				6.47	7.04		8.18	9.40		
5		6.21	6.33	6.53	7.10		8.23	9.45	11.28	1.47

OCC KC
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REDACTED PUBLIC RECORD VERSION

EXHIBIT G

NORTH LINE between CHICAGO and FOX LAKE

SOUTHBOUND

SATURDAY ONLY

	2100 AM	2602 AM	2604 AM	2126 AM	2606 PM	2132 PM	2136 PM	2142 PM	2146 PM
Lv FOX LAKE	5.02	6.49	7.48	10.12	12.12	2.12	4.12	7.12	9.50
Ingleside	5.05	6.52		10.15	12.15	2.15	4.15	7.15	
Wilson Road	5.07	6.54		10.17	12.17	2.17	4.17	7.17	9.54
Long Lake	5.10	6.57		10.20	12.20	2.20	4.20	7.20	9.57
Round Lake	5.14	7.01	7.55	10.24	12.24	2.24	4.24	7.24	10.01
Grays Lake	5.19	7.05	8.00	10.29	12.29	2.29	4.29	7.29	10.06
Libertyville	5.26	7.12	8.06	10.36	12.36	2.36	4.36	7.36	10.13
Rondout	5.32	7.17		10.41	12.41	2.41		7.41	10.17
Lake Forest	5.37	7.22	8.16	10.46	12.46	2.46	4.46	7.46	10.23
Deerfield	5.42	7.27	8.22	10.52	12.52	2.52	4.52	7.52	10.28
Northbrook	5.47	7.31	8.27	10.57	12.57	2.57	4.57	7.57	10.33
Glenview	5.52	7.37	8.32	11.03	1.03	3.03	5.03	8.03	10.39
Golf	5.55	7.40		11.06	1.06	3.06	5.06	8.06	10.42
Morton Grove	5.58	7.43	8.37	11.09	1.09	3.09	5.09	8.09	10.45
Edgebrook	6.03	7.47	8.42	11.14	1.14	3.14	5.14	8.14	10.49
Forest Glen	6.06	7.50		11.17	1.17	3.17	5.17	8.17	10.53
Mayfair	6.09	7.53	8.46	11.20	1.20	3.20	5.20	8.20	10.56
Grayland	6.11	7.55	8.48	11.22	1.22	3.22	5.22	8.22	10.58
Healy	6.15	7.58	8.50	11.25	1.25	3.25	5.25	8.25	11.01
Western Ave.	6.20	8.03	8.55	11.30	1.30	3.30	5.30	8.30	11.06
Ar UNION STATION	6.30 AM	8.14 AM	9.05 AM	11.40 AM	1.40 PM	3.40 PM	5.40 PM	8.40 PM	11.15 PM

NORTH LINE between CHICAGO and FOX LAKE

SOUTHBOUND

SUNDAY AND HOLIDAY

	2602 AM	2126 AM	2132 PM	2136 PM	2142 PM	2146 PM
Lv FOX LAKE	6.49	10.12	2.12	4.12	7.12	9.50
Ingleside	6.52	10.15	2.15	4.15	7.15	
Wilson Road	6.54	10.17	2.17	4.17	7.17	9.54
Long Lake	6.57	10.20	2.20	4.20	7.20	9.57
Round Lake	7.01	10.24	2.24	4.24	7.24	10.01
Grays Lake	7.05	10.29	2.29	4.29	7.29	10.06
Libertyville	7.12	10.36	2.36	4.36	7.36	10.13
Rondout	7.17	10.41	2.41		7.41	10.17
Lake Forest	7.22	10.46	2.46	4.46	7.46	10.23
Deerfield	7.27	10.52	2.52	4.52	7.52	10.28
Northbrook	7.31	10.57	2.57	4.57	7.57	10.33
Glenview	7.37	11.03	3.03	5.03	8.03	10.39
Golf	7.40	11.06	3.06	5.06	8.06	10.42
Morton Grove	7.43	11.09	3.09	5.09	8.09	10.45
Edgebrook	7.47	11.14	3.14	5.14	8.14	10.49
Forest Glen	7.50	11.17	3.17	5.17	8.17	10.53
Mayfair	7.53	11.20	3.20	5.20	8.20	10.56
Grayland	7.55	11.22	3.22	5.22	8.22	10.58
Healy	7.58	11.25	3.25	5.25	8.25	11.01
Western Ave.	8.03	11.30	3.30	5.30	8.30	11.06
Ar UNION STATION	8.14	11.40	3.40	5.40	8.40	11.15

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NORTH LINE between CHICAGO and FOX LAKE

NORTHBOUND

SUNDAY AND HOLIDAY

	2109 AM	2111 AM	2115 PM	2605 PM	2609 PM	2147 AM
Lv UNION STATION	8.35	9.50	12.25	5.40	9.20	12.25
Western Ave.	8.43	9.58	12.33	5.48	9.28	12.33
Healy	8.48	10.04	12.38	5.53	9.33	12.38
Grayland	8.51	10.07	12.41	5.56	9.36	12.41
Mayfair	8.53	10.09	12.43	5.58	9.38	12.43
Forest Glen	8.56	10.12	12.46	6.01	9.41	12.46
Edgebrook	8.59	10.15	12.49	6.04	9.44	12.49
Morton Grove	9.03	10.19	12.53	6.08	9.48	12.53
Golf	9.06	10.22	12.56	6.11	9.51	12.56
Glenview	9.09	10.25	12.59	6.15	9.54	12.59
Northbrook	9.15	10.31	1.04	6.21	10.00	1.05
Deerfield	9.20	10.36	1.09	6.26	10.05	1.09
Lake Forest	9.25	10.41	1.14	6.31	10.10	1.14
Rondout	9.30	10.46	1.19	6.36	10.17	1.19
Libertyville	9.35	10.51	1.24	6.41	10.22	1.24
Grays Lake	9.42	10.58	1.31	6.49	10.29	1.31
Round Lake	9.46	11.02	1.35	6.53	10.33	1.36
Long Lake	9.50	11.06	1.39	6.56	10.37	1.40
Wilson Road	9.53	11.09	1.42	6.58	10.39	1.42
Ingleside		11.11	1.44	7.00	10.41	
Ar FOX LAKE	10.00 AM	11.15 AM	1.50 PM	7.05 PM	10.45 PM	1.47 AM

REDACTED PUBLIC RECORD VERSION

WEST LINE between CHICAGO and ELGIN

EASTBOUND

MONDAY THROUGH FRIDAY

	Miles	2200 AM	2202 AM	2204 AM	2206 AM	2208 AM	2210 AM	2212 AM	2214 AM	2216 AM	2218 AM	2220 AM
Lv ELGIN	0.0	5.00	5.52	6.25	-	6.40	6.50		7.03		7,29	7.50
Elgin (Nat'l St)	0.6	5.02	5.54	6.27		6.42	6.52		7.05		7.31	7.52
Bartlett	6.5	5.10	6.02	6.34	6.42	6.50		7.05	7.13		7.38	8.00
Hanover Park	8.2	5.13	6.05	6.37	6.45	6.53	7.02	7.08	7.15		7.41	8.02
# Schaumburg	10.1	5.15	6.07	6.40	6.48	6.56	7.05		7.17		7.44	8.05
Roselle	12.7	5.18	6.10	6.43	6.51	6.59	7.08	7.13	7.21		7.47	8.08
Medinah	13.6	5.20	6.13		6.53			7.15			7.50	
Itasca	15.6	5.23	6.16	6.47	6.56	7.03	7.12		7.26		7.53	8.13
Wood Dale	17.5	5.26	6.19	6.50	6.59	7.06		7.20	7.30		7.56	8.16
Bensenville	19.4	5.29	6.22	6.55	7.04	7.11	7.17	7.24	7.35	7.45	7.59	8.19
Mannheim	22.6	5.35	6.28			7.16				7.51		
Franklin Park	23.4	5.38	6.30	7.00	7.09	7.18	7.23			7.53	8.05	8.25
River Grove	25.2	5.41	6.34	7.03	7.12		7.26	7.32		7.56		8.28
Elmwood Park	26.4	5.43	6.36	7.06	7.15	7.22	7.28	7.35		7.58		8.30
Mont Clare	27.1	5.45	6.38		7.17	7.24	7.30			8.00		
Mars	27.5	5.46	6.40		7.19		7.32			8.02		
Galewood	28.0	5.48	6.42			7.26		7.39		8.04		
Hanson Park	28.9	5.50	6.44		7.22		7.35			8.07		
Cragin	29.6	5.53	6.46	7.14	7.25	7.29				8.09		
Hermosa	30.7	5.57	6.51	7.17	7.28	7.32	7.39	7.44		8.12		
Western Ave.	33.7	6.04	6.56	7.23	7.34	7.39	7.45	7.50	7.52	8.17	8.23	8.45
Ar UNION STATION	36.6	6.15 AM	7.08 AM	7.35 AM	7.45 AM	7.50 AM	7.55 AM	8.02 AM	8.05 AM	8.26 AM	8.34 AM	8.55 AM

Service to this station will begin on or about November 1, 1982. Schedule as contained in Chicago, Milwaukee, St. Paul & Pacific Railroad Company Employee Timetable No. 2 dated April 25, 1982 shall remain in effect until service begins to the Schaumburg station.

EXHIBIT G

REDACTED PUBLIC RECORD VERSION

WEST LINE between CHICAGO and ELGIN

EASTBOUND

SATURDAY ONLY

	2200 AM	2202 AM	2214 AM	2216 AM	2218 AM	2222 AM	2224 AM	2704 PM	2228 PM	2236 PM	2246 PM	2250 PM
Lv Elgin	5.00	5.52	7.03		7.29	8.55	11.05		2.05	5.05	7.10	9.35
Elgin (Nat'l St.)	5.02	5.54	7.05		7.31	8.57	11.07		2.07	5.07	7.12	9.37
Bartlett	5.10	6.02	7.13		7.38	9.05	11.15		2.15	5.15	7.20	9.45
Hanover Park	5.13	6.05	7.15		7.41	9.08	11.18		2.18	5.18	7.23	9.48
# Schaumburg	5.15	6.07	7.17		7.44	9.11	11.21		2.21	5.21	7.26	9.49
Roselle	5.18	6.10	7.21		7.47	9.14	11.24		2.24	5.24	7.29	9.52
Medinah	5.20	6.13			7.50	9.17	11.27		2.27	5.27	7.32	9.54
Itasca	5.23	6.16	7.26		7.53	9.20	11.30		2.30	5.30	7.35	9.57
Wood Dale	5.26	6.19	7.30		7.56	9.23	11.33		2.33	5.33	7.38	9.59
Bensenville	5.29	6.22	7.35	7.45	7.59	9.26	11.36	2.10	2.36	5.36	7.41	10.02
Mannheim	5.35	6.28		7.51		9.32	11.42		2.42	5.42	7.47	10.07
Franklin Park	5.38	6.30		7.53	8.05	9.34	11.43		2.44	5.44	7.49	10.09
River Grove	5.41	6.34		7.56		9.37	11.47		2.47	5.47	7.52	10.12
Elmwood Park	5.43	6.36		7.58		9.39	11.49		2.49	5.49	7.54	10.14
Mont Clare	5.45	6.38		8.00		9.41	11.51		2.51	5.51	7.56	10.16
Mars	5.46	6.40		8.02		9.43	11.53		2.53	5.53	7.58	10.18
Galewood	5.48	6.42		8.04		9.45	11.55		2.55	5.55	8.00	10.20
Hanson Park	5.50	6.44		8.07		9.48	11.58		2.58	5.58	8.03	10.23
Cragin	5.53	6.46		8.09		9.51	12.01		3.00	6.00	8.05	10.26
Hermosa	5.57	6.51		8.12		9.54	12.03		3.03	6.03	8.08	10.29
Western Ave.	6.04	6.56	7.52	8.17	8.23	9.59	12.09	2.27	3.09	6.09	8.14	10.34
Ar UNION STATION	6.15 AM	7.08 AM	8.05 AM	8.28 AM	8.34 AM	10.10 AM	12.20 PM	2.40 PM	3.20 PM	6.20 PM	8.25 PM	10.45 PM

Service to this station to begin on or about November 1, 1982

Schecule as contained in Chicago, Milwaukee, St. Paul & Pacific Railroad Company Employee Timetable No. 2 dated April 25, 1982 shall remain in effect until service begins to the Schaumburg station.

WEST LINE between CHICAGO and ELGIN

EASTBOUND

SUNDAY AND HOLIDAY

	2700 AM	2702 AM	2224 AM	2228 PM	2236 PM	2248 PM
Lv ELGIN	6.36	8.20	11.05	2.05	5.05	8.30
Elgin (Nat'l St.)	6.38	8.22	11.07	2.07	5.07	8.32
Bartlett	6.44	8.29	11.15	2.15	5.15	8.40
Hanover Park	6.46	8.32	11.18	2.18	5.18	8.43
# Schaumburg	6.48	8.34	11.21	2.21	5.21	8.46
Roselle	6.50	8.37	11.24	2.24	5.24	8.49
Medinah	6.52	8.39	11.27	2.27	5.27	8.52
Itasca	6.55	8.42	11.30	2.30	5.30	8.55
Wood Dale	6.58	8.45	11.33	2.33	5.33	8.58
Bensenville	7.02	8.49	11.36	2.36	5.36	9.01
Mannheim	7.07	8.55	11.42	2.42	5.42	9.07
Franklin Park	7.09	8.58	11.43	2.44	5.44	9.09
River Grove	7.12	9.01	11.47	2.47	5.47	9.12
Elmwood Park	7.14	9.03	11.49	2.49	5.49	9.14
Mont Clare	7.16	9.05	11.51	2.51	5.51	9.16
Mars	7.18	9.07	11.53	2.53	5.53	9.18
Galewood	7.20	9.09	11.55	2.55	5.55	9.20
Hanson Park	7.23	9.11	11.58	2.58	5.58	9.23
Cragin	7.26	9.13	12.01	3.00	6.00	9.25
Hermosa	7.30	9.15	12.03	3.03	6.03	9.28
Western Ave.	7.35	9.20	12.09	3.09	6.09	9.34
Ar UNION STATION	7.46 AM	9.30 AM	12.20 PM	3.20 PM	6.20 PM	9.45 PM

Service to this station to begin on or about November 1, 1982

Schedule as contained in Chicago, Milwaukee, St. Paul & Pacific Railroad Company Employee Timetable No. 2 dated April 25, 1982 shall remain in effect until service begins to the Schaumburg station.

Exhibit H

Escrow No. _____

ESCROW AGREEMENT

To: Bank of LaGrange Park
Oak Avenue at Sherwood
LaGrange Park, Illinois 60525

The following property is deposited with you by the Regional Transportation Authority:

Five Hundred Thousand Dollars ($500,000)

As Escrowee, you are hereby directed to hold, deal with and dispose of the aforesaid property and any other property at any time held by you hereunder in the following manner, subject however, to the terms and conditions hereinafter set forth:

1. For purposes of this Agreement, the following terms shall have the following meanings:

(a) "Authority" -- The Regional Transportation Authority.

(b) "Claim Notice" -- A notice from the Milwaukee to the Escrowee, which notice shall: (i) be signed by the principal operating officer of the Milwaukee or, in his absence, the Milwaukee's Vice-President of Finance; (ii) state that the Authority has failed to pay the amounts specified in the Applicable Provisions of the Subject Agreements within the time period prescribed for such payment by such provisions; (iii) specify the amounts which the Authority has failed to pay, the date or dates on which such payments were to be made by the Authority, and the basis for claiming that the payment was to be made by the Authority and that the Authority has failed to make such payments within the prescribed time period; and (iv) state that the Milwaukee has given to the Authority, at least ___ business days prior to Milwaukee's submission of the Claim Notice to the Escrowee, a copy of such Claim Notice.

(c) "Milwaukee" -- Richard B. Ogilvie, Trustee of the property of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company.

(d) "Applicable Provisions of the Subject Agreements" -- Section 16.2 of the Trackage Agreement dated _____ between the Milwaukee and the Authority; Section 7 of the Lease of Stations and Station Grounds dated _____ between the Milwaukee and the Authority; Section ___ of the Lease of Western Avenue Yard dated _____ between the Milwaukee and the Authority; Section __ of the Lease of the Fox Lake Yard dated _____ between the Milwaukee and the Authority; and Section ___ of the Lease of the Elgin Yard dated _____ between the Milwaukee and the Authority.

2. Upon receipt of a Claim Notice from the Milwaukee, you are directed to pay, from the principal amount then on deposit with you, to the Milwaukee the amount which the Milwaukee has, pursuant to subparagraph 1(b) of this Escrow Agreement, stated that the Authority has failed to pay. You shall give notice to the Authority of such payment immediately after making such payment.

3. The Milwaukee shall not submit a Claim Notice to the Escrowee unless and until the Milwaukee gives the Authority, at least 3 business days prior to the Milwaukee's submission of the Claim Notice to the Escrowee, a copy of such Claim Notice.

4. At the direction of the Authority, you are directed to invest the principal balance held by you hereunder in such investments in which the Authority is authorized by law to invest with a maturity not in excess of 31 days.

5. Upon receipt of any investment earnings, you are directed to pay such earnings to the Authority.

6. To the extent necessary to make any payment pursuant to paragraph 2 above, you are directed to liquidate investments made pursuant to paragraph 4 above.

7. Each time the principal balance held by you hereunder is less than $500,000 for a period of more than 10 days, you are directed to notify the Milwaukee and the Authority of the principal balance and the date on which such balance last was $500,000 or more. For the purpose of determining the principal balance held by you, you are directed to value any investments at your cost.

8. Upon receipt from the Milwaukee and the Authority of notice of the termination of this Agreement, you are directed to distribute all the property held hereunder to the Authority.

9. This Agreement is binding on Richard B. Ogilvie, not as an individual, but solely in his capacity as Trustee of the property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor. After approval by the Reorganization Court the Milwaukee waives any right pursuant to section 77 of the Bankruptcy Act or any other federal law to reject or disaffirm this Agreement.

TERMS AND CONDITIONS

10. Your duties and responsibilities shall be limited to those expressly set forth in these escrow instructions, and you shall not be subject to, nor obliged to recognize, any other agreement between, or direction or instruction of, any or all of the parties hereto even though reference thereto may be made herein: provided, however, with your written consent,

these escrow instructions may be amended at any time or times by an instrument in writing signed by all the then parties in interest.

11. You are authorized, in your sole discretion, to disregard any and all notices or instructions given by any of the undersigned or by any other person, firm or corporation, except only such notices or instructions as are hereinabove provided for and orders or process of any court entered or issued with or without jurisdiction. If any property subject hereto is at any time attached, garnished, or levied upon under any court order or in case the payment, assignment, transfer, conveyance or delivery of any such property shall be stayed or enjoined by any court order, or in case any order, judgment or decree shall be made or entered by any court affecting such property or any part thereof, then and in any of such events you are authorized in your sole discretion, to rely upon and comply with any such order, writ, judgment or decree which you are advised by legal counsel of your own choosing is binding upon you; and if you comply with any such order, writ, judgment or decree you shall not be liable to any of the parties hereto or to any other person, firm or corporation by reason of such compliance even though such order, writ, judgment or decree may be subsequently reversed, modified, annulled, set aside or vacated.

12. You shall not be personally liable for any act taken or omitted hereunder if taken or omitted by you in good faith and in the exercise of your own best judgment. You shall also be fully protected in relying upon any written notice, demand, certificate or document which you in good faith believe to be genuine.

13. Unless otherwise specifically indicated herein you shall proceed as soon as practicable to collect any checks or other collection items at any time deposited hereunder. All such collections shall be subject to the usual collection agreement regarding items received by your commercial banking department for deposit or collection. You shall not be required to have a duty to notify anyone of any payment or maturity under the terms of any instrument deposited hereunder, nor to take any legal action to enforce payment of any check, note or security deposited hereunder. You shall have no liability to pay interest on any money deposited or received hereunder (except as provided in paragraphs 4 and 5 above).

14. You shall not be responsible for the sufficiency or accuracy of the form, execution, validity or genuineness of documents or securities now or hereafter deposited hereunder, or of any endorsement thereon, or for any lack of endorsement

thereon, or for any description therein, nor shall you be responsible or liable in any respect on account of the identity, authority or rights of the persons executing or delivering or purporting to execute or deliver any such document, security or endorsement or these escrow instructions.

15. Any notices which you are required or desire to give hereunder to any of the undersigned shall be in writing and may be given by mailing the same to the address indicated below opposite the signature of such undersigned (or to such other address as said undersigned may have theretofore substituted therefor by written notification to you), by United States mail, postage prepaid. For all purposes hereof any notice so mailed shall be as effectual as though served upon the person of the undersigned to whom it was mailed at the time it is deposited in the United States mail by you whether or not such undersigned thereafter actually receives such notice. Notices to you shall be in writing and shall not be deemed to be given until actually received by your employee or officer who administers this escrow. Whenever under the terms hereof the time for giving a notice or performing an act falls upon a Saturday, Sunday or holiday, such time shall be extended to the next business day. Notices between the Milwaukee and the Authority shall not be deemed to be given until actually received.

16. In case you become involved in litigation on account of being escrowee hereunder or on account of having received property subject hereto, your costs, expenses and reasonable attorneys' fees shall be paid by the party that does not prevail in the litigation or as agreed by the parties in any settlement of the litigation.

17. You shall be paid your reasonable fees for your services and reimbursed for your costs and expenses hereunder by the Authority.

18. If your fees, costs expenses, or reasonable attorneys' fees provided for herein, are not promptly paid, you shall have the right to sell a sufficient portion of the property held hereunder to provide for such payment and reimburse yourself therefor from the proceeds of such sale or from the cash held hereunder.

19. It is understood that you reserve the right to resign as Escrowee at any time by giving 30 days written notice of your resignation, specifying the effective date thereof, to the undersigned. Within 30 days after receiving the aforesaid notice, the Authority shall appoint a successor Escrowee to which you may distribute the property then held hereunder, less

your fees, costs and expenses. If a successor Escrowee has not been appointed and has not accepted such appointment by the end of the 30 day period, you may apply to a court of competent jurisdiction for the appointment of a successor Escrowee, and the Authority shall pay the costs, expenses and reasonable attorneys' fees which you incur in connection with such a proceeding.

20. If, by its terms, this escrow shall not have previously terminated, then it shall terminate on December 31, 1989, at which time the property then held hereunder, less your fees, costs and expenses shall be distributed to the Authority.

21. This escrow agreement shall be construed, enforced, and administered in accordance with the laws of the State of Illinois. The Authority may assign its rights hereunder to the Northeast Illinois Regional Commuter Railroad Corporation.

22. The undersigned Escrowee hereby acknowledges receipt of the property described in the above Escrow Agreement and agrees to hold, deal with and dispose of said property and other property at any time held by it hereunder in accordance with the foregoing Escrow Agreement.

23. Executed this ____ day of _____, 1982 at Chicago, Illinois.

PARTIES TO ESCROW	ADDRESSES
Regional Transportation Authority By: _____ Lewis W. Hill, Chairman	300 North State Street Chicago, Illinois 60611 Attn: Contract Manager
Richard B. Ogilvie, Trustee of the Property of the Chicago Milwaukee, St. Paul and Pacific Railroad Company _____	874 Union Station Building 516 West Jackson Boulevard Chicago, Illinois 60606
Bank of LaGrange Park By: _____ Donald H. Schwiesow, President ATTEST: _____	Oak Avenue at Sherwood LaGrange Park, Illinois 60525

Trackage Agreement
Exhibit I

Primary Accounts

Account Number	Description
1	Engineering
2	Land for transportation purposes
3	Grading
6	Bridges, trestles and culverts
8	Ties
9	Rail
10	Other track material
11	Ballast
12	Track laying and surfacing
13	Fences, snowsheds and signs
16	Stations and office buildings
17	Roadway buildings
26	Communication systems
27	Signals and interlockers
29	Power plants
31	Power transmission systems
39	Public improvements
45	Power plant machinery

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36500

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

GAMEIRO R.V.S. EXHIBIT 2

HIGHLY CONFIDENTIAL - THE "1984 ASSET PURCHASE AGREEMENT" - ASSET PURCHASE AGREEMENT BETWEEN SOO LINE RAILROAD COMPANY AND SLRCO, INC, ON THE ONE HAND, AND RICHARD B. OGILVIE, TRUSTEE OF THE PROPERTY OF THE CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD COMPANY (APR. 6, 1984) (EXCERPTS)

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36500

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

GAMEIRO R.V.S. EXHIBIT 3

IN THE MATTER OF CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC R.R., R.R., REORGANIZATION NO. 77 B 8999, ORDER NO. 809 (N.D. ILL. FEB. 19, 1985) (EXCERPTS)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In the Matter of	)	
	)	In Proceedings for
CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY,	)	the Reorganization of a Railroad
	)	
Debtor.	)	No. 77 B 8999
	)	Thomas R. McMillen, Judge

ORDER NO. 809

Upon consideration of the matter of the sale, pursuant to Sections 4 and 5(b) of the Milwaukee Railroad Restructuring Act ("MRRA"), notice having been given to all parties, of the Rail Assets, as defined in and pursuant to an Asset Purchase Agreement dated April 6, 1984, as amended (the "APA"), to be entered into between Richard B. Ogilvie, not personally, but solely as trustee ("Trustee") of the property of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company ("Milwaukee") and the Soo Line Railroad Company, a Minnesota corporation ("Soo"), and SLRCO, Inc., a Minnesota corporation ("SLRCO"), the Court, acting as the Court of Reorganization for the Milwaukee pursuant to Section 77 of the Bankruptcy Act of 1898 and pursuant to Section 4 and Section 5(b) of the MRRA finds and concludes as follows:

1. Soo and SLRCO filed an application with the Interstate Commerce Commission (the "Commission") seeking approval of a purchase of the Rail Assets. In addition, Chicago and North Western Transportation Company ("CNW") filed its application seeking the purchase of essentially similar assets.

2. The Commission rendered its decision on September 26, 1984 with respect to the application of Soo and SLRCO to purchase the assets specified in the APA. That decision, inter alia, approved the application pursuant to Section 11344(b) of the Interstate Commerce Act, Section 5(b) of the MRRA, and Section 77 of the Bankruptcy Act of 1898. The Commission served its further decision with respect to CNW's modified application on January 11, 1985, which decision incorporated certain portions of its September 26, 1984 decision.

3. The Court has ~~heard~~ considered the evidence adduced, heard the arguments of counsel, and the oral and written applications of various parties in interest seeking review of and commenting upon the Commission's September 26, 1984 and January 11, 1985 decisions, including those of the Trustee, Burlington Northern Railroad Company, Chicago Milwaukee Corporation, Escanaba and Lake Superior Railroad Company, First National Bank of Chicago (as Indenture Trustee), Grand Trunk Corporation, Bruce E. Hendry and Mobil Oil Corporation, the

Commission, LaSalle National Bank (as Successor Corporate Trustee), the City of Milwaukee, Wisconsin, CNW, the Chicago, Milwaukee, St. Paul and Pacific Railroad Bond and Debenture Holders Protective Committee (the "Protective Committee"), Railway Labor Executives' Association, Soo, States of Iowa, Minnesota and Wisconsin Departments of Transportation, the United States, United Transportation Union Local No. 528, Wisconsin Power and Light Company, Green Hills Regional Planning Commission, North Dakota Public Service Commission, Seaboard System Railroad, Inc., Harold E. Spencer, Peter N. Todhunter and Richard James Stevens, State of Missouri, South Dakota Department of Transportation, Coalition to Save The Milwaukee and "Certain Employees for the Milwaukee".

4. Section 5(b)(2) of the MRRA empowers this Court to review the order of the Commission entered under that Section only under Sections 706(2)(A), 706(2)(B), 706(2)(C), and 706(2)(D) of title 5 of the United States Code. The Commission has certified to this Court the full record of proceedings before it in connection with the decision of September 26, 1984 and the decision of January 11, 1985. The Court has considered and reviewed the findings and decisions of the Commission filed with this Court, pursuant to the requirements of those sections. The Court has further considered the allegations of error contained in

the petitions for review and comments and has found that the Commission's findings and decisions should be and are approved by this Court, since the findings and decisions were in accordance with law and were not arbitrary, capricious, an abuse of discretion, contrary to constitutional right, power, privilege or immunity, in excess of statutory jurisdiction, authority or limitations, short of statutory right, or without observance of procedure required by law.

5. The Court has ~~heard~~ considered the evidence adduced, heard the arguments of counsel, and the oral and written arguments of various parties in interest expressing a preference for or objecting to the approval of the sale to either the Soo and SLRCO or CNW, including those of the Trustee, Burlington Northern Railroad Company, Chicago Milwaukee Corporation, Escanaba and Lake Superior Railroad Company, First National Bank of Chicago (as Indenture Trustee), Grand Trunk Corporation, Bruce E. Hendry and the Mobil Oil Corporation, LaSalle National Bank (as Successor Corporate Trustee), the City of Milwaukee, Wisconsin, North Dakota Public Service Commission, CNW, the Protective Committee, Railway Labor Executives' Association, Soo, States of Iowa, Minnesota and Wisconsin Departments of Transportation, Stickney Corporation, the United States, United Transportation Union Local No. 528, Wisconsin Power and Light Company, Green Hills Regional Planning Commission, Seaboard System Railroad,

Inc., State of Missouri, South Dakota Department of Transportation, Coalition to Save The Milwaukee and "Certain Employees of the Milwaukee". The Court has considered the Commission's findings with respect to the public interest, the Commission's vote and basis for its preference for the Soo and SLRCO over CNW, the consideration to be paid to the Debtor's estate, the amount of wages to be paid to employees and other relevant matters. The prompt sale of the Rail Assets to Soo and SLRCO for the continued provision of common carrier service in return for the consideration specified in the APA (including the assumption of certain liabilities of the Milwaukee's estate) is in the best interest of the Milwaukee's estate and of ultimate reorganization of the Milwaukee, and is consistent with the public interest. ~~Soo and SLRCO are bona fide purchasers within the meaning of Rule 8-703 of the Bankruptcy Rules of the Supreme Court of the United States.~~

6. The immediate execution by the Trustee of the APA, and the prompt closing of the transactions in the manner and time contemplated by the APA, are in the best interests of the Milwaukee's estate.

7. The Trustee has issued certain Trustee Certificates during the course of these proceedings which were purchased by the United States Department of Transportation ("DOT") and the Federal Financing Bank pursuant to Sections

505 and 511 of the Railroad Revitalization and Regulatory Reform Act of 1976 and Section 7 of the MRRA. The estate also is liable to the DOT under the terms of its Series I Redeemable Preference Shares issued in 1977 prior to the Milwaukee's filing for reorganization. The Trustee's obligations under the above Trustee Certificates and under the Preference Shares will be assumed at closing by Soo and SLRCO in the manner provided in the APA.

8. The purchase of the Rail Assets together with prior purchases approved by this Court constitute the purchase of substantially all of the Milwaukee Railroad for purposes of Section 7(h)(1)(B) of the MRRA (as amended by Section 701(c)(1) of the Staggers Rail Act of 1980), 45 USC §906(h)(1)(B), and all obligations to the United States or any agency or instrumentality of the United States incurred pursuant to Section 7 of the MRRA by the Milwaukee or the Trustee, including Trustee Certificates 1980 A and B are waived and cancelled.

9. The sale of the Rail Assets and the assignment and assumption of the trackage agreements, joint facilities and operating rights over segments of the rail properties now operated by the Trustee are in the public interest (as determined by the Commission and affirmed by this Court) and are in the best interest of the estate as

found by this Court. The assignment and assumption of the trackage agreements, interests in or agreements with respect to joint facilities, leases, operating rights and all other rights and interests of the Trustee being assigned pursuant to the APA will not effect a termination of the Trustee's rights and interests under the contracts, leases and agreements granting those rights and interests, and those rights and interests are fully assignable to Soo and SLRCO in accordance with the terms of the APA, and notwithstanding any provisions in any such contracts, leases or agreements to the contrary.

10. Section 5 of the MRRA mandates that the Court require the carrier to provide a fair arrangement at least as protective of the interests of employees as that required under Section 11347 of title 49 of the United States Code. In prior sales of lines of railroad pursuant to Section 5, the Court imposed "Appendix B Conditions" (report of the Special Master dated February 20, 1980) which were found to be as protective as statutorily required and consistent with both the scheme and language of the MRRA by the Court of Appeals for the Seventh Circuit in Matter of Chicago, Milwaukee, St. Paul & Pacific Railroad Company, Consolidated Appeals of Railway Labor Executives' Association, 658 F.2d 1149 (7th Cir. Aug. 17, 1981), cert. den. 455 U.S. 1000 (Mar. 8, 1982).

11. Section 5 of the MRRA does not require that labor protective conditions be imposed with respect to employees of The Milwaukee Motor Transportation Company, and the Court finds that such conditions ~~are unnecessary~~ should not be imposed.

12. The additional findings and conclusions of law, not inconsistent with the provisions of this Order, made pursuant to Rule 52 by the Court orally on February 8, 1985, are incorporated in this Order by reference and made a part of this Order.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED as follows:

1. That the sale and assignment to Soo and SLRCO, in accordance with the APA and this Order, of the Trustee's right, title and interest in the Rail Assets are approved and confirmed in all respects. The Rail Assets shall, upon conveyance, be free and clear of all liens, security interests, claims and encumbrances, of whatever nature, whenever arising, including without limitation those arising from federal, state and local tax claims or liens, those arising from that certain First Mortgage dated as of January 1, 1944 with Continental Illinois National Bank and Trust Company of Chicago, Indenture Trustee, and the General Mortgage dated as of January 1, 1944 with Harris Trust and Savings Bank, Indenture Trustee, and all mortgages supplemental thereto, except only liens, security interests,

claims and encumbrances created by, or specifically permitted to remain on the Rail Assets pursuant to, the APA.

2. That the Trustee is authorized and directed to execute promptly and deliver to Soo and SLRCO the APA, to consummate promptly the sale as set forth in the APA and to execute and deliver on or as soon as practicable after the Closing Date (as defined in the APA), all deeds, bills of sale, assignments, certificates of title, and other documents, and to take such other actions, as shall be required or appropriate to effectuate the transactions contemplated by the APA, including to the extent necessary under the circumstances as determined by the Trustee, modifications to the APA or the transaction required to result in a fully taxable transaction, so that for federal income tax purposes gain or loss will be fully recognized by the Milwaukee on the consummation of the sale, and that the net operating loss carry forwards and tax credits available to the Milwaukee immediately prior to the closing of the sale will be preserved to the Milwaukee.

3. That the Trustee is authorized and directed to assign to Soo or SLRCO, as appropriate, all of his rights under contracts as provided by the APA.

4. That the Trustee is authorized and directed to assign to Soo or SLRCO, as appropriate and in accordance with the APA, all of the trackage agreements, joint facili-

ties and operating rights necessary for Soo or SLRCO, as the case may be, to operate the Railroad (as defined in the APA).

5. That the Trustee is authorized and directed to assign to Soo or SLRCO, as appropriate, all labor contracts (including collective bargaining agreements) with respect to employees of the Trustee required by the APA to be offered employment by Soo or SLRCO.

6. That Soo and SLRCO, or either of them, assume each of the obligations and liabilities arising under the contracts or agreements assigned by the Trustee in accordance with paragraphs 3, 4 and 5 of this Order. In addition, Soo and SLRCO, or either of them, shall assume the Trustee's obligations under the Wage Deferral Agreement and the last two sentences of Paragraph 2b of the Wage Reduction Agreement, as specified in the APA as modified in the December 4, 1984 letter agreement between the Soo and the Trustee, the obligations of the Trustee under the Trustee Certificates issued to DOT and the Federal Financing Bank pursuant to Sections 505 and 511 of the Railroad Revitalization and Regulatory Reform Act of 1976 or Section 7 of the MRRA (excluding Trustee Certificates 1980 A and B), the obligations with respect to the Series I Redeemable Preference Shares, the obligations of the Trustee with respect to any labor conditions imposed with respect to the transactions contemplated by the APA and other obligations and liabilities

of the Trustee to be assumed by Soo and SLRCO, or either of them, pursuant to the APA. After the Closing (as defined in the APA), all obligations and liabilities of the Trustee to be assumed by Soo or SLRCO in accordance with this Order or the APA and not otherwise discharged shall be the sole obligation of Soo or SLRCO, or both, as the case may be, and the Trustee and the Milwaukee shall be relieved from any and all liabilities in connection with or arising out of such obligations except as expressly may be provided otherwise by the APA, whether occuring after the Closing or arising out of the conveyance or assignment; provided, however, the foregoing shall not impose on Soo or SLRCO any liability or obligation not imposed upon or assumed by them in accordance with the terms of the APA.

7. That all prepetition obligations and debts of the Trustee and Debtor and its subsidiaries to Soo and its subsidiaries are cancelled. In addition, all outstanding debts and obligations of the Trustee and Debtor and any of its subsidiaries arising out of facilities embargoed or abandoned prior to Closing are cancelled.

8. That the sale, transfer and assigment of the Rail Assets is without warranties, representations or guaranties of any kind, expressed or implied, except as specifically stated in the APA.

9. That upon consummation of the transactions contemplated by the APA, all common carrier obligations of the Trustee and Debtor be assumed by Soo and SLRCO, and shall cease as to the Trustee and Debtor.

10. Subject to the agreement of Soo and SLRCO with representatives of employees to labor protection conditions at least as protective as those specified below, the conditions contained in Appendix B to the Report of the Special Master dated February 20, 1980 are adopted for the protection of employees of Soo and Milwaukee Road affected by the transactions contemplated by the APA; Section 4(e) is included therein as specified in Order No. 276B; Appendix B is also modified as provided in Order No. 409A. Notwithstanding the foregoing, no labor protective conditions are imposed with respect to the employees of The Milwaukee Motor Transportation Company.

11. That the Court shall retain jurisdiction over this matter for the purpose of implementing and carrying out the APA and resolving any disputes arising under or with respect to the APA, this Order or the Closing. The ICC shall have such continuing jurisdiction over this transaction as is by law vested in it.

12. That the rights, claims, liens and interests of any creditor of, or claimant against, the Debtor's estate which are not assumed by Soo or SLRCO in accordance with

this Order or adjudicated by this Order as applying to the Rail Assets which are sold, transfered or assigned pursuant to this Order shall be, upon the Closing, transferred from the Rail Assets to the net proceeds of the sale; such net proceeds shall, until further order of this Court, be deposited and retained in the existing trust account bearing the designation "Escrow Agent Account" No. 13-01043-4 at the Continental Illinois National Bank and Trust Company of Chicago and shall be invested pursuant to this Court's Order No. 536 in accordance with instructions from the Trustee or a person designated by him.

13. That following the closing of the sale and pending the earlier of (i) further order of this Court, (ii) the date on which this Order authorizing the sale shall not have been reversed and no further appeal may be taken by any party or (iii) 90 days after the Closing Date, Soo and SLRCO are directed to conduct the operations of the Railroad, (as defined in the APA), and to maintain the Rail Assets, subject to additions and dispositions in the ordinary course, on a basis reasonably designed to account for the operations of the Railroad and the identification of the Rail Assets subsequent to their transfer to Soo and SLRCO.

14. All requests for relief pertaining to the subject matter of this Order not otherwise granted by this Order shall be considered denied.

15. Directions contained in this Order shall be carried out forthwith.

Dated:

ENTER

Thomas R. McMillen
United States District Judge

Feb. 19, 1985

A true copy-Attest
H. Stuart Cunningham, Clerk
By Kathleen Brasil
Deputy Clerk
U. S. District Court, Northern
District of Illinois
Date: FEB 19 1985

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36500

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

GAMEIRO R.V.S. EXHIBIT 4

THE "1985 TRACKAGE AGREEMENT" - TRACKAGE AGREEMENT BETWEEN RICHARD B. OGILVIE, TRUSTEE OF THE PROPERTY OF THE CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD COMPANY, DEBTOR AND SLRCO, INC. (FEB. 19, 1985) (EXCERPTS) (ALSO METRA COMMENTS EXH. A-2)

EXHIBIT A-2

SLRCO 1985 Inc. Trackage Agreement

T 00640

EXHIBIT G-1

TRACKAGE AGREEMENT

THIS AGREEMENT, made and entered into this 19th day of February, 1985, by and between RICHARD B. OGILVIE, TRUSTEE OF THE PROPERTY OF CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, DEBTOR ("Milwaukee"), and SLRCO, INC. a Minnesota corporation ("SLRCO").

The parties hereto agree as follows:

ARTICLE I.

JOINT LINE DEFINED

1.1 The term "Joint Line" refers to the following trackage, as shown in approximation on Exhibit A, and ancillary facilities between Madison Street, Chicago, Illinois (Mile Post 0.2) and Fox Lake, Illinois (Mile Post 49.79) ("North Line") and between Tower A-5 (Mile Post 5.26) and Almora, Illinois (Mile Post 40.26) ("West Line"): (a) the right of way and improvements thereto, including, but not limited to, rails, ties, ballast, switches, turnouts, wyes, crossovers, bridges, culverts, fills, cuts, right of way fences, embankments, tunnels and grade crossings and grade crossing signals; (b) sidings and spurs, except industry owned spurs; (c) signals and communication facilities; (d) interlocking devices;

(e) towers, sheds, buildings and structures; and (f) such other property, equipment and facilities necessary to the provision of freight service and intercity passenger service ("Service") on the North line and West Line and used by the Milwaukee in the normal course of providing Service. The Joint Line shall not include air rights.

1.2 For the purposes of equitably dividing the monthly expenses for billing purposes between the two parties, the Joint Line shall be divided on a zone basis as follows:

a. North Line

Zone 1 (1 main). Between Fox Lake, Illinois (Mile Post 49.79) and Rondout, Illinois (Mile Post 32.25).

Zone 2 (1 and 2 mains). Between Rondout, Illinois (Mile Post 32.25) and Deerfield, Illinois (Mile Post 24.58).

Zone 3 (1 and 2 mains). Between Deerfield, Illinois (Mile Post 24.58) and Tower A-20, Techny, Illinois (Mile Post 20.63).

Zone 4 (1 and 2 mains). Between Tower A-20, Techny, Illinois (Mile Post 20.63) and Tower A-5, Chicago, Illinois (Mile Post 5.85).

Zone 5 (1, 2 and 3 mains). Between Tower A-5, Chicago, Illinois (Mile Post 5.85) and Tower A-2, Chicago, Illinois (Mile Post 3.02).

Zone 6 (1, 2 and 3 mains). Between Tower A-2, Chicago, Illinois (Mile Post 3.02) and Canal Street, Chicago,

Illinois (Mile Post 0.57), such mains being jointly owned by Milwaukee and The Consolidated Rail Corporation ("Conrail") under an Agreement dated February 7, 1873, as amended.

Zone 7 (1 and 2 mains). Between Lake Street, Chicago, Illinois (Mile Post 0.55) and Madison Street, Chicago, Illinois (Mile Post 0.20), such mains being jointly owned by Milwaukee and Conrail under an Agreement dated February 7, 1873, as amended.

b. West Line (1 and 2 Mains)

Zone 8. Between Almora, Illinois (Mile Post 40.26) and Elgin, Illinois (Mile Post 36.64).

Zone 9. Between Elgin, Illinois (Mile Post 36.64) and Spaulding, Illinois (Mile Post 32.75).

Zone 10. Between Spaulding, Illinois (Mile Post 32.75) and Tower B-17, Bensenville, Illinois (Mile Post 16.87).

Zone 11. Between Tower B-17, Bensenville, Illinois (Mile Post 16.87) and Tower B-12, Franklin Park, Illinois (Mile Post 12.82).

Zone 12. Between Tower B-12, Franklin Park, Illinois (Mile Post 12.82) and Tower A-5, Chicago, Illinois (Mile Post 5.11).

ARTICLE II.

GRANT FOR OPERATION OF TRAINS

2.1 Milwaukee grants to SLRCO the non-exclusive right to use the Joint Line solely for the purpose of providing Service over the Joint Line, and the exclusive right to provide Service to industries on the Joint Line. SLRCO's right to use the Joint Line shall be in common with the Regional Transportation Authority and its assignee, Northeast Illinois Regional Commuter Railroad Corporation (collectively "RTA") pursuant to a Trackage Agreement dated September 16, 1982 between the Milwaukee and RTA (the "RTA Agreement") and such other railroad company or companies previously or subsequently admitted to the use of any part of the Joint Line; provided that:

(a) Except for (1) FRA track inspections, (2) emergencies and (3) temporary detour usage of less than 30 days in a 12 month period, the Milwaukee shall not admit any third party to the use of any part of the Joint Line ("Third Party Use") which materially interferes with SLRCO's use (or the use of any third party admitted by SLRCO) of the Joint Line as contemplated by this Agreement.

(b) SLRCO shall not permit any third party (except Amtrak) to use or detour over any portion of the Joint Line or agree to operate on the Joint Line the trains, engines and cars

which in the normal course of business would not be considered the trains, engines or cars of SLRCO engaged in Service, except that SLRCO may admit a third party to use of the Joint Line in accordance with Section 2.3.

2.2 The rights herein granted to SLRCO to use the Joint Line are limited solely to the provision of Service; nothing in this Agreement shall be construed to give SLRCO or any third party the right to operate Commuter Service as defined in the RTA Agreement.

2.3 SLRCO may admit a third party to use of the Joint Line as long as:

(a) the third party's use of the Joint Line would not materially interfere with any other prior user of the Joint Line;

(b) the third party is not allowed any use of the Joint Line which would not be permitted to SLRCO under this Agreement; and

(c) the third party pays the Milwaukee an amount equal to its proportionate share of Reimbursable Expenses (defined below) and capital expenditures upon the same terms provided in this Agreement with respect to SLRCO, plus a fixed rental at least equal to a base rental of $645,000 per year escalated from March, 1984 in accordance with the provisions of Section 5.2(g) multiplied by the ratio of the route miles the

third party is admitted to use to the route miles of the entire Joint Line.

ARTICLE III.

CONSTRUCTION OF ADDITIONAL SIDINGS

3.1 As of the date of this Agreement, the sidings which exist on the Joint Line are sufficient to permit safe and efficient operation of the existing level of Commuter Service and Service over the Joint Line. The Milwaukee shall construct any additional sidings which are made necessary in its judgment by increased levels of traffic over the Joint Line or which are requested by SLRCO. The costs of the construction of these additional sidings shall be paid by:

(a) SLRCO, if the sidings are made necessary solely due to an increase in the operations of SLRCO or are requested by SLRCO;

(b) A third party, if the sidings are made necessary solely due to increases in the operations of a third party (including RTA) admitted to the use of the Joint Line;

(c) SLRCO and a third party pursuant to a separate agreement allocating such costs if the sidings are made necessary by increases in the operations of both SLRCO and a third party (including RTA) admitted to the use of the Joint Line.

ARTICLE IV.

RADIO COMMUNICATIONS EQUIPMENT

4.1 SLRCO shall, at its sole expense, maintain, repair and replace, as necessary, all radio communications equipment on its trains, engines and cars to permit safe and efficient operation on the Joint Line.

ARTICLE V.

PAYMENT

5.1 SLRCO shall pay to the Milwaukee the amounts described in this Article V. Payment shall be made in accordance with Article VI.

5.2 As used in this Agreement, the following terms shall have the meanings ascribed to them:

(a) Estimated SLRCO Summary Expense Bill -- the Milwaukee's reasonable and good faith estimate of SLRCO's proportionate share of Reimbursable Expenses for a calendar month.

(b) SLRCO Summary Expense Bill -- the monthly bill (or credit) submitted by the Milwaukee to SLRCO for SLRCO's proportion of Reimbursable Expenses for a calendar month, as computed pursuant to Section 5.4.

(c) Property Tax Bill -- the annual bill submitted by the Milwaukee to SLRCO for the payment of SLRCO's proportion-

ate share computed pursuant to Section 5.3 for general real estate taxes with respect to the Joint Line in the counties of Cook, Lake, DuPage and Kane within the State of Illinois.

(d) Gross Ton Mile Proportion -- the ratio determined by dividing the gross ton miles generated by all trains, engines, cars and contents (including passengers) by or on behalf of SLRCO in each zone of the Joint Line during a calendar month by the total number of gross ton miles generated by all trains, engines, cars and contents (including passengers) by or on behalf of the SLRCO and any third parties (including RTA) in each zone during that month. The number of passengers on each SLRCO or third party (including RTA) train during a month shall be determined on the basis of an annual joint study of the RTA and SLRCO.

(e) Train Count Proportion -- the ratio determined by dividing the number of trains operated by or on behalf of Parent in each zone of the Joint Line during a calendar month by the total number of all trains operated by or on behalf of the SLRCO and any third parties (including RTA) in each zone during that month.

(f) Reimbursable Expenses -- Reimbursable Expenses means the following expenses incurred by or on the account of the Milwaukee or on the account of SLRCO:

(1) the expenses incurred during the term of this Agreement and attributable to this Agreement as recorded in the Milwaukee's or SLRCO's accounts;

(2) the expenses properly chargeable to the zones defined in Section 1.2 of this Agreement;

(3) the ordinary and necessary expenses incurred for material (including normal handling charges), labor, health and welfare benefit, fuel, equipment rentals, payroll taxes (including "head" taxes), sales taxes, use taxes and excise taxes and miscellaneous expenses in maintaining, operating, repairing and renewing the Joint Line.

Reimbursable Expenses shall be accounted for by the accrual method of accounting in the Milwaukee's and SLRCO's accounts, consistently applied. Except as required by applicable ICC regulations, changes made by SLRCO or the Milwaukee in its accounting system shall not affect the timing of recognition of Reimbursable Expenses under this Agreement.

(g) Fixed Expense -- Fixed Expense shall mean $645,000 per year, payable in 12 equal monthly installments, which shall be adjusted in accordance with this paragraph. As of the first of March in each year beginning March 1, 1985, Fixed Expense shall be adjusted based on the ratio of the Consumer Price Index - Urban, All Items, United States City Average ("CPI-U") as published by the U.S. Department of Labor for that month to the CPI-U for March 1984. The adjustment shall be based on the first published final index for March of that year, or if not available, the first published final index for the most recently available prior month. Any adjustment based upon an index for a prior month shall be provisional, and

revisions to this provisional adjustment, if necessary, will be made at the time the first published final index for March is available. Should the CPI-U be discontinued or the basis for its calculation be substantially modified, a proper index shall be substituted by mutual agreement of the parties.

5.3 General real estate taxes payable by the Milwaukee with respect to the Joint Line on a county by county basis shall be allocated on the basis of the ratio of the unit-miles of the locomotives, cars and cabooses operated by or on behalf of SLRCO over the entire Joint Line during a calendar year to the unit-miles of all locomotives, cars and cabooses operated over the entire Joint Line during that year. Each yearly Property Tax Bill shall be initially based on the tax bills for the preceding year for which a definite tax bill is available and movements for the preceding year, and shall be adjusted, based on actual movements and actual tax bills, within 30 days of receipt of the actual tax bills for each year during the term of this Agreement. The Property Tax Bill for each year shall be submitted by the Milwaukee to SLRCO on or after August 1 of the year to which it applies, beginning with the year 1984 (for 1984 taxes), payable by the 15th day of the month after the month of receipt of the bill. The Property Tax Bill shall be pro-rated for a partial year; such prorations shall be made within 30 days after definite data requiring the proration becomes available.

The Milwaukee shall pay any balances due pursuant to such adjustment or proration within 30 days of an adjustment or proration; SLRCO shall pay any balance due pursuant to an adjustment or proration within 30 days after receipt of an invoice from the Milwaukee.

Any special assessments levied against the Joint Line shall be amortized over the useful life of the facility for the construction or improvement of which the special assessment was levied. The amount of such special assessment applicable to each calendar year of this Agreement shall be allocated between the parties, billed, paid, pro-rated and adjusted on the same basis as general real estate taxes.

5.4 SLRCO and the Milwaukee shall allocate Reimbursable Expenses as follows:

(a) Maintenance of way and structures expenses incurred for each zone of the Joint Line shall be allocated on a monthly basis between the parties on the Gross Ton Mile Proportion.

(b) Transportation, signal and communication systems expenses and maintenance expenses of non-Milwaukee owned equipment (used in the operation or maintenance of the Joint Line) incurred for each zone of the Joint Line shall be allocated on a monthly basis between the parties on a Train Count Proportion.

(c) Expenses for train dispatchers incurred in operating the Joint Line shall be allocated on a monthly basis by

the average of the Train Count Proportions for all zones of the Joint Line.

(d) The monthly allocated share of labor and fringe benefits expenses (including payroll taxes) determined in accordance with subparagraphs (a) through (c) above shall be increased for administrative overhead and vacation and holidays in accordance with Exhibit B.

(e) Monthly expenses incurred for joint facilities which are part of the Joint Line not solely owned by the Milwaukee, identified in Exhibit C, shall be allocated on a Train Count Proportion in the zone in which each facility is located.

5.5 All amounts to be paid by either party under this Agreement shall bear interest from the date the amount was due in accordance with this Agreement until paid at a rate equal to 2% in excess of the corporate base rate of interest announced from time to time by The First National Bank of Chicago, changing as and when such corporate base rate changes.

5.6 SLRCO shall have no liability for any payments or other obligations arising out of its use of the Joint Line pursuant to this Agreement except as provided in this Article V or specifically provided in another provision of this Agreement.

5.7 At the end of each calendar year the Milwaukee shall recalculate SLRCO's and the Milwaukee's respective pro-

portions of the charges set forth in section 5.4 on the basis of SLRCO's Gross Ton Mile Proportion and Train Count Proportion for such calendar year. Such recalculation shall be computed within 45 days after the expiration of such calendar year.

In the event that SLRCO's proportion of such charges for such calendar year exceeds the sum of SLRCO's proportion of such charges for each of the individual months during such calendar year, SLRCO shall pay the Milwaukee such difference within 30 days of such recalculation; and in the event that SLRCO's proportion of such charges for such calendar year is less than the sum of SLRCO's proportion of such charges computed for each of the individual months during such calendar year, the Milwaukee shall pay SLRCO such difference within 30 days of such recalculation or credit SLRCO with such amount in the next Estimated SLRCO Summary Expense Bill.

ARTICLE VI.

MANNER OF PAYMENT -- INSPECTION OF RECORDS

6.1 SLRCO shall pay Fixed Expense installments on the first day of each month, and shall pay the annual Property Tax Bill on or before the 15th day of the month following the month in which it was received.

6.2 On the first day of each calendar month the Milwaukee shall submit to SLRCO an Estimated SLRCO Summary

Expense Bill for that month. If the Estimated SLRCO Summary Expense Bill shows that SLRCO owes the Milwaukee, the amount owing shall be due within 15 days of receipt of the Estimated SLRCO Summary Expense Bill. If the Estimated SLRCO Summary Expense Bill shows that the Milwaukee owes SLRCO, the amount shall be paid to SLRCO within 30 days of the date of the Estimated SLRCO Summary Expense Bill.

The Milwaukee shall submit to SLRCO within 45 days after the end of each calendar month the SLRCO Summary Expense Bill for that month. If the Estimated SLRCO Summary Expense Bill showed more owing by SLRCO or less owing by the Milwaukee than the SLRCO Summary Expense Bill, the Milwaukee shall credit SLRCO with the excess in the following month's Estimated SLRCO Summary Expense Bill or pay the excess to SLRCO within 15 days. If the Estimated SLRCO Summary Expense Bill showed less owing by SLRCO or more owing by the Milwaukee than the SLRCO Summary Expense Bill, SLRCO shall pay the difference by the 15th day of the month following the month in which the SLRCO Summary Expense Bill is received.

6.3 SLRCO shall furnish to Milwaukee, within 15 days after the end of each calendar month during the term of this Agreement, a statement showing for that month: (a) the train count for the trains operated by or on behalf of SLRCO over each zone of the Joint Line; (b) the gross ton miles generated by the trains, engines and cars and contents operated by or on

behalf of SLRCO over each zone of the Joint Line; and (c) any expenses claimed by SLRCO as a reduction of Reimbursable Expenses. The statement shall be subject to verification and correction by the Milwaukee. If SLRCO fails to furnish the statement within the 15 day period, the Milwaukee may submit a SLRCO Summary Expense bill for that month based on the Gross Ton Proportion and Train Count Proportion during the preceding 12 month period, and assuming no reduction of Reimbursable Expenses. That bill shall be adjusted upon receipt of the required statement from SLRCO. Milwaukee shall furnish to SLRCO copies of RTA's statements to the Milwaukee pursuant to Section 7.4 of the RTA Agreement.

6.4 SLRCO's portion of the costs of the projects described in sections 3.1(a), 3.1(c), 7.2(b) 7.2(c) and 7.2(d), shall be billed as incurred and paid on the 15th day of the month following the month in which the bill is received, subject to verification of the costs and progress of the work.

6.5 No payment shall be delayed because of an error or dispute in a bill. Errors of less than $5,000 shall be adjusted in the next Estimated or Summary Expense Bill.

6.6 The amounts required to be paid by SLRCO shall be paid by check or by wire transfer of immediately available funds to the Trustee's account #50-30048 at The First National Bank of Chicago or another account designated by the Milwaukee.

6.7 Except as otherwise provided in this Agreement all payments under this Agreement are due and payable within 30 days of receipt of the bill or invoice.

6.8 Records of each party reasonably relating to payment or allocation of expenses under this Agreement shall be open to inspection during regular business hours. Each party shall provide sufficient office space for these inspections together with reasonable assistance in conducting an inspection. Records shall be closed to audit, and no bill as to which no exception has been taken shall be adjusted, after three (3) years from December 31 of the year of the invoice date.

ARTICLE VII.

JOINT LINE CAPITAL EXPENDITURES

7.1 The Milwaukee may effect capital projects, including significant maintenance projects, in the Joint Line necessary or desirable for the economical and safe operation of trains, engines or cars over the Joint Line, or which are required by applicable law or regulations.

7.2 The costs of capital projects, including significant maintenance projects, shall be paid by:

(a) a third party, if required solely by the operations of third parties (including RTA) admitted to the use of the Joint Line;

(b) SLRCO, if required solely by the operations of SLRCO;

(c) SLRCO and a third party, in accordance with the allocation formulas for operating expense contained in

Section 5.4 applied to capitalized expenses, for projects required by the operations of both SLRCO and third parties (including RTA) admitted to the use of the Joint Line.

(d) SLRCO and a third party pursuant to a separate fixed facilities agreement allocating such costs, if the provisions of subsection (c) are inapplicable and if the project is required by the operations of both SLRCO and third parties (including RTA) admitted to the use of the Joint Line.

7.3 The Milwaukee shall effect capital projects, including significant maintenance projects, requested by and at the sole expense of SLRCO unless such projects would substantially interfere with the rights of a third party (including RTA) admitted to the use of the Joint Line.

ARTICLE VIII.

OPERATION AND MAINTENANCE OF JOINT LINE

8.1 SLRCO shall direct the movement of all trains, engines, cars and inspection vehicles over the Joint Line. All track, bridge, signal and communication work, materials and track operated machinery and equipment used will be in accordance with industry standards. The priority of the Commuter Service operations and schedules of RTA over the Joint Line shall be observed in accordance with the provisions of the RTA Agreement.

8.2 The operation of all trains over the Joint Line is subject to the direction of SLRCO, and shall at all times be in accordance with reasonable safety and operating rules, regulations and operating timetables prescribed by SLRCO. The management of RTA's Commuter Service is vested solely in the RTA and RTA's trains, engines and cars shall be operated solely by RTA's employees or agents and at RTA's sole expense.

8.3 The Milwaukee shall (a) maintain all joint facility agreements, interlocking agreements and similar arrangements necessary to the operations of the Service over the Joint Line contemplated by this Agreement; (b) pay and discharge when due and payable all lawful governmental charges or levies imposed with respect to the Joint Line (except to the extent and while the validity thereof is contested by appropriate proceedings or when deferred pursuant to an order of the Reorganization Court having jurisdiction over the Milwaukee); (c) provide for utility services necessary to the operations of Service over the Joint Line; and (d) take all other action necessary to permit the Joint Line to be used for the Service by SLRCO.

ARTICLE IX.

TIME TABLES

9.1 The expenses, including costs of composition, printing, binding and distribution, incurred by SLRCO in the

issuance of revised operating time tables required by changes in the operations of SLRCO or third parties (including RTA) shall be allocated proportionately among the parties whose operations required the change, except that the incremental cost of changes made by SLRCO with respect to its freight or intercity passenger service in connection with a revision required by RTA shall be paid by SLRCO.

ARTICLE X.

COMPLIANCE WITH LAWS AND OTHER PUBLIC REGULATIONS

10.1 Each party shall comply with all applicable federal, state and local laws, regulations and rules with respect to the use of and the conduct of its operations over the Joint Line. If a party's non-compliance results in any fine, penalty, cost or charge being imposed or assessed on or against the other party, the non-complying party shall defend on notice from the other party, and shall promptly reimburse and indemnify the other party for or on account of such fine, penalty, cost or charge and all expenses and attorneys' fees incurred in defending, any action which may be brought against the other party on account thereof.

ARTICLE XI.

INSURANCE; PROPERTY DAMAGE AND
CONSEQUENTIAL DAMAGE WAIVERS; FORCE MAJEURE

11.1 SLRCO waives and shall require its insurers to waive all rights of recovery from the Milwaukee for direct physical loss of all property of SLRCO located or occurring on the Joint Line during the term of this Agreement. SLRCO shall either (a) require third parties whose property is on the Joint Line by permission of SLRCO to waive and their insurers to waive all rights of recovery from the Milwaukee for direct physical loss to all property of such third parties (including luggage and cargo) located or occurring on the Joint Line during the term of this Agreement; or (b) indemnify the Milwaukee for such loss paid by the Milwaukee.

11.2 The Milwaukee waives and shall require its insurers to waive all rights of recovery from SLRCO for direct physical loss to all property of the Milwaukee (including luggage and cargo) located or occurring on the Joint Line during the term of this Agreement.

11.3 Neither SLRCO nor the Milwaukee shall be liable to the other or any third party for delays, interruptions or the failure to perform its obligations under this Agreement due to causes beyond their reasonable control, including: "acts of God"; wars (or similar military action); any act, delay or failure to act on the part of any governmental authority or

agency; insurrection or riot; fires; strikes; work stoppages; wrecks; major equipment breakdowns; failure or delay beyond the control of SLRCO or the Milwaukee in obtaining necessary labor, materials or manufacturing facilities or acts of the other party.

11.4 Neither the Milwaukee nor SLRCO shall be liable to the other in contract or in tort (including negligence) under any theory of strict liability, or otherwise, for any special, incidental or consequential loss or damage of any nature arising at any time or from any cause under or related to the performance of this Agreement.

11.5 Except as expressly provided in Sections 11.1 and 11.2 hereof, nothing in this Agreement shall be construed as affecting or impairing any rights of the Milwaukee or SLRCO to contribution or indemnity arising out of claims of third parties.

11.6 During the term of this Agreement, SLRCO shall provide and maintain in effect with respect to the Joint Line and its operations on and affecting the Joint Line insurance coverage of the types and in amounts customary for a line similar to the Joint Line.

ARTICLE XII.

DURATION

12.1 This Agreement shall terminate on December 31, 2083; provided, however, this Agreement may be earlier

terminated by SLRCO with respect to any zone on 180 days written notice. The Fixed Expense shall be proportionately reduced in the event of termination of a zone on the basis of the route miles of the zone to the route miles of the entire Joint Line. Upon the termination of this Agreement, SLRCO shall remove its rolling stock from the Joint Line.

12.2 If SLRCO terminates this Agreement with respect to a zone, SLRCO may remove at its expense any sidings or other capital projects in that zone entirely paid for by SLRCO, subject to the Milwaukee's right to purchase any or all of the sidings or other capital projects at their net liquidation value.

ARTICLE XIII.

NOTICES -- HOW GIVEN

13.1 All requests, notices, demands, authorizations, directions, consents or waivers or other documents required or permitted under this Agreement shall be in writing and shall be delivered in person to, or deposited postage pre-paid in the registered or certified mails of the United States addressed to SLRCO at:

SLRCO, Inc.
516 West Jackson Boulevard
Chicago, Illinois 60606

Attention: President

or to the Milwaukee at:

Trustee
Chicago, Milwaukee, St. Paul and
Pacific Railroad Company
P.O. Box 6205
597 West Jackson Boulevard
Chicago, Illinois 60680-6205

or at such other address as either party may at any time or from time to time designate by notice to the other.

ARTICLE XIV.

SECTION HEADINGS

14.1 Section headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

ARTICLE XV.

SUCCESSORS AND ASSIGNS; ASSIGNMENT

15.1 This Agreement shall be binding upon the successors of the parties hereto. The respective rights and obligations of SLRCO under this Agreement may not be assigned or delegated without the written consent of the Milwaukee, except to a successor in interest to SLRCO (whether by merger, consolidation, or acquisition of all or substantially all of SLRCO's assets) or to another corporation which controls, is controlled by, or is under common control with, SLRCO.

15.2 The respective rights and obligations of the Milwaukee under this Agreement shall be considered to run with and be a burden on the Joint Line and shall be binding on any successor to the Milwaukee. Effective as of any transfer of the title of the Milwaukee to any third party, including for that purpose to SLRCO, the Milwaukee shall to the extent title is transferred have no further rights under and shall be relieved of all obligations under this Agreement, except for rights and obligations accrued as of the date of transfer.

ARTICLE XVI.

AGREEMENT LIMITATIONS ON TRUSTEE

16.1 This Agreement is binding on Richard B. Ogilvie, not as an individual, but solely in his capacity as Trustee of the property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor.

ARTICLE XVII.

OTHER MISCELLANEOUS PROVISIONS

17.1 No modification, addition or amendment to this Agreement shall be effective unless in writing executed by the authorized officers or agents of each party.

17.2 This Agreement shall be governed by the laws of the State of Illinois.

17.3 The provisions of this Agreement shall be interpreted where possible in a manner necessary to sustain their legality and enforceability. The unenforceability of any provision of this Agreement in a specific situation shall not affect the enforceability of: (a) that provision in another situation; or (b) the other provisions of this Agreement if such other provisions could then continue to conform with the purposes of this Agreement and the terms and requirements of applicable law.

17.4 The failure of SLRCO or the Milwaukee to insist upon strict performance by the other of its obligations under this Agreement or the failure or delay in exercising any rights or remedies provided under this Agreement or at law shall not be deemed or construed as a waiver of any claims or rights. No waiver of a breach of any provision of this Agreement shall constitute or be construed as a waiver of any other breach or of that provision.

17.5 If the Milwaukee or SLRCO refuses to perform its obligations under this Agreement in accordance with its terms and that action results in the inability of the SLRCO or any third party (including RTA) to use the Joint Line substantially on the terms contemplated by this Agreement, the non-defaulting party shall, in addition to the remedies available to it at law, be entitled to specific performance of the affected provisions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this document to be executed as of the day and year first above written.

WITNESS

RICHARD B. OGILVIE
TRUSTEE OF THE PROPERTY OF THE
CHICAGO, MILWAUKEE, ST. PAUL
AND PACIFIC RAILROAD COMPANY,
DEBTOR

ATTEST:

SELCO, INC.

President

Soo Line Railroad Company

Soo Line Building
Box 530
Minneapolis, Minnesota 55440
(612) 347-8240

PAUL D. GILMORE
Senior Vice President
Operations

June 13, 1989

CMC Real Estate Corporation
P. O. Box 6205
Chicago, Illinois 60680-6205

Metra
547 West Jackson Boulevard
Chicago, Illinois 60606

Re: Trackage Agreement dated February 19, 1985, by and between Richard B. Ogilvie, Trustee of the Property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor, and SLRCO, Inc. (the "Trackage Agreement")
Law Department files: 533, 1083

Gentlemen:

The Trackage Agreement refers to Exhibits A, B, and C. Unfortunately, the Exhibits were apparently never attached to the originals of the Trackage Agreement; either that, or they were subsequently lost or misplaced.

The purpose of this letter is to evidence our agreement that the documents attached hereto as Exhibits A, B, and C (which documents are described more particularly below) are in fact true copies of the correspondly-lettered Exhibits to the Trackage Agreement. We are also in agreement that the attached Exhibits A, B, and C, or copies thereof, may be attached to the executed originals of the Trackage Agreement in lieu of the missing Exhibits.

The attached documents are described more fully as follows:

Exhibit A: A composite Exhibit consisting of eleven maps, which maps are identified as follows --

Zone 1 schematic showing track layout between Rondout and Fox Lake, IL., bearing date of March 3, 1982, and revision date of July 15, 1982.

Zone 2 schematic showing track layout between Deerfield and Rondout, IL., bearing date of March 4, 1982, and revision date of July 15, 1982.

Zone 3 schematic showing track layout between Techny and Deerfield, IL., bearing date of March 3, 1982, revision date of April 2, 1982, and revision date of July 15, 1982.

Zone 4 schematic showing track layout between Pacific Jct. (A-5) and Techny (A-20), bearing date of March 1, 1982, and revision date of 4-2-82.

Zone 5 schematic showing track layout between Western Ave. (A-2) and Pacific Jct. (A-5), bearing date of February 24, 1982, and revision date of July 15, 1982.

Zone 6 & 7 schematic showing track layout between Union Station and Western Ave. (A-2), bearing date of 2/24/82 and revision date of 7/15/82.

Zone 8 schematic showing track layout between Elgin and Almora, bearing date of March 1, 1982, and revision date of July 15, 1982.

Zone 9 schematic showing track layout between Spaulding and Elgin, bearing date of March 1, 1982, and revision date of July 15, 1982.

Zone 10 schematic showing track layout between Bensenville (B-17) and Spaulding, bearing date of March 1, 1982, and revision date of July 15, 1982.

Zone 11 schematic showing track layout between Franklin Park (B-12) and Bensenville (B-17), bearing date of 2/24/82 and revision date of 7/15/82.

Zone 12 schematic showing track layout between Pacific Jct. (Tower A-5) and Franklin Park (Tower B-12), IL., bearing date of February 22, 1982, revision date of April 2, 1982, and revision date of July 15, 1982.

Exhibit B: A two-page Exhibit pertaining to the allocation of vacation, holiday, and administrative overhead expense.

Exhibit C: A one-page Exhibit entitled "JOINT FACILITY AGREEMENTS."

Very truly yours,

PDG/jr

Attachment

AGREED:

CMC Real Estate Corporation

By _____

Its _____

Commuter Rail Division of the
Regional Transportation Authority
(commonly known as Metra)

By _____

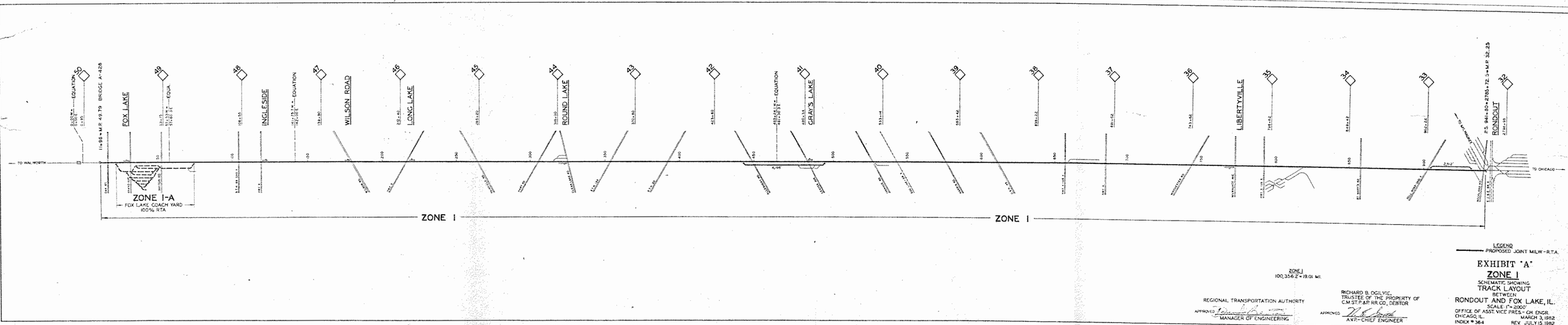
Its ~~EXECUTIVE DIRECTOR~~

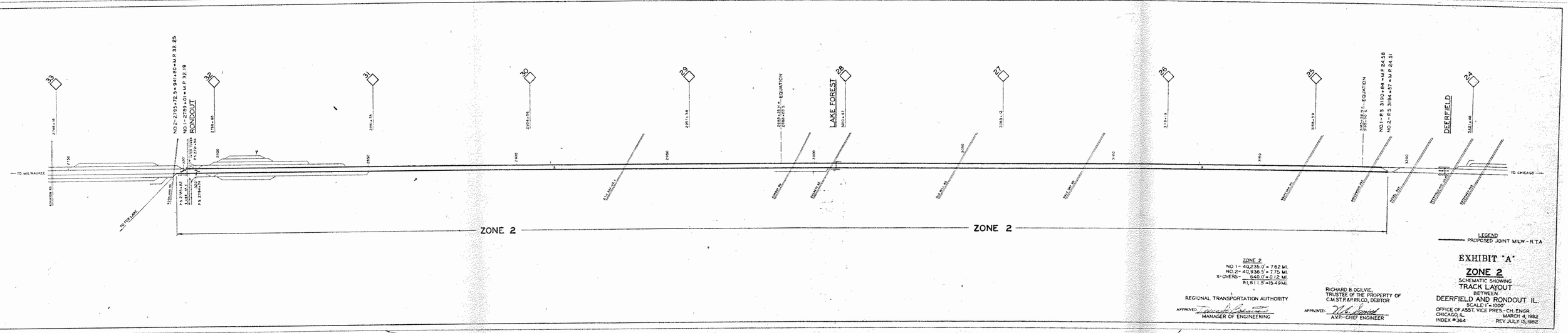
GOQL.081

APPROVED AS TO LEGAL FORM

BY _____

DATE 6/23/89


TO WAUKEGAN
FOX LAKE
INGLESIDE
WILSON ROAD
LONG LAKE
ROUND LAKE
GRAYS LAKE
LIBERTYVILLE
RONDOUT
TO CHICAGO
ZONE 1-A
FOX LAKE COACH YARD
100% R.T.A.
ZONE 1
ZONE 1
LEGEND
PROPOSED JOINT MILW - R.T.A.
EXHIBIT "A"
ZONE 1
SCHEMATIC SHOWING
TRACK LAYOUT
BETWEEN
RONDOUT AND FOX LAKE, IL.
SCALE 1" = 2000'
OFFICE OF ASST. VICE PRES. - CH. ENGR.
CHICAGO, IL.
INDEX # 364
MARCH 3, 1982
REV. JULY 15, 1982
ZONE 1
100,356.2' = 19.01 MI.
REGIONAL TRANSPORTATION AUTHORITY
APPROVED
MANAGER OF ENGINEERING
RICHARD B. OGILVIE,
TRUSTEE OF THE PROPERTY OF
C.M.ST.P.&P. RR.CO., DEBTOR
APPROVED
A.V.P.- CHIEF ENGINEER



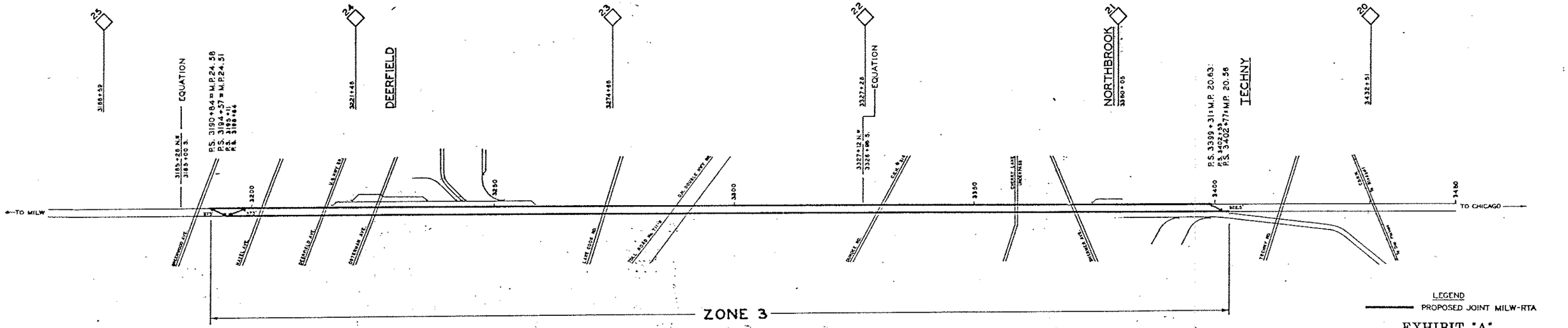
LEGEND
PROPOSED JOINT MILW-R.T.A

ZONE 2
NO.1- 40,235.0' = 7.62 MI.
NO.2- 40,938.5' = 7.75 MI.
K-OVERS- 540.0' = 0.12 MI.
81,611.5' = 15.49 MI.

REGIONAL TRANSPORTATION AUTHORITY
APPROVED: _____
MANAGER OF ENGINEERING

RICHARD B. OGILVIE,
TRUSTEE OF THE PROPERTY OF
C.M.ST.P.&P.RR.CO., DEBTOR
APPROVED: _____
A.V.P.-CHIEF ENGINEER

EXHIBIT "A"
ZONE 2
SCHEMATIC SHOWING
TRACK LAYOUT
BETWEEN
DEERFIELD AND RONDOUT IL.
SCALE 1" = 1000'
OFFICE OF ASST. VICE PRES.- CH. ENGR.
CHICAGO, IL. MARCH 4, 1982
INDEX # 364 REV. JULY 15, 1982



NO. 1 = 20,861.0' = 3.95 MI.
NO. 2 = 20,834.0' = 3.95 MI.
X-OVERS = 1,068.5' = .20 MI.
42,763.5 = 8.10 MI.

REGIONAL TRANSPORTATION AUTHORITY

APPROVED: _____
MANAGER OF ENGINEERING

RICHARD B. OGILVIE,
TRUSTEE OF THE PROPERTY OF
C.M.ST.P.&P. RR.CO., DEBTOR

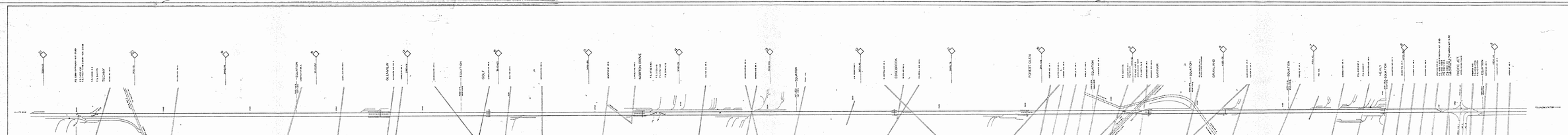
APPROVED: _____
A.V.P.–CHIEF ENGINEER

LEGEND
PROPOSED JOINT MILW-RTA

EXHIBIT "A"
ZONE 3
SCHEMATIC SHOWING
TRACK LAYOUT
BETWEEN
TECHNY AND DEERFIELD, IL.
SCALE: 1"=1000'

OFFICE OF ASST. VICE PRES.-CHIEF ENGR.
CHICAGO, IL.

INDEX #384
MARCH 3, 1982
REV. APRIL 2, 1982
REV. JULY 15, 1982



REGIONAL TRANSPORTATION AUTHORITY
APPROVED
MANAGER OF ENGINEERING

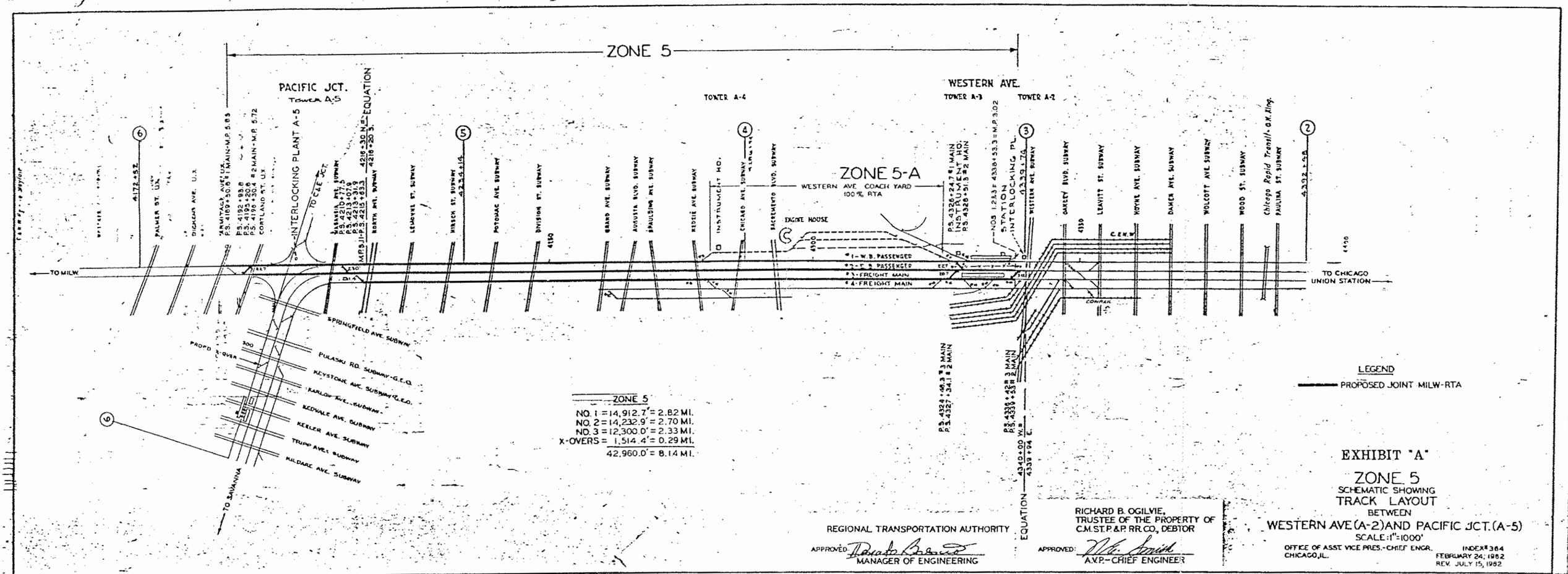
ZONE 4
NO 1176.614 E 1816
NO 3782.474 N 615.05 M
ELEVATION 200.0 ASTM M
TOTAL RIGHTS 41 M

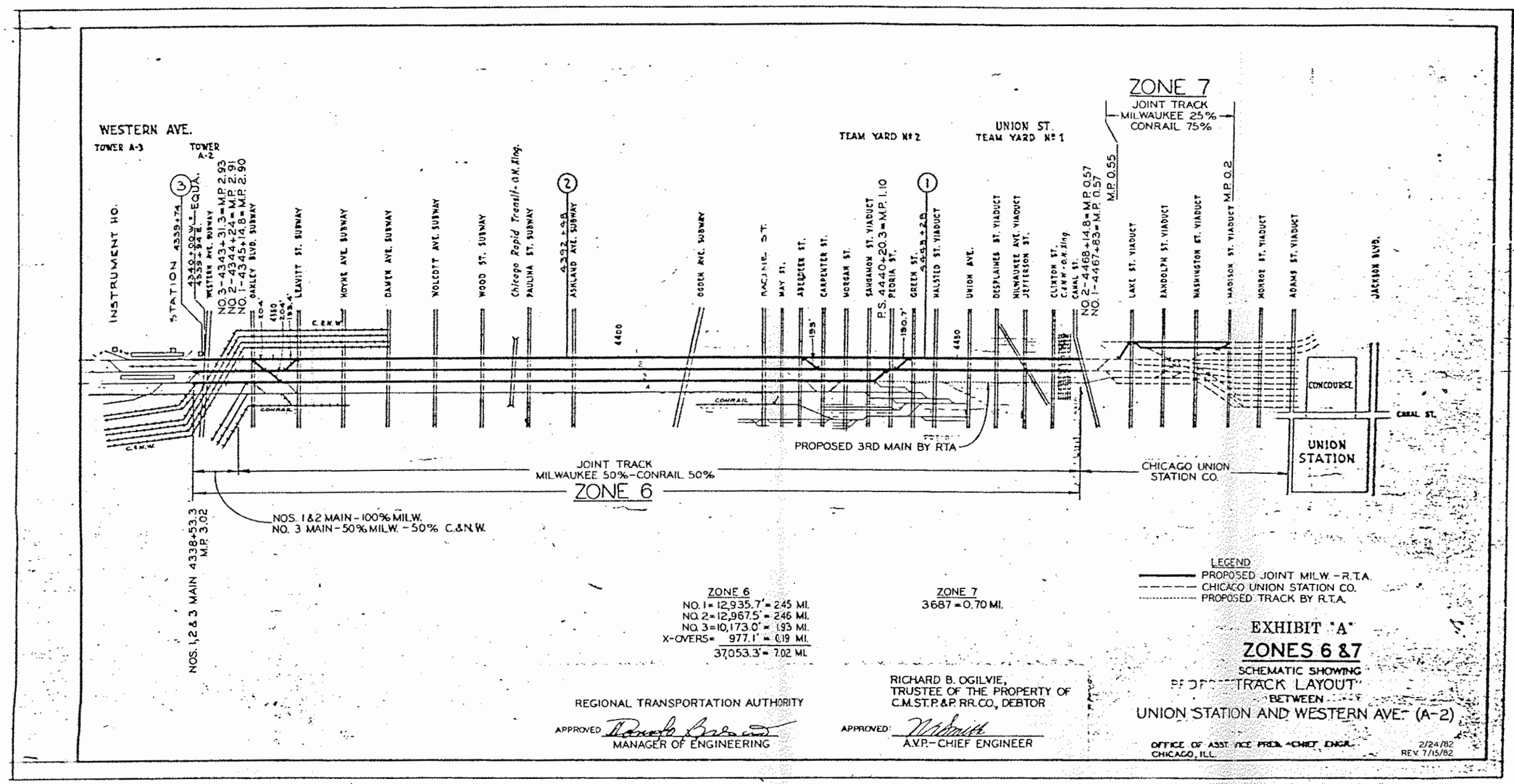
RICHARD B. DOCLIC
TRUSTEE OF THE PROPERTY OF
CHICAGO, DISTOR
APPROVED
ASST CHIEF ENGINEER

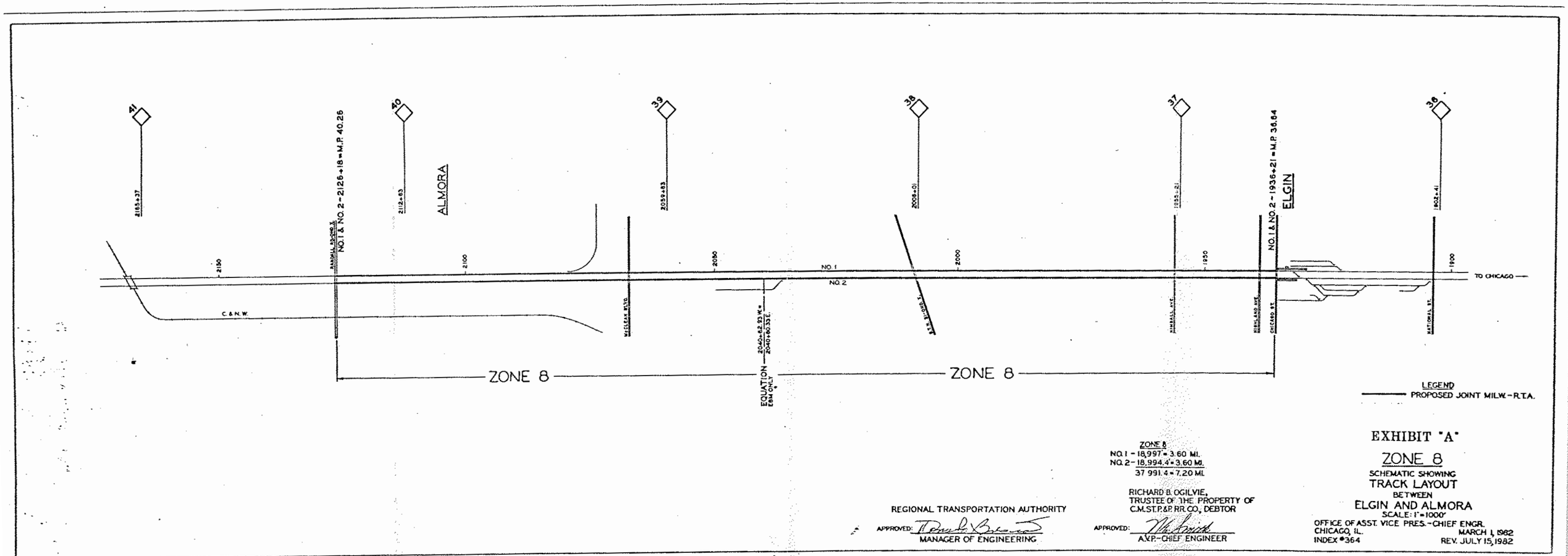
EXHIBIT 'A'

ZONE 4

SCHEMATIC SHOWING
TRACK ARRANGEMENT
OF NORTH
PACIFIC JCT(A-1) AND TECHNY (A-20)
SCALE 1" = 1000'
OFFICE OF ASST. VICE PRES.-CHIEF ENGR.
CHICAGO, ILL.
MARCH 1, 1982 REV. 4-2-82


ZONE 5
PACIFIC JCT.
Tower A-5
INTERLOCKING PLANT A-5
TO CLE. JCT.
EQUATION
4216+30 N.
4216+20 S.
TOWER A-4
WESTERN AVE.
TOWER A-3
TOWER A-2
ZONE 5-A
WESTERN AVE. COACH YARD
100% RTA
ENGINE HOUSE
INSTRUMENT HO.
STATION & INTERLOCKING PL
4339+76
TO MILW.
TO CHICAGO UNION STATION
SPRINGFIELD AVE. SUBWAY
PULASKI RD. SUBWAY-G.E.C.
KEYSTONE AVE. SUBWAY-C.E.D.
KARLOV AVE. SUBWAY
KEDVALE AVE. SUBWAY
KEELER AVE. SUBWAY
TRUMP AVE. SUBWAY
KILDARE AVE. SUBWAY
TO SAVANNA
ZONE 5
NO. 1 = 14,912.7' = 2.82 MI.
NO. 2 = 14,232.9' = 2.70 MI.
NO. 3 = 12,300.0' = 2.33 MI.
X-OVERS = 1,514.4' = 0.29 MI.
42,960.0' = 8.14 MI.
EQUATION
4340+99 W.B.
4339+94 E.B.
LEGEND
PROPOSED JOINT MILW-RTA
REGIONAL TRANSPORTATION AUTHORITY
APPROVED
MANAGER OF ENGINEERING
RICHARD B. OGILVIE,
TRUSTEE OF THE PROPERTY OF
C.M.ST.P.&P. RR.CO., DEBTOR
APPROVED:
A.V.P.-CHIEF ENGINEER
EXHIBIT "A"
ZONE 5
SCHEMATIC SHOWING
TRACK LAYOUT
BETWEEN
WESTERN AVE.(A-2)AND PACIFIC JCT.(A-5)
SCALE:1"=1000'
OFFICE OF ASST. VICE PRES.-CHIEF ENGR.
CHICAGO,IL.
INDEX# 364
FEBRUARY 24, 1982
REV. JULY 15, 1982


WESTERN AVE.
TOWER A-3
TOWER A-2
INSTRUMENT HO.
STATION 4339+74
4340+80 W. EQUA.
4359+84 E.
WESTERN AVE. SUBWAY
NO. 3 - 4343+31.3 = M.P. 2.93
NO. 2 - 4344+24 = M.P. 2.91
NO. 1 - 4345+14.8 = M.P. 2.90
OAKLEY BLVD. SUBWAY
LEAVITT ST. SUBWAY
HOYNE AVE. SUBWAY
DAMEN AVE. SUBWAY
WOLCOTT AVE. SUBWAY
WOOD ST. SUBWAY
Chicago Rapid Transit - O.H. Xing.
PAULINA ST. SUBWAY
ASHLAND AVE. SUBWAY
OGDEN AVE. SUBWAY
RACINE ST.
MAY ST.
ABERDEEN ST.
CARPENTER ST.
MORGAN ST.
SANGAMON ST. VIADUCT
P.S. 4440+20.3 = M.P. 1.10
PEORIA ST.
GREEN ST.
HALSTED ST. VIADUCT
UNION AVE.
DESPLAINES ST. VIADUCT
MILWAUKEE AVE. VIADUCT
JEFFERSON ST.
CLINTON ST.
C.&N.W.-O.H. Xing
CANAL ST.
NO. 2 - 4468+14.8 = M.P. 0.57
NO. 1 - 4467+83 = M.P. 0.57
M.P. 0.55
TEAM YARD Nº 2
UNION ST.
TEAM YARD Nº 1
ZONE 7
JOINT TRACK
MILWAUKEE 25%
CONRAIL 75%
LAKE ST. VIADUCT
RANDOLPH ST. VIADUCT
WASHINGTON ST. VIADUCT
MADISON ST. VIADUCT M.P. 0.2
MONROE ST. VIADUCT
ADAMS ST. VIADUCT
JACKSON BLVD.
CONCOURSE
CANAL ST.
UNION STATION
CHICAGO UNION STATION CO.
PROPOSED 3RD MAIN BY RTA
JOINT TRACK
MILWAUKEE 50% - CONRAIL 50%
ZONE 6
NOS. 1 & 2 MAIN - 100% MILW.
NO. 3 MAIN - 50% MILW. - 50% C.&N.W.
NOS. 1, 2 & 3 MAIN 4338+53.3
M.P. 3.02
ZONE 6
NO. 1 = 12,935.7' = 2.45 MI.
NO. 2 = 12,967.5' = 2.46 MI.
NO. 3 = 10,173.0' = 1.93 MI.
X-OVERS = 977.1' = 0.19 MI.
37,053.3' = 7.02 MI.
ZONE 7
3687 = 0.70 MI.
LEGEND
PROPOSED JOINT MILW. - R.T.A.
CHICAGO UNION STATION CO.
PROPOSED TRACK BY R.T.A.
EXHIBIT "A"
ZONES 6 &7
SCHEMATIC SHOWING
TRACK LAYOUT
BETWEEN
UNION STATION AND WESTERN AVE. (A-2)
REGIONAL TRANSPORTATION AUTHORITY
APPROVED
MANAGER OF ENGINEERING
RICHARD B. OGILVIE,
TRUSTEE OF THE PROPERTY OF
C.M.ST.P.&P. RR.CO., DEBTOR
APPROVED:
A.V.P.-CHIEF ENGINEER
OFFICE OF ASST. VICE PRES. - CHIEF ENGR.
CHICAGO, ILL.
2/24/82
REV. 7/15/82



REGIONAL TRANSPORTATION AUTHORITY

APPROVED: _____
MANAGER OF ENGINEERING

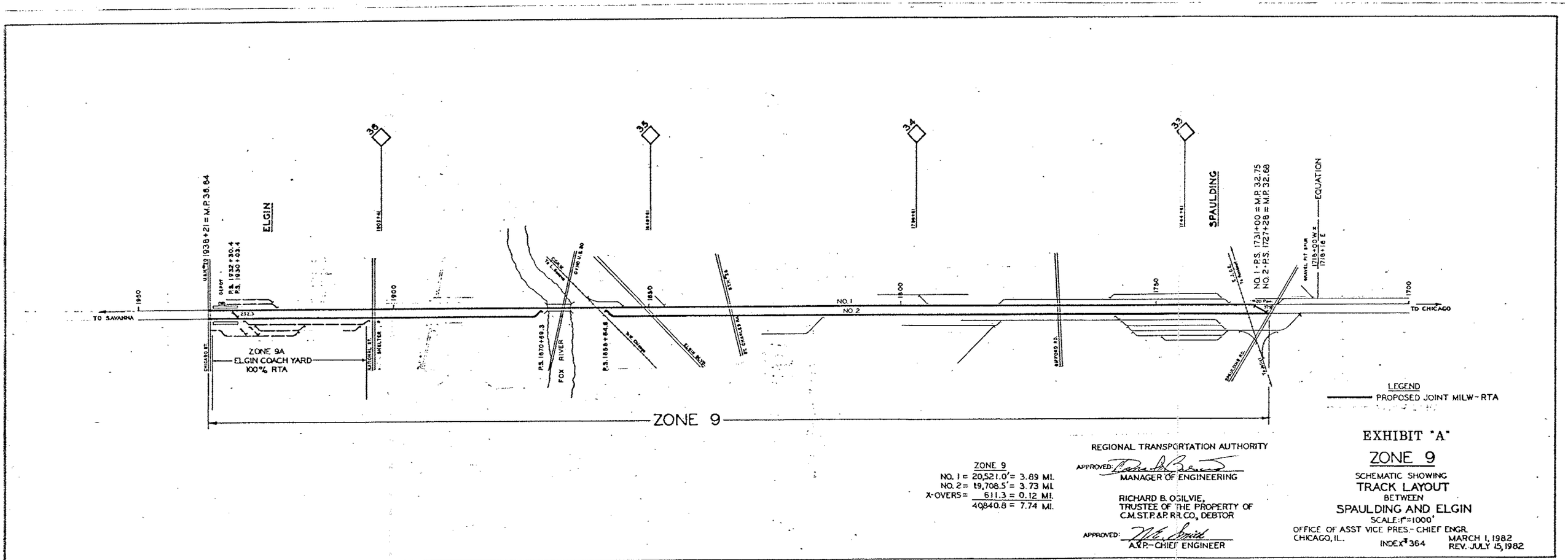
ZONE 8
NO. 1 - 18,997 = 3.60 MI.
NO. 2 - 18,994.4 = 3.60 MI.
37 991.4 = 7.20 MI.

RICHARD B. OGILVIE,
TRUSTEE OF THE PROPERTY OF
C.M.ST.P.&P. RR. CO., DEBTOR

APPROVED: _____
A.V.P.-CHIEF ENGINEER

EXHIBIT "A"

ZONE 8
SCHEMATIC SHOWING
TRACK LAYOUT
BETWEEN
ELGIN AND ALMORA
SCALE: 1" = 1000'
OFFICE OF ASST. VICE PRES.-CHIEF ENGR.
CHICAGO, IL. MARCH 1, 1982
INDEX #364 REV. JULY 15, 1982

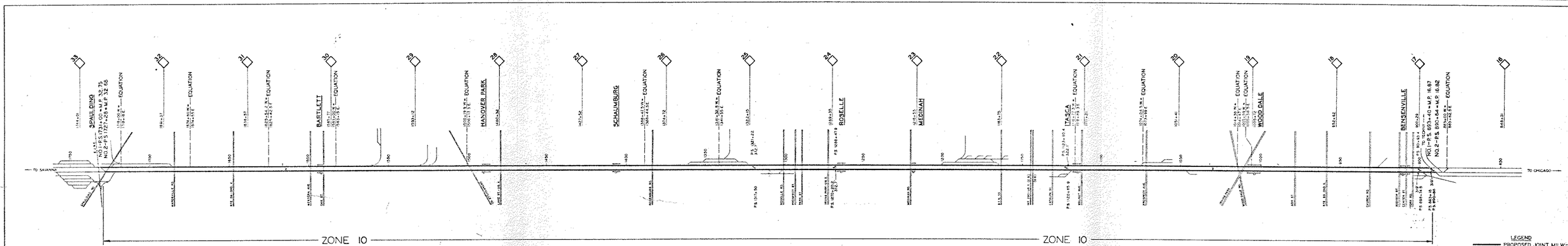


ZONE 9
NO. 1 = 20,521.0' = 3.89 MI.
NO. 2 = 19,708.5' = 3.73 MI.
X-OVERS = 611.3 = 0.12 MI.
40,840.8 = 7.74 MI.

REGIONAL TRANSPORTATION AUTHORITY
APPROVED: _____
MANAGER OF ENGINEERING

RICHARD B. OGILVIE,
TRUSTEE OF THE PROPERTY OF
C.M.ST.P.&P. R.R. CO., DEBTOR
APPROVED: _____
A.V.P.-CHIEF ENGINEER

EXHIBIT "A"
ZONE 9
SCHEMATIC SHOWING
TRACK LAYOUT
BETWEEN
SPAULDING AND ELGIN
SCALE: 1"=1000'
OFFICE OF ASST VICE PRES.- CHIEF ENGR.
CHICAGO, IL. INDEX # 364 MARCH 1, 1982
REV. JULY 15, 1982



REGIONAL TRANSPORTATION AUTHORITY

APPROVED: _____
MANAGER OF ENGINEERING

RICHARD B. OGILVIE,
TRUSTEE OF THE PROPERTY OF
C.M.ST.P.&P. RR.CO., DEBTOR

APPROVED: _____
AVP-CHIEF ENGINEER

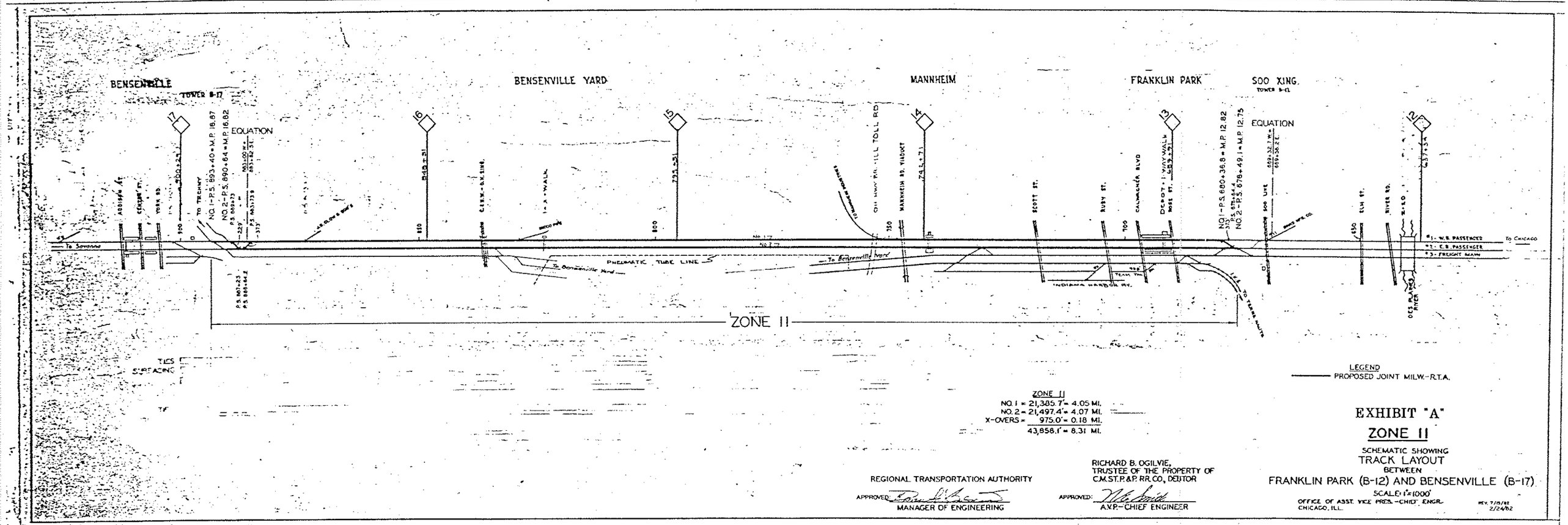
ZONE 10
NO. 1 = 83,783.7 = 15.87 MI.
NO. 2 = 83,687.7 = 15.85 MI.
Y-OVERS = 1,705.5 = 0.32 MI.
169,176.9' = 32.04 MI.

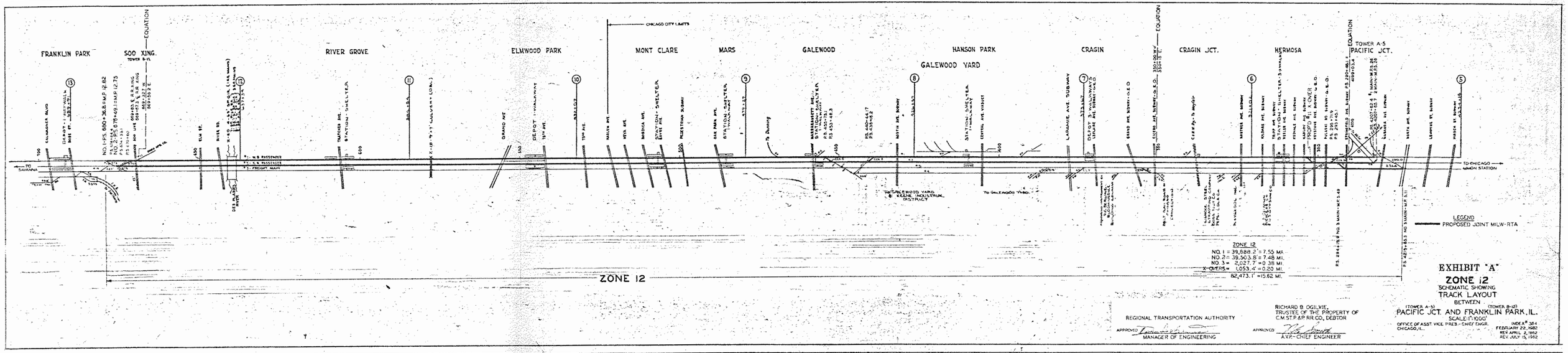
EXHIBIT "A"

ZONE 10

SCHEMATIC SHOWING
TRACK LAYOUT
BETWEEN
BENSENVILLE (B-17) AND SPAULDING
SCALE: 1"=2000'

OFFICE OF ASST. VICE PRES.-CHIEF ENGR.
CHICAGO, IL.
INDEX # 364
MARCH 1, 1982
REV. JULY 15, 1982


BENSENVILLE
TOWER B-17
BENSENVILLE YARD
MANNHEIM
FRANKLIN PARK
SOO XING.
TOWER B-12
EQUATION
EQUATION
NO.1 - P.S. 893+40 = M.P. 18.87
NO.2 - P.S. 890+64 = M.P. 16.82
NO.1 - P.S. 680+36.8 = M.P. 12.82
NO.2 - P.S. 678+49.1 = M.P. 12.75
ADDISON ST.
CENTER ST.
YORK RD.
To Seymour
To Chicago
PNEUMATIC TUBE LINE
To Bensenville Yard
C.M.S.T.P.&P. R.R.
I-A-I WALK
OHIO HWY. RAILL TOLL RD.
MANNHEIM RD. VIADUCT
SCOTT ST.
RUBY ST.
CALHOUNEN BLVD
ELM ST.
RIVER RD.
INDIANA HARBOR BY.
#1 - W.B. PASSENGER
#2 - E.B. PASSENGER
#3 - FREIGHT MAIN
ZONE II
LEGEND
PROPOSED JOINT MILW.-R.T.A.
ZONE II
NO. 1 = 21,385.7' = 4.05 MI.
NO. 2 = 21,497.4' = 4.07 MI.
X-OVERS = 975.0' = 0.18 MI.
43,858.1' = 8.31 MI.
REGIONAL TRANSPORTATION AUTHORITY
APPROVED:
MANAGER OF ENGINEERING
RICHARD B. OGILVIE,
TRUSTEE OF THE PROPERTY OF
C.M.ST.P.&P. RR.CO., DEBTOR
APPROVED:
A.V.P.-CHIEF ENGINEER
EXHIBIT "A"
ZONE II
SCHEMATIC SHOWING
TRACK LAYOUT
BETWEEN
FRANKLIN PARK (B-12) AND BENSENVILLE (B-17)
SCALE: 1"=1000'
OFFICE OF ASST. VICE PRES.-CHIEF ENGR.
CHICAGO, ILL.
REV. 7/15/82
2/24/82


FRANKLIN PARK
SOO XING.
TOWER A-15
EQUATION
RIVER GROVE
ELMWOOD PARK
CHICAGO CITY LIMITS
MONT CLARE
MARS
GALEWOOD
HANSON PARK
GALEWOOD YARD
CRAGIN
CRAGIN JCT.
HERMOSA
TOWER A-5
PACIFIC JCT.
TO SAVANNA
TO CHICAGO UNION STATION
TO GALEWOOD YARD
ZONE 12
LEGEND
PROPOSED JOINT MILW-RTA
ZONE 12
NO. 1 = 39,888.2' = 7.55 MI.
NO. 2 = 39,503.8 = 7.48 MI.
NO. 3 = 2,027.7 = 0.38 MI.
1,053.4' = 0.20 MI.
82,473.1' = 15.62 MI.
EXHIBIT "A"
ZONE 12
SCHEMATIC SHOWING
TRACK LAYOUT
BETWEEN
(TOWER A-15) (TOWER B-67)
PACIFIC JCT. AND FRANKLIN PARK, IL.
SCALE: 1"=1000'
REGIONAL TRANSPORTATION AUTHORITY
APPROVED
MANAGER OF ENGINEERING
RICHARD B. OGILVIE,
TRUSTEE OF THE PROPERTY OF
C.M.ST.P.&P. RR.CO., DEBTOR
APPROVED
A.V.P.-CHIEF ENGINEER
OFFICE OF ASST. VICE PRES.-CHIEF ENGR.
CHICAGO, IL.
INDEX # 384
FEBRUARY 22, 1980
REV. APRIL 2, 1982
REV. JULY 15, 1982

METHODOLOGY FOR ALLOCATION OF VACATION AND HOLIDAY EXPENSES

Expenses to be Allocated (A):

Vacation and holiday expenses properly distributed to operating expense accounts as prescribed by the Interstate Commerce Commission's Uniform System of Accounts in 49 CFR part 1201.

Expenses specifically not allocable:

Labor expenses of officers on the exempt payroll, separation allowance payments and productivity fund payments.

Labor Base to Which Vacation & Holiday Expenses are to be Applied (B):

Direct Labor, exclusive of vacation and holiday payments and other payments mentioned above; paid to all employees.

Procedure for Allocation:

Divide the expenses to be allocated (A) by the labor base to which vacation and holiday expenses apply (B). Multiply the resulting ratio by (1) the applicable labor and fringe benefits properly charged or allocated to each zone on the joint line for commuter service and (2) labor and fringe benefit expenses charged for dispatching on the joint line.

Example Allocation (Unaudited):

Vacation and holiday expenses = $14,891,180

Labor base = $154,624,225

Vacation and holiday expense ratio = $14,891,180 ÷ $154,624,225 = 9.631%

Labor and fringe benefit expenses allocated to zone of commuter line = $10,500

Vacation and holiday expenses allocated to zone = $10,500 x 9.631% = $1,011.26

Allocation Statistic Update Procedures:

Update annually in January utilizing data from previous calendar year.

EXHIBIT B
p. 1 of 2

METHODOLOGY FOR ALLOCATION OF ADMINISTRATIVE OVERHEAD EXPENSES

Labor Expenses to be Allocated (A):

Expenses for Superintendence and General Administration properly charged to operating expense accounts as prescribed by the Interstate Commerce Commission's Uniform System of Accounts in 49 CFR part 1201.

Expenses specifically not allocable:

Expenses properly chargeable to the following functional areas or accounts are specifically not allocable (B):

> Marketing, Car Management, Freight Claim Prevention, Customer Services, Freight Adjustment, Regional Accounting, Revenue/Interline Accounting, and operating expense accounts properly chargeable as shop and store expense.

Labor Base to Which Administrative Overhead Expenses are to be Applied (C):

Labor and vacation and holiday expenses properly charged to operating expense accounts as prescribed in 49 CRR part 1201 and excluding expenses reported in sections A and B.

Procedure for Allocation:

Divide the expenses to be allocated (A) by the labor base to which administative overhead expenses apply (C). Multiply the resulting ratio by (1) the applicable labor, vacation and holiday expenses, fringe benefits and miscellaneous expenses properly charged or allocated to each zone on the joint line for commuter service and (2) labor, vacation and holiday expenses, fringe benefits and miscellaneous expenses charged for dispatching on the joint line.

Example Allocation (Unaudited):

Administrative overhead expenses = $2,086,187

Labor base = $8,711,933

Administrative overhead expense ratio = 23.946%

Labor, vacation and holiday expenses, fringe benefits and miscellaneous expenses allocated to zone of commuter line = $11,511

Administrative overhead expenses allocated to zone = $2,756.42

Allocation Statistic Update Procedures:

Update monthly based on actual expenses.

EXHIBIT B
p. 2 of 2

EXHIBIT C
P. 1 of 1

JOINT FACILITY AGREEMENTS

ZONE LOCATION	RAILROAD	AGREEMENT DATE	DESCRIPTION	LOCATION
ONE	SOO LINE	8-15-99	AUTOMATIC INTERLOCKER	GRAYS LAKE
THO	EJ&E RY.	8- 1-89	TOWER & INTERLOCKER	RONDOUT
FOUR	C&NW TRANSP.	1- 1-95	TOWER & INTERLOCKER	MAYFAIR - CHICAGO
FOUR	C&NW TRANSP.	12-31-94	AUTOMATIC INTERLOCKER	GRAYLAND - CHICAGO
FIVE	C&NW TRANSP. CONRAIL	3-24-04	TOWER A-Z, TRACKS & SWITCHES, CROSSINGS	WESTERN AVE. - CHICAGO
SIX	CONRAIL	2- 7-73	TRACKS & FACILITIES WESTERN AVE. TO CANAL ST.	CHICAGO
SEVEN	CONRAIL	2- 7-73	TRACKS & FACILITIES LAKE STREET TO MADISON STREET	CHICAGO
NINE	C&NW TRANSP.	6-11-10	REMOTE CONTROLLED INTERLOCKER	ELGIN
NINE	EJ&E RY.	8- 1-89	TOWER & INTERLOCKER	SPAULDING
ELEVEN	C&NW TRANSP.	4-18-10	OVERHEAD CROSSING	BENSENVILLE
ELEVEN	C&NW TRANSP.	6-26-12	OVERHEAD CROSSING	BENSENVILLE
ELEVEN	SOO LINE	12- 1-30	TOWER & INTERLOCKER	FRANKLIN PARK
TWELVE	I.H.B.R.R.	3- 1-32	REMOTE CONTROLLED INTERLOCKER	FRANKLIN PARK
TWELVE	C&NW TRANSP.	2- 1-05	REMOTE CONTROLLED INTERLOCKER PACIFIC JCT.	CRAIGIN JUNCTION CHICAGO

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36500

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

GAMEIRO R.V.S. EXHIBIT 5

IN THE MATTER OF CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC R.R., R.R. REORGANIZATION, NO. 77 B 8999, STIPULATION (N.D. ILL. SEPT. 3, 1987) (METR_FD36500_012882-928) (EXCERPTS)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN THE MATTER OF CHICAGO, MILWAUKEE, ST. PAUL and PACIFIC RAILROAD COMPANY	)	In Proceedings For The Reorganization of a Railroad
Debtor.	)	No. 77 B 8999

REGIONAL TRANSPORTATION AUTHORITY, an Illinois municipal corporation,	)	
Plaintiff,	)	
vs.	)	No. 85 C 5969
CMC REAL ESTATE CORPORATION; 1,132 ACRES OF LAND, MORE OR LESS, comprising a certain railroad right-of way between Canal Street in Chicago Illinois and Rondout, Illinois, between Rondout, Illinois and Fox Lake, Illinois, and between Pacific Junction (tower A-5) and Almora, Illinois; certain personal property related to the operation of commuter rail services over said right-of-way; and certain UNKNOWN OWNERS,	)	Honorable Prentice H. Marshall
Defendants.	)	

S T I P U L A T I O N

The undersigned parties hereto, CMC Real Estate Corporation ("CMC"), the Regional Transportation Authority ("RTA"), and the Commuter Rail Division of the Regional Transportation Authority ("METRA"), enter into this Stipulation ("Stipulation") after being fully advised by their respective

counsels, for the purpose of defining the property and property rights of CMC to be taken pursuant to the above-captioned proceedings ("Condemnation Proceedings") and the property and property rights not to be acquired and to which the taking is subject, agreeing on an award of just compensation for the taking and the manner of its payment, and providing for other terms, conditions, and rights related to the foregoing, all as set forth herein and in the Schedules and Exhibits attached hereto.

SECTION 1. PROPERTY TO BE ACQUIRED

Subject to the exceptions set forth in Section 2 hereof and in reliance on the representations, covenants, and warranties set forth herein, on the Effective Date (as hereinafter defined) the parties hereto agree as follows:

1.1 Real and Personal Property. RTA shall acquire pursuant to the Condemnation Proceedings, and shall simultaneously deed, convey, assign, and transfer to METRA, all of the right, title, and interest of CMC in:

(a) all fixtures, land, and realty, all rights of way, easements, and the like pertaining or relating thereto as described in Exhibit 1-A attached hereto;

(b) all structures, fixtures, and improvements and appurtenances thereto (i) located within the areas outlined on the maps attached hereto as Exhibit 1-B ("Maps") from the west side of Canal Street, Chicago, Illinois (Mile Post 0.57) to Rondout, Illinois (Mile Post 32.52); from Rondout,

Illinois (Mile Post 32.52) to Fox Lake, Illinois (Mile Post 49.79); and from Tower A-5 (Mile Post 5.26) to Almora, Illinois (Mile Post 40.26) commonly known as the Milwaukee Road North and West Commuter Lines (collectively "Commuter Rail Lines"), including without limitation retaining walls, roadbeds, main and connecting tracks, rails, ties, ballast, switches, turnouts, wyes, crossovers, tunnels, grade crossings, sidings, depots, yards, storage and parking areas, culverts, fills, cuts, right of way fences, embankments, bridges, sheds, buildings, structures, communication and signal facilities and equipment, interlocking towers, commuter stations and platforms or (ii) located adjacent to the areas outlined on the Maps if such property is either primarily held for use or primarily used in connection with the management, operation, and maintenance of the commuter rail operations over the Commuter Rail Lines ("Commuter Rail Service") or other rail operations on the Commuter Rail Lines (but specifically excluding parking lots or industry lead tracks not located within the areas outlined on the Maps); and

(c) all machinery, equipment, tools, signal relays, cables and equipment, supplies, telephone cables, circuits, and equipment, relays or parts of relays held as replacement equipment, all valuation maps and records, all reproducible drawings, tracings, microfilm and the like, all books and

records, and any other personal property primarily used or held for use, in any manner whatsoever, in connection with the Commuter Rail Service or the Commuter Rail Lines.

1.2 Assumed Contracts. Subject to the prorations set forth in Section 4.5 hereof, METRA shall acquire pursuant to the Condemnation Proceedings all of CMC's right, title, interest, and shall assume all of CMC's obligations in, to, and under, the Assumed Contracts (as hereinafter defined). Notwithstanding the foregoing,

(a) CMC hereby retains the benefit of any and all rights of indemnification from third parties under the Assumed Contracts with respect to liabilities arising out of events or occurrences occurring prior to the Effective Date; provided, however, that to the extent METRA or RTA is held liable for any such event or occurrence as a consequence of its ownership of the Acquired Property or its assumption of the Assumed Contracts, the foregoing retention is hereby limited so as to provide that the benefits of such rights of indemnification shall first accrue to METRA and/or RTA, as the case may be, to the extent of such liability, unless CMC has hereunder indemnified METRA and/or RTA, as the case may be, against such liability; and

(b) to the extent any Assumed Contract pertains to real or personal property not comprising the Acquired Property (the "Non-Acquired Property"), CMC hereby retains those rights, benefits and obligations under such Assumed Contract which arise directly out of the Non-Acquired Property.

1.3 Other Terms.

(a) The real property, personal property, interests, and other assets described in Sections 1.1 and 1.2 above (but excluding the Exceptions and Reservations as set forth in Section 2 below), shall be collectively referred to as the "Acquired Property".

(b) In the event of any conflict between the descriptions of the land comprising the Acquired Property set forth on Exhibits 1-A and 1-B, the description of the land established by the black outlines on Exhibit 1-B shall control.

(c) Any fixture, improvements, or structures comprising the Acquired Property lying on land adjacent to the areas outlined on the Maps of which METRA does not take possession of, exert control over, or utilize within any two (2) year period following the Effective Date may, upon sixty (60) days written notice to Metra, at CMC's option be deemed abandoned, and in such event, CMC may remove, demolish, or otherwise dispose of such property; provided, however, that Metra may,

within the sixty (60) day period following such notice, take possession of (and shall demonstrate a bona fide need for) or remove or dispose of such property.

SECTION 2. EXCEPTIONS AND RESERVATIONS

The Acquired Property shall not include the following property, rights, and interests:

2.1 Excluded Assets. All personal property set forth on Schedule 2.1 attached hereto.

2.2 Excluded Air Rights. The volume of air space as set forth on Schedule 2.2 attached hereto.

2.3 Excluded Fiber Optics Revenues. The revenues from fiber optics contracts retained by CMC as set forth in the Fiber Optics Agreement attached hereto as Exhibit 4.3(a).

2.4 Easements.

(a) CMC Easements. The easements or fees ("CMC Easements") as set forth on Exhibits 2.4(a)(1) through 2.4(a)(25) hereto, but subject to the terms and conditions contained therein. The terms and conditions of the CMC Easements are subject to requests for variations therein made by CMC; provided, however, such variations must be in form and substance acceptable to METRA and such acceptance by Metra shall not be unreasonably withheld or withheld at all if in the same form and substance customarily used for similar such easements by railroads which conduct commuter passenger service. CMC may assign, transfer, lease, license,

or grant an easement or subeasement ("Transfer") in any and all CMC Easements to any third party or parties ("Transferees") with or without consideration subject to METRA's approval, such approval not to be withheld with respect to the transferee's set forth on Schedule 2.4(a)(II). In the event of a Transfer of any CMC Easement, CMC shall be released from any liabilities or obligations thereunder accruing after the Transfer to the extent that the Transferee assumes such liabilities or obligations. CMC shall keep and retain any and all monies that it receives or has received in connection with the Transfer of any and all CMC Easements, and METRA and RTA hereby waive all claims to such monies. If, with METRA's written approval, a CMC Easement is transferred after the date hereof and prior to the Effective Date, such CMC Easement shall be deemed an Assumed Contract as if described on Schedule 2.6 hereto.

(b) Galewood Easements. Four (4) easements for grade crossings at the Galewood Yard ("Galewood Easements") as set forth in Exhibit 2.4(b) attached hereto, but subject to the terms and conditions contained therein. The terms and conditions of the Galewood Easements are subject to requests for variations therein made by CMC; provided, however, such variations must be in form and substance acceptable to METRA and such acceptance by Metra shall not be unreasonably

withheld or withheld at all if in the same form and substance customarily used for similar such easements by railroads which conduct commuter passenger service.

(c) Certain Terms and Conditions of Galewood Easements. All Galewood Easements are subject to the following terms and conditions: (i) cost of construction, including without limitation grade crossings, signal systems, and crossing devices or cost of maintenance of any Galewood Easement is at the sole cost and expense of CMC or any successor or partial successor to CMC's interest, but such construction and maintenance shall be performed by METRA or persons employed by it or acting on its behalf as requested by CMC or its successor, or as Metra may deem appropriate; (ii) any construction, development, or alteration pertaining to any Galewood Easement, or any portion thereof is subject to METRA's prior approval, such approval not to be unreasonably withheld and; (iii) any use, assignment, transfer, lease, license, grant of any easement or subeasement, construction, development, or alteration, pertaining to any Galewood Easement, or any portion thereof by CMC or any successor or partial successor to CMC's interest may not interfere with the safety or efficient operation of any rail service over the Commuter Rail Lines.

2.5 CRC's Interest. All right, title, and interest of Consolidated Rail Corporation ("CRC") as an owner of any undivided interest in any of the Acquired Property.

2.6 Assumed Contracts. All right, title, and interest of all parties (including without limitation any parties claiming by or through such other parties) other than CMC in, to, and under the contracts, contract rights, leases, permits, and licenses ("Assumed Contracts") set forth on Schedule 2.6 attached hereto.

2.7 Certain Excluded Real Estate. Subject to the transfers effected by Section 1.1(b)(ii) hereof, CMC retains the real property and improvements thereon described in Exhibits 2.7(a) and 2.7(b) hereto.

SECTION 3. CONSIDERATION

3.1 Cash Consideration. The parties hereto agree that just compensation for the Acquired Property shall be SIXTY-SEVEN MILLION NINE HUNDRED THOUSAND DOLLARS ($67,900,000).

3.2 4.04 Obligations.

(a) The consideration shall be paid by RTA to CMC by the Notes, issued pursuant to Illinois Revised Statutes Chapter 111 2/3, paragraph 704.04, pursuant to the General Ordinance adopted August 5, 1985, as amended July 23, 1986 and November 20, 1986, and the Series Ordinance adopted August 6, 1987 (collectively, the Note, the General Ordinance and the Series Ordinance are referred to as the "4.04

Obligations"), all as set forth in Exhibit 3.2 attached hereto and subject to the terms and conditions contained therein.

(b) The 4.04 Obligations shall not be assigned, transferred or otherwise disposed of except (i) pursuant to a sale or pledge of all or substantially all of CMC's assets, (ii) to an entity resulting from a merger or consolidation with CMC, (iii) to a successor in interest to CMC by operation of law, or (iv) to CMC's parent or an entity in which CMC or its parent holds a fifty percent (50%) or greater controlling interest; provided, however, that no such transfer shall be undertaken for the purpose, in whole or in part, of obtaining a premium on the principal balance of the 4.04 Obligations. Any transaction undertaken in violation of this Section 3.2(b) shall be without force or effect. In no case shall a transfer of the 4.04 Obligations be made in violation of the Securities Act of 1933 or the Securities Exchange Act of 1934, as amended, or the rules and regulations promulgated thereunder.

3.3 Assumption of Liabilities. METRA shall undertake, assume, pay, perform, and discharge (and shall indemnify and defend CMC against and hold CMC harmless from) all debts, liabilities, and commitments, absolute or contingent (other than as attributable to the intentional or negligent acts or omissions on or after the Effective Date of CMC or a CMC Affiliate (as

hereinafter defined)) accruing or arising on or after the Effective Date out of (i) the Assumed Contracts (but specifically excluding debts, liabilities or obligations arising out of rights or obligations pertaining to Non-Acquired Property), and/or (ii) the Acquired Property.

SECTION 4. FURTHER AGREEMENTS

4.1 Termination of Agreements. CMC and RTA or METRA shall terminate as of the Effective Date those contracts, agreements, and understandings ("Terminated Contracts") as set forth on Schedule 4.1 attached hereto. The following terms and conditions shall apply to the termination of all Terminated Contracts:

(a) Any audit rights under the Terminated Contracts which have not been barred by orders of the reorganization court shall survive the termination.

(b) Any rights, liabilities, and obligations of CMC, RTA, or METRA under the Terminated Contracts (which have not been barred by orders of the reorganization court) accruing or arising from events or time periods occurring prior to the Effective Date shall survive the termination, whether or not asserted until after the Effective Date.

(c) Any payments, charges, credits, offsets, or portions thereof which relate to a period prior to the Effective Date shall be prorated according to the terms of such Terminated Contracts or if a Terminated Contract contains no such terms, the number of days in such period

(e) Except as set forth above, any monies received by CMC or METRA to which another party hereto is entitled pursuant to this Stipulation, and which are not subject to the proration, reproration, and settlement addressed in Section 4.5, shall be held in trust by the party receiving such monies on behalf of the party so entitled to such monies, and shall be paid over to the party so entitled to such monies within 15 days after the other party's receipt thereof; provided, however, that each party shall be permitted to co-mingle such funds with other of its general funds.

SECTION 10. INDEMNIFICATIONS

10.1 METRA's Indemnification. METRA hereby agrees to indemnify and hold CMC and its successors and assigns forever harmless from and against any and all liabilities, claims, demands, actions or causes of action, assessments, losses, costs, damages, or expenses, including reasonable attorneys' fees, sustained or incurred by CMC:

(a) resulting from or arising out of any misrepresentation or breach of warranty or nonfulfillment of any covenant on the part of METRA contained in this Stipulation or other instrument or document furnished by METRA pursuant hereto or in connection herewith; or

(b) resulting from or arising out of any liability or obligation under the Assumed Contracts (but specifically excluding liabilities or obligations arising out of non-Acquired Property) or relating to the Acquired Property accruing or arising from events occurring on and after the Effective Date, other than events attributable to the negligent or intentional acts or omissions after the Effective Date of CMC, any CMC Affiliate or any other party indemnified under this Section 10.1; or

(c) resulting from or relating to the absence of a request for ICC approval of, or the lack of ICC approval of, the condemnation of the Acquired Property.

10.2 RTA's Indemnification. RTA hereby agrees to indemnify and hold CMC and its successors and assigns forever harmless from and against any and all liabilities, claims, demands, actions or causes of action, assessments, losses, costs, damages or expenses, including reasonable attorneys' fees, sustained or incurred by CMC resulting from or arising out of any misrepresentation or breach of warranty or nonfulfillment of any covenant on the part of RTA contained in this Stipulation.

10.3 CMC's Indemnification. CMC hereby agrees to indemnify and hold RTA and METRA and their successors and assigns forever harmless from and against any and all liabilities, claims,

demands, actions or causes of action, assessments, losses, costs, damages or expenses, including reasonable attorneys' fees, sustained or incurred by RTA or METRA:

(a) resulting from or arising out of any misrepresentation or breach of warranty or nonfulfillment of any covenant on the part of CMC contained in this Stipulation or other instrument or document furnished by CMC pursuant hereto or in connection herewith;

(b) accruing or arising from events occurring prior to the Effective Date which result from or arise out of (i) any liability or obligation of CMC under the Assumed Contracts or (ii) the Acquired Property, except (x) as otherwise provided for in any lease or other agreement by and between CMC and RTA or METRA in effect prior to the execution of this Stipulation, (y) as caused by events prior to the Effective Date creating or permitting to exist a physical condition out of which such liability arises after the Effective Date or (z) as arising out of events attributable to the intentional or negligent acts or omissions of METRA, RTA or any other party indemnified under this Section 10.3;

(c) resulting from or arising out of the CMC Easements, except as to which CMC is relieved of liability under Section 2.4 hereof or the agreements contemplated thereby; or

(d) accruing or arising out of any claims pertaining to the sites identified on Schedule 5.6 and which (i) arise under federal, state or local environmental laws or regulations, or (ii) otherwise arise out of any environmental hazards present at such sites; notwithstanding anything to the contrary contained herein, CMC hereby retains liability, if any, for all such claims pertaining to the sites identified on Schedule 5.6.

(e) accruing or arising out of any liability directly or indirectly imposed upon METRA or RTA under Section 902(d) of the Illinois Income Tax Act and Section 5(j) of the Illinois Retailers Occupation Tax Act with respect to taxes owed by CMC or any CMC Affiliate to the State of Illinois or any subdivision thereof.

10.4 Procedure Re: Indemnification.

(a) If any party entitled to indemnification hereunder ("Indemnified Party") shall discover or have actual notice of facts giving rise or which may give rise to a claim for indemnification under this Section 10, or shall receive notice of any demand, assertion, claim, action, or proceeding, judicial or otherwise ("Action"), with respect to any matter for which indemnification may be claimed, the Indemnified Party shall, within twenty (20) days following service of process (or within such shorter time as may be necessary to give the party required by the terms hereof to

provide indemnification therefor ("Indemnifying Party") a reasonable opportunity to respond to such service of process) or within thirty (30) days after any other such notice, notify the Indemnifying Party in writing thereof together with a statement of such information respecting such matter as the Indemnified Party then has; it being understood and agreed that any failure or delay of the Indemnified Party to so notify the Indemnifying Party shall not relieve the Indemnifying Party from liability hereunder except and solely to the extent that such failure or delay shall have materially adversely affected the Indemnifying Party's ability to defend against, settle, or satisfy any such Action. Following such notice, the Indemnifying Party shall have the right, at its sole cost and expense, to contest or defend such Action through attorneys, accountants, and others of its own choosing (the choice of such attorneys, accountants, and others being subject to the approval of the Indemnified Party, such approval not to be unreasonably withheld) and in the event it elects to do so, it shall promptly notify the Indemnified Party of such intent to contest or defend such Action. If within twenty (20) days following such notice (or within such shorter time as may be necessary to give the Indemnifying Party a reasonable opportunity to respond to service of process or other judicial or administrative action) from the Indemnified

Party, the Indemnified Party has not received notice from the Indemnifying Party that such Action will be contested or defended by the Indemnifying Party, the Indemnified Party shall have the right to (i) authorize attorneys satisfactory to it to represent it in connection therewith and/or (ii) at any time settle, compromise, or pay such action, in either of which events the Indemnified Party shall be entitled to indemnification therefor subject to this Section 10. Following any notice of an indemnification claim not based on an Action, the Indemnifying Party shall promptly reimburse the Indemnified Party for all amounts owed to it by reason of such indemnification obligation.

(b) In the event and so long as the Indemnifying Party is actively contesting or defending against an Action as hereinabove provided, the Indemnified Party shall cooperate with the Indemnifying Party and its counsel in such contest or defense, shall join in making any appropriate counterclaim or cross-claim in connection with the Actions, and shall provide such access to the books and records of the Indemnified Party as shall be necessary in connection with such defense or contest, all at the sole cost and expense of the Indemnifying Party. Notwithstanding that an Indemnifying Party is actively conducting such defense or contest, any Action may be settled, compromised, or paid by the Indemnified Party without the consent of the Indemnifying

Party, provided however, that if such action is taken without the Indemnifying Party's consent, its indemnification obligations in respect of such claim shall thereby be nullified. No such Action may be settled, compromised, or paid by the Indemnifying Party without the Indemnified Party's consent, provided that if an offer of compromise, settlement, or payment shall be rejected by the Indemnified Party, the liability of the Indemnifying Party in respect of such Action shall in no event exceed the amount of such offer, less any legal fees and costs incurred by the Indemnifying Party after such offer.

(c) In the event any Action involves matters partly within or partly outside the scope of the indemnification by the Indemnifying Party hereunder, then the attorneys' fees, costs, and expenses of contesting or defending such Action shall be allocated between the Indemnified Party and the Indemnifying Party as they shall agree. If such an allocation cannot be agreed upon, the Indemnifying Party, at its sole expense, shall contest or defend those matters involved in the Action that fall within the scope of the indemnifications hereunder, and the Indemnified Party, at its sole expense, shall contest or defend those matters involved in the Action that fall outside the scope of the indemnifications hereunder.

parties hereto agree that the Court in the Condemnation proceedings retains jurisdiction for the determination and adjudication of any matters which may arise with respect to the Acquired Property, or any other matters relating to the terms, rights, and obligations set forth in this Stipulation or the Schedules and Exhibits and Schedules attached hereto.

IN WITNESS WHEREOF, each of the parties hereto has duly executed this Agreement as of this 3 day of September, 1987 and year first above written.

COMMUTER RAIL DIVISION OF THE
REGIONAL TRANSPORTATION AUTHORITY

Attest:
Assistant Secretary

By: ~~Executive Director~~

REGIONAL TRANSPORTATION AUTHORITY

Attest:
Secretary

By:

CMC REAL ESTATE CORPORATION

Attest:
Asst. Secretary / Vice President

By:

STATE OF ILLINOIS)
) ss.
COUNTY OF C O O K)

I, Sarah Filler as a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Samuel K. Skinner personally known to me to be the Chairman of the Board of the Regional Transportation Authority, and Edmund J. Wolf, personally known to me to be the Secretary of the Regional Transportation Authority, and personally known to me to be the same persons whose names subscribed to the foregoing instrument, appeared before me in person and severally acknowledged that as such Chairman of the Board and Secretary, they signed and delivered the said instrument as Chairman of the Board and Secretary of said Regional Transportation Authority, and caused the corporate seal of the Regional Transportation Authority to be affixed thereto, pursuant to authority, given by the Board of Directors of said Regional Transportation Authority as their free and voluntary act, and as the free and voluntary act and deed of said of the Regional Transportation Authority, for the uses and purposes therein set forth.

GIVEN under my hand and official seal this 3 day of September, 1987.

Sarah Filler
Notary Public

Commission expires May 4, 1989

STATE OF ILLINOIS)
) ss.
COUNTY OF C O O K)

I, Sarah E. Filler, as a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Edwin Jacobson personally known to me to be the President of CMC Real Estate Corporation, and Lawrence Adelson personally known to me to be a Vice-President of CMC Real Estate Corporation and personally known to me to be the same persons whose names subscribed to the foregoing instrument, appeared before me in person and severally acknowledged that as such President and Vice-President; they signed and delivered the said instrument as President and Vice-President of said CMC Real Estate Corporation, and caused the corporate seal of CMC Real Estate Corporation to be affixed thereto, pursuant to authority, given by the Board of Directors of said CMC Real Estate Corporation as their free and voluntary act, and as the free and voluntary act and deed of said CMC Real Estate Corporation, for the uses and purposes therein set forth.

GIVEN under my hand and official seal this 3 day of September, 1987.

Sarah Filler
Notary Public

Commission expires May 4, 1989

STATE OF ILLINOIS)
) ss.
COUNTY OF C O O K)

I, Sarah E. Filler, as a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Jeffrey R. Ladd personally known to me to be the Chairman of the Commuter Rail Division of the Regional Transportation Authority, and Maureen McClelland, personally known to me to be the Assistant Secretary of the Commuter Rail Division of the Regional Transportation Authority, and personally known to me to be the same persons whose names subscribed to the foregoing instrument, appeared before me in person and severally acknowledged that as such Chairman and Assistant Secretary, they signed and delivered the said instrument as Chairman and Assistant Secretary of said Commuter Rail Division of the Regional Transportation Authority, and caused the corporate seal of the Commuter Rail Division of the Regional Transportation Authority to be affixed thereto, pursuant to authority, given by the Board of Directors of said Commuter Rail Division of the Regional Transportation Authority as their free and voluntary act, and as the free and voluntary act and deed of said Commuter Rail Division of the Regional Transportation Authority, for the uses and purposes therein set forth.

GIVEN under my hand and official seal this 3 day of September, 1987.

Sarah Filler
Notary Public

Commission expires May 4, 1989

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36500

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

GAMEIRO R.V.S. EXHIBIT 6

THE 1993 SOO-METRA SUPPLEMENTAL AGREEMENT – SUPPLEMENTAL AGREEMENT BETWEEN COMMUTER RAIL DIVISION OF THE REGIONAL TRANSPORTATION AUTHORITY AND SOO LINE RAILROAD COMPANY (MAY 27, 1993) (EXCERPTS) (ALSO METRA COMMENTS EXH. A-3)

EXHIBIT A-3

Metra-CP 1993 Supplement

METRA COUNTERPART

SUPPLEMENTAL AGREEMENT

THIS SUPPLEMENTAL AGREEMENT, made and entered into this 27TH day of May, 1993, by and between the Commuter Rail Division of the Regional Transportation Authority, a division of a municipal corporation (hereafter referred to as "Metra"), and Soo Line Railroad Company, d/b/a CP Rail System (hereinafter referred to as "CP"). Collectively hereinafter Metra and CP shall be referred to as "the Parties".

PRELIMINARY STATEMENT

SLRCO (a predecessor in interest to CP) and Richard B. Ogilvie, Trustee of the Property of Chicago, Milwaukee, St. Paul and Pacific Railroad (a predecessor in interest to Metra) entered into a Trackage Agreement dated February 19, 1985 ("Trackage Agreement") whereby SLRCO acquired certain rights to use of the Joint Line as therein defined to provide service over the Joint Line; and

Metra desires to assume certain maintenance obligations on the Joint Line and the Parties wish to supplement the Trackage Agreement to establish the terms and conditions under which Metra will provide such maintenance; and

The Parties desire to incorporate in the Trackage Agreement certain provisions from the September 16, 1982 Trackage Agreement between Richard B. Ogilvie, Trustee of the Property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor and the Regional Transportation Authority and the March 2, 1988, Letter Agreement between the Parties.

In consideration of the terms and conditions hereinafter contained, the Parties agree to amend and supplement the Trackage Agreement as follows:

1. All references to Richard B. Ogilvie, Trustee of the Property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor ("Milwaukee") shall be deemed to be references to Metra, and all references to SLRCO, Inc. ("SLRCO") shall be deemed to be references to CP.

2. Amend Article 1 as follows:

(i) Delete Zone 7 from Section 1.2 a

(ii) Amend Article 1.2 b to add to the end of the sentence under Zone 11:

", including Tracks No. 3, 4, 5, and 6 as shown in Attachment 5 only for the purpose of maintaining signal circuits for the crossings shown in Attachment 5."

(iii) Amend Section 1.2 b to add the following: "Zone 13 (#3 main). Between Pacific Junction (Mile Post 5.85) and Tower B-12 (Mile Post 12.82).

3. Amend Article II as follows:

(i) Add the following to the end of the first sentence of Section 2.1:

", including the right to operate self-propelled maintenance of way equipment and inspection equipment. CP shall be required to provide qualified operators when

operating such equipment on the Joint Line."

(ii) Delete the parenthetical "(except Amtrak)" from Section 2.1 (b)

(iii) Add to the end of Section 2.1(b) the following:

"; provided however, that CP and its connecting freight carriers shall have the right to carry out normal interchange activities in the Chicago area (cars not destined to or from CP shall in no event be considered interchange cars), and cars and trains of connecting carriers shall be considered those of CP for purposes of compensation to Metra, billing, and liability under this Supplemental Agreement.

(iv) Add a new Section 2.3 (d) to read as follows:

(d) Prior to April 30, 1996, Amtrak shall be considered a third-party admitted by CP, and until such date CP shall be entitled to all payments due from Amtrak for use of the Joint Line. No additional or other compensation shall be due Metra for Amtrak's use of the Joint Line other than compensation paid by CP for its use of the Joint Line.

(v) Add a new Section 2.4 to read as follows:

2.4 At any time after April 30, 1996, Metra shall have the right to admit Amtrak to use of the Joint Line and shall be entitled to all compensation due from Amtrak for such use. Amtrak's use of the Joint Line as of and after such aforesaid date shall be considered for

all purposes hereunder as use by Metra trains.

(vi) Add a new Section 2.5 as follows:

2.5 Metra agrees that nothing contained in this Agreement shall in any way be construed or acted upon when such would impede the ability of CP to meet its obligations under the Rail Passenger Service Act of 1970, 45 U.S.C. Section 501, et seq., or under existing and future contracts executed pursuant thereto with the National Railroad Passenger Corporation ("Amtrak"). In such circumstances, the offending provision shall be considered by the Parties to be null and void.

4. Amend Article V as follows:

(i) Section 5.1 shall be amended to read as follows:

"The Parties shall apportion between them the amounts described in this Article V and all payments due under this Article V shall be subject to the special provisions of Attachment 1 attached hereto. Payment shall be made in accordance with Article VI."

(iii) Section 5.2(d) shall be amended to add the following sentence after the first sentence thereof:

"Light engine, backup and industry switching movements shall be excluded in determining Gross Ton Miles Proportion except light engine movements initiated by Metra in excess of 51 per weekday shall be included."

(iv) Amend Section 5.2(e) to add the following sentence

after the first sentence thereof:

"Light engine, backup and industry switching movements shall be excluded in determining the Train Count Proportion except light engine movements initiated by Metra in excess of fifty-one (51) per weekday shall be included."

(v) Amend Section 5.4 (d) by adding the following at the end of the section:

", subject to the provisions of Attachment 1 of this Supplemental Agreement."

(vi) The word "Parent" in Section 5.2(e) shall be amended to read "either Party."

5. Article VI shall be amended as follows:

(i) Section 6.2 shall be amended to add at the beginning of the paragraph the following:

"Except for the first calendar month following the Commencement Date,"

(ii) The last sentence of Section 6.3. is amended to read as follows:

Metra shall furnish to CP within 15 days after the end of each calendar month during the term of this Agreement, a statement showing for that month: (a) the train count for the trains operated by or on behalf of Metra over each zone of the Joint Line; and (b) the

gross ton miles generated by the trains, engines and cars and contents operated by or on behalf of Metra over each zone of the Joint Line. Light engine movements in excess of fifty-one (51) per weekday shall be reported by Metra for (a) and (b) above. The statement shall be subject to verification and correction by CP. If Metra fails to furnish the statement within the fifteen (15) day period, the Summary Expense bill for that month shall be based on the Gross Ton Proportion and Train Count Proportion during the preceding twelve (12) month period. That bill shall be adjusted upon receipt of the required statement from Metra.

(iii) All words after to in the third line of Section 6.6 shall be deleted and replaced with:

"Metra's account 140003100 at Amalgamated Trust and Savings Bank at Chicago or another account designated by Metra."

6. Article VII is deleted in its entirety and replaced with the following:

Section 7. JOINT LINE CAPITAL EXPENDITURES

Definitions: For purposes of this Agreement "Capital Projects" shall mean a project that deals specifically with capital related improvements (e.g.; rehabilitation, replacement, renewal, modernization, or expansion of facilities or equipment) as contained in Attachment 2, as amended from time to time.

7.1. Metra may effect Capital Projects on the Joint Line necessary or desirable for the economical and safe operation of

trains, locomotives or cars over the Joint Line, or which are required by applicable law or regulations. Attachment 2 contains the Five Year Capital Projects Plan through calendar year 1997.

7.2. The costs of Capital Projects shall be paid by:

(a) Metra, if required solely by the operations of Metra or of third parties admitted to the use of the Joint Line by Metra;

(b) CP, if required solely by the operations of CP or of third parties admitted to the use of the Joint Line by CP; provided that CP shall pay the entire cost of the renewal in kind of turnouts for industry spurs used solely for freight operations except those paid for by the industry;

(c) Metra and CP have agreed to an allocation of costs for the Capital Projects identified on Attachment 2. As future Capital Projects are included in amended Attachment 2's, allocation of costs shall be agreed upon; however, in no event shall CP be required to contribute more than fifty percent (50%) of the cost of any Capital Project for the joint benefit of the Parties.

The Parties hereto further agree that the budget figures contained in Attachment 2 are estimates only and will be adjusted to actual expenditures as the work is completed.

7.3. Metra shall effect Capital Projects requested by and at the sole expense of CP unless such projects would substantially interfere with Metra's operations over the Joint Line or the rights

of a third party admitted to the use of the Joint Line.

7.4. Capital Projects effected pursuant to this Section shall be considered personal property and title to such projects shall vest in CP and Metra in proportion to the costs paid by each Party; provided that upon expiration of the useful life (as determined by standard accounting rules) of the project, title to such materials shall automatically transfer to and vest in Metra, except for industry spurs used solely for freight operations.

7.5. The designated representatives from Metra's Engineering Department and CP's Engineering Department shall make an annual joint inspection of the Metra Joint Line for the purpose of determining the Capital Projects to be undertaken and developing the Five Year Capital Program.

A report reflecting Capital Projects for the Metra Joint Line shall be furnished by Metra to CP within thirty (30) days after the annual joint inspection referred to in this Section 7.5 but not later than May 1 of each year. This report shall show in reasonable detail new projects, progress on existing projects, an estimate of total project costs and estimated completion dates. Metra shall not charge to CP the costs of any Capital Project for which CP has not given consent and authorization for expenditure in writing. Such consent shall not be unreasonably withheld, conditioned, or denied.

7.6. In reaching agreement as to allocation, the Parties shall be guided by the following guidelines: CP has no need for the main line tracks to be maintained to higher than FRA Class 3 for freight trains and FRA Class 4 for intermodal trains, and any additional cost needed to meet the Metra Track Standards shall be borne solely by Metra.

7.7. Each Party shall bill the other Party and the Parties shall pay each other in accordance with Article VI Section 6.4.

7. Article VIII is amended to add the following:

8.3. Metra shall furnish all labor and material and shall maintain, repair and renew the Joint Line, as amended in this Supplemental Agreement, in accordance with the terms of this Agreement, provided that CP shall maintain with its own forces, and at its sole expense, the portion of industry spurs and the portion of side tracks and yards including, but not limited to, those at Spaulding, Rondout, Galewood, Morton Grove, Schaumberg, Itasca, and similar trackage at other locations used exclusively for freight operations all as shown in green on Attachment 3; provided that such trackage owned by Metra shall be maintained by CP to not less than FRA Class 1 standards. Notwithstanding any provision hereof Metra shall perform the entirety of any publicly funded grade crossing improvement project on the Joint Line as amended in this Supplemental Agreement.

8.4. The Parties shall maintain all track, interlocking and crossing signals on the Joint Line as provided in Attachment 4, except the maintenance of the signal system at five (5) grade crossings in Franklin Park shall be governed by Attachment 5.

8.5. Metra shall own and maintain the tower structures at Rondout, A-2, A-5, B-12 and B-17, regardless of which Party operates the towers.

8.6. Metra shall assume maintenance responsibility for the entirety of all bridges spanning or carrying any portion of the Joint Line, but only to the extent CP is currently performing such

maintenance or Metra's predecessors were obligated to perform such maintenance.

8.7. CP shall maintain communication facilities that are related to the control of freight train movements including those related to commuter operations when such facilities overlap with freight operations. CP shall also maintain the CDRC (Centralized Dispatcher Radio Control) communication network including the base stations located at Fox Lake, Rondout, Spaulding, and A-5 and the local radios at Towers B-12, B-17, and Rondout. CP shall maintain the intercom network connecting Towers B-12, B-17, and CP's Bensenville Yard Office and hump tower.

Metra shall maintain the local radio at Towers A-2, A-5, and Track 19 (i.e.; Union Station) including the talk back speakers at those locations. Metra shall also maintain the pole line whether located on Metra property, CP property or third party property.

MCI shall continue to maintain the fiber optics cable. In the event MCI no longer desires to retain fiber optics cable between Cragin and Milwaukee, CP shall have the right to assume MCI's rights to the extent CP uses them for railroad operations.

CP shall continue to own and maintain the T1 equipment, located at the CDRC radio base station building at Rondout and at Bensenville. This equipment is associated with the 24 channel fiber optics circuit between Bensenville and Rondout which is used (or in the process of being used) for the CDRC network, CTC, and telephone circuit.

8.8. CP shall have the right to store inventory at reasonable locations on Metra property for no charge by providing Metra thirty (30) days written notice of its intent to do so, but such storage

shall be at its sole risk and responsibility. The location at which the inventory is stored shall not interfere with Metra's operations. Both CP and Metra shall have such reasonable vehicular and pedestrian access to the other's property as shall be required for their respective maintenance obligations. Each Party shall have the right to locate equipment and other property necessary for its commuter or freight operation on the other Parties property at no charge to the other Party; provided that such equipment and property shall not interfere with the operation of the owning Party. Requests to locate any additional equipment or property on the other Party's property in the future shall be made not less than sixty (60) days in advance of the need to do so and approval of such request shall not be unreasonably withheld.

8.9. As used herein, "Metra Track Standards" means the Class 4 standard of the Federal Railroad Administration or any successor agency ("FRA") for all aspects of track maintenance except track geometry, and the FRA Class 5 standard for track geometry, so as to facilitate the operation of Metra's trains at 70 miles per hour. Metra shall maintain the Joint Line main line tracks to the Metra Track Standards. Exceptions: (i) main line Track No. 3 between Pacific Junction, Chicago, Tower B-12 need only be maintained to FRA Class 2; and (ii) the double main line tracks between Rondout (Mile Post 32.25) and the termination of Metra ownership (Mile Post 32.52) shall be maintained to FRA Class 4 standards for all aspects of track maintenance including geometry. Joint Line facilities other than main line tracks shall be maintained by Metra in accordance with reasonable standards jointly agreed by CP and Metra. Metra shall maintain minimum clearances as are in effect as of the effective date of this Agreement. Track standards necessary for freight operations on the No. 1 and No. 2 main lines (except for intermodal trains and Amtrak) shall be a maximum of FRA Class 3 standards. Track standards necessary for the operation of intermodal trains and Amtrak shall be

not more than FRA Class 4 and 70 miles per hour respectively (79 miles per hour between Mile Post 29 and Mile Post 32.25) in the zones used for such operation.

8.10. If the use of or traffic over the Joint Line is interrupted or delayed at any time, the Parties shall expeditiously restore the line for the passage of trains. Any Metra train, locomotive, or car derailed or damaged on the Joint Line shall be expeditiously picked up or removed by Metra or its emergency service contractor. Any CP train, engine or car derailed or damaged on the Joint Line shall be expeditiously picked up or removed by CP or its emergency service contractor; provided that in the event CP does not so act expeditiously, Metra shall have the right to provide such removal services. The expenses incurred in picking up and removing derailed or damaged trains and the cost of restoration of the Joint Line resulting from a derailment or accident shall be paid in accord with the provision of Section 11.7 hereof.

8.11. In the event Metra fails to meet its obligations under this Section, and if CP gives written notice specifying the failure and requesting that it be remedied, and if Metra fails to remedy such failure within 30 days of receipt of such written notice, then CP shall have the right to correct such failure. With respect to any such corrective work, CP shall also be entitled to deduct from any payments due Metra, Metra's proportionate share of CP's costs of correction, including CP overheads.

8.12. Metra shall (a) maintain all joint facility agreements, interlocking agreements and similar arrangements necessary to the operations controlled by these facilities, with the expense therefore allocated between the Parties as provided in this Agreement; (b) pay and discharge when due and payable all lawful governmental charges or levies imposed with respect to the Joint Line (except to the extent

and while the validity thereof is contested by appropriate proceedings); (c) provide for utility services necessary to operations over the Joint Line; and (d) take all other action necessary to permit the Joint Line to be used for the joint benefit of the Parties and their admittees.

8.13. The routine maintenance forces to be utilized by Metra are specified in Exhibit F of the Transition Agreement. These routine maintenance forces are to remain at or below the levels contained in Exhibit F for the purpose of allocating track and signal maintenance expenses to CP under the Section 5.4 and Attachment 1.

8.14. For costs hereunder, each Party shall bill the other Party and the Parties shall pay each other in accordance with Article V and Article VI, subject to the provisions of Attachment 1.

8.15. CP recognizes the priority of commuter service operations on the Joint Line on Monday through Friday, inclusive, with respect to trains which depart from their originating stations during the times and in the zones identified below and maintain timetable schedule (the "peak period trains"):

Big Timber Road to CUS -- eastbound

5:15 a.m. - 7:45 a.m.
4:30 p.m. - 6:30 p.m.

B-12 to CUS -- eastbound

6:05 a.m. - 8:35 a.m.
5:15 p.m. - 7:15 p.m.

CUS to B-12 & Big Timber Road -- westbound

5:15 a.m. - 8:30 a.m.
4:00 p.m. - 6:15 p.m.

Rondout to CUS -- southbound

6:00 a.m. - 7:50 a.m.
4:20 p.m. - 6:00 p.m.

CUS to A-20 -- northbound

6:25 a.m. - 8:45 a.m.
4:15 p.m. - 6:10 p.m.

A-20 to Rondout -- northbound

7:00 a.m. - 8:15 a.m.
4:30 p.m. - 6:20 p.m.

Fox Lake to Rondout -- southbound

5:00 a.m. - 8:30 a.m.

Rondout to Fox Lake -- northbound

4:30 p.m. - 6:45 p.m.

Except as required by an emergency, CP shall not interfere or permit any third party to interfere with peak period trains. CP shall not object to Metra's operations of peak period trains on the grounds that those operations unreasonably interfere with CP's or third parties' ability to provide efficient freight or intercity

passenger service. CP may make reasonable adjustments to the operations of traffic on the Joint Line which do not unreasonably disrupt or delay trains which are not peak period trains.

8.16. Except as provided in this Section 8.16, the operation of the commuter service on the Joint Line during times outside the peak periods shall be subject to the schedules effective April 25, 1993, for the west line and May 9, 1993 for the north line attached as Attachment 6. Metra may not change the schedule on Attachment 6 without CP's prior written consent, which may not be unreasonably withheld; providing that such change shall not materially interfere with freight operations. However, CP agrees that Metra may add trains to the Joint Line on the new service route between Chicago Union Station and Antioch during the off peak periods as scheduled below:

Eastbound:

Train	Depart	Time
106	B-12	10:38 a.m.
108	B-12	2:38 p.m.

Westbound:

Train	Depart	Time
103	CUS	11:40 a.m.
105	CUS	2:30 p.m.

Additionally, Metra may add, subject to consultation with CP regarding the schedule and CP's consent (whose consent shall not be unreasonably withheld providing that the trains do not materially

interfere with freight operations), ten (10) trains during the off-peak periods as follows: (i) one (1) train in each direction between Tower B-12, Franklin Park and Chicago Union Station (CUS); (ii) Two (2) trains in each direction between Elgin and CUS; (iii) two (2) trains in each direction between Fox Lake and CUS. At any time upon ten (10) days prior written notice, Metra may decrease the number of commuter service trains.

8.17. CP shall operate the interlocking towers, with the exception of Towers A-2 and A-5 which shall be operated by Metra, all under the direction of the CP dispatcher. Billing for the operator positions for Towers A-2 and A-5 shall be in accordance with Article V, Section 5.4 without regard to Attachment 1, subject, however, to the staffing levels contained in Exhibit F.

8. Article XI is amended to add a new Section 11.7 which shall read as follows:

Section 11.7 LIABILITY

Definition: Whenever the expression "proportionally by the Parties" is used in this Section, it means that expenses will be borne in proportion to the total gross ton miles handled by each Party in the zone in which the incident occurred in the month prior to the occurrence, or if it cannot be determined in which zone the incident occurred or if the incident occurred in more than one zone, the expenses will be borne in proportion to the total gross ton miles handled by each Party over the entire Joint Line in the month prior to the occurrence. Until April 30, 1996, the locomotives, trains, cars, property, passengers or employees of National Railroad Passenger Corporation (Amtrak) shall be considered CP for liability purposes in this Section 11.7. After such date, said locomotives, trains, cars, property,

passengers, or employees shall be considered Metra for purposes of liability under this Section 11.7. Wisconsin & Calumet Railroad's (WICT) locomotives, trains, cars, and property shall be considered as Metra.

(a) Both Parties shall undertake to comply with all applicable federal and state laws or regulations, and all applicable rules, regulations or orders promulgated by any municipality, board or commission. If any failure of either Party to comply with such laws, rules, regulations or orders in respect to the use of the Joint Line results in any fine, penalty, cost or charge being assessed against the other Party, the Party which failed to comply agrees to reimburse promptly and indemnify the other Party for such amount.

(b) The employees of either Party while operating, maintaining or directing operation along the Joint Line shall not be considered as joint employees but will remain the sole employees of either Party. However, when any sole employee of CP or Metra is engaged in maintaining, repairing, renewing, removing, or inspecting the Joint Line, or in dispatching, giving orders for or directing the movement of trains over the Joint Line, or performing other service involving the Joint Line for the common benefit of the Parties, and the death of, injury to, or loss of property of the sole employee arises out of such service for the common benefit of the Parties, then the liability shall be borne proportionally by the Parties, except for cases covered by Sections 11.7(c) and 11.7(h) below, which losses shall be divided between the Parties in accord with the provisions thereof.

(c) Liability for injury to or death of any persons or loss of or damage to any property, including the Joint Line

and turnouts therefrom, in any manner resulting from or in connection with the operation of locomotives, trains or cars of either Party, or in connection with the presence on the Joint Line of locomotives, trains, cars, property, passengers or employees of either Party, shall be borne and paid by the Parties as follows:

(i) When the same shall involve the train of only one of the Parties, or a defect in or failure of the Equipment of one of the Parties, liability will be borne by that Party. "Equipment" in this Subparagraph means rolling stock, locomotives and cabooses and includes cars of any ownership which are on the Joint Line in the account of one of the Parties, in which event such cars will be considered to be equipment of the Party in whose account they are unless the car has been repaired by the other Party after it arrived on the Joint Line and the liability is traceable to that repair, in which case that car will be considered to be in the account of the Party performing the repair.

(ii) When the same shall be due to the acts or omissions of any sole employee of a Party, and that employee is not performing service for the common benefit, liability shall be born by that Party, regardless of any other provision of this Agreement.

(iii) When the same shall involve the trains of both Parties, the liability shall be borne by each Party as to its own employees, passengers, property, or property in its custody, and as to third party property or persons (other than passengers) the

liability shall be borne proportionally by the Parties.

(iv) When the same shall be due to any acts or defects not provided for in this Agreement, liability shall be borne by each Party as to its own employees, passengers, property, or property in its custody, but as to third party property or persons (other than passengers) the liability shall be borne by the Party whose locomotive, train or car is involved in the accident causing the loss, damage, injury or death, and if the locomotives, trains or cars of both Parties were involved in causing such accident, then such liability shall be borne proportionally by the Parties.

(v) Third-party claims for loss or damage to property arising out of the killing or injuring of livestock or the setting of fires on or along the Joint Line, when caused by the locomotive, train or car of one of the Parties, shall be handled or settled by the Party whose locomotive, train or car caused such loss or damage, but if it cannot be determined whose locomotive, train or car caused such loss or damage, the claim will be handled or settled on behalf of both Parties in the first instance by Metra, and the loss will then be borne proportionally by the Parties.

(vi) Notwithstanding anything to the contrary herein, claims which are caused by or arise out of the sole negligence of CP train dispatchers or CP or Metra tower operators performing service under the control

of CP or Metra supervision shall be borne by the Party providing such supervision.

(d) Except when Section 11.7(b) is applicable, in the event no locomotive, train or car of either Party is involved, liability shall be borne by each Party as to its own employees, passengers, property, or property in its custody, and as to third party property or persons (other than passengers) the liability shall be borne proportionally by the Parties.

(e) Each Party agrees that it will pay for all loss, damage and expense, the risk of which it has herein assumed, the judgment of any court to the contrary notwithstanding, and will forever indemnify and save harmless the other Party, its successors and assigns, from such judgment.

(f) In the event that both Parties hereto shall be liable under this Agreement for any claim, demand, suit or cause of action, and the same shall be compromised and settled by voluntary payment of money or valuable consideration by one of the Parties, release from liability will be taken in the name of both Parties. Neither Party shall make any such compromise or settlement in excess of $5,000 without authority of the other Party having liability, but any settlement made by one Party in consideration of $5,000 or less shall be a settlement releasing all liability of both Parties and shall be binding upon the other Party having liability.

(g) In case a lawsuit or lawsuits shall be commenced against either Party hereto for or on account of any damage or injury for which the other Party would be solely or jointly liable under this Agreement, the Party thus sued shall give

the other Party timely written notice of the pendency of such suit, and thereupon the Party so notified shall assume or join in the defense thereof, and if the Party so notified is liable therefor under this Agreement, such Party shall save harmless the Party so sued from all loss, cost and expense so determined by this Agreement. Neither Party shall be concluded by any judgment against the other Party unless it shall have been so notified and shall have had reasonable opportunity to assume or join in the defense of the action. When so notified, and said opportunity to join in the defense of the action afforded, the Party so notified shall to the extent of its liability under this Agreement be concluded by such judgment.

(h) It is understood and agreed that a number of vehicular crossings of the Joint Line presently exist, or may be constructed. The Parties agree to accept all crossings in their design and configuration as they may be during the term of this Agreement and further agree that rules of liability in this Section 11.7 shall apply to crossing accidents, and such rules shall not be subject to any offset or defense based on such design or configuration.

Supplemental Agreement
Metra/CP Rail

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized.

ATTEST:

SOO LINE RAILROAD COMPANY
d/b/a CP RAIL SYSTEM

Fern B. Albers
Corporate Secretary

By: _____
P. A. Pender
Vice President and
Chief Operating Officer

ATTEST:

COMMUTER RAIL DIVISION OF THE REGIONAL TRANSPORTATION AUTHORITY

_____
Maureen Pochron
Assistant Secretary

By: _____
Philip A. Pagano
Executive Director

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36500

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

GAMEIRO R.V.S. EXHIBIT 7

THE 2003 SOO-METRA AMENDMENT AGREEMENT – AMENDMENT AGREEMENT BETWEEN COMMUTER RAIL DIVISION OF THE REGIONAL TRANSPORTATION AUTHORITY AND SOO LINE RAILROAD COMPANY (APR. 1, 2003) (EXCERPTS) (ALSO METRA COMMENTS EXH. A-4)

EXHIBIT A-4

Metra-CP 2003 Amendment Agreement

AMENDMENT AGREEMENT

THIS AMENDMENT AGREEMENT is made and entered into this 15 day of April, 2003, by and between the Commuter Rail Division of the Regional Transportation Authority, a division of a municipal corporation (hereafter referred to as "Metra") and the Soo Line Railroad Company, a Minnesota corporation d/b/a Canadian Pacific Railway (hereafter referred to as either "CP" or "CPR"), sometimes collectively referred to below as the "Parties" and sometimes individually referred to below as a "Party."

PRELIMINARY STATEMENT

SLRCO, Inc. (a predecessor in interest to CPR), and Richard B. Ogilvie, Trustee of the Property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor (a predecessor in interest to Metra) entered into a Trackage Agreement, dated February 19, 1985 (as amended by agreements executed May 27, 1993, May 11, 1995, June 3, 1996, September 28, 2001, and June 17, 2002) ("Trackage Agreement") whereby CPR acquired certain rights to use the Joint Line as therein defined and to admit a third party to the Joint Line; and

CPR and Metra amended certain aspects of the Trackage Agreement through a Supplemental Agreement, dated May 27, 1993, ("Supplemental Agreement"). In an Agreement, dated April 7, 1997, CPR and Metra acknowledged that CPR was admitting, but not assigning rights to, I&M Rail Link, LLC ("IMRL") pursuant to CPR's rights under the Trackage Agreement; and

In view of the sale of IMRL's assets to the Iowa, Chicago & Eastern Railroad Corporation ("IC&E"), and the discontinuance of IMRL's rail operations, CPR has decided that it will admit IC&E to Zones 8 through 13 of the Joint Line pursuant to its rights under the Trackage Agreement, and Metra has concluded, subject to the following undertakings and subject to those contained in a separate Trackage Rights Agreement executed simultaneously with this Amendment Agreement ("IC&E Trackage Rights Agreement"), that the traffic projected by IC&E for the period immediately following its admission to Zones 8 through 13 of the Joint Line does not at present materially interfere with the current level of traffic on the Joint Line.

The Parties agree that fixing the Base Cap amount is intended to simplify the administration of the existing Base Cap mechanism, and is consistent with the economic arrangement and the protections afforded to CPR by the Base Cap that the Parties agreed to in the 1993 Supplemental Agreement.

The Parties agree it is mutually beneficial to eliminate the monthly compilation of gross ton miles and train counts for the purpose of the equitable allocation of expenses related to the Joint Line as defined in the February 19, 1985 Trackage Agreement as amended.

NOW THEREFORE, in consideration of the terms and conditions contained in this Amendment Agreement and in the IC&E Trackage Rights Agreement, the parties agree to amend and supplement the Trackage Agreement as follows:

1. CPR has determined that it will exercise its right under Section 2.3 of the Trackage Agreement to admit IC&E to Zones 8 through 13 of the Joint Line as a replacement for CPR's former admittee, IMRL, effective April 1, 2003. The operations and traffic of IC&E, or any successor to IC&E, shall be governed by the IC&E Trackage Rights Agreement, which

designates Metra as a third party beneficiary with the authority to enforce the terms of the Trackage Rights Agreement in accordance with Section 8.4 thereof. Based upon statements made by IC&E in filings it has made at the Surface Transportation Board in Finance Docket No. 34177, Metra has determined that current operations of the IC&E will not materially interfere with traffic currently on the Joint Line, including Metra's traffic. The Parties agree that IC&E is being admitted as a third party admittee and not as a result of an assignment of a portion of CPR's trackage rights under the Trackage Agreement.

2. The Parties agree that the terms "Existing Traffic," "Increased Traffic," "Coal Trains," "Force Majeure Trains," and "Excess Trains" as used in this Agreement shall have the same meanings as set forth in Section 1.6 of the IC&E Trackage Rights Agreement.

3. The terms of the Trackage Agreement, as amended, will continue to prevail with respect to maintenance, operation and compensation, and the current formula and procedures for capital improvements will stay in effect without modification so long as IC&E's traffic does not include Increased Traffic, Excess Trains, or Coal Trains over any zone(s) to which it has been admitted on the Joint Line. CPR will direct IC&E to report to Metra any increases relative to Increased Traffic, Coal Trains and Excess Trains.

4. In the event IC&E seeks to operate Increased Traffic, Excess Trains, or Coal Trains over the Joint Line, the Trackage Agreement as amended will continue in effect but certain provisions will be modified as expressly provided by this Amendment Agreement. In such an event, CPR will enforce the procedures specified in Sections 2.13 and 2.14 of the IC&E Trackage Rights Agreement, including the refusal to admit Coal Trains, Increased Traffic, or Excess Trains, except as permitted by those Sections, and will assist and cooperate with Metra in Metra's efforts to enforce those provisions. The Parties shall promptly notify each other of any

failure of IC&E to abide by the terms of the IC&E Trackage Rights Agreement entered into between IC&E and CPR. Should CPR's refusal to dispatch or admit IC&E's Increased Traffic, Excess Trains, or Coal Trains pursuant to the terms of that Agreement result in the issuance of an order of the Surface Transportation Board ("STB"), its successor, or a court of law with competent jurisdiction requiring that CPR dispatch or admit said traffic onto the line, Metra agrees that any CPR compliance with such order shall not constitute breach of this Agreement or the Trackage Agreement and that Metra shall have no cause of action arising from CPR's compliance with such order.

5. Section 5.4(a) shall be deleted and replaced with the following language: "Maintenance of way and structures expenses incurred for each zone of the Joint Line not included in expenses governed by the CPR Base Cap or the Fixed Cap shall be allocated based upon the average Gross Ton Mile Proportion for the applicable zone(s) between the Parties for the preceding Fiscal Year. Five years from June 1, 2004, and at five (5) year intervals thereafter, either Party may reopen and reevaluate this allocation at their expense by notice given to the other at least 30 days prior to the end of each five (5) year period and the Parties shall determine the need to agree to a new allocation."

Section 5.4(b) shall be deleted and replaced with the following language: "Transportation, signal and communication systems expenses and maintenance of non-Milwaukee owned equipment (used in the operation or maintenance of the Joint Line) incurred for each zone of the Joint Line not included in expenses governed by the CPR Base Cap or the Fixed Cap shall be allocated based upon the average Train Count Proportion for the applicable zone(s) between the Parties for the preceding Fiscal Year. Five years from June 1, 2004, and at five (5) year intervals thereafter, either Party may reopen and reevaluate this allocation at their

expense by notice given to the other at least 30 days prior to the end of each five (5) year period and the Parties shall determine the need to agree to a new allocation."

Section 5.4(c) shall be deleted and replaced with the following language: "Expenses for train dispatchers incurred in operating the Joint Line shall be allocated based upon the average Train Count Proportion for all zones between the Parties for the preceding Fiscal Year. Five years from June 1, 2004, and at five (5) year intervals thereafter, either Party may reopen and reevaluate this allocation at their expense by notice given to the other at least 30 days prior to the end of each five (5) year period and the Parties shall determine the need to agree to a new allocation."

Section 5.4(e) shall be deleted and replaced with the following language: "Monthly expenses incurred for joint facilities which are part of the Joint Line and not solely owned by the Milwaukee, identified in Exhibit C, and not included in expenses governed by the CPR Base Cap or the Fixed Cap shall be allocated based upon the average Train Count Proportion for the applicable zone(s) between the Parties for the preceding Fiscal Year. Five years from June 1, 2004, and at five (5) year intervals thereafter, either Party may reopen and reevaluate this allocation at their expense by notice given to the other at least 30 days prior to the end of each five (5) year period and the Parties shall determine the need to agree to a new allocation."

6. CPR and Metra agree that the computation for the Base Cap for the year beginning June 1, 2003 under Attachment 1 to the Supplemental Agreement shall include, in addition to other CPR traffic, all IMRL and IC&E traffic, as set forth in (i), (ii), and (iii) below, as CPR trains, and shall be based upon applicable IMRL and IC&E operating statistics for the period June 1, 2002 to May 31, 2003 that will be the sum of the following calculations:

(i) for the period June 1 through July 29, 2002, the applicable operating statistics shall be the actual level of IMRL traffic over the Metra Trackage;

(ii) for the period July 30, 2002 through August 29, 2002, the applicable operating statistics shall be the average applicable operating statistics for the level of IC&E traffic over the Metra Trackage by IC&E trains from the time period August 30, 2002 through the date of this Agreement, that being the time period during which IC&E trains moved over the Metra Trackage by way of that certain Detour Agreement with Metra; and

(iii) for the period from August 30, 2002, through May 31, 2003, the applicable operating statistics shall be the actual applicable operating statistics of IC&E trains over the Metra Trackage, whether operated under that certain Detour Agreement or under the IC&E Trackage Rights Agreement.

As of June 1, 2004, CPR's Base Cap as defined in Section (A)(1)(a) of Attachment 1 of the May 27, 1993 Supplemental Agreement shall be referred to as the "Fixed Cap," and shall be established as the greater of $1,765,137.78 adjusted by the annual average of the CPI-U-Chicago Index (as calculated based on the sum of the monthly Index numbers for the preceding 12 months, divided by 12 ("Index"), for the period beginning June 1, 2003 and ending May 31, 2004), or the annual Base Cap paid by CPR to Metra as set forth above for the period of June 1, 2003 through May 31, 2004, adjusted by the Index for the period beginning June 1, 2003 and ending May 31, 2004. The Fixed Cap shall be adjusted by Metra, on or before August 1 of each fiscal year, being the period of June 1st through May 31st in any one year ("Fiscal Year"), in accordance with the Index ("Fiscal Year Adjustment"). In the event that the CPI-U-Chicago Index ceases to be published, or the methodology by which it is derived is materially altered, the parties shall determine the most appropriate substitute index that most closely matches the

structure of the canceled/altered CPI-U-Chicago Index. Such replacement index will be used for the remainder of the Agreement, unless and until it ceases to be published, or is materially altered, and is replaced in the manner stated above.

CPR shall pay the annual Fixed Cap in twelve (12) equal installments in the following manner: On or before August 1st of each Fiscal Year, Metra shall issue twelve (12) monthly invoices to CPR, and CPR shall pay the amounts due under said invoices in U.S. currency within thirty-five (35) days after the first day of each of the following months, including the month of August, in the Fiscal Year. Fixed Cap Installments paid for the months of June and July shall be the same as the monthly amount paid in the prior Fiscal Year and shall be billed or credited retroactively based on the amount of the Fiscal Year Adjustment and, if billed, shall be paid in U.S. currency within thirty (30) days of CPR's receipt of an invoice for the retroactive amount due. Other than annual CPI-U adjustments, the Fixed Cap shall remain fixed for five (5) year periods starting June 1, 2004, and may be reevaluated at the written request of either party by notice given to the other at least 30 days prior to the end of each five (5) year period. In the absence of such request, the Fixed Cap shall continue for the next five (5) year term. The terms upon which either party may request a reevaluation of the Fixed Cap are as follows:

(1) Changes in FRA Standards or government mandates which cause an increase or decrease in the maintenance expense incurred by Metra.

(2) Increases in the allowable gross weight per car that is currently authorized at 286,000 pounds.

(3) Increases or decreases in expenses experienced by Metra as a result of improvements installed to the Joint Line on behalf of CPR or to accommodate the Existing Traffic of CPR's third party admittee, provided that the additional

expenses are offset by any reduction in expenses due to the removal of replaced structures.

(4) Material changes to maintenance procedures of Metra or traffic levels of Metra or CPR (including Existing Traffic of CPR's third party admittee, but excluding Increased Traffic, Coal Trains or Excess Trains of CPR's third party admittee).

In the event a Party requests a reevaluation of the Fixed Cap in accordance with the terms of this Agreement, CPR agree to continue to pay the Fixed Cap in accordance with the current formula for the Fixed Cap as adjusted by the Index. At such time as the Parties agree to the amount of the reevaluated Fixed Cap, the new Fixed Cap amount shall be applied retroactively to the beginning of the five (5) year term for which the reevaluation was requested.

7. Effective the first month during which Increased Traffic, Excess Trains, or Coal Trains are transported on the Joint Line, CP shall in addition direct IC&E to pay directly to Metra the GTM Excess Train Charge or the GTM Coal Train Charge in accordance with the terms of the IC&E Trackage Rights Agreement (representing IC&E's obligation for Increased Traffic, Excess Trains, and Coal Trains and for which IC&E must either pay directly or indirectly and reimburse CP). Under the IC&E Trackage Rights Agreement, IC&E has agreed to pay these charges directly to Metra if directed to do so by CPR. Said GTM Excess Train Charge or GTM Coal Train Charge, as applicable, shall be consistent with the charges set forth in Sections 3.1 and 3.2 of the IC&E Trackage Rights Agreement for any IC&E Increased Traffic, Excess Trains or Coal Trains that are transported over the Joint Line. The GTM Train Charge as defined and set forth in the IC&E Trackage Rights Agreement shall be adjusted effective July 1 of each year, beginning July 1, 2003, on the basis established in Appendix A hereto to compensate Metra for increases in the cost of labor, materials and other expenses plus applicable

additives. These charges represent the exclusive charges payable to Metra for all expenses associated with the operation of ICE Increased Traffic, Excess Trains, or Coal Trains other than capital expenditures.

8. To address additional capital expenditures that are necessary to accommodate IC&E's Increased Traffic, Excess Trains, and Coal Trains on the Joint Line, Section 7.2 of the Trackage Agreement, as amended by Section 6 of the Supplemental Agreement, is further amended by substituting the following sentences for the second sentence of subsection (c):

> As future Capital Projects are included in amended Attachments 2, allocation of costs shall be agreed upon, however, in no event shall CP be required to contribute more than fifty percent (50%) of the cost of any Capital Project for the joint benefit of the Parties, unless the Capital Project is in part necessitated by the introduction of Increased Traffic, Excess Trains, or Coal Trains. Where introduction of such Increased Traffic, Excess Trains, or Coal Trains causes the need for the Capital Project, the procedures set forth in Sections 2.14, 3.4, 3.6, 3.7, and 3.8 of the IC&E Trackage Rights Agreement shall be used to determine the allocation of such Capital Project costs among Metra, CPR and IC&E. CP, subject to Section 7.2(e), shall be solely responsible for that portion of the Capital Project, plus no more than 50% of the remaining portion of the Capital Project attributable to other CP and Metra traffic. CP's allocation for Capital Projects involving signals, dispatching and communications facilities shall be based upon the Train Count Proportion for the year prior to adoption of the plan for the Capital Project, plus no more than 50% of the remaining portion of the Capital Project attributable to other CP and Metra traffic, except that CP, subject to Section 7.2(e), shall be solely responsible for that portion of the Capital Project attributable to the increase in its Train Count as modified

by projections of future traffic growth for IC&E Increased Traffic and Coal Trains. It is agreed that to the degree that operation of Increased Traffic, Excess Trains, and Coal Trains diminishes the remaining useful life of an existing capital structure as established by Metra and approved by the Federal Transit Administration for commuter rail operations or requires an upgrading of capital structures to prevent annual maintenance expenses from exceeding the average level of annual expenses computed in constant dollars over the preceding ten years, CP shall be solely responsible for that portion of the Capital Project.

An example of the foregoing computations is set forth in Appendix B to this Agreement.

9. Section 7.2 of the Trackage Agreement is further modified by inserting the following new subsections:

(d) Subject to Section 7.2(e), CP, if required solely by the transportation of Increased Traffic, Excess Trains, or Coal Trains on the Joint Line; or if required solely because Increased Traffic, Excess Trains, or Coal Trains causes the remaining useful life of the existing and future rail facilities on the Joint Line to diminish below the "useful life" standards set by Metra and reported to the Federal Transit Administration.

(e) CP will not be responsible to Metra for payments for Capital Projects attributable to Increased Traffic, Excess Trains, or Coal Trains; *provided* that CP creates the Escrow Account described by Section 3.6 of the IC&E Trackage Rights Agreement, including arrangements for Metra to verify the sufficiency of funds deposited therein and to promptly receive payment upon submission of the

appropriate documentation, and cooperates with Metra to insure that the Escrow Account is administered as required by Section 3.6.

10. Section 8.15 to the Supplemental Agreement is amended by adding the following sentence at the end of the Section:

CP shall not admit or permit IC&E trains, including those transporting coal, to operate within Zones 8 through 13 during the periods when peak period trains are operating in those Zones.

11. CPR shall insure that all IC&E engineers and train crews are properly certified to operate on the Joint Line in compliance with the Trackage Agreement, as amended. CPR acknowledges that from time to time Metra will conduct spot inspections including a review of crew certification activities. IC&E trains, equipment and employees will be treated as CPR trains, equipment and employees with regard to liability.

12. CPR waives any claim or cause of action against Metra relating to or arising from any delay in the admission of IC&E to the Metra Trackage or in Metra's refusal to consent to an assignment of the CPR-IMRL Trackage Rights Agreement dated April 4, 1997, or for any delay in completion of capital improvements needed prior to admission of Coal Traffic.

13. Section 6.3 (ii) is amended to eliminate, commencing May 31, 2003, the requirement of both Parties to furnish statements of train counts and gross ton mileage per zone on a monthly basis. CPR shall furnish statements of train counts and gross ton mileage per zone to Metra on an annual basis. Notwithstanding the foregoing, in order for Metra to accurately invoice CPR and confirm that payments received from CP are in accordance with Section 4 of this Agreement, CPR agrees to obtain from IC&E and to forward to Metra gross ton mileage data

described in Section 2.15 of the IC&E Trackage Rights Agreement within 15 days of the close of the calendar month.

14. In Section 11.7, the definition "proportionally by the Parties" shall be modified by the substitution of the following sentences for the existing first sentence: "Whenever the expression 'proportionally by the parties' is used in this Section, it means that expenses will be borne in proportion to the total gross ton miles in the preceding year for the applicable zone in which the incident occurred, or if it cannot be determined in which zone the incident occurred or if the incident occurred in more than one zone, the expenses will be borne in proportion to the total gross ton miles handled by each party over the entire Joint line during the preceding year. Five years from June 1, 2004, and at five (5) year intervals thereafter, either Party may review and reevaluate this allocation at their expense by notice given to the other at least 30 days prior to the end of each five (5) year period and the Parties shall determine the need to agree to a new allocation."

15. Nothing in this Agreement shall be construed to give CPR's admittee the right to operate any commuter service over the Joint Line, or any portion thereof, or otherwise use the Joint Line, or any portion thereof, to provide any passenger service, unless and until CPR's admittee has first received Metra's prior written consent.

16. The Parties agree that a purchaser of all or substantially all of the assets of IC&E shall be permitted to enter into a new trackage rights agreement as provided in Section 8.3 of the IC&E Trackage Rights Agreement. Furthermore, in the event of a sale by IC&E of all or substantially all of its assets, Metra shall enter into a new amendment agreement with CPR containing the same terms and conditions as this Amendment Agreement recognizing said purchaser as CPR's admittee under the terms of the Metra Agreement.

17. The Parties agree that the Amendment Agreement between them dated April 7, 1997 is terminated and shall be of no further force and effect, and that the Chicago Trackage Rights Agreement between CPR and IMRL dated April 4, 1997 shall also be of no further force and effect.

18. CPR agrees that CPR shall not enter into any agreements to amend, revise, or otherwise alter the IC&E Trackage Rights Agreement in any manner that may affect or affects Metra's rights, remedies, or obligations thereunder without Metra's prior written consent, which consent shall not be unreasonably withheld or delayed.

19. In any case where the Parties, after attempting to negotiate with each other for a reasonable period of time, are unable to reach an agreement regarding any of the provisions of Sections 5 and 6 of this Agreement, then either Party may request mediation or binding arbitration to resolve the dispute in accordance with the procedure set forth below.

a. Such dispute shall be submitted to a single arbitrator; said arbitrator to be chosen in accordance with the Commercial Arbitration Rules of the American Arbitration Association.

b. In the event of the death or disability of the arbitrator during the pendency of an arbitration, a substitute arbitrator shall be chosen in the manner the original arbitrator was appointed.

c. The arbitration shall proceed in an expeditious manner with any hearings that are deemed necessary to resolution of the issues properly before the arbitrator, and the arbitrator shall render a decision and, if appropriate, an award. The arbitration shall take place in Chicago, Illinois, unless the Parties otherwise agree. At the discretion of the arbitrator, the Commercial Rules of the

American Arbitration Association may be used, in whole or in part, to govern the conduct of the proceedings (except insofar as they contradict any provision of this Agreement, in which case this Agreement shall take precedence and control). Pending the final resolution of any dispute arising under or relating to this Agreement, the Parties shall continue to perform all obligations in accordance with the terms and conditions of this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment Agreement to be executed by their respective officers who are duly authorized.

ATTEST:

SOO LINE RAILROAD COMPANY

d/b/a CANADIAN PACIFIC RAILWAY:

_____

By: James Bender
DIR. I'LINK MGMT

ATTEST:

COMMUTER RAIL DIVISION OF THE

REGIONAL TRANSPORTATION AUTHORITY:

Debra M. Ellison

By: _____

Philip A. Pagano, Executive Director

Appendix A

To

Amendment Agreement

ESCALATION

The GTM Train Charges established in the Trackage Rights Agreement and referenced in this Amendment Agreement shall be escalated upward or downward effective July 1 of each year, beginning July 1, 2003, to compensate for the increase or decrease, if any, in the cost of labor and material, excluding fuel, as reflected in the Annual Indexes of Charge-Out Prices and Wage Rates (1977 = 100), Series Q-MPW, included in "Indexes of Railroad Material Prices and Wage Rates" and supplements thereto, issued by the Association of American Railroads. In making such determination, the final "Material prices, wage rates and supplements combined (excl. fuel) " index for the Western District shall be used and the final index figure for the calendar year 2001 of 325.0 shall be taken as the base ("Base Charge"). The method of escalating the GTM Train Charges shall be determined by calculating the percent of increase or decrease in the index of the year to be escalated as related to the base year, and applying that percent to the Base Charge.

By way of example, assuming "A" to be the Material prices, wage rates and supplements combined (excl. fuel) final index figure for the year 2001, "B" to be the "Material prices, wage rates and supplements combined (excl. fuel) for the year 2002; "C" to be the Base Charge and "D" to be the percent of increase or decrease, the escalated charge effective as of July 1, 2003 would be determined by the following formula:

(1) $(B - A) \div A = D$

(2) $(D \times C) + C =$ escalated charge effective 7/1/03

If the base for the annual Indexes of Charge-Out Prices and Wage Rates issued by the Association of American Railroads shall be changed from the year 1977, appropriate revision shall be made in the base (established as herein provided) for the calendar year 2001. If the Association of American Railroads or any successor organization discontinues publication of the Annual Indexes of Charge-Out Prices and Wage Rates (or of any relevant component), an appropriate substitute for determining the percentage of increase, or decrease, shall be negotiated by the Parties.

Appendix B
To
Amendment Agreement

Example of Methodology for Allocation of Capital Project Costs if Necessitated In Part by the Introduction of IC&E Increased Traffic, Coal Trains or Excess Trains

Estimated Cost of Capital Project for zones covered by Agreement provisions relating to allocation of Capital Project Costs	$1,000,000	
Gross Ton Miles:		
CP Rail (Including IC&E Existing Traffic)	13,500,000	GTM
Metra	16,500,000	GTM
IC&E Increased Traffic, Coal Trains, and Excess Trains	10,000,000	GTM
Total GTM for Line	40,000,000	GTM
IC&E Increased Traffic, Coal Trains, and Excess Trains as a percentage of Total Gross Ton Miles (10,000,000÷40,000,000)	25%	GTM
IC&E Share of capital costs due to IC&E Increased Traffic, Coal Trains, and Excess Trains	$250,000	
Metra & CPR to further split the balance per the Metra Agreement based upon GTM allocation (up to a Maximum of 50% for CP if for benefit of both parties)		
CP Rail Share (all or a portion of which may be the obligation of IC&E based upon the CPR/IC&E Existing Traffic GTM pro ration)	375,000	
Metra Share	375,000	
Total Capital Cost	$1,000,000	

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36500

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

EXHIBIT N

REPLY VERIFIED STATEMENT OF OSCAR DEL CUETO

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36500

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

REPLY VERIFIED STATEMENT OF OSCAR AUGUSTO DEL CUETO CUEVAS

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1. My name is Oscar Augusto Del Cueto Cuevas. I am the Presidente, Gerente General y Representante Ejecutivo (President, Executive Representative and General Manager) of Kansas City Southern de México, S.A. de C.V. (KCSM). I am also a member of KCSM's Board of Directors.

2. I have been with KCSM since it began operating its concession from the Mexican government in 1997.[1] I have served in my current role since August 1, 2020. I previously served as Vice President and General Director from November 2018 to July 2020 and as Vice President-Operations from January 2009 to October 2018. Prior to 2009, I held various other leadership positions working for KCSM. In all, I have nearly 32 years of railway industry experience, working in institutional relations, communication, operations, planning and logistics.

3. In my role as President of KCSM, I also serve as a director of Ferrocarril y Terminal del Valle de México, S.A. de C.V. (Ferrovalle), the terminal railroad in the Mexico City area,[2] and have served as the head of the Asociatión Mexicana de Ferrocarriles (the Mexican Railroad Association).

4. My educational background includes a master's degree in business administration from the University of Monterrey and a bachelor's degree in communications. I also have

[1] KCSM initiated railroad operations on June 24, 1997 as TFM, S.A. de C.V. (TFM, formerly Ferrocarril del Noreste, S.A. de C.V.). TFM was owned 80% by Grupo Transportacion Ferroviaria Mexicana, S.A. de C.V. (Grupo TFM) (formerly Transportacion Ferroviaria Mexicana, S. de R.L. de C.V.) - a joint venture of Kansas City Southern Industries, Inc., and Transportacion Maritima Mexicana, S.A. de C.V. (TMM) – and 20% by the Mexican government. In 2005, Kansas City Southern acquired the interests of TMM and of the Mexican government. Following that acquisition, TFM was renamed Kansas City Southern de México, S.A. de C.V. Also, during my career working for KCSM I was an employee of KCSM Servicios, S.A. de C.V. (Servicios), a KCSM subsidiary that employed everyone who provided services to KCSM except KCSM's president. Servicios was merged into KCSM in July 2021. For simplicity, I will refer to my work with KCSM, its subsidiary and predecessors simply as work for KCSM.

[2] Ferrovalle is owned 25% by Ferrocarril Mexicano, S.A. de C.V. (Ferromex), 25% by Ferromex's affiliate Ferrocarril del Sureste, S.A. de C.V. (Ferrosur), 25% by KCSM and 25% by the Mexican government through the Secretaría de Infraestructura, Comunicaciones y Transportes (SICT).

completed advanced studies in Mexico and the United States, such as the University of Michigan Railroad Administration Program certificate and certificate programs at the Center for Transportation Technology, in Pueblo, Colorado.

5. My office is in Mexico City, but my responsibilities take me to many places throughout Mexico as I interface with KCSM's customers, employees and with the many local, state and federal officials with which KCSM works in providing its service across Mexico. A substantial portion of my responsibilities involves working with our customers and our regulators to manage compliance with our regulatory responsibilities while meeting our customers' needs.

6. I am submitting this Reply Verified Statement to provide real-world context regarding Mexican railroad laws and regulations that comments filed with the Surface Transportation Board (Board or STB) by Union Pacific Railroad Company (UP) and BNSF Railway Company (BNSF) in this proceeding failed to analyze. I will also address KCSM compliance with these regulations, how BNSF and UP's proposed "conditions" are not related to impacts of the Transaction and how, from the perspective of Mexican regulatory authorities, BNSF's and UP's proposed conditions are not properly before the Board.

I. KCSM Has Provided Huge Benefits to the Mexican Rail System and Its Customers in KCSM's First Twenty-Five Years; The STB Should Not Reach Across International Borders to Interfere With That Success.

7. Before turning to discussion of the testimony of UP and BNSF's paid experts, I want to provide some real-world context about what KCSM is and how it functions in the Mexican transportation system.

8. As this statement is being finalized, KCSM has just completed the celebration of its first 25 years as the operator of Mexico's northeast rail concession. During that celebration, KCSM had occasion to look back over the vast changes that it has been able to help bring to the

Mexican rail system and its customers. Some of those changes, highlighted in a recent KCS company newsletter, include:

- In 1997, 12-14 trains a day crossed the International Bridge between Nuevo Laredo, Tamaulipas and Laredo, Texas. Today, 28-32 trains cross the bridge daily.
- In 1997, the average train length was 55-60 rail cars per train. Today, trains are as long as 120 rail cars.
- In 25 years, KCSM evolved from a load capacity of 1,000 metric tons and average speeds of 9.5 kilometers per hour to 16,000 metric tons and speeds of up to 110 kilometers per hour.
- In 1997, most rail was 90-pound jointed rail. Today, most of the KCSM network is 136-pound welded rail, allowing KCSM to move larger trains at higher speeds for better fluidity and better customer service.
- Railroad sector participation in Mexico's freight transportation system increased from 12 percent of total cargo moved in 1997 to today's 26 percent of all freight transported. KCSM represents 30 percent of all freight transported by rail in Mexico.
- Before KCSM's acquisition of the northeast concession, the majority of Mexico's railroad switches were operated by hand. Today, most of the network has Centralized Traffic Control.
- Total KCSM carloads have increased significantly. In 1988, the network moved approximately 570,000 loaded rail cars. In 2021, KCSM moved 920,000 loaded rail cars.

Del Cueto Cuevas R.V.S. at 4

- In 25 years, KCSM has invested more than $4.4 billion to maintain excellent service through new and better infrastructure.

9. These facility improvements, this growth in traffic and these investments are not indicative of an anticompetitive business functioning in the unregulated, anything-goes environment that UP and BNSF witnesses hypothesize. Rather, these are signs of a business that seeks to grow and to serve customers and the public interest better.[3] They are not signs of something that a U.S. regulatory agency should reach across the border to hobble, as UP and BNSF invite this agency to do.

II. The Mexican Rail System is Governed by a Robust Legal and Regulatory System, Including Protections Relating to Rates, Competitive Access, and Anticompetitive Conduct.

10. As background for this statement, I have reviewed the statements by Dr. Aaron Dychter Poltolarek, in support of BNSF's comments, and Dr. Luis De la Calle, in support of UP's comments. Both identify some of the applicable law and regulations and identify the appropriate regulatory agencies.

11. However, neither Dr. Dychter nor Dr. De la Calle analyze how KCSM operates (or how a post-Transaction CPKC would operate) under the Mexican regulatory system or real-life market conditions. Instead, both Dr. Dychter and Dr. De la Calle make only generic

[3] The International Transport Forum at the Organisation for Economic Co-operation and Development (OECD) wrote in 2014, "Mexico has seen a transformation of its railway in the last fifteen years, from a declining operation increasingly dependent on large government subsidies to what we have found to be a very productive and technologically improved system that operates profitably without public subsidy. This performance has lessons for other countries…". It added that, "[i]nvestment in the main railway concessions in Mexico since reform has transformed a declining and unreliable system into a reliable and technologically competent railway, with improved track and signaling systems permitting the use of heavier, more productive trains. The productivity of Ferromex and Kansas City Southern Mexico railways is higher by a large margin than any other general freight rail carrier in Latin America." Peer Review of Railway Freight Development in Mexico, Report of the International Transport Forum, February 2014 at 7, 33.

criticisms of how Mexico regulates Mexico's railroad industry. With all due respect, their analyses are both hypothetical and incomplete.

12. KCSM and other Mexican railroads exist within a robust legal and regulatory environment. As both Dr. Dychter and Dr. De la Calle note, the applicable Mexican laws and regulations cover, among other things, rates, competition, merger control, and anticompetitive conduct, and provide remedies ranging from rate regulation, opening access to improve competition, and investigations and penalties for anticompetitive conduct.

13. The essential argument by both Dr. Dychter and Dr. De la Calle seems to be that Mexican legal and regulatory systems -- systems they both indicate that they had a hand in creating -- are inadequate, and that the Mexican government would not mind if the STB reached across the border to remedy supposed deficiencies of Mexican law and regulation by giving BNSF and UP certain control of KCSM's rates and operations. De la Calle VS, page 3 and Sections I and III; Dychter VS, Section III. In my view, that argument is simply wrong.

A. Background on the Development of Mexican Railroad Concessions

14. In the mid-1990s, the Mexican government granted concessions for operation of the formerly state-owned rail system to encourage revitalization of the Mexican rail industry. The then Secretariat of Communication and Transport (now named Secretariat of Infrastructure, Communications, and Transport (SICT)) divided the national rail system into three large and several smaller sections, and auctioned to private businesses concessions to improve, maintain, and operate the rail systems on those separate sections of the network.

15. On June 1, 1997, the Mexican government issued the Northeast rail concession to TFM. TFM was owned 20% by the Mexican government and 80% by Grupo TFM, a joint venture of Kansas City Southern Industries, Inc., and Transportacion Maritima Mexicana, S.A. de C.V. (TMM).

Del Cueto Cuevas R.V.S. at 6

16. On June 24, 1997, TFM began operating the Northeast rail concession, which extended from that concession's connections to the U.S. rail network at Laredo and Brownsville, TX, through Monterrey and Mexico City, to the Pacific Coast port of Lazaro Cardenas and to Veracruz and Tampico on the Gulf Coast. The other two major concessions were granted to Ferromex and Ferrosur.

17. KCSM and other concessionaires each remain subject to the Regulatory Railway Transportation Law (Ley Reglamentaria del Servicio Ferroviario)(the Rail Law) and the Regulations of the Railway Transportation Service (Reglamento del Servicio Ferroviario)(the Rail Regulations, together with the Rail Law, referred to as Mexican Regulations). These regulations generally encouraged private investment in the Mexican rail network while allowing the Mexican government to continue oversight to ensure a free and competitive market. Pursuant to Mexican Regulations, concessionaires must provide authorized services on an on-going basis in a uniform and equitable manner, without discriminating and under equal conditions as regards to time, quality, and price. *See* Rail Law, Article 24, first paragraph, which can be translated as, "Rail services shall be provided to all requesting users on a permanent, uniform and fair basis in terms of opportunity, quality and price."

18. The rail systems operated by concessionaires are property of the Mexican government, and revert back to the government at the expiration or termination of the concession, effectively operating somewhat like a lease of the government-owned assets. Major concessions such as the ones that KCSM and Ferromex operate were granted for terms of 50 years, with the possible extension of another 50 years subject to certain provisions of the Mexican Regulations.[4] TFM's concession included a 30-year exclusivity period in which only

[4] Some smaller concessions were granted for shorter periods.

TFM/KCSM can render rail services on its concessioned system, except for authorized trackage rights or as may otherwise be agreed with other concessionaires (the Exclusivity Period).

19. On October 6, 2004, Mexico's Foreign Investment Commission (FIC) notified KCS of its approval of KCS's application for authority to acquire TMM's interest in TFM. This approval was necessary for a foreign company to become a majority owner of a Mexican railway company. In 2005, KCS bought out its joint venture partner TMM and subsequently acquired the Mexican government's 20% interest in TFM to become the sole ultimate parent of TFM. KCS then changed the name of TFM to KCSM.

B. Mexican Railroads Are Governed by a Robust Legal and Regulatory System that Supports the Stated Goals of the Mexican Government

20. There are four Mexican governmental agencies that have jurisdiction over railroads. They are the Mexican rail authority (Agencia Reguladora del Transporte Ferroviario (the ARTF)) - and the Rail Development and Multimodal General Directorate (Dirección General Desarrollo Ferroviario y Multimodal) (DGDFM), both under the SICT; the SICT itself; and the Mexican antitrust authority, the Comisión Federal de Competencia Económica (COFECE).

21. The ARTF establishes regulations concerning railway safety and operations, and is responsible for resolving disputes between railways and customers. KCSM must register its maximum rates with the ARTF and make regular reports to the ARTF and the SICT. The DGDFM regulates certain projects such as permits for transload terminals, "comodatos", and other matters.

22. COFECE is Mexico's competition authority. Among its responsibilities, it conducts merger control and investigations under the Federal Economic Competition Law (Ley Federal de Competencia Economica)(Competition Law). If the ARTF or another party considers

there to be no effective competition for a particular rail service, they may request an opinion from the COFECE regarding market conditions. If the COFECE determines that there is no effective competition for particular movements, the ARTF could set rates for those movements or grant limited trackage rights to another railroad while the condition of no effective competition remains.

23. Similar to railroad regulations in the United States, Mexican Regulations allow railroads to take the initiative in setting their rates. Unlike the United States, however, concessionaires must register maximum rates, referred to as TUCE rates, and can be sanctioned by the government for charging a customer more than the TUCE rate.

24. Drs. Dychter and De la Calle each imply that the registration of TUCE rates is a simple matter and that KCSM is largely free to set whatever TUCE rate it wants. In fact, though, quite the opposite is true. KCSM personnel spend weeks discussing changes in TUCE rates with regulators, going through various cost and other justifications and making adjustments to satisfy the agency, before the ARTF will accept the annual change in KCSM's TUCE rates. Translated to English, Article 46 of the Rail Law describes this process as follows:

> "Any modification to the maximum rates of different services and charges must be registered before the Agency prior to its application, with the concessionaire accompany the relevant justification. The Agency may issue recommendations on the proposed increases. The Agency may also, at any time, if appropriate, request the opinion of the Federal Economic Competition Commission to proceed in terms of its powers."

In short, the process of registering TUCE rates is not as easy or as unregulated as Drs. Dychter and De la Calle imply.

25. Further, Article 170 of the Mexican Regulations imposes a non-discrimination requirement on rates. Concessionaires may implement discount programs or promotions, but only under equitable conditions and without discrimination, taking into account the specific

characteristics of each service such as volume, equipment, and distance. Concessionaires cannot discriminate based on interline partner, unless cost differentiations justify those differences.

26. Shippers and other market participants have viable processes and recourse for violations of the Mexican Regulations. For example, as noted by Dr. De la Calle, the COFECE conducted an investigation of competition in transport of four hazardous chemicals to customers south of Veracruz. The COFECE concluded that there was a lack of effective competition for shipments of those chemicals on 20 of 31 routes considered.[5] The COFECE's conclusion triggered the ARTF's imposition of price controls on shipments of those chemicals on those routes. While KCSM has challenged the ARTF's action in court, that court action did not prevent ARTF's rate limitations from taking effect. My understanding is that this process is somewhat similar to U.S. processes, where the STB makes a finding of market dominance before it can regulate a challenged rate, and that a party disappointed with the STB's decision can appeal that decision in court.

27. Had it chosen to do so, the ARTF also could have imposed trackage rights to resolve the COFECE's concerns about a lack of effective competition in the involved markets. Article 36 of the Rail Law allows for the compelled access by one concessionaire to another's track in the event COFECE finds a lack of effective competition in a particular route or routes.

28. The ARTF can also impose rate limitations on its own initiative in instances where the COFECE has found a lack of effective competition. (Rail Regulations, Article 174.)

29. Moreover, the regulatory agencies have the ability to levy significant penalties. Concessionaires operate at the behest of the Mexican federal government and can even lose their

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5 The COFECE's investigation covered shipments of anhydrous ammonia, chlorine, ethylene oxide, and caustic soda with an origin or destination in the southern region of the State of Veracruz not served directly by KCSM. KCSM was involved in limited segments of only 5 out of such 20 routes, and only in connection with the shipments of chlorine and ethylene oxide.

Del Cueto Cuevas R.V.S. at 10

concession -- for which they may have paid hundreds of millions of dollars and invested even more to upgrade -- if the ARTF imposes sanctions on the concessionaire for a significant infraction three times in a period of five years. (Rail Law, Article 21.)

30. Due to its public responsibilities and the serious potential consequences of violations of Mexico's rail law or regulations, including penalties as serious as revocation of its concession, KCSM takes great care to comply with all applicable law and regulations. We have a robust regulatory compliance process to ensure our continuing compliance with the law. Neither Dr. Dychter nor Dr. De la Calle offers any evidence of non-compliance by KCSM. Nor should they, as KCS and KCSM maintain compliance with all applicable laws and regulations. KCSM has not received any penalty from these agencies in its twenty-five years operating its concession.

31. What Drs. Dychter and De la Calle seem to be saying, rather, is that Mexico's application of its laws and regulations is uncertain and, also, that perhaps Mexican regulatory authorities do not care about international traffic.

32. If by uncertain they mean that there is not a long history of application of railroad laws and regulations by the COFECE, the ARTF, and the SICT, that is not surprising. The Mexican rail system was concessioned only 25 years ago; prior to that it was part of the government. In those 25 years, there has been one major rewrite of the Rail Law, and the COFECE and the ARTF each were established only within the past ten years, replacing previous agencies that had somewhat similar responsibilities. Necessarily these agencies will not have a long history of regulatory enforcement activity.

33. However, a lack of a long regulatory history does not mean regulatory inertia or disinterest. The ARTF and the COFECE are quite active, always seeking additional information

from concessionaires, conducting frequent audits, and performing studies on the functioning of the rail system. KCSM must provide reports on investments; traffic volumes; theft and vandalism on the general right of way; customer complaints; fuel consumption; numbers of locomotives, railcars, and employees; activities around maintenance of way, sidings and spurs; and numerous financial matters. While KCSM is able to take the initiative in establishing its rates on a non-discriminatory basis, up to the maximum rates registered with the ARTF, at any time the ARTF may request additional information regarding the determination of such rates and may issue recommendations with respect to proposed rate increases. A lack of enforcement decisions does not mean a lack of attention by the regulatory agencies.

34. The contention that Mexican authorities perhaps do not care about international traffic is puzzling. Article 48 of the Law[6] specifically addresses international rail transport, indicating that the Mexican government *does* care about the activities of Mexico's railroads with respect to cross-border traffic. And, as stated above, concessionaires cannot discriminate based on interline partner.

35. The main thesis of Drs. Dychter and De la Calle that Mexican rail regulators are incapable of defending shippers' interests is wrong. The ARTF, the SICT and the COFECE form a powerful regulatory trio that is very involved in concessionaires' activities. That is the real world, which is very different from the hypothetical one that UP's and BNSF's witnesses discuss.

[6] Article 48 can be translated as follows standards: "The international rail transport is the one operated from another country to the national territory, or vice versa, and shall conform to the terms and conditions provided for in the applicable international treaties or, failing that, to the conventions concluded between the participating railway undertakings."

III. BNSF and UP Fail to Consider How KCSM Operates, and How a Post-Transaction CPKC Would Operate, in Real World Market Conditions

36. Not only are the regulatory constraints on KCSM much stronger than UP and BNSF suggest, the transportation marketplace also would prevent KCSM from engaging in the manipulations of Mexican rates that UP and BNSF claim.

37. First, KCSM already has the incentive to maximize the rate it can achieve for its services while still earning the customer's business. KCSM does this now, just as I am sure UP and BNSF do on the U.S. side of the border. Indeed, BNSF's complaint that KCSM Rule 11 rates[7] and other practices that fully comply with Mexican law create a lack of transparency that prevents BNSF from knowing what it can charge to capture a shipper's business is really BNSF saying that it does not know how high it can make its rate without driving away the business.[8] BNSF's demand for "transparency" of rates covering transportation within Mexico really is just a way for BNSF to get the highest rate it can on the U.S. side of the border.

38. Second, KCSM is restrained by the marketplace. KCSM competes with other rail transport as well as with water and truck transportation.[9] This competition presses KCSM to keep its rates low to attract business.

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[7] Article 36 Ter. of the Rail Law specifically allows shippers to request separate rates from each carrier, saying (as translated), "When the public cargo or passenger transport service requested by the user refers to routes involving the participation of more than one concessionaire, the user shall have the right to choose between agreeing a rate independently with each concessionaire on the portion of the route that corresponds or in an integral way on the total of the route with the originating concessionaire or the destination concessionaire." In addition, there are certain tax implications of through rates on shipments from the U.S. into Mexico that can be mitigated by using Rule 11 rates.

[8] Also, transportation service contracts in Mexico remain subject to inspection by the ARTF. Article 46 of the Rail Law says in part, "those rates that are mutually agreed between concessionaires and users, which must be available at all times at the request of the Agency." I understand that by law in the United States, transportation contracts are not subject to any regulatory oversight, even though most U.S. rail traffic moves under such contracts. Seemingly this makes U.S. rates less 'transparent' than BNSF claims is the case for rates in Mexico.

[9] UP's witness John Turner claims that much rail traffic is not compatible with truck transport. Rocker/Turner VS at 17. In fact, though, a smaller portion of rail traffic in Mexico is rail-dependent than in the United States, because Mexican railroads do not have the same high amount of coal and ore

39. Further, all traffic that KCSM handles in Mexico, regardless of the U.S. interline partner, is KCSM business that earns revenue for KCSM's parent, whether that is KCS or CPKC. Single-line CPKC business will only be a fraction of the total Mexico movements. It would be against KCSM's and its parent's own self-interest to push rates so high that its customers would choose a non-rail option over KCSM/UP or KCSM/BNSF.

40. Finally, KCSM does not want to jeopardize its concession. As explained above, concessionaires operate at the behest of the government. The ARTF, the SICT, and the COFECE together can impose a number of penalties for violations of the Mexican Regulations, including stripping a concessionaire of its concession. KCS has invested billions of dollars in its Mexican and cross-border business. KCS and CPKC have every incentive not to jeopardize that investment.

IV. UP and BNSF Comments Amount to a Criticism of the Mexican Regulatory Scheme, Not a Criticism of This Transaction.

41. This Transaction has no effect on the supposed deficiencies of the Mexican regulatory system and legal system that UP and BNSF allege. The merger does not change any regulations, laws, process, timeline, or agency authority. Nor does the merger change KCSM's abilities, rights or obligations, or that of any shipper. KCSM will remain a separate entity as part of the CPKC network. The merger makes no impact on the application of Mexican law or agency authority. Legal and regulatory options available to shippers remain the same both before and after the Transaction.

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shipments as U.S. railroads. *See* Peer Review of Railway Freight Development in Mexico, Report of the International Transport Forum, February 2014 at 15: "Comparisons of the traffic densities, modal shares and cost levels of freight railway systems should always distinguish between those that serve heavy concentrated mining flows (like coal and iron ore) and those that do not have such favourable base-load traffics but must rely on general industrial and agricultural cargoes. … The Mexican railway system is predominantly a general cargo railway, a characteristic that must be considered when reviewing the different aspects of its performance."

Del Cueto Cuevas R.V.S. at 14

42. Neither Dr. Dychter nor Dr. De la Calle argue that there is anything specific to the CP/KCS transaction that creates a unique situation under Mexican law. Both describe the current state of regulation in Mexico. Both hypothesize, without evidence, that post-merger a future KCSM would act with anticompetitive intent. It is only that assumed hypothetical intent which allows them to list out their criticisms.

43. Despite their hypothetical criticisms of the Mexican legal and regulatory system, both Drs. Dychter and De la Calle effectively admit that system works. For example, Dr. De la Calle and Dr. Dychter mention a number of investigations that have been opened, reports published by COFECE, including one investigation that resulted in a finding of a lack of effective competition. In fact, Dr, Dychter admits that the lack of enforcement can be equally explained by the railroad's compliance with policies where no shipper has felt the need to litigate. (Dychter VS, paragraph 18.)

44. I hope that as a government agency, the STB will take more seriously than UP and BNSF do the political and economic consequences of UP's and BNSF's invitation to regulate across the border and interfere with Mexican authorities' power to regulate Mexican railroads operating in Mexico under Mexican statutes and regulations. If the situation were reversed, would the STB sit idly by and allow the ARTF to regulate the behavior of railroads in the U.S.? Isn't regulation of railroads in Mexico beyond the authority given to the STB by the U.S. Congress?

45. Moreover, the conditions proposed by UP and BNSF would not resolve the alleged deficiencies of the Mexican regulatory system. The verified statement in this filing by my colleague Mike Naatz, KCS's Executive Vice President and Chief Marketing Officer, provides an in-depth analysis of the proposed mileage pro-rate mechanism proposed by UP and

BNSF and how that mechanism would simply tie KCSM's hands for UP's and BNSF's benefit. Also, because of the anti-discrimination requirements of the Rail Law, UP and BNSF's proposed control of some rates could indirectly affect other rates, with undetermined overall impact on KCSM. In short, none of the concerns raised by BNSF or UP (lack of transparency, regulatory precedent, or experience in dispute resolution) are fixed by their conditions.

V. BNSF's Request for "Springing" Trackage Rights Has Nothing To Do With This Transaction; It Is Only an Attempt to Get an Unfair Advantage for a Possible Future Attempt to Obtain a Concession to Operate in Mexico.

46. In its Comments, BNSF argues that it will seek a concession to operate as a railroad in Mexico at some point in the future. Further, BNSF admits that its request for potential future trackage rights over KCS to Laredo is about "ensur[ing] that BNSF may access Mexico when the Mexican Government opens its rail lines to additional competition." And that "[t]o obtain such a concession, BNSF would need to be able to demonstrate to the Mexican government that it has a credible plan for accessing Mexico, which would require direct access to Laredo." (BNSF Comment at 50) (BNSF-9-54.)

47. KCSM does not believe that Mexican law allows the type of concession that BNSF describes itself getting. But even if the law did allow that, whether BNSF could ever get a concession to operate a railroad in Mexico depends on a number of things, including future conditions under Mexican regulation and policy, BNSF's ability to present an acceptable application, and BNSF's ability to find a willing Mexican co-venturer.[10] None of these required showings would be changed by the Transaction.

48. More importantly, though, the reason BNSF says that it needs trackage rights on KCS's line from Robstown to Laredo is to show in its concession application that it can connect

[10] Article 17 of the Rail Law translates as, "Foreign investment may participate up to forty-nine percent in the share capital of the concessionary companies referred to in this Law."

to the Mexican rail system. But BNSF doesn't need trackage rights from Robstown to Laredo to connect to the Mexican rail system because BNSF already has trackage rights to connect to KCSM via UP's Brownsville Subdivision, and BNSF also connects with Ferromex at San Diego, California and El Paso and Eagle Pass, Texas. My understanding is that BNSF has never used its trackage rights on UP's Brownsville Subdivision, but if BNSF needed to show that it has trackage rights to connect to KCSM in Mexico (in addition to its own multiple track connections to other Mexican gateways), BNSF already has such rights. It does not need trackage rights on KCS.

49. Again, BNSF's request for potential future trackage rights to Laredo does not relate to a problem created by the Transaction. BNSF argues the Board should grant it trackage rights over KCS to Laredo because the Mexican Government may want a "credible plan for accessing Mexico," but BNSF already accesses Mexico through multiple other gateways except Laredo. It is entirely speculative that the Mexican Government would require BNSF to access all gateways, especially since CPKC now and in the future only access a single gateway.

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VERIFICATION

I, Oscar Augusto Del Cueto Cuevas, declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

Executed this 12 day of July, 2022.

DocuSigned by:
Oscar Del Cueto
165928ED74B840D...

Oscar Augusto Del Cueto Cuevas
Presidente, Gerente General y Representante Ejecutivo
Kansas City Southern de México, S.A. de C.V.

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36500

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

EXHIBIT O

REPLY VERIFIED STATEMENT OF W. ROBERT MAJURE

CORNERSTONE RESEARCH
ECONOMIC AND FINANCIAL CONSULTING AND EXPERT TESTIMONY

BEFORE THE SURFACE TRANSPORTATION BOARD

Finance Docket No. 36500
CANADIAN PACIFIC RAILWAY LIMITED, ET AL. – CONTROL – KANSAS CITY SOUTHERN, ET AL.

EXPERT REPLY STATEMENT OF W. ROBERT MAJURE, PH.D.

July 12, 2022

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1. QUALIFICATIONS AND ASSIGNMENT

1.1. Qualifications

1. My name is W. Robert Majure. I am a Vice President at Cornerstone Research. Prior to joining Cornerstone Research, I worked for approximately 25 years in the Antitrust Division of the U.S. Department of Justice ("DOJ") as an economist, Assistant Section Chief, Section Chief, and ultimately as the Director of Economics.

2. I earned my Ph. D. in Economics from Massachusetts Institute of Technology in 1994 and a B.A. from the University of Virginia in 1990. My main area of expertise is the economics of industrial organization – particularly issues of competition.

3. While at the DOJ, I performed and supervised economic analyses of competition issues in various industries, including transportation, telecommunications, banking, computer software and hardware, heavy industry, mining and drilling, healthcare, entertainment, and railroads. I submitted testimony on competitive effects in the merger of the Union Pacific and Southern Pacific Railroads and on the suitability of remedy in *U.S. v. SBC Communications Inc. and AT&T Corp.* and *U.S. v. Verizon Communications Inc. and MCI, Inc.* I also served on the committee that drafted the 2010 Horizontal Merger Guidelines. I received awards for my work at the DOJ, including presidential recognition for my contributions as a senior executive of the civil service.

4. A copy of my *curriculum vitae* is attached as Appendix A.

1.2. Assignment

5. In the context of these proceedings, on April 30, 2021 and at the request of counsel for Canadian Pacific ("CP"), I submitted an expert statement ("Initial Statement") to describe my preliminary findings on the competition issues related to the proposed acquisition of Kansas City Southern ("KCS") by Canadian Pacific, and to compare them to competitive issues that would be raised in an acquisition of KCS by Canadian National ("CN").[1]

6. On June 28, 2021, at the request of counsel for CP, I submitted a second expert statement ("Voting Trust Statement"), in the context of the proceedings related to the proposed acquisition of KCS by CN.[2] In the Voting Trust Statement, I provided an economic analysis of the voting trust arrangement that had been proposed by CN for its potential acquisition of KCS, and showed that a voting trust arrangement would have given CN an immediate incentive to implement its part of the anticompetitive horizontal consequences of a CN/KCS combination. I also provided additional analysis that confirmed the proposed merger of CN and KCS should have been treated as a horizontal merger, and that CN's proposed divestiture was insufficient to

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[1] Expert Statement of W. Robert Majure, Ph.D., *Canadian Pacific Railway Limited, et al. – Control – Kansas City Southern, et al.*, Finance Docket No. 36500 and *Canadian National Railway Company, et al. – Control – Kansas City Southern, et al.*, Finance Docket No. 36514, April 30, 2021 ("Initial Statement").

[2] Expert Statement of W. Robert Majure, Ph.D., *Canadian National Railway Company, et al. – Control – Kansas City Southern, et al.*, Finance Docket No. 36514, June 28, 2021 ("Voting Trust Statement").

resolve the horizontal competition issues that would have been created by the transaction.

7. On October 29, 2021, I submitted a third expert statement ("Application Statement") at the request of counsel for CP evaluating whether the proposed acquisition of KCS by CP is likely to generate any procompetitive benefits or cause any competitive harms.[3]

8. On February 28, 2022, UP, BNSF, NS, CN, and CSXT filed comments on the merger application of CP and KCS. Included in these comments are responses to my Application Statement, as well as other arguments and analyses assessing the potential competitive effects of a CP/KCS combination. Several other parties also filed comments expressing particular concerns they describe as related to competition. I have been asked to submit a fourth expert statement at the request of counsel for CP responding to these submissions.

9. Cornerstone Research is being compensated at my standard billing rate of $955 per hour. I have been assisted by staff of Cornerstone Research, who worked under my direction. Cornerstone Research's compensation in this matter is not in any way contingent or based on the content of my opinion or the outcome of this or any other matter, nor is my compensation.

[3] Expert Statement of W. Robert Majure, Ph.D., *Canadian Pacific Railway Limited, et al. – Control – Kansas City Southern, et al.*, Finance Docket No. 36500, October 29, 2021 ("Application Statement").

10. Appendix B contains a list of materials I have relied upon in preparing this statement. I reserve the right to supplement my analysis if additional information and data become available as these proceedings continue.

1.3. Summary of opinions

11. My economic analysis continues to support the following main conclusion: a CP/KCS combination is a vertical transaction of two complementary networks that would create opportunities for procompetitive benefits throughout the CP/KCS network and would not substantially lessen competition.

12. Commenters on behalf of competing railroads have largely ignored my analysis and conclusion that a combination of CP and KCS will not have adverse horizontal competitive effects within any corridor or between corridors. They focus their attention on arguments that an end-to-end railroad merger *might* have adverse vertical competitive effects. In doing so, they incorrectly dismiss the Board's past findings that such effects are not likely in this industry and otherwise ignore the facts and circumstances of the railroad industry. When those facts are considered, I find that the Commenters offer no reason for concluding that adverse vertical effects are likely in an end-to-end railroad merger and, in particular, in a CP/KCS combination.

13. Commenters have variously proposed "remedies" for their perceived competitive concerns. In addition to failing to establish any need for such remedies, I find that the proposed remedies are self-serving and would not enhance competition. Indeed,

"remedies" proposed by UP and BNSF would impair competition by raising the cost to CPKC of offering shippers attractive rates for single-line service – both existing single-line service as well as the new single-line service made possible by the combination.

14. I organize my economic analysis that supports these conclusions with respect to the various arguments raised by different Commenters as follows:

- In section 2, I consider Commenters' analysis of end-to-end railroad mergers and the possibility of vertical competitive effects based on economic theories. I show that Commenters are incorrect to characterize the Board's past findings as a presumption based on a specific economic theory. Rather, the Board has repeatedly assessed end-to-end railroad mergers in a manner consistent with the framework recently articulated in the Vertical Merger Guidelines, which call for investigation of whether an industry is prone to incentive and ability elements necessary for a vertical competitive effect. In contrast, Professor Salop articulates a framework which *presumes* an incentive and ability based on his assumption that railroads are limited in the ways they can set or adjust prices amongst themselves – an assumption that is not consistent with the facts of the industry. And, Dr. Reishus posits a numerical example of cross-border movements that is consistent with neither the facts of Mexican non-discrimination regulation on such movements nor with basic economic rationality.
- In section 3, I consider Commenters' analyses that purport to show foreclosure as an empirical matter. This includes Professor Mayo's analysis of interline movements involving NS and the Meridian Speedway as well as various Commenters' responses to my analysis of whether the current flows of traffic through Laredo rule out allegations made at the time of KCS's acquisition of TM and TFM that competition north of Laredo would be largely foreclosed. I show that these responses are flawed both in concept and in methodology, as well as inconsistent with the factual record. I examine Commenters' representations of various changes that have occurred in the intervening years and show that these comparisons fail to account for a number of innocuous

changes affecting cross-border traffic in general and for specific commodities. Moreover, the changes illuminate that competition has been enhanced through improved single-line service provided by KCS and KCSM and through investments in competitive routings (including investments by others that have made other gateways on the Mexican border more competitive for UP and BNSF). I show that, as Eagle Pass (for UP and BNSF) and El Paso (for BNSF) have become more competitive on cross-border traffic that might have crossed at Laredo, overall this cross-border traffic has not been restrained and, instead, {{{[redacted]}}} since the acquisition of TM and TFM.

- In section 4, I consider "remedy" proposals made by UP, BNSF, and CN. I show that the similar proposals of UP and BNSF to regulate CPKC interline rates would harm competition. This unnecessary regulation would create a disincentive for CPKC to offer competitive rates to shippers. UP and BNSF would benefit from not facing the full competitive force of new single-line service from CPKC while shippers, including shippers that currently use single-line service on KCS that would be swept up in this effect, are likely to see higher prices from such a "remedy." I also show that CN's proposal that the Board award it a specific portion of KCS's track is equally self-serving. CN has not shown that either current or prospective competition is likely to be adversely affected if this track is part of CPKC.
- In section 5, I consider comments from shippers or from certain other parties that suggest other issues they associate with competition. I find that the issues articulated in these comments are not reasons to consider likely any adverse competitive effect of the CP/KCS combination.

2. COMMENTERS' ANALYSIS OF VERTICAL ECONOMIC THEORY DO NOT ESTABLISH A RISK OF VERTICAL HARM FROM THE CP/KCS COMBINATION

15. In my Application Statement, I concluded that neither CP nor KCS would have the incentive and ability as a combined firm to foreclose rivals or otherwise lessen competition as a result of vertical integration. Commenters responded with theoretical critiques of my conclusion. In this section, I address their arguments and explain why they do not change my conclusion. In section 2.1, I provide an overview of the flaws in Commenters' reasoning in their theoretical critiques of my conclusions regarding potential effects from a CP/KCS combination. In section 2.2, I address the specific theoretical arguments presented by Professor Steve Salop on behalf of UP. In section 2.3, I respond to the specific theoretical arguments presented by Dr. David Reishus on behalf of BNSF.

2.1. Overview of the flaws in Commenters' critiques of my analysis of potential vertical effects from the CP/KCS combination

16. Commenters have not disputed the basic framework of vertical effects analysis I used in reaching my opinion. Vertical effects require that a merger creates both an *ability* for the merging parties to achieve some new objective – i.e., that the arrangements they could reach independently were limited in a way that the merger resolves – and that they have an *incentive* to pursue the new objective – i.e., they do not already earn the same profits or greater profits in some other form. Those vertical effects can be anticompetitive, if the previously unexploited incentive and ability

relate to impairing competition, or procompetitive, if they relate to enhancing the combined product or terms of the merging parties.

17. In the combination of CP and KCS, there is a clearly procompetitive vertical effect in the ability to operate as a single-line to offer shippers a more efficient and effective service. The incentive to offer such service is the fundamentally procompetitive drive to win business by offering shippers a better option.

18. In my Application Statement, I noted that the Board has repeatedly examined the industry facts relevant to end-to-end railroad mergers and, in case after case, has determined that there is neither an ability nor an incentive to support anticompetitive vertical effects from combinations such as CP and KCS.[4] In considering ability, the Board has examined whether various past combinations are likely to change the set of constraints facing the merged firms and found that this is not likely.[5] In considering incentive, the Board has noted that, to the extent that a railroad may have power over a shipper, the pricing and practices in the industry do not support the assumption that the railroad is significantly constrained in ways that a merger would affect, and therefore, the railroad's ability to earn profit is not an incentive to anticompetitive effects.[6]

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[4] *See* Application Statement, § 3.2, ¶ 13, fns. 3, 4; ¶ 22, fn.10.

[5] *See* Application Statement, § 3.2, ¶ 25, fn. 12.

[6] The Board decisions use language for this incentive issue dating back to Bork (1954) in the academic literature and so speak of the potential profit a railroad may earn as its "lump" and whether the railroad is already earning that full potential as the "one lump" theory. See Application Statement, § 3.2, ¶, fn. 11; *See* Robert Bork, "Vertical Integration and the Sherman Act: The Legal History of an Economic Misconception," *The University of Chicago Law Review*, 22(1), 1954, pp. 157–201.

19. For the most part, Commenters do not offer any new theories or facts about the industry for the Board to examine in this case. Rather than engage with the facts of the industry or show some other reason to think that the Board was wrong in its past investigations, Commenters have mischaracterized the Board decisions as merely presumptions based on a single theory and proceed to knock down this straw man of the "one lump" theorem.[7] I discuss Commenters' straw-man attacks on the "one lump presumption" in section 2.1.1.

20. To the extent Commenters suggest any theories that might apply to the railroad industry, they either fail to connect those theories to facts of the industry or make the same claims that have been rejected on the facts in prior Board proceedings.[8] For example, Commenters claim that Mexican non-discrimination regulations make the Laredo gateway a special situation – this claim was alleged and rejected during the

[7] Commentators do this, despite taking contrasting positions during prior Board investigations of their own proposed combinations. For example, economic expert opinion submitted on behalf of BN during the investigation of its acquisition of the Santa Fe Railroad argued that the "one lump" theory "assumes neither automatic foreclosure nor automatic gains from integration," "has long been accepted by many economists as a sound starting point for analysis,"...and is a "widely useful and cogent theory," while also noting that "the ICC, too, has accepted the one-lump theory, and concluded, rightly in my view, that it should be applied in all but exceptional circumstances." *See* Rebuttal Verified Statement of Richard L. Schmalensee, *Burlington Northern Inc., et al. – Control and Merger – Santa Fe Pacific Corporation, et al.*, Finance Docket Nos. 32549, 32549 (Sub-No. 1), June 9, 1995, BNSF0001523 – 97 ("Schmalensee R.V.S. 1995") at BNSF0001550 – 1, BNSF0001554.

[8] That Commenters lack a theory that is both (i) connected to the facts of the railroad industry and (ii) predicts vertical harm is consistent with their observations during past investigations. For example, expert opinions submitted on behalf of BN during the investigation of its acquisition of the Santa Fe Railroad stated that, ("It is well recognized that the circumstances under which 'vertical foreclosure' leads to post-merger reductions in competition in relevant markets are extremely limited, and that such circumstances are generally absent from railroad markets.") Verified Statement of Joseph P. Kalt, *Burlington Northern Inc., et al. – Control and Merger – Santa Fe Pacific Corporation, et al.*, Finance Docket No. 32549, October 1994, BNSF0002026 – 117 ("Kalt V.S. 1994") at BNSF002126.

Board's investigation of the KCS-TM-TFM combinations.[9] I address the specific claims and theoretical arguments of Professor Salop in section 2.2 and of Dr. Reishus in section 2.3.

21. Having failed to demonstrate any reason to expect some heretofore unseen incentive and ability for an end-to-end railroad merger to impair competition, Commenters resort to relabeling the likely procompetitive effects as "anticompetitive" without engaging in some consideration of why the CP/KCS combination would differ from all the end-to-end railroad mergers that have come before. They take the extreme view that any instance where CP and KCS have identified an opportunity to win business with the enhanced single-line service their combination allows would instead be an opportunity that CPKC would win through anticompetitive effects.[10] Further, they fail to suggest any reason why, assuming CPKC did have some anticompetitive means to accomplish the same ends, they would choose such a strategy and not the straightforward path of winning this business by offering a better service. As I discuss in section 2.1.2, even assuming that CPKC might face such a choice between anticompetitive activity and competing on the merits, Commenters offer no evidence that CPKC would choose the former, nor

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9 *Kansas City Southern – Control – The Kansas City Southern Railway Company, et al.*, Finance Docket No. 34342 (Decision No. 12 served Nov. 29, 2004) ("KCS-TM-TFM Decision"), pp. 6, 29–30.

10 *See*, *e.g.*, Verified Statement of Steven C. Salop, *Canadian Pacific Railway Limited, et al. – Control – Kansas City Southern, et al.*, Finance Docket No. 36500, February 27, 2022 ("Salop V.S."), ¶ 12; Verified Statement of David Reishus, Ph.D., *Canadian Pacific Railway Limited, et al. – Control – Kansas City Southern, et al.*, Finance Docket No. 36500, February 28, 2022, BNSF-9-400 – 77 ("Reishus V.S."), ¶ 16; Verified Statement of Professor John Mayo, Ph.D., *Canadian Pacific Railway Limited, et al. – Control – Kansas City Southern, et al.*, Finance Docket No. 36500, February 28, 2022 ("Mayo V.S."), ¶¶ 9–10.

do they describe this hypothetical anticompetitive activity with the specificity necessary to assess such a question.

2.1.1. Commenters' straw man arguments about a "one lump presumption" are misguided

22. Instead of offering any reason of their own to doubt the Board's past findings, Commenters inaccurately describe the Board's past findings as having been based strictly on the *presumptions* of a single economic model – namely, the "one lump" theory. They then proceed to attack this straw-man, rather than the Board's actual assessments of the facts. In doing so, Commenters ignore all the ways in which the Board's discussions in those past decisions are inconsistent with the particularly strict application of the "one lump" theory that the Commenters wish to knock-down. Those inconsistencies suggest that, in these decisions, the Board is simply borrowing terminology from that theory to help describe the incentive element in the Board's more nuanced view.

23. In these decisions, the Board often uses the terms "lump" and "one lump theory," but does so to discuss incentives generally not to employ the strict straw-man version of that theory Commenters attack. The Board discusses the potential profit a railroad may realistically earn from whatever power it may have as the degree to which that railroad has a profit—or a "lump"—that it can earn.[11] The Board refers to the "one

[11] *See*, *e.g.*, *CSX Corporation, et al. – Control and Operating Leases/Agreements – Conrail Inc., et al.*, Finance Docket No. 33388 (Decision No. 89 served July 23, 1998) ("CSX-Conrail Decision"), p. 269, fn. 107 ("Further, Kalt has shown that Kahn/Dunbar have made no attempt to

lump theory" as a reflection of the basic incentive issue – that is, the fact that alternative ways for the railroad to earn the "lump" do not create an incentive for merger effects unless they create some opportunity to expand the "lump." Unlike the theory from which this terminology is taken, however, the Board was *not* assuming an absolute ability to extract rents absent a merger. Indeed, the discussion of degrees of a railroad's "lump" that the Board uses as a premise clearly distinguishes the Board's usage from a strict application of the theory.[12]

24. Thus, Commenters miss the point with their observations that the "one lump" theory, *if it were strictly applied*, would fail to match real-world facts of the industry.[13] The question is whether the incentive issue that the Board is considering when it uses language borrowed from the "one lump" theory is still relevant.

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control for competitive factors that affect the size of the profit opportunities, or "lump," available to the railroads."); KCS-TM-TFM Decision, p. 59 ("Market forces that prevent a lump from being taken prior to a control transaction will continue to prevent that lump from being taken even after vertical firms have come under common control.").

12 *See*, *e.g.*, CSX-Conrail Decision, p. 268 ("the one-lump theory does not predict that bottleneck carriers will always be able to execute a perfect price squeeze; it merely predicts that vertical integration will not increase the bottleneck carrier's market power over shippers."), p. 269 ("Kahn/Dunbar are simply wrong in asserting that the general applicability of the one-lump theory to mergers requires a set of explicit and rather implausible assumptions, and thus 'the circumstances in which the pure one-lump theory is likely to hold represent an 'extreme example.' They appear unaware that this very argument has been considered and rejected by the ICC, with the ICC's reasoning specifically affirmed by the court."); *Burlington Northern Inc., et al. – Control and Merger – Santa Fe Pacific Corporation, et al.*, Finance Docket No. 32549 (Decision No. 38 served Aug. 23, 1995), 10 I.C.C.2d ("BN-SF Decision"), p. 751 ("We do not think that the one lump theory requires the series of perfect conditions that the utilities claim must be present for the theory accurately to represent the coal transportation markets at issue here. Our focus here is properly on *substantial* harm to competition…Conversely, when certain factors are present that limit a carrier's ability to take full advantage of a bottleneck, those factors will remain in place as effective safeguards after the merger.") and ("The fact that a bottleneck carrier might not have sufficient information to execute a perfect price squeeze or to extract the last penny of economic profits does not mean that *substantial* benefits to shippers will be lost when the bottleneck carrier merges with a connecting carrier.").

13 *See*, *e.g.*, Salop V.S., ¶ 32; Reishus V.S., ¶ 39.

Commenters have not tried to suggest that the incentive issue, rather than the specific theory, is irrelevant.

25. The incentive issue, however one refers to it, remains relevant. The modern incarnation of this fundamental economic consideration is seen in the 2020 Vertical Merger Guidelines' requirement of an incentive for vertical effects.[14] Thus, Commenters' focus on the specific model, and not on the incentive issue, is misguided and fails to recognize that the Board's decisions, though phrased in the language of "one lump," are nevertheless an examination of relevant economic incentives and of the facts in the railroad industry.

2.1.2. Relabeling procompetitive effects of single-line service "anticompetitive" is not only unfounded, it fails to consider reasons that CPKC would prefer to win traffic through better service

26. Another common mistake among Commenters' analyses is to assume that opportunities CP and KCS have identified for new single-line service are

[14] U.S. Department of Justice and the Federal Trade Commission, "Vertical Merger Guidelines," June 30, 2020, available at https://www.ftc.gov/system/files/documents/reports/us-department-justice-federal-trade-commission-vertical-merger-guidelines/vertical_merger_guidelines_6-30-20.pdf ("Vertical Merger Guidelines"), p. 5. As I noted in my Application Statement, on September 15, 2021, the FTC voted to withdraw from these guidelines. The majority statement in that decision took issue with a separate section of the 2020 VMG related to efficiencies while endorsing the sections that discussed the incentive and ability elements: "The 2020 VMGs represent a substantial improvement over the 1984 guidelines that they replaced and address important principles such as raising rivals' costs, foreclosure, and misuse of competitively sensitive information." *See* Federal Trade Commission, "Statement of Chair Lina M. Khan, Commissioner Rohit Chopra, and Commissioner Rebecca Kelly Slaughter on the Withdrawal of the Vertical Merger Guidelines," Commission File No. P810034, September 15, 2021, available at https://www.ftc.gov/system/files/documents/public_statements/1596396/statement_of_chair_lina_m_khan_commissioner_rohit_chopra_and_commissioner_rebecca_kelly_slaughter_on.pdf, p. 2

opportunities to win traffic through some anticompetitive action.[15] In doing so, these Commenters imply a perverse equivalence – in their logic, any opportunity to compete is an opportunity to restrain competition. It is not clear why they would draw such an equivalence, but it is clear that, by doing so, they skip over the required elements of analyzing the hypothesized anticompetitive action – what it is, why the merger creates an ability to pursue it, and why CPKC would have an incentive to pursue it, rather than other actions. Most critically, they fail to recognize that, in the face of CPKC's demonstrated opportunity to win the traffic through a better product – and expand the market in the process – Commenters' hypothesis that CPKC would pursue the traffic through anticompetitive actions of some sort is particularly unlikely.[16]

27. Commenters correctly identify the traffic at issue, i.e., interline traffic that could be served by a CPKC single-line service post-merger, but overlook the fact that *how* that traffic is won can have very different consequences for CPKC. It is important to distinguish the incentive implications of a prize, such as the traffic that might be won, from the overall incentive to engage in a particular strategy to win that prize. For example, I have an incentive to win the lottery, and may even buy a ticket. However,

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15 Salop V.S., ¶ 12; Reishus V.S., ¶¶ 16, 45; Mayo V.S., ¶¶ 9–10.

16 Economic experts submitting statements on behalf of BNSF argued a similar position when discussing the traffic diversions forecasted by the combined BN-SF. One expert explained that these diversions would "arise from improvements in the service offerings to customers" and are "not the consequence of any exercise in market power." Kalt V.S. 1994, BNSF0002125. Another expert explained that, "this merger is likely to yield substantial efficiencies and service improvement. This means that, with increased efficiency and expanded service, BN/Santa Fe would likely gain business from competitors. This result is exactly what would be expected under competition and has nothing to do with anticompetitive foreclosure." Schmalensee R.V.S. 1995, BNSF001561.

I would certainly not pursue other strategies for winning that have different overall costs (e.g., stealing a ticket or trying to rig the numbers). These strategies have the same prize with the same contribution to overall incentives, but each strategy has its own costs and risks. When vertical merger theory considers a firm's incentives, it considers the profits of a particular strategy, not an unbridled assessment of the incentive to win the prize by any strategy. Commenters have confused the incentive to win the prize – the traffic capable of being won – with an incentive to engage in unspecified strategies to win the prize. As this confusion means Commenters have not even identified what the anticompetitive strategy is that they are hypothesizing, its risks and costs – its incentives as a strategy – cannot be assessed. Commentators are, in effect, making the same sort of unfounded presumption about vertical effects that they accuse the Board of making – though they would have it as a presumption of harm

28. In general, Commenters have failed to justify their mis-identification of opportunities to win traffic through new single-line service as opportunities to engage in some unspecified anticompetitive strategy. Moreover, even if such a strategy could be shown to be relevant, they fail to explain why CPKC would pursue it instead of competing – especially since the pro-competitive choice expands the market available to be won.

2.2. Professor Salop's vertical theories do not prove actual harm, or even the risk of harm from a CP and KCS combination

29. Professor Salop makes the straw-man argument discussed above, taking aim not at the relevant analysis, but the "one lump" theory. To this argument, he adds two observations about possible contracting difficulties to further support his non sequitur that the "one-lump" theory as he conceives it is inappropriate in the railroad context. As I discussed above, that argument is a straw-man and does nothing to undermine all of the Board's past findings about the railroad industry and why anticompetitive vertical effects are unlikely in end-to-end railroad mergers. Similarly, and as explained below, the particular contracting realities Professor Salop points out are also not reasons to conclude that the Board was wrong in all of its past examinations of the industry.

30. In addition to attacking the "one lump" theory, Professor Salop also presents his own theory, based on an unfounded assumption about how interline prices are set, and conducts simulation analysis of this theory, which he claims evaluates the effects of the CP/KCS combination. As I explain below, Professor Salop's model is built on an assumed contracting mechanism that is inconsistent with ordinary practice in the railroad industry. Taking account of that ordinary practice eliminates any incentive or ability for vertical effects suggested by Professor Salop's model. Thus, as the effects he models and simulates would not occur in actual railroad markets, his model does not suggest, much less establish, that a CP/KCS combination poses any significant risk of the theoretical harm he identifies.

31. In this section, I unpack Professor Salop's observations and assumptions about the railroad industry. I show that his observations that railroads have imperfect information about their interline partners and that rail service is a differentiated product for shippers do not undermine the Board's previous findings related to a "one lump," nor the Board's past conclusions that vertical effects are not likely in end-to-end railroad mergers. I also discuss the foundation of Professor Salop's theory of vertical harm – that railroads cannot negotiate both a combined price to the shipper in interline movements and the allocation of the profits of such a movement between them – and why it is not a good description of actual negotiations over interline movements. Finally, I conclude that Professor Salop's theoretical model's reliance on assumptions in place of actual industry conditions leads the model to presume an anticompetitive concern in any vertical merger in any industry, with the only question for overall effect one of whether this concern is outweighed by a particular efficiency that is also not specific to any facts of the railroad industry. Professor Salop's model is thus of little use in assessing the CP/KCS combination.

2.2.1. Professor Salop's observations of the rail industry do not establish that anticompetitive vertical effects are likely in end-to-end railroad mergers

32. Professor Salop makes two observations about actual conditions in the railroad industry. First, he observes that railroads often have imperfect information about other railroads involved in an interline movement.[17] He is correct to note that

[17] Salop V.S., § 3.2.

uncertainty is not a feature included in the original "one lump" model. However, uncertainty alone is not a reason to ignore the more general principle illuminated by the "one-lump" theory – the need to examine incentives and whether the contracts between independent vertically related firms could already provide a means to achieve the profit that might be earned from a hypothesized anticompetitive effect. If railroads have means other than mergers to achieve those profits, there is little reason to expect that a merger will result in anticompetitive behavior to achieve those same profits.

33. Professor Salop fails to consider that the economics literature has explored a variety of ways that contracting parties routinely cope with uncertainty. Indeed, a whole area of economics has been developed around the design of mechanisms to solve such problems and ensure truthful revelation of private information.[18] Of course, the original "one lump" model was not meant to explore such issues and so it is no surprise that the model does not assume either uncertainty or solutions to uncertainty. However, to go from that observation to an implication that railroads can only solve uncertainty issues through vertical mergers requires that railroad

[18] *See*, *e.g.*, Dirk Bergemann and Juuso Välimäki, "Information in Mechanism Design," in *Advances in Economics and Econometrics: Theory and Applications, Ninth World Congress*, Volume I, eds. Richard Blundell, Whitney K. Newey, and Torsten Persson, eds. (Cambridge: Cambridge University Press, 2006), pp. 186–221 at p. 186 ("The basic issue in mechanism design is how to truthfully elicit private and decentralized information in order to achieve some private or social objective. The task of the principal is then to design a game of incomplete information in which the agents have indeed an incentive to reveal the information."). *See*, *e.g.*, R. Preston McAfee and John McMillan, "Auctions and Bidding," *Journal of Economic Literature*, 25(2), 1987, pp. 699–738; Alexander Teytelboym, Shengwu Li, Scott Duke Kominers, Mohammad Akbarpour, and Piotr Dworczak, "Discovering Auctions: Contributions of Paul Milgrom and Robert Wilson," *The Scandinavian Journal of Economics*, 123(3), 2021, pp. 709–750 for surveys of literature on bidding mechanisms under asymmetric information.

executives faced with uncertainty are as limited in the scope of contractual provisions they can employ as Professor Salop's model is.[19]

34. Professor Salop has shown nothing of the sort.

35. Second, Professor Salop observes that shippers perceive railroads' service as a differentiated product.[20] That is, each railroad offers some unique characteristics that shippers value, so the shipper's choice of railroads is a product of the values they place on each of these characteristics as well as the price.[21] Again, this is an aspect of real markets that the original "one lump" model was not attempting to capture. However, rather than proving CP and KCS have some incentive and ability to foreclose rival railroads after the CP/KCS combination, the fact that shippers view rail service as a differentiated product actually illustrates one of the reasons CPKC would want to continue working with other railroads. The unique characteristics of those other railroads create value for some customers, and the only way to be part of that value is for CPKC to work with the railroad that shipper particularly wants to use.

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[19] In Professor Salop's model, while one interpretation of downstream competition between carriers is that they each submit a bid to the shipper for a through rate, in the upstream market, the hypothesized monopoly carrier is limited to set a through-rate and there is no bidding or other mechanisms allowed to affect the terms of interchange between railroads. Salop V.S., Appendix C.

[20] Salop V.S., § 3.3.

[21] Sources of product differentiation cited by Professor Salop include distances between shippers' locations to the origin stations, speed, reliability, and frequency of service, other dimensions of customer service, terms of payment, etc. *See* Salop V.S., ¶ 40.

36. In concluding that product differentiation is, instead, a reason to assume that anticompetitive effects are likely, Professor Salop offers only his model and simulations. However, as I discuss next, that model depends critically on another assumption that Professor Salop makes and which is a particularly poor fit to industry practice.

2.2.2. *Professor Salop's theoretical model depends on an assumed tension that disappears if actual conditions in the railroad industry are taken into account*

37. The potential vertical harm Professor Salop asserts with his theoretical analysis is driven by his assumption that railroads have to set interline prices in a specific, limited way. Although economists commonly make similar assumptions in order to simplify vertical relationships into a mathematical model, those assumptions are not necessarily a good description of any particular industry. For railroads, it is not a good description of the way interline rates are actually set and negotiated. Similarly, Professor Salop's simulation analysis is untethered to industry facts and thus provides no basis for the alleged risk of vertical issues from the CP/KCS combination.

38. Professor Salop's theory of vertical harm rests on an assumption that the upstream firm is restricted to employ only a linear pricing mechanism (i.e., the railroad sets or agrees to a price per unit which is the entire arrangement that railroad is allowed to have with its interline partners).[22] Thus, under Professor Salop's basic framework, the upstream railroad with hypothesized monopoly power only has this one contracting

[22] Salop V.S., ¶ 26.

tool – and no other levers – to accomplish two conflicting goals. The first goal is to maximize the size of available joint profits. His hypothesized monopolist could only achieve this goal by *lowering* the price to the downstream firms.[23] The second goal of Professor Salop's hypothesized monopolist is to maximize its own share of the available joint profit. Professor Salop's pricing assumption means the hypothesized monopolist can only accomplish this goal by *raising* its price to the downstream firms.

39. Thus, Professor Salop's framework is built upon an assumed tension. The harm from a vertical merger it predicts is a result of the merger relaxing the restriction created by his linear price assumption. Relaxing this restriction gives the merged firm separate ways to collect profits and set total prices for shippers – that is, the hypothesized monopolist gains direct control of one of the interlining railroad's prices and profits and affects its willingness to work with other railroads where the tension is assumed to constrain it.

40. However, the economics literature has established that a wide range of more creative pricing arrangements resolve the tension inherent in Professor Salop's model and thus eliminate the incentive for any effect of a vertical merger. Essentially, if the two goals (optimize the end price to maximize joint profits and allocate those profits

[23] In particular, the upstream carriers are assumed to influence downstream pricing by offering them through-rate divisions based on the upstream firm's profit-maximizing incentives, which the downstream firms can then use to maximize their profits. *See* Salop V.S., ¶¶ 26, 55, Appendix C, p. C-1.

between the interlining railroads) can be achieved with the pricing tools available to real-world executives, there is no incentive for anticompetitive vertical effects.

41. The kind of prices Professor Salop's model depends on are, at most, the starting point from which actual railroad interline pricing is determined. I understand railroad contract terms may include volume discounts, volume commitments, and service guarantees.[24] Moreover, railroad contracting involves more than setting a unit-price, and contract negotiations play out in ways not contemplated by Professor Salop's model.

42. Unlike in the assumed price setting of Professor Salop's model, in real-world railroad interline pricing there is opportunity for negotiations, with shippers and between interline partners, before final contract terms are set. A shipper may request a combined interline rate from one railroad, which will request and incorporate a rate from its prospective interline partner. When the shipper receives that bid, it can compare the terms with alternatives. It can then return to the railroad with a request for improved terms, including an amount by which the combined rate must decrease

[24] For example, I reviewed a negotiation between KCS and a shipper in which the terms reviewed by KCS management include { [redacted] }. *See* Kansas City Southern, {{ [redacted] }} (Majure R.V.S. Exhibit C-1), p. 10. In another example, this one involving CP, CP renegotiated a contract with {{ [redacted] }}. *See* Email chain from {{ [redacted] }} (Majure R.V.S. Exhibit C-2).

to win the business.[25] At that point, the railroad can begin negotiating with its interline partner over how to adjust their combined bid in order to win the business.[26]

43. A shipper can also request separate rates directly from each interline partner, with the same effect. After receiving these individual bids, the shipper can return to one or both railroads, again with a request for improved terms, including an amount the two would-be interline partners need to reduce their combined rates to win the business. The prospective interline partners can then, again, begin negotiating adjustments to their individual bids in order to reach an effective combined rate that can win the business. In either scenario, a rational shipper will be indifferent to the divisions

[25] I understand such negotiations are common. For example, { }}. *See* Email chain from {{ }} (Majure R.V.S. Exhibit C-3) {{ }

[26] For instance, {{ }}. *See* Email chain from {{ }} (Majure R.V.S. Exhibit C-3). As another example of the negotiations between interlining railroads, consider the interaction between {{ }} *See* Email chain from {{ }} (Majure R.V.S. Exhibit C-4).

between the two railroads, and the two railroads have the ability to negotiate between themselves.

44. Although Professor Salop asserts that his model holds if extended to negotiated rates, he artificially restricts the subject of those negotiations between railroads to be solely over each railroad's per-unit interline rate, which he assumes constitutes the entirety of the arrangement between them. In limiting the contracting to a single term (a linear per-unit price), Professor Salop precludes the possibility that negotiations *simultaneously* address (i) any transfer or split among the railroads and (ii) the end-price (or that the split might make the payments between railroads contingent on or proportional to the rate ultimately negotiated with the shipper).[27] If Professor Salop had included this fact of real negotiations over interline rates, the tension in his model would have been resolved.[28] The hypothesized monopolist would be able to agree

[27] Salop V.S., pp. C-3, D-2. In Professor Salop's negotiation framework, even though both sides of the negotiation know that agreeing to any particular split rate will result in an end price to the shipper that is higher than the rate that would maximize their joint profits, they cannot bring that issue to the negotiating table. That is, they simply take the inefficient markups that will happen after they agree to a split rate as inevitable and proceed to negotiate only over that one tool which, under this assumption, naturally carries the same tension between the same two goals as Professor Salop's model relied upon without negotiation.

[28] Professor Salop claims that his model covers situations when more general contracts (e.g., volume rebates) are negotiated between railroads. He claims in these situations that vertical integration with one competing carrier and foreclosure of the other allows the hypothesized monopoly carrier to extract the full monopoly profit that it could not pre-merger. However, in these situations Professor Salop adds that railroads face an additional contracting constraint – that one competing carrier does not observe the contract terms between the other competing carrier and the hypothesized monopoly carrier. Essentially, there is another goal – coordinating the beliefs of the two interline partners about the overall strategy – to absorb the additional tool (e.g., the volume rebates) which maintains the tension of too many goals for the number of tools he allows in his model. The new contracting issue he notes also has solutions that are recognized in the economics literature. *See* Salop V.S, fn. 10; Patrick Rey and Jean Tirole, "A Primer on Foreclosure," in *Handbook of Industrial Organization*, Volume 3, eds. Mark Armstrong and Robert H. Porter (Amsterdam: North-Holland, 2007), pp. 2145–2220 at pp. 2167–2168.

with interline partners on the end-price and simultaneously negotiate the split of joint profits. And, as I explained above, without that tension there is no incentive in Professor Salop's model for any anticompetitive effect of a vertical integration.

2.2.3. *Professor Salop's simulation model would presume an anticompetitive concern in all vertical mergers in all industries, and incorrectly assumes that only one form of efficiency applies in vertical mergers*

45. Professor Salop's simulations, which are based on his model, are not a reason to expect harm from vertical integration. As discussed above, such harm is an artifact of his modeling assumption that does not fit the reality of railroad pricing. His simulations are also untethered to industry facts beyond the pricing mechanisms. He acknowledges that none of his parameters are calibrated to industry data points.[29] Thus, there is no factual basis for the assertion that these simulations demonstrate a risk of vertical issues from the combination of CP and KCS.

46. In further disregard for actual conditions in the railroad industry, Professor Salop also assumes that one, and only one, form of efficiency applies to vertical mergers. In particular, Professor Salop's pricing assumption creates an efficiency through the elimination of double-marginalization.[30] However, he excludes from his analysis the

[29] Salop V.S., fn. 43 ("In this regard, I want to emphasize that the models are not calibrated.").

[30] Salop V.S., ¶¶ 45–47.

possibility of efficiencies in the form that is actually most relevant to the railroad industry – enhanced quality associated with single-line service.[31]

47. Professor Salop's theoretical framework would presume an anticompetitive concern in *every* vertical merger across *all* industries. Rather than analyze whether the facts of the railroad industry fit his theory, Professor Salop simulates the effects of the merger as if the theory always holds. The only relevant question Professor Salop's approach would allow is to investigate whether the incentive to foreclose is outweighed by the particular efficiency of reduced double marginalization.[32]

48. Given the lack of connection to the railroad industry in Professor Salop's approach, it is not surprising that his presumptions are inconsistent with the Board's fact-based conclusion in all of its past investigations of end-to-end railroad mergers. That is, to the extent constraints prevent railroads from achieving monopoly rents on an entire move through their control of an endpoint, it is not, despite the assumption in Professor Salop's model, a lack of creative pricing mechanisms that constrains them. Moreover, the constraints that bind them are also ones that are not likely to be relaxed to the detriment of shippers just because a merger lets a railroad work more closely with its former interline partner to set a final price to shippers. Professor Salop's theory, which is so disconnected from the relevant facts and realities of the railroad industry, offers no reason to re-examine these basic determinations that both

31 *See*, *e.g.*, Application Statement, § 3.1.

32 Salop V.S., ¶ 51.

incentive and ability for anticompetitive vertical effects are lacking in these end-to-end railroad mergers.

2.3. Dr. Reishus's vertical analysis is internally inconsistent and does not establish that a CP and KCS combination is likely to result in harm

49. Dr. Reishus makes the same straw-man argument of a "one lump" presumption and makes a similar observation as Professor Salop; namely that interline partners possess imperfect information about each other. Nevertheless, unlike Professor Salop, he acknowledges that end-to-end rail mergers are typically pro-competitive with benefits such as providing new single-line service and operational efficiencies.[33] As a reason to believe the CP/KCS combination may be an exception, Dr. Reishus points to a particular fact that would apply at the Laredo gateway – regulation in Mexico against discriminatory pricing.[34] This is, incidentally, the same constraint that Professor Hausman suggested, on behalf of UP, might generate an incentive and ability for vertical effects when KCS was acquiring TM and TFM, and which the Board at the time found unlikely to lead to vertical effects.[35] In an attempt to revive this rejected theory, Dr. Reishus presents a numerical example that he claims illustrates how the regulation could lead to a merger effect.[36] Dr. Reishus's

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33 Reishus V.S., ¶¶ 23–28.

34 Reishus V.S., § C.

35 *See* Verified Statement of Jerry A. Hausman, *Kansas City Southern – Control – The Kansas City Southern Railway Company, et al.*, Finance Docket No. 34342, August 1, 2003 ("Hausman V.S. 2003"), pp. 11–16.

36 Reishus V.S., Figure 3.

assumption about the way that this regulation operates is incorrect. Even if it did operate as he assumes, though, his illustrative example is not economically coherent and fails to establish the vertical foreclosure incentive and harm to shippers that he claims.

50. Consider how Dr. Reishus's example works. He assumes a monopoly railroad (M) is subject to Mexican regulation. This railroad interconnects with three U.S. railroads (A, B, and C) that are each the only way to serve three different shippers. He also assumes that M sets a single price that applies to all three interconnections, which is the way he assumes the regulation binds M. Specifically, he assumes that this price leaves zero profit for railroads B and C (who each carry their respective traffic at their marginal cost of $10 in his example) but a positive profit for railroad A (who is also assumed to have marginal cost of $10, but a shipper willing to pay $3 more than the shippers B and C serve). If Dr. Reishus's numbers were credible, M would like to charge A more than it charges B and C, but because he assumes Mexican law does not allow any differences in price, he concludes that M has an incentive and ability after a merger with B to raise its price to all three carriers. His assumption that C is already pricing at marginal cost is what makes this model a prediction of anticompetitive effects, as it leads to his conclusion that M's decision would mean foregoing the movement to C's shipper at this higher price.

51. Before getting into why Dr. Reishus's numbers are not credible as a matter of economics, it is worth noting that Mexican regulation does not preclude differences in prices that apply to the segment within Mexico in the way Dr. Reishus assumes in his

example. In particular, Dr. Reishus assumes away the possibility that non-discriminatory prices can include different pricing for otherwise similar shipments that differ by volume. This assumption is contrary to my understanding of Mexican pricing regulation.[37]

52. There is no effect of the merger in Dr. Reishus's numerical example if carrier M can comply with Mexican regulation and set a schedule of rates that is non-discriminatory (in the sense that the same schedule is available to any shipper) but which results in a different effective rate for A's shipper than would apply to B or C. In particular, because Dr. Reishus's simplified example relies on A's shipper handling half the volume, a $3 surcharge on all large shipments would give M all of the possible profit without any effect from a merger while still complying with Mexican regulation.

[37] *See*, *e.g.*, Reply Verified Statement of Oscar Augusto Del Cueto Cuevas, *Canadian Pacific Railway Limited, et al. – Control – Kansas City Southern, et al*., Finance Docket No. 36500, July 12, 2022, ¶ 25 ("Further, Article 170 of the Mexican Regulations imposes a non-discrimination requirement on rates. Concessionaires may implement discount programs or promotions, but only under equitable conditions and without discrimination, taking into account the specific characteristics of each service such as volume, equipment, and distance. Concessionaires cannot discriminate based on interline partner, unless cost differentiations justify those differences."). *See also* Kansas City Southern de México,{{ }}, KCSR-HC-00020713 – 9 ("{{ }}").

53. Even if Dr. Reishus were correct about the way that regulation in Mexico works, his numerical example only shows the effect it does because he assumes a set of prices and quantities that defy economic principles. In particular, the prices Dr. Reishus assumes are ones that do not constitute an economic equilibrium. That is, one or more of the railroads in his example would make more profit with a different price than with the price he assumes. I illustrate this flaw in Exhibit 1. I show that railroad C would make more profit by charging a higher price – one above marginal costs – than Dr. Reishus assumes.

EXHIBIT 1
Flaws in Dr. Reishus's numerical example

Railroad	Cost[1]	Price[2]	Quantity	Profit[3]	Total Shipper Price Paid	Max Price of Complete Move[4]	Acceptable Total Price For Shipper[5]
Dr. Reishus's prices and quantities pre-merger							
Mexican Railroad							
M	$10	$15	100	$500			
Interconnecting U.S. Railroads							
A	*$10*	*$13*	*50*	*$150*	*$28*	*$28*	*Yes*
B	*$10*	*$10*	*30*	*$0*	*$25*	*$25*	*Yes*
C	$10	$10	20	$0	$25	$25	Yes
Response 1: Carrier C charges $10.50, M does not lower its price[6]							
Mexican Railroad							
M	$10	$15	80	**$400**			
Interconnecting U.S. Railroads							
A	*$10*	*$13*	*50*	*$150*	*$28*	*$28*	*Yes*
B	*$10*	*$10*	*30*	*$0*	*$25*	*$25*	*Yes*
C	$10	**$10.50**	0	$0	$26	$25	**No**
Response 2: Carrier C charges $10.50, M lowers its price[7]							
Mexican Railroad							
M	$10	**$14.50**	100	**$450**			
Interconnecting U.S. Railroads							
A	*$10*	*$13.50*	*50*	*$175*	*$28*	*$28*	*Yes*
B	*$10*	*$10.50*	*30*	*$15*	*$25*	*$25*	*Yes*
C	$10	**$10.50**	20	$10	$25	$25	Yes

Source: Reishus V.S., Figure 3
Note:
[1] The marginal cost per carload for each rail segments.
[2] The rate per carload set by each railroad for its segment.
[3] Calculated as the difference between the price and marginal cost for each railroad multiplied by the quantity.
[4] The maximum rates per carload that can be charged for the shipments to different receivers across the three interconnecting railroads (Reishus's model of shipper demand).
[5] Describes whether the total price paid by the receivers, i.e., the price for the Mexican segment plus the interline price, is no greater than the maximum price that can be charged for the shipments to different receivers in Reishus's model of demand.
[6] In this response, Reishus's model of demand posits that railroad C would have zero quantity becuase the total price charged exceeds the maximum rate from the corresponding receiver.
[7] In this response, railroad M lowers its price to $14.50 per carload which, in Reishus's model of demand, ensures that the movement over railroad C occurs as the total price does not exceed the maximum rate from the corresponding receiver.

54. As I show in the top panel of Exhibit 1, Dr. Reishus assumes that railroad C makes zero profit carrying 20 units of traffic at its marginal cost of $10. But, in an economically rational equilibrium of this example railroad C would not settle for zero profit, and M has no mechanism by which to force C to settle for zero profit. If railroad C in this model charged $10.50, instead, then railroad M would face a choice between continuing to charge $15 as Dr. Reishus assumes (foregoing the traffic with C) and making $400 in profit (Response 1 in the middle panel of the exhibit) or lowering its price to $14.50 to carry all of the traffic and making $450 in profit (Response 2 in the lower panel of the exhibit). As railroad C should expect M to choose the larger profit between these choices, charging $10.50 to make some profit is clearly better for C than making zero profit and Dr. Reishus's assumed behavior for C is not rational.[38]

55. This flaw in Dr. Reishus's numerical example is critical to the effect he uses the example to demonstrate. Recall that the reason he predicts an anticompetitive effect is that, in his example, he assumes railroad C is already pricing at its marginal cost and cannot further lower price to retain the business when M tries to get more of the profit that he assumes is left to A. In an economically rational equilibrium, railroads B and C would not settle for zero profit, and C would not be in the precarious position necessary for Dr. Reishus's prediction. Indeed, this assumption is inconsistent with the realities of the railroad industry. In the real world, railroads earn profits, including

[38] Railroad B would be in a similar position with an ability to make higher profit than Dr. Reishus's numbers assume it would settle for.

on their interline traffic. For instance, UP and BNSF report that in 2019 they earned 39 and 34 percent in operating margins, respectively.[39]

56. More generally, when Dr. Reishus assumes that "railroad M is in a position to capture as much of the available profit as possible" his numbers fail to reflect that the amount that is possible is actually a product of bargaining with the other railroads over the split of profits.[40] That split, the bargaining over it, and the other limitations on a real railroad's ability to earn "as much profit as possible" are the facts that the Board noted as defusing vertical effects from Mexican non-discrimination regulations

[39] Union Pacific Corporation, SEC Form 10-K for period ended December 31, 2019, filed on February 7, 2020, pp. 1–98 at p. 24; Burlington Northern Santa Fe, LLC, SEC Form 10-K for period ended December 31, 2019, filed on February 21, 2020, pp. 1–48 at p. 16. I understand that, in particular, UP and BNSF {{{ }}} on their cross-border traffic through the Laredo gateway. Michael Baranowski has examined the profitability of these routes using RVC ratios, which, for a movement or a set of movements, are calculated as the ratio of revenue to a measure of variable costs (referred to as URCS) which was developed by the Board and is reported in the Confidential Waybill Sample ("CWS"). Mr. Baranowski finds that, on average, in 2019, UP's RVC was {{{ }}}. He also finds that, on average, in 2019, BNSF's RVC was {{ }}. *See* Rebuttal Verified Statement of Michael R. Baranowski, *Canadian Pacific Railway Limited, et al. – Control – Kansas City Southern, et al.*, Finance Docket No. 36500, July 12, 2022 ("Baranowski R.V.S."), Table 6.

[40] It is also possible that Dr. Reishus may have meant to assert yet another constraint, that M sets its price before any other railroad and is somehow constrained to never change that price. While I am not aware of any evidence that such a constraint applies anywhere in the pricing of interline railroad movements, it is an assumption that sometimes appears in the academic economics literature and would make Dr. Reishus's numbers rationalizable, if not credible, due to a well-studied extreme case of bargaining game theory referred to as ultimatum games. The theory of subgame perfection applied in these games suggests one can predict a party with no profits at stake will act however one chooses (i.e., that Dr. Reishus can assume B and C will carry the traffic if left with zero profit whether they do so or not). Laboratory experiments of ultimatum games, however, have shown repeatedly that it is not credible to assume B or C would make the choice that M wants after M's price setting leaves them with no chance to make a profit of their own. *See*, *e.g.*, Werner Güth, Rolf Schmittberger, and Bernd Schwarze, "An experimental analysis of ultimatum bargaining," *Journal of Economic Behavior & Organization*, 3(4), 1982, pp. 367–388; Daniel Kahneman, Jack L. Knetsch, and Richard H. Thaler, "Fairness and the Assumptions of Economics," *The Journal of Business*, 59(4), 1986, pp. S285–S300.

the last time this possibility was raised. Dr. Reishus's failure to incorporate these considerations in his numerical example makes the scenario he posits irrelevant to the analysis of vertical effects.

3. COMMENTERS' CRITIQUES OF MY ANALYSIS OF LAREDO TRAFFIC AND OTHER EMPIRICAL FORECLOSURE ARGUMENTS ARE FLAWED AND DO NOT CHANGE MY CONCLUSION

57. In my Application Statement, I explained that "neither CP nor KCS would have the incentive and ability as a combined firm to foreclose rivals or otherwise lessen competition as a result of vertical integration."[41] To support this conclusion, I provided analysis of northbound traffic KCSM brings to the Laredo gateway to "illustrate how the overall effects on rivals of a combination of CP and KCS are likely to stem, not from CP/KCS foreclosing those rivals, but from enhanced competition as shippers freely choose newly-created CP/KCS single-line options."[42]

58. In response, Commenters have provided empirical analyses of their own in which they find that KCS handles different shares of traffic when they look at different cuts of data or different subsets of traffic than I did. They point to these different percentages as suggesting that some UP or BNSF traffic may have been foreclosed by KCS in the years since it acquired TFM-TM, and argue that my analysis cannot rule out this possibility. In the rest of this section, I address these analyses, but first, I explain the overarching reason why the approach taken by Commenters is misguided, flawed, and does not show what they claim it shows.

59. In the previous section, I established that Commenters have not offered any new theories to support anticompetitive vertical effects from mergers of end-to-end railroads, such as CP and KCS. Commenters' empirical arguments suffer from this

41 Application Statement, ¶ 12.

42 Application Statement, ¶ 12.

same fundamental flaw – their analyses do not test a theory for how a CP/KCS combination would create a new incentive and ability that my analysis did not already rule out. Instead, they offer empirical observations they claim could be consistent with the outcome of some heretofore-unspecified theories of foreclosure.

60. The analysis I presented in my Application Statement tested, and ruled out, the only foreclosure theory posited by Commenters UP and BNSF at the time of the KCS-TFM-TM merger. The theory implied that KCS could divert a substantial amount of traffic at the Laredo gateway by foreclosing UP and BNSF:

- Professor Hausman, UP's expert witness, pointed to the non-discrimination regulation in Mexico as a constraint and argued that KCS would raise TFM's rate following the merger, disadvantaging UP and hurting shippers with the amount of the increase determined by the ability to give a rebate on traffic diverted to KCS. Thus, for his theory to predict a significant effect on competition, a significant volume of traffic would have to be diverted to KCS.[43]
- Dr. Reishus, BNSF's witness at the time, argued that "to the extent that BNSF provides a competitive discipline to UP at Laredo and Brownsville, this alternative could be lost or reduced if [KCS] were to inefficiently favor its own traffic through its routing over the Laredo and Brownsville gateways." He did not suggest a theory of how the merger would remove some constraint that could generate the requisite incentive or ability for such a prediction. However, he did suggest that BNSF could lose all competitive relevance from KCS foreclosure after the TFM-TM combination, implying a similarly substantial amount of foreclosure.[44]

[43] Professor Hausman claimed that almost half of the traffic at Laredo (corresponding to 75 percent of UP traffic at the time) could be diverted to KCS following the acquisition. *See* Hausman V.S. 2003, pp. 15–16.

[44] Verified Statement of David Reishus, *Kansas City Southern – Control – The Kansas City Southern Railway Company, et al.*, Finance Docket No. 34342, August 4, 2003, pp. 73–74.

61. These theories suggest that the appropriate benchmark is a relatively obvious one. As Professor Salop admits, the shares I report in my analysis are "inconsistent with a claim of complete foreclosure."[45] Professor Hausman's rebate theory may not imply as precise a benchmark, but the implication is clear enough to examine in the data: a finding that, as of 2019, KCS does not handle a substantial fraction of the traffic at Laredo—despite doing so being most consistent with the theorized KCSM power—is sufficient to show that neither of these theories were borne out. Indeed, this is what I found. In my analysis of northbound traffic at Laredo I found that KCS hands over to UP or BNSF {{[redacted]}} of the traffic it takes to Laredo from Mexico.[46]

62. Commenters' response to this is to produce different cuts of my analysis and then to point to the ones where KCS keeps a higher share of movements at Laredo in 2019, suggesting that my analysis cannot rule out *all* potential theories of *partial* foreclosure that could apply to these subsets of traffic.[47] This exercise does not prove that KCS is foreclosing UP or BNSF as interline partners on particular subsets of traffic. In suggesting there is some unrefuted theory of foreclosure that could be consistent with the observed shares, Commenters simply assume that out of all possible reasons shares may have evolved, some partial foreclosure is the relevant explanation.[48] They do not offer any evidence that might help distinguish between

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45 Salop V.S., ¶ 89.

46 Application Statement, Exhibit 2.

47 Reishus V.S., ¶¶ 62–63, Table 2; Verified Statement of Professor Julie M. Carey and Dr. Albert W. Bremser, *Canadian Pacific Railway Limited, et al. – Control – Kansas City Southern, et al.*, Finance Docket No. 36500, February 28, 2022 ("Carey/Bremser V.S."), pp. 17–18, Figure 2; Salop V.S., ¶¶ 94–96, Figure 8.

48 Reishus V.S., § 4; Salop V.S., § 5.

their vague, unspecified theories, procompetitive explanations, and other unrelated changes in traffic patterns to explain the differences in shares observed in the data. Instead, their exercise only proves there is a lot of variation in how different subsets of the traffic were affected by the many reasons that shares may change over the intervening 15 years since the KCS-TFM-TM transaction.

63. While Commenters are correct that my analysis cannot rule out *all possible* theories of foreclosure as an explanation of share changes over time, they have not addressed the question of whether any of these possible theories are *relevant.* As I explained above, only one serious theory of potential foreclosure, the theory that was suggested at the time of the KCS-TFM-TM transactions, has actually been suggested; other theories, to the extent they are discernible, are disconnected from the facts of the industry or even from economic principles for the reasons described elsewhere in my statement. My analysis is sufficient to rule out that theory.

64. Thus, to the extent Commenters suggest examining how KCS shares evolved over time relative to a but-for scenario, this greater precision would only be needed to rule out additional theories that were not even suggested at the time of the KCS-TFM-TM transaction. As I discussed in section 2, despite how readily experts have pointed out that presumptions should not govern the analysis of vertical effects, they have collectively failed to present any theories consistent with facts of the railroad industry – beyond what have already been rejected by the Board in past investigations including at the time of the KCS-TFM-TM transactions and again by my analysis – to explain why a CP and KCS combination would create a new incentive and ability to

foreclose. In fact, as discussed in section 2.1.2, with no justification they adopt a presumption that any share gain is the result of anticompetitive conduct.

65. In the rest of this section, I address Commenters' analyses in more detail. I organize my response to their arguments as follows. In section 3.1, I explain that Commenters' analysis of KCS shares of southbound traffic, which naively inverts my analysis of northbound traffic, is theoretically flawed and misleading. In section 3.2, I demonstrate that an examination of cross-border traffic patterns reveal Commenters' analyses comparing shares over time are incomplete, ignore patterns in the data consistent with stronger competition from KCS, and cannot be interpreted as Commenters suggest. In section 3.3, I address Commenters' flawed critique of my use of BEAs to identify destinations where KCS could compete for northbound traffic from Laredo. In section 3.4, I respond to analyses presented by BNSF and demonstrate why they do not provide evidence of KCS foreclosure of BNSF. Finally, in section 3.5, I evaluate Professor Mayo's analysis that he claims identifies risk of foreclosure by CPKC and explain that it is methodologically flawed and based on the unfounded, perverse logic that I discussed in section 2.1.2 – which presumes that all opportunities to compete are opportunities to restrain competition.

3.1. Commenters analysis of southbound traffic is methodologically flawed and misleading

66. Commenters present an analysis in which they naively invert my analysis of northbound traffic to examine southbound traffic moving through Laredo.[49] In this section I explain that, unlike my analysis of northbound flows, Commenters' analyses of southbound flows cannot reliably test the hypothesis that KCS is using its position at Laredo to foreclose its interline partners, UP and BNSF, on southbound movements. To examine the reverse flow of traffic, Commenters' experts would have needed to control for several differences that complicate the interpretations of their analyses. What they have done, instead, is not comparable to the analysis of northbound traffic that I put forward in October and is not informative about KCS's incentive and ability to foreclose its interline partners at Laredo.[50]

67. The foreclosure theories posited at the time of the KCS-TFM-TM merger predict that KCSM would favor KCS on cross-border traffic at Laredo to get a longer haul. For example, according to these theories, KCS may try to hold onto a northbound movement carried to Laredo by KCSM and either deliver it to its final destination or to an interline partner at another gateway located farther into KCS's U.S. network than Laredo.

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[49] Reishus V.S., ¶¶ 62–63, Table 2; Carey/Bremser V.S., pp. 17–18, Figure 2; Salop V.S., ¶¶ 94–96, Figure 8.

[50] I noted in my Application Statement that an analysis based on reversing the direction of my Laredo traffic flow analysis from northbound to southbound would not be an appropriate test of KCS's potential foreclosure incentives. *See* Application Statement, Exhibit 2, fn. 17.

68. My analysis of northbound traffic provided a direct and clean test of the theory. Laredo is the only gateway through which KCSM can deliver northbound cross-border shipments. Thus, for a shipment moving north from Mexico to the U.S. or Canada, which KCSM delivered to the border, Laredo represents the first gateway along that shipment's route at which KCS could use the alleged market power of KCSM to force a longer haul for itself. This means that Laredo is the gateway at which KCS's incentives to foreclose interline partners would be strongest. By taking over the shipment directly from KCSM at Laredo, KCS maximizes its length of haul. Thus, my analysis of the share of northbound traffic that KCSM hands to UP or BNSF at Laredo tests the posited theory that alleged KCSM market power at Laredo provided KCS with the incentive and ability to foreclose UP and BNSF.

69. It is not possible however to replicate a similar test for traffic headed south to Mexico by examining KCS shares of southbound traffic at Laredo. First, the numerator (i.e., the traffic that KCS carries to Laredo) is not the right measure to serve as a test of the theory, because it obscures any distinction between traffic that was handed off as early as possible and traffic that was not. Southbound traffic arrives at Laredo from multiple origins and could theoretically transit through multiple gateways along the way. Rather than identifying traffic that had a longer haul on KCS than its minimum possible, the numerator used by Commenters merely identifies traffic that KCS handled on both sides of the border. Whether that traffic could have been or was handed off as early as practical, or was held longer than practical, is simply not being tested with this numerator.

70. Second, the denominator used by Commenters is misleading and artificially inflates the share attributed to KCS at Laredo. In focusing on the northbound traffic that KCSM brings to Laredo, I identified a base of traffic to study that allowed for all of the possible market power the theory would assume. That is, the theory assumes that vertical effects might alter the choice of carrier and route north of Laredo, but KCSM has no reason to distort traffic it is already carrying in Mexico. Examining southbound traffic requires considering that the originating carrier, UP, or BNSF, may have reasons to encourage movements over other border gateways. I understand that UP has been working with FXE (particularly once it acquired a 26 percent stake in FXE) to improve the flow of traffic at Eagle Pass.[51] As KCS does not serve Eagle Pass on either side of the border, traffic that UP or BNSF may route over that gateway is missing from the analysis. Taking this traffic out of the denominator – traffic that can only be associated with UP or BNSF's share of overall southbound movements – mechanically inflates the share attributed to KCS at Laredo.

71. Additionally, Commenters' analysis of southbound traffic suffers from a data-availability issue that similarly biases their calculations to show larger shares for KCS. Specifically, shipments that FXE delivers to locales that are alternatives to delivery on KCSM should be included in the denominator of a southbound analysis. Given the {{[redacted]}} amount of traffic that UP and BNSF can be identified as

[51] Union Pacific Railroad, "1999 Fact Book," September 2000, available at https://www.up.com/investors/factbooks/factbook99/factbook99.pdf, p. 24 ("Union Pacific increased its investment in the Ferromex (FXE) railroad from 13 [percent] to 26 [percent]. The FXE is a 4,000-mile rail network serving four of the six gateways to the United States.").

handling at Eagle Pass and Brownsville,[52] the lack of relevant FXE data is a significant flaw in Commenters' analysis of southbound movements.[53]

3.2. Commenters' analyses that compare shares over time and for subsets of traffic ignore patterns in the data consistent with stronger competition from KCS and cannot be interpreted as Commenters suggest

72. In this section, I demonstrate that the analyses Commenters offer comparing shares over time or across different subsets of traffic cannot be interpreted as a reliable test, even of some unspecified theory of partial foreclosure. Despite Commenters' suggestions otherwise, the patterns they observe in the data are likely capturing variations in traffic that follow from procompetitive and other explanations unrelated to whatever vague, unspecified theory Commenters may have in mind.

3.2.1. Growth in traffic at the Eagle Pass gateway may explain some of the patterns in UP, BNSF, and KCS shares presented by Commenters

73. One big change in traffic patterns since the KCS-TFM-TM transactions is the growth of the Eagle Pass gateway. This growth, which Commenters ignore, makes it difficult to assess the evolution over time of traffic that would have been handled into

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52 *See* § 3.2.1.

53 FXE traffic tapes have not been produced in these proceedings. UP and BNSF traffic tapes – which provide some information on movements handled by FXE – were produced after I submitted my Application Statement. I have not examined whether the information about FXE terminations that may be available in UP and BNSF tapes is sufficient to rectify Commenters' error as the issue with the numerator I describe above would still make such an exercise misleading.

and out of Laredo by UP or BNSF in some but-for scenario without the KCS-TFM-TM transaction.

74. Growth at Eagle Pass may explain some of the seeming loss in UP and BNSF traffic that Commenters point to at Laredo.[54] Analyses presented by Professor Salop and Dr. Reishus of cross-border traffic shares are limited to traffic that crosses the Mexican border at the Laredo gateway.[55] Their analyses do not include traffic crossing the border at the Eagle Pass or Brownsville gateways. To the extent growth at Eagle Pass, in particular, demonstrates that it is an increasingly good alternative to Laredo and that the growth likely includes some traffic that otherwise would have transited at Laredo, looking only at shares of traffic at Laredo over time is misleading. UP and BNSF both handle U.S. traffic into and out of Eagle Pass and Brownsville, while KCS does not connect to either these two gateways.[56] So, growth in UP and BNSF traffic at Eagle Pass or Brownsville mechanically makes KCS appear to be gaining share at Laredo, even if the amount of U.S.-Mexico traffic handled by each railroad did not change.

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54 For example, as I discuss in section 3.4 below BNSF appears to have shifted {{ }} grain traffic from Laredo to Eagle Pass.

55 Reishus V.S., Table 2; Salop V.S., Figure 8.

56 UP owns tracks to Eagle Pass, where it connects with FXE. BNSF has trackage rights over UP that allow it to directly access the FXE network at Eagle Pass, whereas BNSF's access to Laredo begins in Robstown located around 150 miles away from Laredo. BNSF also has trackage right over UP to access the Brownsville gateway where it connects to KCSM network. *See, for example*, Union Pacific Railroad, "Union Pacific System Map," available at https://www.up.com/aboutup/reference/maps/system_map/index.htm; BNSF Railway, "Mexico System Map," available at https://www.bnsf.com/bnsf-resources/pdf/ship-with-bnsf/maps-and-shipping-locations/mexico-system-map.pdf.

75. El Paso is another gateway to Mexico that can be relevant as an alternative to Laredo, particularly for BNSF. Indeed, as I discuss in section 3.4.3, BNSF has {{[redacted]}}. For example, BNSF traffic {{[redacted]}} on BNSF's main route from Chicago to Southern California (its "Southern Transcon" line), rather than depending on trackage rights over UP as it does to Laredo, Eagle Pass, and Brownsville.[57] Consistent with this, BNSF traffic at El Paso {{{[redacted]}}} since the time of the KCS-TFM-TM transaction.[58] Indeed, as of 2019, BNSF handles {{{[redacted]}}} through El Paso and Eagle Pass than through Laredo and Brownsville.[59]

76. I have not included traffic through El Paso in the analysis of cross-border flows that I present in what follows, however, to avoid possible complications in interpretation. First, UP's network does not appear to have similar advantages for El Paso relative to Laredo (or Eagle Pass), so diversion to El Paso may be a more BNSF-

[57] *See* § 3.4.3. BNSF's reliance on trackage rights from UP to access Laredo, Eagle Pass, or Brownsville and its connection over owned tracks between El Paso and BNSF's Southern Transcon line at Belen, NM can be seen in BNSF Railway, "Mexico System Map," available at https://www.bnsf.com/bnsf-resources/pdf/ship-with-bnsf/maps-and-shipping-locations/mexico-system-map.pdf; BNSF Railway, "Rail Talk – BNSF Railway's Southern Transcon: Rail's Super Highway," October 23, 2018, available at https://www.bnsf.com/news-media/railtalk/service/southern-transcon.html.

[58] BNSF traffic at El Paso {{{[redacted]}}} between 2006 and 2019. A rough estimate of BNSF traffic over El Paso to/from U.S. points east of El Paso shows this traffic has also {{{[redacted]}}}. *See* my workpaper 1.

[59] *See* my workpaper 1.

specific phenomenon. Second, even focusing on BNSF traffic, the El Paso gateway is also BNSF's {{{[redacted]}}} for traffic out of the Western U.S.,[60] so excluding El Paso ensures the traffic in my analysis is more focused on traffic that KCS competes for via the Laredo gateway. Nevertheless, the prospect of BNSF substitution to El Paso is a reason to consider my analyses in this section a lower bound.

77. In Exhibit 2, I present cross-border traffic volumes at the Laredo, Eagle Pass, and Brownsville gateways in 2006 and 2019 for UP, BNSF, and KCS.[61] I find that UP and BNSF {{{[redacted]}}} cross-border traffic across these three gateways

[60] Based on comparing BNSF traffic through El Paso, Eagle Pass, Laredo, and Brownsville, I find that the share of El Paso traffic originating or terminating in the Western U.S. is {{{[redacted]}}} than the other three gateways, handling around {{{[redacted]}}} percent of all Western U.S. traffic in 2006 and 2019. *See* my workpaper 1. In his deposition, Mr. Hirsch identified San Diego, CA as the only other BNSF gateway along the Mexican border. According to publicly available traffic data presented by Dr. Reishus the San Diego gateway handles small amounts of traffic. The data presented by Dr. Reishus include two additional gateways: Calexico, CA and Nogales, AZ. Based on its "Mexico System Map," BNSF does not have access to these two other gateways either through its own tracks, nor through trackage rights on UP's network from which these gateways are accessible. *See* Remote Zoom Videotaped Deposition of Paul Hirsch, *Canadian Pacific Railway Limited, et al. – Control – Kansas City Southern, et al.*, Finance Docket No. 36500, June 3, 2022 ("Hirsch Deposition"), pp. 28–29; Reishus V.S., Figure 2; BNSF Railway, "Mexico System Map," available at https://www.bnsf.com/bnsf-resources/pdf/ship-with-bnsf/maps-and-shipping-locations/mexico-system-map.pdf.

[61] For 2019 traffic, I rely on combined CP-KCS-KCSM-UP-BNSF-CN-NS-CSXT traffic tapes ("Combined Tapes"). These data provide information on all 2019 movements crossing the Mexican border that involve CP, KCS, UP, or BNSF. Similar traffic tapes are not available in this proceeding for 2006. Thus, for 2006 traffic, I rely on the CWS. Due to limitations in the CWS, for 2006 I approximate cross-border traffic by assuming for traffic observed originating or terminating at one of the border stations at Eagle Pass, Brownsville, or Laredo (and, by extension, Robstown or Corpus Christi by BNSF) that the ultimate origin or the ultimate destination for the movement is in Mexico. This method may understate movements through Eagle Pass because through-movements terminated by FXE in Mexico are not reported in the CWS. The conclusions of my analyses in § 3.2 are qualitatively unchanged if for 2019 traffic, rather than use the 2019 Combined Tapes, I use the same methodology I used for 2006 on the 2019 CWS to approximate cross-border traffic. *See* my workpaper 2.

in 2019 than they did in 2006.[62] While BNSF traffic volume {{{[redacted]}}} between 2006 and 2019.[63] For UP, {{{[redacted]}}}.[64] As overall traffic across the three gateways grew, UP and BNSF cross-border traffic at Eagle Pass grew {{{[redacted]}}}. By 2019, Eagle Pass accounted for approximately {{[redacted]}} percent of all traffic crossing the three gateways, {{{[redacted]}}} percent in 2006.[65]

[62] Considering all three gateways combined, UP {{{[redacted]}}} its total cross-border traffic from {{{[redacted]}}}; BNSF {{{[redacted]}}} its total traffic from {{{[redacted]}}}. *See* my workpaper 3. My analysis is also consistent with {{[redacted]}} BNSF traffic through Mexico since the KCS-TFM-TM transaction that is documented by BNSF. *See* BNSF Railway, {{[redacted]}}, BNSF0002839 – 57 at BNSF0002842.

[63] *See* my workpaper 4.

[64] *See* my workpaper 5.

[65] *See* my workpaper 6.

EXHIBIT 2
Traffic {{{ }}} through Eagle Pass has increased

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Source: Confidential Waybill Sample, 2006; Combined CP-KCS-KCSM-UP-BNSF-CN-NS-CSXT Traffic Tapes, 2019; CP Intermodal Containers to Railcar Conversion Factor.xls
Note: This analysis considers traffic southbound and northbound to/from Mexico, including movements identified in the CWS and the Combined Tapes as terminating/originating in Mexico and passing through the Laredo, Eagle Pass, and Brownsville gateways, or movements identified in the 2006 CWS as terminating/originating in the SPLC of Laredo (including SPLCs for Robstown/Corpus Christi for BNSF), Eagle Pass, or Brownsville, regardless of rebill code. Movements are considered handled by a carrier if the carrier is observed handling the movement to the gateway or terminating/originating the shipment at the SPLC of a gateway. Volume of traffic is reported in expanded carloads when relying on the CWS. Intermodal units in the 2006 CWS and in the Combined Tapes are converted to carloads using 4.7 units per flat car, which corresponds to a system average for CP in 2019.

78. The {{{ }}} is consistent with evidence of investments made by UP to improve the quality of its service at Eagle Pass and encourage shippers to use UP's routings through Eagle Pass for movements between Mexico and the U.S. For example, by 2015, UP expanded its

Eagle Pass yard capacity and constructed double track infrastructure.[66] In the same year, it expanded its "Eagle Premium Service" offered in conjunction with FXE for intermodal and automotive traffic.[67] UP currently advertises its Eagle Premium intermodal service as the "Industry's Best Mexico Service."[68]

79. In light of this significant growth of Eagle Pass, Commenters are incorrect to focus on traffic only at Laredo. By calculating shares only at the one gateway, they incorrectly ignore the fact that changes over time in the choice among border gateways generates an artificial appearance of increases in KCS's share.

3.2.2. *Procompetitive or innocuous factors that would have affected shares have been ignored by Commenters which invalidates their conclusion that any changes in UP, BNSF, and KCS shares can be attributed to anticompetitive effects*

80. In addition to the growth at Eagle Pass discussed in the prior section, many other changes across more than 15 years since the TM and TFM transactions will have affected traffic patterns – including changes that reflect the enhanced competitiveness of various movements. In particular, Commenters fail to account for any efficiencies

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66 Union Pacific Corporation, "2015 Investor Fact Book," April 2016, available at https://www.up.com/cs/groups/public/@uprr/@investor/documents/investordocuments/pdf_up_invest_2015_factbook.pdf, p. 33.

67 Union Pacific Corporation, "2015 Investor Fact Book," April 2016, available at https://www.up.com/cs/groups/public/@uprr/@investor/documents/investordocuments/pdf_up_invest_2015_factbook.pdf, pp. 17, 30.

68 Union Pacific Corporation, "The Industry's Best Mexico Service Just Got Better: Expanded Eagle Premium Service Connects Monterrey to Chicago, Los Angeles, Lathrop and Seattle Markets," January 2018, available at https://www.up.com/cs/groups/public/@uprr/@customers/documents/up_pdf_nativedocs/pdf_up_inter_eagle.pdf.

of single-line service created by the merger of KCS with TM and TFM. Commenters also ignore the effect of countless other factors, instead attributing any differences in KCS's share over time for all border traffic or for subsets of traffic to a possibility of some partial foreclosure theory.

81. In Exhibit 3**,** I show the volume of traffic that each of UP, BNSF, and KCS carried to and from the Mexican border through one of the three gateways, Laredo, Eagle Pass, and Brownsville, in 2006 and in 2019. The exhibit presents the same volume figures shown in Exhibit 2 above, but considers the direction in which the traffic flows rather than the gateway through which it goes, first combining northbound and southbound traffic, and then showing each direction separately. Each bar shows the traffic handled by each of UP, BNSF, and KCS.

EXHIBIT 3
Traffic through the three Mexican gateways increased from 2006 to 2019 {{{[redacted]}}}

{{{

[redacted]

}}}

Source: Confidential Waybill Sample, 2006; Combined CP-KCS-KCSM-UP-BNSF-CN-NS-CSXT Traffic Tapes, 2019; CP Intermodal Containers to Railcar Conversion Factor.xls

Note: This analysis considers traffic southbound and northbound to/from Mexico, including movements identified in the CWS and the Combined Tapes as terminating/originating in Mexico and passing through the Laredo, Eagle Pass, and Brownsville gateways, or movements identified in the 2006 CWS as terminating/originating in the SPLC of Laredo (including SPLCs for Robstown/Corpus Christi for BNSF), Eagle Pass, or Brownsville, regardless of rebill code. Movements are considered handled by a carrier if the carrier is observed handling the movement to the gateway or terminating/originating the shipment at the SPLC of a gateway. Volume of traffic is reported in expanded carloads when relying on the CWS. Intermodal units in the 2006 CWS and in the Combined Tapes are converted to carloads using 4.7 units per flat car, which corresponds to a system average for CP in 2019.

82. Consistent with what I presented in Exhibit 2, total traffic between the U.S. and Mexico through these three gateways, combining both northbound and southbound movements, increased {{{[redacted]}}}. The {{{[redacted]}}} demonstrate that

traffic patterns are likely to have changed significantly for reasons other than any possible foreclosure by KCS.

83. Looking at the northbound traffic, I find increases in volume {{{ }}} relative to 2006. {{{ }}} These patterns show an expansion of northbound traffic, not an anticompetitive reduction in output. Regardless of what interpretation Commenters may put on shares, their failure to consider the expansion in overall traffic belies their supposition that this data suggests KCS may have made the markets for this traffic less competitive.[72]

84. A review of southbound traffic supports the same point. Overall southbound traffic volume also increased between 2006 and 2019. {{{ }}} Looking more closely at the

69 *See* my workpaper 7.

70 *See* my workpaper 7.

71 *See* my workpaper 8.

72 When I look at the data for the specific commodity types (automotive and intermodal) that constituted about {{{ }}} percent of northbound movements in 2006, I find similar patterns. Total volumes handled by {{{ }}} between 2006 and 2019. *See* my workpaper 9.

73 *See* my workpaper 10.

74 *See* my workpaper 10.

commodity composition of the southbound traffic reveals that many different factors have likely affected the changes in shares for each carrier.

85. In Exhibit 4, I present southbound cross-border traffic for different commodity types. I categorize commodities according to the same "lines of business" that Brown and Zebrowski used for their diversion analysis: Automotive, Energy, Grain, Intermodal, and Other.[75] KCS's {{{[redacted]}}}. However, the situation appears to vary considerably from category to category which suggests that category-specific factors are particularly important to understanding these changes.

[75] The "Other" category combines all other lines of business considered by Brown and Zebrowski. *See* Verified Statement of Richard W. Brown and Nathan S. Zebrowski, *Canadian Pacific Railway Limited, et al. – Control – Kansas City Southern, et al.*, Finance Docket No. 36500, October 28, 2021 ("Brown/Zebrowski V.S."), ¶ 25.

EXHIBIT 4
Decomposition of southbound traffic through the three gateways by carrier and commodity type

{{{

}}}

Source: Confidential Waybill Sample, 2006; Combined CP-KCS-KCSM-UP-BNSF-CN-NS-CSXT Traffic Tapes, 2019; CP Intermodal Containers to Railcar Conversion Factor.xls
Note: This analysis considers traffic southbound and northbound to/from Mexico, including movements identified in the CWS and the Combined Tapes as terminating/originating in Mexico and passing through the Laredo, Eagle Pass, and Brownsville gateways, or movements identified in the 2006 CWS as terminating/originating in the SPLC of Laredo (including SPLCs for Robstown/Corpus Christi for BNSF), Eagle Pass, or Brownsville, regardless of rebill code. Movements are considered handled by a carrier if the carrier is observed handling the movement to the gateway or terminating/originating the shipment at the SPLC of a gateway. Volume of traffic is reported in expanded carloads when relying on the CWS. Intermodal units in the 2006 CWS and in the Combined Tapes are converted to carloads using 4.7 units per flat car, which corresponds to a system average for CP in 2019. I use the line of business ("LOB") classifications that were part of the backup materials to the Brown/Zebrowski V.S., which categorize 7-digit STCCs into coarser commodity groupings.

86. For example, Automotive movements from the U.S. to Mexico are a declining area of traffic {{{ }}} but are also the only category with overall declines – likely a result of new auto manufacturing facilities in Mexico.[76] The reduced

[76] According to a study by the Federal Reserve Bank of Chicago, Mexico light vehicle production increased from around 1.5 million in 2004 to almost 3.5 million in 2016. The study notes that most of the increase in auto output was exported, with the United States remaining the principal

{{{[redacted]}}} traffic in this commodity seems to be explained by the overall decrease in this type of movement, rather than as a consequence of some foreclosure by KCS. {{{[redacted]}}}.[77] Southbound Automotive volume handled by KCS {{{[redacted]}}}, while BNSF handled {{{[redacted]}}} of southbound Automotive traffic in either year.[78] Rather than suggesting a diversion of traffic, as Commenters' comparisons would suggest, these changes suggest the most important factor to explain this traffic is the overall decline in demand for such movements.

87. For the Energy category, which also includes chemicals and plastics, total southbound volume increased by {{{[redacted]}}} carloads in 2006 to {{[redacted]}} in 2019.[79] Although KCS {{{[redacted]}}} its volume of southbound Energy traffic {{{[redacted]}}} over this period, UP

destination. *See* Thomas H. Klier and James Rubenstein, "Mexico's Growing Role in the Auto Industry Under NAFTA: Who Makes What and What Goes Where," *Economic Perspectives*, 41(6), September 2017, available at https://www.chicagofed.org/publications/economic-perspectives/2017/6, pp. 5, 23. As of 2020, Mexico produced about 3.0 million automobiles and exported about 2.7 million automobiles. *See* Reuters, "Mexican auto production falls for fourth year running," January 10, 2022, available at https://www.reuters.com/business/autos-transportation/mexican-auto-production-falls-second-year-running-2022-01-07/.

77 *See* my workpaper 11.

78 *See* my workpaper 12.

79 *See* my workpaper 13.

volumes {{{[redacted]}}} and BNSF volumes {{{[redacted]}}}.[80]

88. The expansion of Energy traffic moving from the U.S. to Mexico over this time period is consistent with a liberalization in the Mexican energy sector which began in 2013 and by 2016 allowed for Mexican receivers to import refined energy products.[81] The regulatory change opened up new southbound business for U.S. carriers to compete for. Thus, changes since the KCS-TFM-TM transaction in shares of southbound traffic handled by UP, BNSF, and KCS would not reflect changes in the terms of interconnecting existing traffic, as Commenters' comparisons would suggest, but would mostly reflect each carrier's relative ability to win this new business moving refined energy products to Mexico. To that extent, the single-line service enabled by the KCS-TFM-TM transaction was particularly relevant in helping shippers served by KCS's U.S. network efficiently reach new markets in Mexico.[82]

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[80] In 2006 {{{[redacted]}}}, in 2019 {{[redacted]}}. For Intermodal traffic, {{{[redacted]}}}. *See* my workpaper 14.

[81] David Alire Garcia, "UPDATE 1-Mexico fuel prices to begin liberalization at end of March," *Reuters*, December 21, 2016, available at https://www.reuters.com/article/mexico-gasoline/update-1-mexico-fuel-prices-to-begin-liberalization-at-end-march-idINL1N1EG0PN.

[82] For example, as Mr. Naatz explains in his Reply V.S., in December 2017, ExxonMobil began shipping gasoline and diesel fuel from the Jefferson Energy Terminal near Beaumont to San Luis Potosi and San Jose Iturbide, in Mexico. UP, BNSF and KCS all have access to the Jefferson Energy Terminal and bid for this traffic. KCS won the contract with Exxon. *See* Reply Verified Statement of Michael J. Naatz, *Canadian Pacific Railway Limited, et al. – Control – Kansas City Southern, et al.*, Finance Docket No. 36500, July 12, 2022 ("Naatz R.V.S."), ¶ 44. As Mr. Naatz explains, unlike UP or BNSF, KCS can offer single-line service to and has rail infrastructure in the eastern part of Mexico, which, at the time, was the focus of Exxon's strategy for the commercialization of gasoline and diesel. *See* Naatz R.V.S., ¶ 45.

89. For the Grain category, the pattern is again different. Total grain shipments increased by about {{{ }}} percent.[83] {{{ }}}.[84] But, the fact that KCS has {{{ }}} its grain shipments is completely understandable as a result of competing effectively through its relationship with Bartlett Grain.

90. Bartlett is a major shipper of grain to Mexico,[85] and over the past two decades has become KCS's largest grain customer.[86] Over this time, KCS and Bartlett have invested in and built a mutually beneficial partnership. In the 2005-2006 timeframe KCS introduced a shuttle train service for grain, partly in response to Bartlett's interest in a 75-car cross-border service.[87] Their collaboration continued to grow and KCS and Bartlett signed a long-term contract in 2012.[88] Since signing the contract with KCS, Bartlett has made considerable investments in its grain operations, including the launch of a new multimillion-dollar grain elevator facility in

83 *See* my workpaper 15.

84 *See* my workpaper 16.

85 Bartlett, A Savage Company, "About Bartlett," available at https://bartlettco.com/about/.

86 Naatz R.V.S., fn. 33.

87 Naatz R.V.S., ¶ 93.

88 Naatz R.V.S., ¶ 93.

Jacksonville, IL,[89] upgrades at other U.S.-based elevator facilities,[90] and the acquisition and further expansion of facilities in Mexico at Aguascalientes in 2015, Cuautitlan in 2017, and San Louis Potosi in 2019.[91] Over the same period, KCS has also made investments in their grain service infrastructure, with the goal of improving reliability and reducing cycle times.[92] This mutually beneficial relationship has resulted in KCS's grain shipments for Bartlett {{ }} carloads in

[89] Bartlett invested $25 million in the construction of the Jacksonville, IL grain terminal. The terminal, located on a KCS line, launched operations in July 2013 with capacity for about 2.2 million bushels of grain and the ability to accommodate 100-cars trains. According to commentary by KCS at the time, the facility added another strategic origination point from which KCS could service Bartlett grain shipments and would "enhance the supply chain to Mexico." *See* Progressive Railroading, "KCS helps Bartlett Grain inaugurate Illinois facility, installs Smith as AVP," August 12, 2013, available at https://www.progressiverailroading.com/kansas_city_southern/news/KCS-helps-Bartlett-Grain-inaugurate-Illinois-facility-installs-Smith-as-AVP–37236.

[90] Naatz R.V.S., fn. 34 ("Facilities that Bartlett upgraded include the Council Bluffs north facility in 2013, the Kansas City River Rail facility in 2014, the Council Bluffs south facility in 2016, and the Atchison, Kansas elevator in 2019.").

[91] Verified Statement of Mr. Bob Knief, *Canadian Pacific Railway Limited, et al. – Control – Kansas City Southern, et al.*, Finance Docket No. 36500, June 20, 2022, ¶ 9 ("To support our Mexico business, Bartlett has bought and made significant investments in three train unloading facilities in Mexico. Specifically, we bought facilities at Aguascalientes in 2015, Cuautitlan in 2017, and San Louis Potosi in 2019. Each of those has been expanded since we purchased them to add capacity.").

[92] For example, a KCS ordinary course document indicates that {{ }}. *See* {{ }} (Naatz R.V.S. Exhibit 1), p. 5. Also in 2013 KCS invested in 450 jumbo grain hoppers to support its grain franchise and had upgraded approximately 40 percent of the corridor between Monterrey and Laredo which allowed it to increase train speeds. *See* Kansas City Southern, "2013 Annual Report," March 2014, available at https://www.annualreports.com/HostedData/AnnualReportArchive/k/NYSE_KSU_2013.pdf, "Letter to Our Stockholders."

2003 to {{ }} in 2019.[93] As of 2019, Bartlett accounts for over {{ }} percent of KCS grain shipments through Laredo.[94]

91. Commenters' failure to account for these and many other possible procompetitive and innocuous changes underlying the changes over time in each carrier's share makes their attempted attribution of any differences in KCS's share over time for all border traffic or for subsets of traffic to a possibility of some partial foreclosure theory meaningless.

3.3. BNSF and CSXT's argument that I have defined areas served by KCS too broadly is flawed

92. In my analysis of northbound Laredo traffic, I rely on U.S. BEA areas to identify destination areas that "KCS serves."[95] Admittedly, this label could have been clearer, and at deposition I did clarify that the point was to capture an area where KCS has had the potential to win business that it either directly serves or could have served.[96] That is, if the opposition theory in KCS-TM-TFM were correct, the BEA area around KCS's current service should be where KCS's hypothesized foreclosure allowed it to expand service by inducing customers to transload, relocate, build out, etc., as well as by inducing a switch of directly served locations.

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93 Naatz R.V.S. Figure 6, Workpaper – HC – Bartlett KCS Grain Cars Shipped.

94 *See* my workpaper 17.

95 Application Statement, Exhibit 2.

96 Remote Videotaped Deposition of W. Robert Majure, Ph.D., *Canadian Pacific Railway Limited, et al. – Control – Kansas City Southern, et al.*, Finance Docket No. 36500, February 7, 2022 ("Majure Deposition"), pp. 194–195.

93. Dr. Reishus and Drs. Carey and Bremser criticize my use of the BEA area, and present a version of my analysis that replaces the BEA area with a more narrowly defined area. In this section, I respond to their arguments and explain that my use of BEA areas was reasonable and that their analyses exclude relevant forms of competition between railroads, which renders the KCS shares they present unreliable for the purposes of testing any alleged theory of KCS foreclosure.

94. In my analyses, the BEA area defines the endpoint (origin or destination) for a particular movement or corridor, and is used to reflect the area over which competition could be realized over time between two railroads that both serve the area.[97] Thus, in identifying the size of the area used to define endpoints, it is important to consider whether, of all the different ways that two nearby railroads may compete, the identified area captures the relevant ones. The Board has identified a number of ways that nearby railroads can compete that it views as relevant in examining a proposed transaction, such as a CP/KCS combination.[98] As I explained in my Application Statement and again in my deposition, BEA areas are well suited to capture the possibilities contemplated by the Board,[99] and are a "reasonable

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97 Majure Deposition, p. 112:4–10.

98 Specifically, the Board asked about the possibility of the "elimination of shippers' buildout, transloading, plant siting, and production shifting choices when two railroads serving overlapping areas merge." *See* Application Statement, ¶ 45; Majure Deposition, p. 110:10–23; and *Canadian National Railway Company, et al. – Control – Kansas City Southern, et al.,* Finance Docket No. 36514 (Decision No. 5 served Aug. 31, 2021), p. 4.

99 Application Statement, ¶ 47 ("The factors used to construct a BEA area correspond well to the kinds of economic decisions underlying local competition possibilities that have been considered by the Board.").

representation of areas in which a shipper is likely to look for 'nearby' railroad competition."[100]

95. Yet, Commenters argue my choice of BEA areas is too broad, and propose narrower areas to define corridor endpoints. While Dr. Reishus and Drs. Carey and Bremser suggest different alternative areas, both proposals suffer from the same fundamental error – they exclude forms of competition between railroads that are relevant to my analysis and thereby bias upwards the KCS shares they present.

96. Dr. Reishus uses the Brown-Zebrowski diversion methodology to narrow the definition of areas where "KCS serves," suggesting this methodology is a "better, if imperfect, categorization of traffic moving through the Laredo gateway that KCS could potentially serve in single-line service in competition with UP and BNSF."[101] Yet, in making this assessment, Dr. Reishus mistakenly ignores the implications for his test of using two fundamentally different approaches to identifying areas of potential railroad competition. The approach contemplated by the Brown-Zebrowski diversion study is appropriately focused on areas around its current service where a railroad is most likely to expand its service in a relatively short time. By restricting attention to such areas, rather than all areas where a railroad is reasonably likely to offer competitive options to shippers, Dr. Reishus is effectively counting KCS's share only where it was already most likely to offer service. Dr. Reishus offers no

100 Application Statement, ¶ 46.

101 Reishus V.S., ¶ 77.

adjustment or explanation to make this measure a relevant test of any foreclosure theory.

97. The goal of the Brown-Zebrowski diversion study, as I understand it, is to identify traffic that would be most readily available for potential diversion by a new CP-KCS single-line service "within three years" of the CP/KCS combination.[102] My subject—potential effects on competition—incorporates a longer time horizon and considers additional potential competitive scenarios, which the Board identified and which I discussed in my Application Statement.[103]

98. Applying the Brown-Zebrowski approach to an analysis looking at how competition could have evolved over the 15 years since the TFM and TM transactions would inherently exclude much of the relevant shipper activity and, instead, over-focus on the most likely traffic to be served by KCS. In particular, over this longer horizon the potential forms of railroad competition that are relevant includes shippers relocating within a community, transloading, or building out. As I explained above, the BEA area is a reasonable and reliable representation for this purpose.

99. Thus, by applying the Brown-Zebrowski methodology to define what areas "KCS serves," Dr. Reishus constructs a measure based on the traffic *already* most likely to

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[102] Brown/Zebrowski V.S., ¶ 27 ("…opportunities we expect would experience some level of traffic diversions within the *three years* following consummation of the CP/KCS merger.") (emphasis added).

[103] For example, Brown and Zebrowski note, "Our analysis…does not consider other potentially significant traffic opportunities that would arise from …investments by CP/KCS in growth opportunities unlocked by a combined CP/KCS network." *See* Brown/Zebrowski V.S., fn. 1.

see KCS service, without any adjustment to reflect the correspondingly higher expectation that KCS would serve this traffic in any event. The fact that he finds in his Table 6 a higher share for KCS within this restricted set of traffic is due to the nature of the restriction and not a valid way to test any alleged theory of KCS foreclosure.[104]

100. Drs. Carey and Bremser make a similar, and arguably more extreme, version of Dr. Reishus's error. Drs. Carey and Bremser apply an even narrower definition of what constitutes the relevant forms of competition between railroads for the purpose of testing alleged KCS foreclosure. Specifically, they assume KCS's ability to compete for traffic is limited to traffic that is originating from or destined for stations (9-digit SPLCs) that KCS currently serves.[105] As I explained in my Application Statement, defining an endpoint very narrowly, like Drs. Carey and Bremser have, only allows for very restricted forms of competition between railroads.[106] Such a narrow definition of competition does not allow for many of the ways the Board has recognized that railroads could compete over time for traffic in an area. More critically, this further restriction around traffic KCS is most likely to serve, further inflates KCS's expected share. Indeed, their methodology approaches counting KCS's share among its existing customers. With no recognition of this effect of their

104 Reishus V.S., Table 6.

105 Carey/Bremser V.S., pp. 18–19, Figure 3.

106 Application Statement, ¶ 44 ("For example, one candidate for defining a corridor's endpoints might be the exact location at which a movement starts and the exact location at which it ends. Such a narrow definition would count only competition among railroads that serve these exact locations and would not allow consideration of other potential forms of competition.").

restrictions, the KCS shares presented by Drs. Carey and Bremser in their Figure 3 are unreliable for the purposes of testing any alleged theory of KCS foreclosure.

3.4. Dr. Reishus's incomplete and misleading analysis does not support his claims that BNSF has been foreclosed by KCS

101. I now turn to the claims made by Dr. Reishus that BNSF has been foreclosed by KCS at Laredo after the TFM-TM transaction. Dr. Reishus asserted that, according to BNSF's witness Mr. Paul Hirsch, a rate increase that KCS put in place for cross-border movements after the TFM-TM transaction resulted in a decline of BNSF carload traffic at Laredo. Dr. Reishus portrayed this price increase as a unilateral move by KCS, like Mr. Hirsch, and suggested that this is inconsistent with a lack of vertical anticompetitive effects following a vertical merger.[107] In support of this claim, Dr. Reishus has presented an analysis of BNSF cross-border traffic at Laredo and asserted these patterns, showing a decline in carload traffic since the TFM-TM acquisitions, as evidence in support of his claim of foreclosure by KCS at Laredo.[108]

102. In this section, I first explain why Dr. Reishus mischaracterizes and misinterprets the rate increase following the TFM-TM transaction (§ 3.4.1). I then explain that the analysis Dr. Reishus presents as supporting his foreclosure claim cannot distinguish between his vague claims of foreclosure, procompetitive

[107] Reishus V.S., ¶ 82, fn. 71; Verified Statement of Paul Hirsch, *Canadian Pacific Railway Limited, et al. – Control – Kansas City Southern, et al.*, Finance Docket No. 36500, February 28, 2022, BNSF-9-192 – 211, p. 7.

[108] Reishus V.S., ¶¶ 83–87.

explanations, and other unrelated changes in traffic patterns to explain the differences in shares and traffic volumes observed in the data (§ 3.4.2). Next, I demonstrate that by looking only at Laredo Dr. Reishus ignored the fact that BNSF can route Mexican traffic across the border through other gateways, and thus omits important context for evaluating his foreclosure claim. Indeed, his approach assumes away the strategy BNSF appears to have taken following the KCS-TFM-TM transaction (§ 3.4.3). Finally, I revisit the data presented by Dr. Wilson and illustrate how this traffic illuminates the flaws in BNSF's allegation that it has been foreclosed at Laredo (§ 3.4.4).

3.4.1. Dr. Reishus mischaracterizes and misinterprets the KCS rate increase he claims foreclosed BNSF

103. Dr. Reishus's characterization of BNSF's experience since the TFM-TM merger is premised on the presumption that KCS increased a particular rate in order to foreclose BNSF.[109] However, one long-recognized benefit of mergers is that new management can lead to better decision making. That appears to be what happened with the rate Dr. Reishus references in his analysis. As I explain below, KCS management identified a rate that was insufficient to cover costs and thus inconsistent with profit-maximizing behavior. Bringing that rate up for the first time in about a decade ended a particularly favorable deal for BNSF, but facing market rates (or even

[109] Reishus V.S., ¶ 82.

rates sufficient to cover the other railroad's costs) is not at all the same as being foreclosed.

104. Following the KCS acquisition of TM, the management of KCS reviewed the price TM had been charging on the 150-mile stretch that connects BNSF's network at Robstown/Corpus Christi to the Laredo gateway. At the time, the rate was approximately $260 and had not been raised in years.[110] After the acquisition of TM, KCS's management announced a new rate of $525 and maintained it at that level until 2015 when it increased it to $595, the level at which it currently stands.[111] I understand with these increases, KCS rates exceed the variable costs it likely incurs on such movements, but by a small margin.[112] This in turns implies that, at a $260 rate, these movements were most likely unprofitable for TM.[113]

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110 Naatz R.V.S., ¶ 12 ("At the time KCS took control of Tex Mex, Tex Mex was offering BNSF a rate of $260 per car if BNSF hit certain volume requirements, which I am told they always did."); ¶ 14 ("It is true that KCS did raise Tex Mex's division requirements. KCS did so because the then rates existing prior to the merger were not remunerative and had not been raised in years.").

111 Naatz R.V.S., ¶ 18 ("After control was implemented, KCS did raise its rate for movements over the Tex Mex rail lines, initially to $525 and now, with adjustements, it stands at $595.").

112 In his R.V.S., Michael Naatz, Chief Marketing Officer of KCS, has calculated that the RVC ratio of KCS rates to 2020 URCS variable costs on the Robstown to Laredo route and on the Corpus Christi to Laredo route are equal to 114 and 107 percent, or $75 and $43 over URCS variable costs, respectively. Mr. Naatz also calculated that at the time when KCS first increased the rates, these ratios stood at 121 and 115, or $96 and $71 over 2006 URCS variable costs, respectively. *See* Naatz R.V.S., Tables 1, 2.

113 Naatz R.V.S., ¶ 21 ("I did not have access to the 2004 URCS costs, but the 2004 costs should not be that dissimilar to the 2006 costs. Assuming such 2004 URCS costs were like those in 2006, and when one considers that prior to 2005 Tex Mex was charging approximately $260 per car or less for grain, intermodal, and automotive traffic, Tex Mex *was charging hundreds of dollars less than URCS costs*.") (emphasis in original).

105. BNSF was understandably not pleased that these rates increased. But rather than negotiate, BNSF reportedly decided to route more traffic over Eagle Pass by offering a price for its single-line service to Eagle Pass that is lower than what the through-rate would be for a BNSF-KCS interline to Laredo. This would encourage BNSF shippers to use the Eagle Pass crossings instead of Laredo.[114]

106. According to testimony by Mr. Hirsch, BNSF was forced to pursue this strategy of shifting to Eagle Pass because the increase in rates proposed by KCS would force BNSF to {{[redacted]}} to service Mexican traffic via Laredo.[115] However, it is telling to compare the markup on this rate to the markup on rates BNSF charges its shippers on the Mexican traffic it does serve via Laredo. Mr. Naatz reported that the rate KCS currently charges BNSF to Laredo is 7 to 14 percent above its URCS variable costs,[116] while I understand the markup BNSF charges shippers is on average {{{[redacted]}}} percent above its URCS variable costs for carload

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114 Naatz R.V.S., ¶ 6 ("It is BNSF that is intentionally keeping its division requirement high and has steadfastly refused to lower its division requirements to make a joint BNSF/KCSR interline movement competitive with UP or the BNSF single-line movement."); ¶ 23 ("We understand from customers that BNSF's single-line rates to Eagle Pass at grain origins where BNSF, KCS, and/or UP compete are lower by approximately the difference between the current KCSR rate and the original $260 Tex Mex rate.").

115 Hirsch Deposition, pp. 149:11–150:14 ("{{[redacted]}}").

116 Naatz R.V.S., Table 1.

traffic and {{{ }}} percent above URCS for intermodal traffic, {{{ }}}.[117] So, what BNSF considers acceptable for shippers to pay is apparently {{{ }}} than it considers acceptable for KCS to charge it. Indeed, as these ratios suggest, BNSF's claim is not one of foreclosure as much as it is an admission that reducing its division slightly and continuing to {{{ }}} movements through Laredo was not as attractive as the profit it could make serving Mexico through Eagle Pass. By choosing, instead, to focus on Eagle Pass and to price so that shippers are encouraged to choose Eagle Pass, BNSF has exercised a competitive option. And, as much as foreclosure is not defined as an inability to get and set the prices BNSF finds acceptable, foreclosure is particularly not defined by BNSF engaging in competitive options to avoid even a small reduction in its margins.

107. The evidence on which Dr. Reishus relies to characterize this particular rate change as anticompetitive is inadequate for such a conclusion. He has only noted that the rate increased,[118] and has not demonstrated that it increased to some supracompetitive level. He has not examined the effect of the price change on competition – he has not looked at whether any of BNSF's Laredo traffic was diverted to KCS or to UP. In addition, to the extent any traffic was diverted and

[117] Mr. Baranowski finds that, on average, in 2019, BNSF's RVC was {{ }}. *See* Baranowski R.V.S., Table 6.

[118] Reishus V.S., ¶ 82.

ended up on UP, he has not explained why such an outcome would be anything other than a consequence of BNSF's refusal to negotiate over a market rate.

108. Rather, the analysis Dr. Reishus has presented is a recitation of share and volume changes since the TFM-TM combination that provide no way to distinguish between his vague claims of foreclosure, procompetitive explanations, and other unrelated changes in traffic patterns to explain the differences in shares observed in the data.

3.4.2. Dr. Reishus's analysis cannot distinguish his hypothesis of foreclosure from the many unrelated factors that affect BNSF traffic volumes and shares

109. Evidence from BNSF ordinary course documents makes clear that many factors other than alleged foreclosure caused these traffic share changes, and that there is a lot of variation in how different subsets of the traffic were affected over the intervening 15 years since the KCS-TFM-TM transaction. Dr. Reishus does not attempt to control for these factors, does not identify any change in shares that is not explained by them, and consequently does not identify any change that would be explained by his hypothesized foreclosure.

110. First, BNSF documents highlight changes in Mexican cross-border traffic for BNSF (and other railroads) that correspond to changes in macroeconomic trends, such as the strength of the Mexican economy and overall Mexican-U.S. trade volume. This includes {{[redacted]}} in both the macroeconomic indicators and in traffic which

happened to follow the KCS-TFM-TM transaction. Dr. Reishus's analysis would associate these {{ }} in traffic with his alleged foreclosure. For example, {{ .}} Yet, BNSF documents highlight that at this time Mexico's economy was slowing considerably, and {{ }}[119] After 2009, the Mexican economy and total Mexico-U.S. trade increased, and {{ }}[120]

111. Second, although Dr. Reishus points to aggregate changes in overall Mexican cross-border BNSF traffic, BNSF documents demonstrate that these aggregate

[119] A December 2008 BNSF document tracks {{ } *See* BNSF Railway, {{ }}, BNSF0002814 – 28 at BNSF0002815, BNSF0002822.

[120] A 2010 BNSF document tracks {{ }} *See* BNSF Railway, {{ }}, BNSF0002839 – 57 at BNSF0002840, BNSF0002844. A 2012 BNSF document noted how { }} *See* BNSF Railway, {{ }}, BNSF0002798 – 813 at BNSF0002799, BNSF0002800. A 2014 BNSF document {{ } *See* BNSF Railway, {{ }}, BNSF0002910 – 29 at BNSF0002912, BNSF0002917.

changes obfuscate the varied underlying dynamics of specific commodities or lines of business. For example, between 2007 and 2008, while BNSF {{ }}[121] Moreover, different lines of business appear to have had specific factors affect the changes over time. For example, BNSF highlights {{ }}[122] Neither of these reasons are related to foreclosure of BNSF by KCS.

112. In addition, while BNSF observed {{ }} For example, between 2011 and 2012, {{ }}

[121] BNSF Railway, {{ }}, BNSF0002814 – 28 at BNSF0002819.

[122] BNSF Railway, {{ }}, BNSF0002814 – 28 at BNSF0002818.

[123] BNSF Railway, {{ }}, BNSF0002839 – 57 at BNSF0002850.

[124] At this time volume for other "business segments" {{ }} *See* BNSF Railway, {{ }}, BNSF0002798 – 813 at BNSF0002801. As another example, {{ } *See* BNSF Railway, {{ }}, BNSF0002910 – 29 at BNSF0002919.

[redacted]}} – factors specific to this line of business and not indications of any foreclosure by KCS. Dr. Reishus's analysis cannot account for the many different factors that affected specific categories of BNSF traffic, and thus cannot distinguish any effect to associate with his alleged foreclosure from the many unrelated reasons that BNSF traffic volumes may have changed over the last 15 years.

113. Finally, BNSF documents demonstrate {{[redacted]}} Since at least 2008, BNSF has systematically tracked {{[redacted]}}[125] An examination of these reports suggests that while {{[redacted]}} This pattern is consistent with competition from UP affecting BNSF volumes.[126] Dr. Reishus's

[125] *See*, *e.g.*, BNSF Railway, {{[redacted]}}, BNSF0002814 – 28 at BNSF0002820; BNSF Railway, {{[redacted]}}, BNSF0002839 – 57 at BNSF0002846, BNSF0002849; BNSF Railway, {{[redacted]}}, BNSF0002798 – 813 at BNSF0002806, BNSF0002807; and BNSF Railway, {{[redacted]}}, BNSF0002910 – 29 at BNSF0002913, BNSF0002916.

[126] Between 2008 and 2012 { [redacted] } *See* BNSF Railway, {{[redacted]}}, BNSF0002814 – 28 at BNSF0002822; BNSF Railway, {{[redacted]}}, BNSF0002839 – 57 at BNSF0002844; BNSF Railway, {{[redacted]}}, BNSF0002798 – 813 at BNSF0002800; BNSF Railway, {{[redacted]}}, BNSF0002910 – 29 at BNSF0002917. These patterns in { [redacted]

analysis, however, does not consider this possibility – changes in BNSF cross border traffic volumes that were the result of competition with UP would be incorrectly ascribed in his analysis to his hypothesized foreclosure of BNSF.

3.4.3. Dr. Reishus' analysis only looks at traffic to Laredo ignoring the fact that BNSF can route Mexican traffic across the border through other gateways

114. Another flaw in Dr. Reishus's analysis is that he looked only at BNSF's traffic to Laredo and not the ease with which BNSF has substituted other border gateways in its offerings to shippers. As I discussed above, BNSF electing to use a competitive option rather than sacrifice any of its margin on Mexican traffic by adjusting divisions on the Laredo route is not an example of foreclosure. By excluding BNSF's use of options other than Laredo for its Mexican traffic, Dr. Reishus's analysis incorrectly treats this traffic as evidence of foreclosure when it is not.

115. {{

}} *See* BNSF Railway, {{ }}, BNSF0002839 – 57 at BNSF0002846; BNSF Railway, {{ }}, BNSF0002798 – 813 at BNSF0002806; BNSF Railway, {{ }}, BNSF0002910 – 29 at BNSF0002913.

[redacted]}} Dr. Reishus ignores these options.

116. As early as 2003 – prior to the KCS-TFM-TM transaction – {{[redacted]}} In one document, BNSF {{[redacted]}} For example, the document noted that {{[redacted]}}[127] And, BNSF noted {{[redacted]}}[128]

117. Similarly, a 2016 BNSF document assessed BNSF's {{[redacted]

[redacted]

127 BNSF Railway, {{[redacted]}}, BNSF0000932 – 42 at BNSF0000934; Hirsch Deposition, p. 71:14–19; BNSF Railway, "Rail Talk – BNSF Railway's Southern Transcon: Rail's Super Highway," October 23, 2018, available at https://www.bnsf.com/news-media/railtalk/service/southern-transcon.html.

128 BNSF Railway, {{[redacted]}}, BNSF0000932 – 42 at BNSF0000936.

[redacted]}}[129] As Mr. Hirsch clarified in his deposition, this meant that {{[redacted]}}.[130]

118. The relevance of these other gateways as meaningful alternatives to Laredo is emphasized by a recent internal document in which BNSF {{[redacted]}}[131]

119. Despite BNSF's implication otherwise, its documents indicate that Laredo is only one among several options that BNSF considers, and is not always the most preferred gateway. BNSF has weighed the costs and benefits of handling cross-border

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[129] BNSF Railway, {{[redacted]}}, BNSF0000947 – 64 at BNSF0000951; Hirsch Deposition, p. 169:7–16 ("{ [redacted] }}").

[130] Hirsch Deposition, pp. 171:18–172:13 ("{{[redacted]}}").

[131] In the document BNSF describes { [redacted] } BNSF Railway, {{[redacted]}}, BNSF0000166 – 8 at BNSF0000166 – 7.

Mexican traffic through different gateways, even prior to the KCS-TFM-TM combination. Yet, in his analysis, Dr. Reishus assumes away the relevance of these other gateways by limiting his analysis to Laredo.

120. In the analysis I present below, I show that by limiting his analysis to Laredo, Dr. Reishus omits relevant context for evaluating his claims of foreclosure. As a result, his analysis is incomplete and cannot reliably support his claims of foreclosure. In Exhibit 5 below, I present the volume of BNSF's cross-border traffic by gateway in 2006 and 2019.[132] As I did in my analysis of traffic flows in section 3.2, I consider flows through Eagle Pass, Laredo, and Brownsville.[133] I consider both total traffic as well as the specific categories of traffic considered by Dr. Reishus: Carload, Automotive, and Intermodal.[134] Traffic volumes, including for Intermodal movements, are expressed in terms of carloads.[135]

[132] For 2019 traffic, I rely on BNSF's traffic tapes. These data provide information on all 2019 movements involving BNSF. Similar traffic tapes are not available in this proceeding for 2016. Thus, for 2016 traffic, I rely on the CWS. *See* § 3.2 for additional details.

[133] To the extent El Paso is also seen in BNSF documents as a viable alternative for certain traffic from Laredo, including traffic flows through El Paso would further underscore the limitations and incompleteness of Dr. Reishus's analysis. BNSF traffic at El Paso {{{[redacted]}}} between 2006 and 2019. A rough estimate of BNSF traffic over El Paso to/from U.S. points east of El Paso shows this traffic has also {{{[redacted]}}}. *See* my workpaper 1.

[134] I combine together loaded and empty Intermodal movements to ease the exposition. Intermodal traffic volumes broken down by loaded and empty movement are available in my workpapers. *See* my workpaper 18.

[135] As in my Application Statement, I convert volumes of Intermodal traffic from containers to carloads by dividing the number of reported carloads by 4.7, which describes the CP-system average number of containers-per-flat-car. *See* Application Statement, Exhibit 2.

EXHIBIT 5
Since 2006 BNSF has moved {{{ }}} carload traffic over Eagle Pass and {{{ }}} intermodal traffic over Laredo

{{{

}}}

Source: Confidential Waybill Sample, 2006; Combined CP-KCS-KCSM-UP-BNSF-CN-NS-CSXT Traffic Tapes, 2019; CP Intermodal Containers to Railcar Conversion Factor.xls
Note: This analysis considers traffic southbound and northbound to/from Mexico, including movements identified in the CWS and the Combined Tapes as terminating/originating in Mexico and passing through the Laredo, Eagle Pass, and Brownsville gateways, or movements identified in the CWS as terminating/originating in the SPLC of Laredo (including SPLCs for Robstown/Corpus Christi for BNSF), Eagle Pass, or Brownsville, regardless of rebill code. Movements are considered handled by BNSF if BNSF is observed handling the movement into the gateway or terminating the shipment at a gateway SPLC. Volume of traffic is reported in expanded carloads. Intermodal units in the 2006 CWS and in the Combined Tapes are converted to carloads using 4.7 units per flat car, which corresponds to a system average for CP in 2019.

121. As shown in the exhibit, traffic at Eagle Pass constituted {{{ }}} percent of BNSF traffic crossing the border at these gateways (in either direction) in 2006 and it {{{ }}} percent in 2019.[136] In terms of volume, BNSF went from

136 *See* my workpaper 19.

{{{ }}} carloads through Eagle Pass in 2006 to {{ }} carloads in 2019.[137] And, by category, over this period, the fraction of Carload movements through Eagle Pass {{{ }}}, and for Automotive traffic {{{ }}}.[138]

122. Moreover, the traffic BNSF has {{{ }}} at Laredo has mostly been the Intermodal category that it {{{ }}} prior to the combination of KCS with TM and TFM. Among these three gateways, BNSF {{{ }}}. Specifically, {{{ }}}.[139]

123. By omitting traffic at Eagle Pass from his analysis, Dr. Reishus has assumed away the strategy BNSF appears to have adopted – diverting its business to another border gateway. Ignoring BNSF's actual choices inherently understates BNSF's share of the relevant traffic, and counting only traffic that did transit at Laredo mechanically overstates KCS's share, since BNSF can handle traffic through Eagle Pass and KCS cannot. This omission is critical to Dr. Reishus's interpretation of the rate change as some sort of foreclosure of BNSF at Laredo.

124. By not presenting any analysis of BNSF's ease of substitution between Laredo and other gateways, and Eagle Pass in particular, Dr. Reishus has not offered the

137 *See* my workpaper 20.

138 *See* my workpaper 21.

139 *See* my workpaper 22.

proper context through which to interpret the dispute between BNSF and KCS over the rate increase for the Laredo-Robstown route. The significant {{{[redacted]}}} of Carload and Automotive traffic that I can observe at Eagle Pass suggests that BNSF is not at KCS's mercy, but rather that it has viable alternatives to use in a negotiation, or at least good enough alternatives to be willing to let the negotiation be protracted for over a decade.

3.4.4. The data presented by Dr. Wilson illuminate the flaws in BNSF's foreclosure claim

125. Dr. William W. Wilson, another BNSF expert witness, presented an account of BNSF grain shipments through Laredo and Eagle Pass.[140] According to Dr. Wilson, these data indicate that BNSF appears to have been foreclosed at Laredo because BNSF grain traffic has shifted to Eagle Pass even though that route is more circuitous.[141]

126. In what follows, I revisit the data presented by Dr. Wilson and illustrate how this traffic instead illuminates the flaws in BNSF's allegation that it has been foreclosed at Laredo. As I discuss below, the shift in BNSF grain traffic from Laredo to Eagle Pass demonstrates that BNSF's use of these two gateways is a fluid situation across this span of years, reacting dynamically to a number of changes that seem to have affected

[140] Verified Statement of William W. Wilson, Ph.D., *Canadian Pacific Railway Limited, et al. – Control – Kansas City Southern, et al.*, Finance Docket No. 36500, February 28, 2022, BNSF-9-497 – 527 ("Wilson V.S."), Figures 11, 12.

[141] Wilson V.S., pp. 4, 16–19.

one or both of the gateways at various points, rather than alleged foreclosure by KCS at Laredo.

127. In Exhibit 6 below, I present annual shipments of grain that BNSF carried over the Mexican border between 2000 and 2019 as presented by Dr. Wilson. Each bar describes the total carload volume handled each year, while the shading of the bars indicates how much of this traffic was handled through Eagle Pass (blue) and Laredo (orange).

EXHIBIT 6
BNSF corn, wheat, and soybean volumes moving via Eagle Pass and Laredo gateways: 2000–2019

{{

}}

Source: BNSF Shipment Records, 2000 – 2019 from BNSF Wilson Production, March 29, 2022
Note: This analysis considers northbound and southbound grain movements presented by Dr. Wilson in his Verified Statement. Movements are first identified as transiting through the Laredo or Eagle Pass gateways based on the Mexican Gateway variable available in the data provided by Dr. Wilson. Movements are then aggreated to compute annual total volumes of traffic and shares of traffic moving through each gateway. Volumes of traffic are reported in carloads as recorded in Dr. Wilson's data.

128. The data in Exhibit 6 suggest that BNSF shifted grain traffic {{ }} a pattern Dr. Reishus's analysis could not reveal because he omits traffic at Eagle Pass. From 2000 to 2002, {{ }}. After the acquisition and from 2006 to 2007, {{ }}. While the volume of grain traffic through Laredo {{ }}

129. Moreover, the {{ }} in grain volume lamented by Dr. Wilson and Dr. Reishus occurred {{ }}. This suggests that something other than alleged KCS foreclosure, such as a drop in demand for BNSF grain shipments or BNSF difficulties competing with UP, which also serves both gateways, likely underlie the patterns presented in Exhibit 6.

130. Further, between 2011 and 2014 combined volume at Eagle Pass and Laredo {{ }}. In 2015 and 2016 it {{ }}

142 *See*, *e.g.*, Reishus V.S., Figure 6; Wilson V.S., pp. 4, 16–19.

[redacted]}}.

Over this period (2011 – 2019), {{[redacted]}} BNSF grain traffic {{[redacted]}} over Eagle Pass.

131. Consequently, it took over {{[redacted]}} years after the KCS-TFM-TM merger for the alleged "exclusion" of BNSF grain traffic from Laredo to occur. At that same time, the Eagle Pass grain shipments of BNSF {{[redacted]}} even though the alleged explanation of foreclosure cannot apply to those movements. The alleged foreclosure also has not prevented BNSF from {{[redacted]}}. Moreover, the allegedly inferior Eagle Pass gateway has been handling {{[redacted]}} BNSF grain shipments {{[redacted]}}. None of these patterns are consistent with the foreclosure explanation Dr. Wilson and Dr. Reishus hypothesize.

132. As I explained in section 3.2, KCS's success in grain shipments has depended on the establishment of long-term relationships with large shippers as well as the investment that those shippers made in the U.S. *and* in Mexico. And KCS witnessed rapid growth once those relationships and investments came to fruition. Without any explanation provided by Dr. Wilson and Dr. Reishus for the patterns presented in Exhibit 6 above, other than vague claims of foreclosure by KCS, and based on the experience I have detailed for KCS's grain franchise, I interpret the large swings in total grain volume and the emergence of Eagle Pass as the border crossing of choice for BNSF grain as consistent with underlying competitive dynamics and market

forces rather than some foreclosure by KCS at Laredo. In particular, the pattern observed seems consistent with geographic competition the Board has identified as important, including commodity flows shifting to alternative destinations or from alternative origins in response to improvements in transportation alternatives.[143]

3.5. Professor Mayo's analysis of corridors where CPKC will allegedly choose to foreclose interline options with NS in favor of new CPKC single-line service is flawed and misleading

133. In this section, I address the analysis presented by Professor Mayo in which he claims to show that a "substantial number of rail traffic routes are subject to potential incentives for anticompetitive conduct in the wake of the proposed CP/KCS merger."[144] The traffic Professor Mayo claims is at risk of competitive harm is traffic within corridors he identifies (via an unreliable methodology) as corridors with the potential for new CPKC single-line service. Thus, at the core of Professor Mayo's analysis is the mistaken notion, which I discussed in section 2, that any opportunity to win business with the enhanced single-line service a CP/KCS combination allows can be identified as an opportunity for CPKC to impair competition. Rather than presenting any evidence that might show CPKC would have the incentive and ability to pursue a foreclosure strategy, he bases his conclusions on an assumption that CPKC will foreclose interline partners in these corridors. Thus, despite reiterating the straw-man attack on the "one lump presumption" I addressed above, Professor Mayo

[143] I understand Mr. Hirsch claimed that traffic through Eagle Pass {{[redacted]}}. However, this is not inconsistent with geographic competition. *See*, *e.g.*, Hirsch Deposition, pp. 139:4–141:5, 145:8–148:21, 158:4–160:6.

[144] Mayo V.S., ¶ 46.

offers no facts, nor even a theory, to dispute the Board's prior findings that end-to-end railroad mergers are unlikely to have anticompetitive vertical effects.

134. I first discuss the methodology used by Professor Mayo to select his {{{[redacted]}}} "potential new single-line corridors that will be created by the merger."[145] He starts from the methodology I used for a preliminary analysis of traffic that might benefit from CPKC single-line service as part of a statement I filed more than a year ago to aid the Board's analysis of CN's proposal to use a Voting Trust to acquire KCS.[146] However, Professor Mayo makes substantive modifications to relax the criteria defining a potential single-line opportunity for CPKC. Given that Professor Mayo worked from a methodology that has been supplanted by a more detailed and rigorous analysis in the Application, one would expect him to impose more caution, rather than less, in drawing inferences from the data about where a CPKC single-line service would be commercially feasible and could expect significant diversion of traffic.[147]

135. However, Professor Mayo relaxes the definition considerably, despite his claim that he's only "modifying [the methodology] slightly." In particular, he makes the following changes:

- He assumes away limitations on CPKC service. In some cases, a railroad may be more competitive terminating traffic in an area than in originating or *vice*

145 Mayo V.S., ¶ 46.

146 Voting Trust Statement, § 5.2.

147 For more details on Applicants' estimated diversions, *see* Brown/Zebrowski V.S., pp. 11–19.

versa. This may even be a matter of feasibility if, for example, observed movements involve trackage rights with restrictions on the type of movements that can be served.[148] In my preliminary analysis, I respected this issue by requiring that one of CP or KCS serves the origin but not the destination, and the other serves the destination but not the origin, in order to identify a corridor as having the potential for a new CPKC single-line service. Professor Mayo removes the directional element and assumes any service proves that all service is available.[149]

- He ignores circuity altogether.[150] Every instance of railroad competition involves one route that is technically more circuitous than another which, in ordinary situations, can be offset with better service, better rates, or other characteristics shippers may value. Professor Mayo takes the extreme position that circuity never becomes so great as to make such competitive pressure too limited – that even a CPKC route starting in Mexico, crossing into Canada, circling the great Lakes, and returning south to reach the Mid-Atlantic region is one he is willing to assume shippers would choose often enough that foreclosure to induce such a route could be profitable. Such routes are not expected to divert traffic with the benefits of single-line service in my preliminary analysis or in the analysis of Brown and Zebrowski, which is explicitly focused on estimating likely diversions.[151]

136. To illustrate how Professor Mayo's assumptions undercut his analysis by relaxing the identification of potential CPKC single-line service, I focus on the Houston BEA area as an example. Professor Mayo identified Houston as an endpoint in {{{[redacted]}}} of the {{{[redacted]}}} corridors in his analysis, representing more than

148 *See*, *e.g.*, Brown/Zebrowski V.S., pp. 17–18, fn. 11.

149 Mayo V.S., p. 96, fn 73 ("Modifying Dr. Majure's assumptions slightly, I consider a corridor to be a potential candidate for a new single line service when CP and KCS are present (originated or terminated traffic in 2019) in respective origin and destination locations. That is, for this analysis, I consider a corridor a "potential route" even if it would involve CP originating from (terminating at) a location in which CP was only observed terminating at (originating from), and similarly vis-a-vis KCS."); Voting Trust Statement, p. 39.

150 Dr. Mayo only considers the circuity of a route as a characteristic in a robustness check presented in the Appendix of his statement. *See* Mayo V.S., p. 94, fn. 73, and Appendix Exhibits 1, 2.

151 Voting Trust Statement, pp. 39–40.

{{{[redacted]}}} percent of the total Class I carrier revenue for which he claims there is risk of anticompetitive harm by a combined CP/KCS.[152] As explained in the Wahba/Naatz V.S. and the Brown/Zebrowski V.S., KCS's access to the area relies on UP trackage rights that restrict the type of traffic KCS can originate or terminate in Houston.[153] For that reason, my preliminary analysis, as well as Brown/Zebrowski's detailed diversion analysis excluded any potential routes that involved Houston.[154]

137. More generally, Professor Mayo's methodology leads to a set of corridors that are, for the most part, demonstrably unlikely to see any effects on competition. Of the {{{[redacted]}}} corridors he identifies, {{{[redacted]}}} are corridors where one of CP or KCS is not involved in any movement of any commodity seen in the 2019 CWS.[155] That is, these are corridors which dropped out at the very first step of my within-corridor analysis of competitive effects. [156] Even though that analysis was focused on

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152 Mayo V.S., ¶ 46; Mayo workpapers. *See* my workpaper 24.

153 Verified Statement of Jonathan Wahba and Michael J. Naatz, *Canadian Pacific Railway Limited, et al. – Control – Kansas City Southern, et al.*, Finance Docket No. 36500, October 29, 2021 ("Wahba/Naatz V.S."), p. 24 ("KCS already operates an intermodal facility in Kendleton, TX, near Houston, but restrictions in KCS's trackage rights over UP between Beaumont and Houston (which KCS must use to reach Kendleton) prohibit intermodal traffic originating or terminating at Kendleton and moving to/from points north."); Brown/Zebrowski V.S., p. 18 ("As another example, KCS does not currently have rights to move traffic over UP trackage between Houston and Beaumont unless that traffic has had a prior or subsequent haul on the Tex Mex Laredo-Robstown/Corpus Christi line or is moving to/from shipper facilities on KCS's "Wharton Line" between Rosenberg and Victoria, TX.").

154 Voting Trust Statement backup materials; Brown/Zebrowski V.S., p. 18 ("As a result, our analysis excluded movements between Houston and CP territory from potential diversion.").

155 *See* my workpaper 25.

156 I draw similar conclusions for the subset of the {{{[redacted]}}} corridors that are of specific interest for NS – those where NS interlines with CP or KCS: {{{[redacted]}}} of the {{{[redacted]}}} such corridors dropped out in this first stage review of whether CP and KCS both have involvement in moves for that corridor. *See* my workpaper 26.

horizontal competition, this first step – ensuring that each of CP and KCS is capable of winning some part of some movements in the corridor – also establishes a foundation for any possible anticompetitive vertical effects in the corridor.[157] Additionally, {{{[redacted]}}} of the corridors Professor Mayo identifies were screened as 1-to-1.[158] That is, these corridors already have some railroad that is involved in every route observed in the data for movements in the 2019 CWS, so shippers already have no ability to negotiate with an independent route. This is another way in which Professor Mayo's list is over-inclusive.[159]

138. For the few corridors in Professor Mayo's list that would remain after eliminating the over-inclusive entries, there is an unaddressed question of why any anticompetitive vertical effect would be likely. Professor Mayo asserts in his Exhibit 4 that many of these corridors have what he labels [redacted]}}} as a result of the CP/KCS combination.[160] However, these labels are misleading and are based only on *assumptions* about CPKC's behavior post-merger. His {{{[redacted]}}} is an assumption that *if* the merged firm chose to foreclose *all* its current interline partners, the only routing in the corridor would be a CPKC single-line service. Similarly, his

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157 Professor Mayo glosses over this issue by identifying the corridors he finds concerning as having some reliance on CP or KCS. But, to have an effect following from the combination, the other party should be contributing something to the route, otherwise incentives and ability can hardly be expected to change.

158 *See* my workpaper 27.

159 Application Statement, § 4.

160 Professor Mayo's Exhibit 4 focuses specifically on the {{{[redacted]}}} of the {{{[redacted]}}} corridors where NS interlines with CP or KCS. He describes this narrowed focus on these corridors relevant to NS traffic as an "illustrative example."

{{{[redacted]}}} is based on another assumption: {{{[redacted]}}}[161] Professor Mayo provides no evidence that CPKC would have the incentive or ability to pursue such strategies in these corridors. Professor Mayo's presumption of harm aside, there is no reason to conclude an anticompetitive vertical effect of the CP/KCS combination is likely.

[161] Mayo V.S., Exhibit 4, notes.

4. REMEDIES PROPOSED BY COMMENTERS PURPORT TO RESOLVE COMPETITIVE HARMS THAT DO NOT EXIST AND WOULD BE ANTICOMPETITIVE IN ANY EVENT

139. Several Commenters have proposed "remedies" to be included by the Board as conditions for approval of a CP/KCS combination. In this section, I address "remedies" proposed by Professor Salop, Dr. Reishus, and CN. I show that these "remedies" purport to resolve competitive harms that do not exist, and in the case of the "remedies" suggested by Professor Salop and Dr. Reishus, would be anticompetitive to the benefit of the carriers, UP and BNSF, that propose them.

4.1. The "remedy" proposed by Professor Salop and Dr. Reishus to regulate CPKC interline rates would be anticompetitive and would ensure UP and BNSF do not face fully competitive single-line pricing from CPKC

140. Both UP and BNSF responses include proposed "remedies" which would regulate the interline rates that KCSM can charge in Mexico so that any single-line price CPKC offers on a movement that crosses the border entitles UP and BNSF to use KCSM at a mileage prorated portion of the CPKC single-line price.[162] Commenters argue that this regulation allows CPKC to realize the benefits of any

[162] To illustrate how the proposal would work, consider the following example. Suppose that CPKC sets a particular single-line rate for movements from Rio Verde, Mexico, to Chicago, IL. The proposed remedy fixes the rate that CPKC can charge for the segment from Rio Verde, Mexico, to the Laredo Gateway to be the single-line rate scaled by the share of Mexican segment miles relative to the total CPKC route miles to reach Chicago. If the segment length from Rio Verde to the Laredo Gateway were 25 percent of the total CPKC miles between Rio Verde and Chicago, then CPKC's Mexican interline rate would be regulated at 25 percent of its single-line rate from Rio Verde to Chicago. For a description of BNSF's proposal, *see Canadian Pacific Railway Limited, et al. – Control – Kansas City Southern, et al.*, Finance Docket No. 36500 (Comments of BNSF Railway Company dated Feb. 28, 2022), BNSF-9-1 – 581 ("Comments of BNSF Railway Company"), p. 46–47. For UP's proposal, *see* Salop V.S., ¶¶ 117, 119.

efficiencies derived from the combination while alleviating UP and BNSF's (unfounded) concerns that CPKC will engage in anticompetitive behavior to foreclose UP and BNSF from winning traffic at the Mexican border.[163] In this section, I demonstrate that Commenters are wrong – their proposal to regulate CPKC interline rates would be anticompetitive and would ensure UP and BNSF do not face the full competitive pressure they would otherwise face from a combined CPKC.

141. Before addressing the core reason the proposed "remedies" would be anticompetitive, I note that through the process of regulating CPKC's interline rates to align with its single-line rates, both proposals would create the opportunity for CPKC's competitors to learn CPKC's single-line rates. The proposals, perhaps in recognition of the implication for competition if rivals can observe CPKC's offers, each provide mechanisms intending to keep UP and BNSF from learning CPKC's single-line rates with certainty. These mechanisms, however, are likely to be weak protections. In BNSF's proposal, based on an existing arrangement between BNSF and UP at the Portland Gateway (i.e. "I-5 Prop Rate Agreement"),[164] the history of CPKC single-line rates is still revealed.[165] In UP's proposal, although the CPKC rates

163 Salop V.S., ¶¶ 12–13; Reishus V.S., ¶ 16; Comments of BNSF Railway Company, p. 45.

164 Reishus V.S., ¶¶ 98–104. I have examined the I-5 Prop Rate Agreement. I observe that the agreement was negotiated between two parties as part of a larger exchange of interests. As might be expected, the I-5 Prop Rate Agreement is complicated, reflecting the outcome of negotiations between sophisticated parties. Attempting to impose a similar arrangement as a condition, rather than negotiated agreement, is not only unlikely to resolve any of Dr. Reishus's illusory concerns, but is also likely to create new problems. *See* Proportional Rate Agreement between BNSF Railway Company, Union Pacific Railroad Company, and Southern Pacific Transportation Company, May 22, 1997, BNSF0003706 – 61.

165 The underlying single-line rates are based on the average single-line rates charged for similar traffic in the prior period. A third-party entity would calculate the average single-line rates and the

are provided directly to the shipper, the shipper would need to reveal to UP the price of the KCSM portion in order to discuss the total price of UP's offer and the mechanism makes recovering the CPKC price simple math from that point.[166] This leakage of CPKC's private, commercially valuable information is one way in which the proposed remedies are likely to harm competition.[167]

142. This revelation of CPKC's competitive information, however, is not the main reason the proposals are anticompetitive. Both proposals erect a disincentive for CPKC to price its single-line service as competitively as it otherwise might, and, in doing so, act as a tax on single-line rates offered by CPKC that insulates UP and BNSF from facing fully competitive single-line pricing from a combined CPKC. To see this, assume for illustrative purposes that Commenters are right in the premise upon which they rely in arguing the need for the "remedy." That is, assume that KCSM has some particular power over shippers in Mexico that would give KCSM the ability to charge a higher rate on the Mexican segment than might typically be earned on a segment with more competition. If not constrained from doing so by this "remedy" regulation, CPKC's ability to offer new single-line service would put even more competitive pressure on the carriers competing to win the segment north of the

implied mileage-based prorates for the Mexican segments. The interline carriers would then observe the mileage-based prorates to use them to quote shippers a through-rate that includes both the Mexican and U.S. segments. *See* Reishus V.S., ¶¶101–103.

166 In UP's proposal, CPKC would quote to inquiring shippers both a single-line rate and a mileage-based prorate for the Mexican segment. *See* Salop V.S., ¶¶ 19, 118, 120. UP and BNSF would not directly observe these interline rates, but shippers would need to reveal the provided CPKC interline quote to prospective interline partners in order to negotiate over the total rate for the interline movement. With this information, UP or BNSF would know CPKC's single-line rate as well.

167 Professor Salop notes the value of private information for carriers in his discussion of strategic bargaining incentives. *See* Salop V.S., ¶ 105.

border. The enhanced offer by CPKC would drive down the effective price to shippers of a given level of service.

143. However, if the proposed "remedy" is allowed to regulate the relationship between CPKC's single-line and interline rates, even maintaining its existing end-to-end pricing on an interlined CP-KCS route would require CPKC to give up revenue it was otherwise making on the interline segment in Mexico. So, before CPKC can even begin to compete with a new single-line service, it would face a regulatory "tax" on its Mexican revenue that it can only mitigate by raising its single-line rate or abandoning its own end-to-end offer. Only where KCSM currently earns *less* than its U.S. interline partners on a prorated basis, a scenario that is not at all consistent with Commenters' justification for the proposal, could this proposal fail to impair competition.

144. Indeed, the proposed "remedy" would have this effect of taxing CPKC's ability to compete with single-line service anywhere that interline rates on the KCSM segment happen to be higher than a mileage-based prorate for any reason – not just a hypothesized power over shippers. This is indeed the effect the proposed "remedies" would have on CPKC. In this way, the "remedy" serves as a tax on CPKC's ability to compete, and has the effect of insulating from that competition the same carriers who proposed the "remedy" – UP and BNSF.

145. In the rest of this section, I establish the anticompetitive effect of these proposed "remedies" in more detail. In section 4.1.1, I show that market-based rates in the

industry do not align with mileage-based prorates. Where interline segment rates are above a mileage-based prorate, the "remedy" would inhibit competition, even if Commenters are wrong in their theory that KCSM possesses market power that it leverages in its rate setting. In section 4.1.2, I demonstrate how the "remedies" act as a tax on CPKC single-line service and insulate UP and BNSF from facing competition from CPKC, creating an impetus to raise prices faced by shippers on many cross-border movements. In section 4.1.3, I explain that Commenters' "remedies" are, despite their claims otherwise, economically similar to the "rate equalization" conditions previously shown to be anticompetitive.

4.1.1. Market rates for interline traffic are not set based on prorated mileage

146. In this section, I show that market rates for interline traffic generally are not set based on prorated mileage. Although the "remedies" proposed by UP and BNSF intend to regulate CPKC so it could not set KCSM interline rates higher than a mileage-based prorate, rates for many interline segments are already higher than what would be implied by a mileage prorate.[168]

[168] UP and BNSF discuss their proposals with reference only to interchanges at or near Laredo. The examples in this section are meant to demonstrate that interchanges throughout the U.S. commonly demonstrate one railroad earning a higher prorated rate without even the veneer of concern which UP and BNSF have raised specifically about Laredo. To the extent the proposed "remedies" would apply to these market-based rates wherever CPKC happens to currently have some reason for the higher rate and a prospect of single-line service, they would also impose distortions to competition affecting shippers on such routes.

147. The segment-level freight revenue and distances from the 2019 traffic tape data confirm that market-based rates for interline movements are not set based on mileage alone. These data show that market rates for interline segments do not align with the prorated mileage covered by the segment. Other market-based factors determine whether a carrier earns more or less revenue than would be implied by its segment's share of the movement's revenues.

148. In Exhibit 7, I focus on interline movements within the U.S. or between the U.S. and Canada in the 2019 traffic tape data. In particular, I analyze interline movements in which KCS or CP interlines with UP, BNSF, or each other.[169] For these movements, I show the relationship between the share of miles and the share of revenues earned by each carrier.

149. There are four panels, one for each of KCS, CP, UP, and BNSF. In each panel, the x-axis describes the share of miles handled by that carrier on the interline movement, and the y-axis describes the share of total movement revenue earned by that carrier on the same movement. For example, the top left panel shows the mileage share handled by KCS on routes it interlines with either UP, BNSF, or CP along the x-axis, and the share of KCS revenue earned on each interlined route along the y-axis.

150. If interline rates were typically set based on mileage, then the movement-level dots would tend to fall along the 45-degree line in each panel of Exhibit 7. However,

[169] This analysis is limited to interline movements that involve two or three Class I carriers for traffic in which we observe all interline carriers' segment-level revenues and distances in the data.

many movements are above and many are below the 45-degree line, indicating that market-based rates on interline movements generally do not simply reflect the share of mileage handled by the carrier. All four carriers, including UP and BNSF, earn more than their mileage-share would imply on many movements, and less than their mileage-share would imply on many others. In addition, shorter hauls often earn more than their mileage-share (that is, movements to the left of the 50 percent Share of Mileage on the x-axis tend to be above the 45-degree line). This is true for {{[redacted]}}.

EXHIBIT 7
KCS, UP, BNSF, and CP interline rates do not align with a mileage prorate, Movements within the U.S. or between the U.S. and Canada

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Source: Combined CP-KCS-KCSM-UP-BNSF-CN-NS-CSXT Traffic Tapes, 2019; CP Intermodal Containers to Railcar Conversion Factor.xls

Note: Each of the colored dots in each panel describes the Share of Mileage and the Share of Revenue earned by each of the four carriers, KCS, UP, BNSF, and CP, on segments that it interlines with one of the other carriers on movements in the U.S. or in the U.S. and Canada. The Share of Revenue is defined as the revenue for each carrier divided by the total revenue on the relevant interline movements. A similar method is used to calculate Share of Mileage. The opacity of the dots indicate the frequency of traffic where darker shades indicate more instances of traffic with that Share of Mileage and Share of Revenue.

4.1.2. The proposed "remedy" imposes a tax on KCSM's revenue in Mexico that CPKC can only mitigate by reducing or avoiding competition with UP and BNSF – making it a regulation to prevent rather than enhance competition as UP and BNSF claim

151. In this section, I explain how the proposed "remedies" would be anticompetitive, incentivize CPKC to raise prices on single-line offerings, and insulate UP and BNSF

from facing fully competitive single-line pricing from a combined CPKC. I first demonstrate that the "remedy" would act as a tax on KCSM's revenue in Mexico wherever it currently earns a higher share of through revenues than its share of miles and would otherwise enhance competition with CPKC single-line service. As I showed in the previous section, the share of revenue a carrier earns on an interline movement frequently does not align with the share of miles covered by the carrier's segment. Therefore, and as I show in this section, the anticompetitive effect of the proposed "remedy" would reduce competition for a substantial volume of traffic, to the benefit of UP and BNSF.[170] Finally, I explain why Professor Salop's defenses of his proposed "remedy" are flawed and misleading.

152. In my assessment of the competitive implications of the proposed "remedy," I use the following notation:

- For interline routes involving other railroads (e.g., UP or BNSF), the rate that CPKC earns on its Mexican segment is *r*.
- Without the "remedy," the total through-rate for a CPKC single-line movement between an origin-destination pair is noted as *P*.
- The share of total movement miles accounted for by KCSM's Mexican segment in a CPKC single-line route is *d.*
- With the "remedy," the CPKC single-line rate is *S,* and the rate for the Mexican-segment that the "remedy" would require CPKC make available for interlines

[170] Both UP and BNSF have focused their proposed "remedies" on traffic handled by KCSM through the Laredo gateway. Thus, the discussion and analysis in this section focus on the potential effect of the "remedies" on KCSM traffic through Laredo. However, the remedy proposed by UP and Professor Salop could potentially be interpreted as applying more broadly to any combination of CPKC single-line route with a related shorter segment interlining with other carriers, regardless of whether it crosses to or from Mexico. To the extent this broader application of the "remedy" is intended, it would create anticompetitive effects like those discussed in this section for additional traffic beyond Laredo traffic.

with UP or BNSF is *dS* (i.e., the mileage prorate of the CPKC single-line rate).[171]

153. To see how the "remedy" creates a tax on revenues in Mexico, I focus on traffic for which the Mexican-segment rate earned by CPKC is more than the implied mileage prorate for that segment. That is, traffic where $r > dP$. I then ask the following question: under the proposed "remedy," what single-line rate would CPKC need to set in order to maintain the Mexican-segment revenue CPKC would earn in the absence of the "remedy"? That is, what CPKC single-line price would "keep them whole" for a given volume of traffic?

154. It is straightforward to show that the single-line price (S) CPKC would have to set to satisfy this condition will be greater than the pre-"remedy" interline price (P) – that is, when $r > dP$, then $S > P$.[172] The difference between S and P is the tax that the "remedy" would create and is an incentive for CPKC to *raise* its single-line prices simply to avoid losing revenue it would have earned without the "remedy."[173]

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171 Similarly, after imposing the "remedy," CPKC would be required to make available to UP *dS* on all of its interline routes that are also served by KCSM-KCS.

172 The revenue neutrality condition shows that $SQ + dSq = PQ + rq$, where Q is CPKC's current single-line volume and q is CPKC's current interline volume. Rearranging terms to solve for S, shows that $S = (PQ + rq) / (Q + dq)$. Using this we know that $S > P$ when $(PQ + rq) / (Q + dq) > P$, which can be rearranged to be $r > dP$. The inequality, $r > dP$, compares the rates that KCS currently earns on interline movements with other carriers, such as UP, BNSF, or CP, to the mileage-based prorates it *would* earn on CPKC single-line service if current rates were prorated according to KCS's share of total movement mileage.

173 Note that movements in which $r < dP$ would not necessarily lead to a tax from the "remedy," but they are also not likely to lead to a "rebate," or single-line price reduction for shippers, as the remedy is not binding in this direction. That is, UP and BNSF already obtain an interchange rate lower than the one the "remedy" would offer them and are unlikely to avail themselves of the opportunity to pay CPKC more. Consequently, I do not draw any conclusions about the "remedy" for such movements. In addition, I am not considering scenarios where the new single-line service would

155. To make this more concrete, consider an example in which CPKC earns $40 on the Mexican segment of its interline route, CPKC earns $100 on its single line, and the Mexican segment of the CPKC single-line route accounts for 30 percent of the total movement miles. Because $40 is greater than 30 percent of $100, the price CPKC would have to charge for its single-line after the remedy to remain revenue neutral will be greater than $100. Exactly how much larger will depend on volumes. If CPKC's single-line volume is 20 and CPKC's interline volume is 100, before the "remedy" revenue is $100*20 + $40*100 = $6,000. With the "remedy," the single-line price CPKC would need to charge to remain revenue neutral would be $120 (with the "remedy" dictating an interline rate of $120 * 30% = $36), which gives the same $6,000 of revenue broken down as $120 on 20 units and $36 on 100 units. Thus, in this example the tax that the "remedy" would create is the $20 difference between the single-line price CPKC would otherwise set ($100) and the price it would have to set to stay revenue neutral ($120).[174]

156. UP and BNSF benefit twice from this tax on CPKC. First, they get the proceeds of the tax in the form of room to raise their rates to shippers (by $4 in the example) before the shipper sees any overall increase in rates. Then, they gain a cushion ($20 in

be so efficient that just as a result of that efficiency shippers would never be inclined to choose any interline service, as such extremes would both obviate Commenters' premise for a remedy of any sort and make irrelevant the "remedy" they have proposed.

[174] The analysis presented in this section, as well as the example just discussed, assume that CPKC single-line volume and interline volumes are fixed. *See* Appendix § 6 for additional details, including for elastic quantities.

the example) on their own pricing before they face the competitive pressure of CPKC single-line rates.

157. I now analyze the traffic tape data to identify traffic for which the "remedy" would create this regulatory tax. In particular, I focus on two categories of traffic through the Laredo gateway, and show that for each the "remedy" would reduce CPKC's incentive to compete aggressively on a substantial volume of traffic.[175] I first look at Laredo traffic on routes where KCSM-KCS already offers a single-line. I show that the "remedy" effectively imposes a tax of {{[redacted]}} percent on single-line revenues on routes where I currently observe both KCS interline and single-line service for the same commodity.[176] There is approximately {{[redacted]}} million of current KCS single-line service, all of which, as I discuss below, would be subject immediately to the issues of this tax.[177] I then look at the effect of the "remedy" on movements where CPKC has identified the combination would create particular procompetitive opportunities for CPKC to compete with its new single-line service.[178] Based on the forecast of these new services in the absence of a "remedy," I

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175 Although I focus on these two sets of CPKC traffic, the "remedy" could have such an anticompetitive effect on additional traffic. For example, there may be additional corridors that could be served by CPKC that were not identified as diversion opportunities in which CPKC's incentive to compete with a single line would be reduced. In addition, my analysis focuses on traffic that moves between Mexico and the U.S., which is largely the focus of the "remedies" proposed by Dr. Reishus and Professor Salop; however, if the "remedy" were to be expanded beyond the Mexican-border traffic, more shippers would be subject to the anticompetitive effect of this regulatory tax.

176 *See* my workpaper 28.

177 According to the 2019 KCS traffic tapes. *See* my workpaper 29.

178 To identify these corridors, I use the corridors identified by Brown and Zebrowski as diversion opportunities for new CPKC single-line service. These are corridors where CPKC has identified that a CP/KCS combination would promote enhanced competition and provide better service and value. Brown/Zebrowski V.S., p. 7, Parts II–III.

estimate below the tax that the "remedy" would effectively impose on this traffic is approximately {{[redacted]}} million.[179] For both categories of traffic, the only way for CPKC to mitigate the tax is to compete less aggressively with UP and BNSF.

158. In Exhibit 8**,** I focus on the first category of movements – Laredo traffic on routes where I observe that KCS already offers interline and single-line service for the same commodity[180] – and identify for which of these movements the "remedy" would act as a regulatory tax on the single-line traffic that KCS already has.[181] As I explained above, the "remedy" acts as a regulatory tax on traffic for which KCSM interline rates are greater than the implied mileage-based prorate, i.e., $r > dP$, or $r/P > d$.[182] I find that this is true for approximately {{[redacted]}} percent of this KCS traffic – corresponding to the traffic above the 45-degree line (the red dots).[183] It is also

179 *See* my workpaper 30.

180 In particular, I identify all of the origin-destination-commodity ("ODC") triplets where KCSM-KCS offers a single-line service and KCSM offers interline service with UP or BNSF in the 2019 Combined Tapes, using BEAs to identify ultimate endpoints.

181 That is, under the "remedy," for which of these movements would KCS (CPKC) have an incentive to raise its KCSM-KCS single-line rates in order to maintain "revenue neutrality" with what it was earning absent the "remedy."

182 I calculate the implied mileage-based prorate as the share of distance handled by KCSM on its single-line traffic (d) times the total revenue-per-car earned for the KCSM-KCS single-line traffic (P). I then pair the average mileage-based prorate from the KCSM-KCS single-line traffic with KCSM's interline rates (r) on KCSM interline traffic for the same ODC triplets.

183 Competing interlines in this analysis serve the same BEA as the existing KCS movements. As I have explained, routes serving the same BEA compete with each other for shipper business, accounting for the multiple dimensions of competition the Board has noted as relevant for assessing railroad competition. Thus, UP or BNSF interlines serving the BEA compete with these existing KCS movements, even if UP or BNSF would need to take some additional steps or motivate the shipper to take additional steps in order to serve a specific shipper. These additional steps would still be needed before UP or BNSF can implement service using the "remedy" terms. However, the competitive pressure of their ability to do so was already deemed to bind on CPKC's decisions without the "remedy," so CPKC would appropriately add the tax into their decision-making in such situations. *See* my workpaper 31.

straightforward to calculate the effective tax rate the "remedy" would immediately impose on the traffic shown in Exhibit 8. For this traffic – traffic on routes where I currently observe KCS interline and single-line service for the same commodity – the "remedy" would impose an effective tax rate of {{ }} percent on KCS single-line revenues.[184]

[184] For each of the movements above the 45-degree line, the amount of tax is essentially the vertical distance to the 45-degree line ($r - dP$) scaled by the volume of traffic represented by the dot. For each of the movements below the 45-degree line $r<dP$, and as I explained above, the "remedy" would not necessarily lead to a tax, but it is also not likely to lead to a "rebate," or single-line price reduction for shippers, as the remedy is not binding in this direction. The effective tax rate for these movements is the total tax divided by the total revenue. *See* my workpaper 28.

EXHIBIT 8
The proposed "remedies" would create an incentive to raise prices for a large volume of traffic for routes where KCS already provides both interline and single-line service

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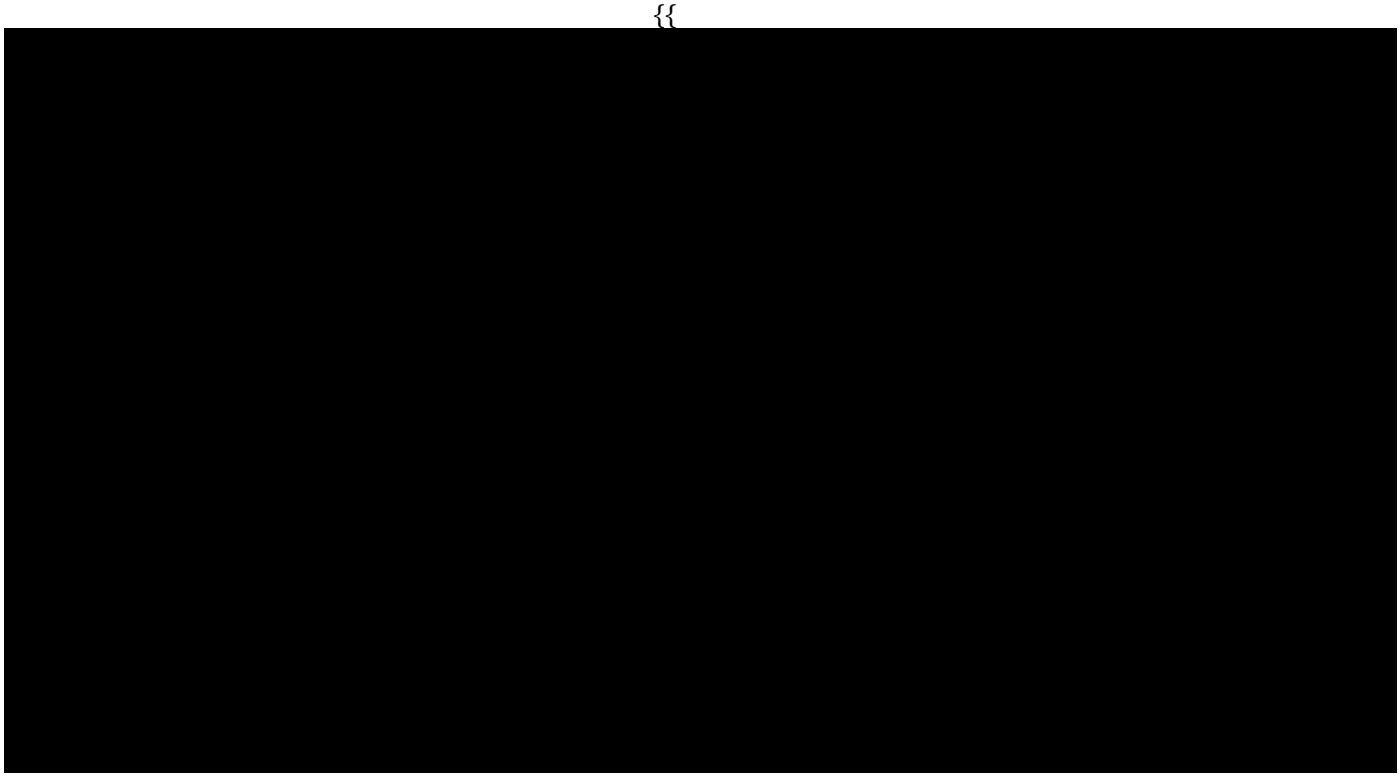

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Source: Combined CP-KCS-KCSM-UP-BNSF-CN-NS-CSXT Traffic Tapes, 2019; CP Intermodal Containers to Railcar Conversion Factor.xls
Note: Describes the Share of Single-Line Mileage and the Interline Revenue earned by KCSM divided by the average KCSM-KCS single-line price to serve those corridors in 2019. Specifically, the y-axis shows *r/P* – the ratio of (i) revenue earned on the Mexican segment of a KCSM interline route with UP or BNSF and (ii) KCSM-KCS single-line revenue earned on similar traffic. The x-axis shows *d* – the share of miles covered by the KCSM segment on the KCSM-KCS single-line serving the same corridor. Traffic is plotted for all ODC triplets that can be served by a KCSM-KCS single-line service and that compete with a KCSM-interline service with either BNSF or UP through the Laredo Gateway. Each dot describes traffic for interline routes observed in the 2019 Combined Tapes data. The opacity of the dots indicate the frequency of traffic where darker shades describe more instances of particular traffic types. The size of the dots indicates the amount of traffic handled that are of particular traffic types.

159. There is approximately {{ }} million in current KCS single-line service through Laredo.[185] All of this traffic would immediately be subject to the issues of the tax imposed by the "remedy." Even where I observe single-line service but do not

185 *See* my workpaper 29.

observe KCS currently offering an interline service for the same commodity,[186] the "remedy" would force KCS to make an interline offer if requested by a shipper. While it is not clear the extent to which shippers would choose this interline option – KCS does not currently provide it – one way to think about the effect of the "remedy" on KCS's pricing incentives when making its offer is that this same {{[redacted]}} percent tax will apply.[187] This is a tax on existing *KCS* single-line traffic – that is, a tax on traffic that is, in terms of the alleged concern this "remedy" purportedly addresses, unaffected by the CP/KCS combination.

160. Moreover, any tax on the {{[redacted]}} million in existing KCS single-line revenues is a subset of the potential effect of the tax created by the "remedy."[188] For instance, in markets where KCS does not currently provide single-line service, but could provide it in the future, this tax would create a disincentive for KCS to invest in providing that single-line service and winning traffic. In addition, there is approximately {{[redacted]}} million in current KCS interline service through Laredo where KCS interchanges north of Laredo.[189] If the "remedy" is intended to cover these longer hauls, by requiring KCS to price short hauls to Laredo according to the mileage prorate of its longer haul service, then the issues of this tax could also apply

186 Routes for which I do observe both a KCS interline and single-line service for the same commodity are included in Exhibit 8.

187 *See* my workpaper 28.

188 *See* my workpaper 29.

189 This is calculated according to the 2019 Combined Tapes and limited to KCS interlines that are not identified as new single-line opportunities by Brown and Zebrowski and where CP is not the only interconnecting railroad. *See* my workpaper 32. *See* also Brown/Zebrowski V.S. Backup Materials, 8 – Diversion Identification.xlsx.

to this traffic. All of this harm is to competition in markets where CPKC essentially *is* KCS. In these markets, there should not be changes to incentives due the CP/KCS combination, so any incentive changes are solely the result of the distortionary effects of the "remedy."

161. I next turn to the second category of movements – where CPKC has identified the combination would create particular procompetitive opportunities for CPKC to compete with its new single-line service, focusing on opportunities involving Laredo. As I did in Exhibit 8, I identify for which of these movements the "remedy" would tax CPKC's revenues. However, this analysis differs from that one because for these movements CPKC does not yet offer single-line service. Rather, these are commodity-corridors where CPKC anticipates being able to enhance competition with new single-line service after the CP/KCS combination. Thus, for this particular analysis, the relevant question is not whether the "remedy" would create an incentive to raise prices on existing CPKC movements, but instead whether the "remedy" would reduce CPKC's incentive to price its new single-line service as aggressively as it would have without the "remedy." Specifically, I evaluate whether the "remedy" would create a disincentive for CPKC to price its new single-line service at the same level as current interline rates.

162. In Exhibit 9, the y-axis is the ratio of KCSM interline revenue to the revenue CPKC would earn on a single-line if it set the price of that new service equal to observed KCSM-UP or KCSM-KCS-BNSF interline rates (which I use as a

"hypothetical CPKC single-line revenue").[190] The x-axis is the KCSM share of CPKC single-line mileage.[191] Almost all of this traffic (more than {{ }} percent) is above the 45-degree line.[192] For this traffic, the "remedy" would tax CPKC's single-line revenue, giving CPKC an incentive to set its new single-line service at a price higher than existing interline prices. Shippers that utilize these routes would not benefit from fully competitive single-line pricing from CPKC.

[190] Note that for this traffic, the revenue neutral condition is based on a pre-"remedy" single-line rate P^* that is the observed through rate on traffic KCS interlines with UP or BNSF.

[191] I identify traffic in the 2019 Combined Tapes data with origin and termination SPLCs and commodities identified at the 7-digit STCC that has also been identified by the Brown/Zebrowski V.S. analysis as corridors and commodities with diversion opportunities because of the CP/KCS combination. Each dot in Exhibit 9 describes a movement that is a potential diversion opportunity for CPKC, capturing the ratio of KCSM interline rates over the hypothetical single-line rate along the y-axis and the KCSM interline-segment share of the single-line mileage. *See* Brown/Zebrowski V.S., p. 7, Parts II–III.

[192] *See* my workpaper 23.

EXHIBIT 9
KCSM interline rates are often greater than a mileage-based prorate for a competitive interline route on routes with CPKC diversion opportunities

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Source: Combined CP-KCS-KCSM-UP-BNSF-CN-NS-CSXT Traffic Tapes, 2019; 8 – Diversion Identifiation.xlsx (Brown/Zebrowski V.S. backup materials); CP Intermodal Containers to Railcar Conversion Factor.xls
Note: Describes the Share of Single-Line Mileage and the Interline Revenue earned by KCSM divided by the average CPKC single-line price to serve those corridors in 2019. The y-axis shows *r/P* – the ratio of (i) revenue earned on the Mexican segment of a KCSM interline route with UP or BNSF and (ii) interline revenue earned on the same traffic in each corridor. The x-axis shows *d* – the share of miles covered by the KCSM segment on CPKC single-line serving the same corridor. The opacity of the dots indicate the frequency of traffic where darker shades describe more instances of particular traffic types. The size of the dots indicates the amount of traffic handled that are of particular traffic types. The traffic is limited to corridors and commodities identified by the Brown/Zebrowski V.S. analysis as diversion opportunities.

163. For this category of traffic, the tax would apply to movements CPKC could reasonably expect to win if its incentive to compete for traffic on these routes were not constrained by the "remedy." To forecast this traffic, I use the estimates of CPKC diversions from Brown and Zebrowski. With that forecast of volume for CPKC traffic on these routes, I can approximate the total tax the "remedy" effectively imposes on

such traffic. [193] Aggregating across all relevant movements in the forecast, the total tax imposed on these CPKC movements is more than {{[redacted]}} million.[194] This is a tax of more than {{[redacted]}} million on traffic that CPKC otherwise expects to win as a result of the enhanced single-line service CPKC would offer. In other words, this is a direct tax on the enhanced competition and procompetitive benefits of the CP/KCS combination, and has the effect of insulating from that competition the same carriers who proposed the "remedy" – UP and BNSF.

164. Dr. Reishus links his proposed "remedy" to an agreement reached between BNSF and UP during the latter's acquisition of the SP (the I-5 Prop Rate Agreement). He repeatedly points to how long this agreement has remained in effect as an indication of its procompetitive durability. However, considering the benefit UP and BNSF would each receive from an agreement that is reciprocal and may therefore discourage each of them from pricing aggressively, this durability hardly proves the agreement is procompetitive.[195] That his proposed "remedy" is based on such an agreement does not obviate the need to examine its consequences. And, as I have

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[193] For each of the movements above the 45-degree line, the amount of tax is essentially the vertical distance to the 45-degree line ($r - dP$) scaled by the volume of traffic represented by the dot. For each of the movements below the 45-degree line $r<dP$, and as I explained above, the "remedy" would not necessarily lead to a tax, but it is also not likely to lead to a "rebate," or single-line price reduction for shippers, as the remedy is not binding in this direction.

[194] *See* my workpaper 30.

[195] Indeed, as a BNSF {{[redacted]}} on the I-5 Prop Rate Agreement explains, {{[redacted]}}
See BNSF Railway, {{[redacted]}},
BNSF0003672 – 83 at BNSF0003674.

shown here, those consequences mean that this would not be a good policy provision to promote or preserve competition for railroad services.

165. I now explain why Professor Salop's defenses of his proposed "remedy" are flawed and misleading. In defense of his proposed "remedy," Professor Salop argues that the "goal and impact" of the "remedy" is to "prevent price foreclosure that would otherwise occur, and which would lead to *higher* single-line rates and *higher* rates charged on interline routes."[196] He also provides a simple numeric example that he purports to show that under his proposed "remedy," CPKC would still have an incentive to reduce its single-line rates.[197] First, as I explain throughout this report, Professor Salop is wrong that the CP/KCS combination would result in price foreclosure and higher rates.

166. Second, Professor Salop's numeric example is inconsistent with his own theory and does not show what he claims it does. His example assumes the pre-merger KCSM "monopoly" interline rate is *already* prorated based on mileage. Yet, Professor Salop's theory, were it true, suggests that KCSM, today, has some power over shippers that enables it to charge a higher rate for the Mexican segment than might typically be earned on a segment with more competition. It is this "monopoly" power over the Mexican segment that Professor Salop's theory suggests CPKC will be able to leverage to implement the alleged "price foreclosure" after the combination. Professor Salop's "remedy" is thus targeted at existing marker power—

196 Salop V.S., ¶ 123 (emphasis in original).

197 Salop V.S., ¶ 124.

whether real or imagined—and not an effect of the CP/KCS combination. In Professor Salop's numerical example, he assumes away the very "monopoly" power his theory of vertical harm and his justification for the "remedy" are based upon.

167. Further, in my analysis, I evaluated the effect of the "remedy" where KCSM *does* currently earn more than its mileage prorate on the Mexican segment (whether via some form of market power, as Professor Salop alleges, or some other reason). As I demonstrated above, the effect of the "remedy" on such routes would be the opposite of what Professor Salop claims – it would actually *create* an incentive to *raise* prices. Thus, for the routes that are potentially relevant for Professor Salop's theory (and for many routes that happen to have a rate above prorated mileage for innocuous reasons), the proposed "remedy," does not maintain competition, and instead deters competition by imposing a regulatory tax on CPKC that would discourage CPKC from competing as aggressively. The reduced competition would benefit UP and BNSF by insulating them from the full competitive pressure they would otherwise face from a combined CPKC.

4.1.3. UP and BNSF's attempts to distance their proposed "remedy" from the reasons that made the DT&I conditions anticompetitive are wrong

168. Conditions originally established as part of the approval to merge in the Detroit, Toledo & Ironton R.R. et al. Control, Etc. ("DT&I") matter were rescinded by the ICC as anticompetitive. Commenters for both BNSF and UP recognize this and try to

distance their "remedy" proposals from the DT&I conditions.[198] However, although the Commenters' proposed "remedies" may not immediately appear to restrict rate-setting behavior in the same way as the DT&I conditions, they do, like the DT&I conditions, ultimately lead to reduced flexibility in rate setting and, as my analysis in the previous section shows, anticompetitive outcomes.

169. The DT&I conditions required merging carriers to continue offering interline routes, rates, and services available to shippers through gateways affected by the new combination, with the ostensible goal of prohibiting discrimination in favor of the post-merger entity, e.g., a new single-line service.[199] When the ICC rescinded the DT&I conditions in 1982 as anticompetitive, it recognized that enforcement of the conditions "prevented carriers from pricing more efficient routes at lower rates," led to rate equalization and rate freezing, and "encouraged unnecessary utilization."[200] In its decision to revoke routine application of the DT&I conditions, the ICC stated that,

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198 Comments of BNSF Railway Company, pp. 47–48; Salop V.S., ¶ 121.

199 The first condition required the consolidated carrier to "keep open all routes and channels of trade via existing junctions and gateways." This condition was interpreted by the ICC to require rate equalization because it was feared that a lower single-line rate without a lower interline rate would lead to shipper diversion to the single-line service and lead to closure of the interline option, violating the condition. The second and fourth conditions disallowed any discrimination in service provided on interline traffic. The third condition required the carrier to maintain "present traffic and operating relationships." The fifth condition allowed industries operating on the consolidated carriers' network to have all pre-merger routes and gateways open to them. *See* Interstate Commerce Commission Decision, Ex Parte No. 282 (Sub-No. 5), *Rulemaking Concerning Traffic Protective Conditions in Railroad Consolidation Proceedings* (Decided Mar. 9, 1982), 366 I.C.C. 122, 1982 WL 28412, p. 1.

200 The Commission found the DT&I conditions to be "anticompetitive and contrary to the public interest." *See* Interstate Commerce Commission Decision, Ex Parte No. 282 (Sub-No. 5), *Rulemaking Concerning Traffic Protective Conditions in Railroad Consolidation Proceedings* (Decided Mar. 9, 1982), 366 I.C.C. 122, 1982 WL 28412, pp. 1–2.

"instead of restraining potential monopolistic behavior, they [the DT&I conditions] were found to prevent the realization of merger efficiencies and public benefits."[201]

170. The Commenters for UP and BNSF argue that their proposals would not lead to the same concerns raised by the DT&I conditions such as rate equalization or rate freezing.[202] Rather, they claim that their proposed remedies are "far narrower than the DT&I conditions," do "not constrain the single-line rate of the merged firm," and do not diminish carriers' incentives to pass on cost savings to shippers.[203]

171. Yet, the "remedy" proposals put forward by the Commenters are similarly restrictive, reducing carriers' rate-setting flexibility and leading to forms of rate equalization. Under the proposed "remedies," CPKC will have less flexibility setting lower prices for its single-line service because those rates would necessarily be tethered to its interline rates. CPKC would not be able to pass on cost savings related to single-line service to its single-line customers without also passing on proportional reductions to its interline customers. Absent price-setting flexibility for its single-line service, CPKC would not be able to "use its assets to the fullest" by providing the

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201 Daniel Smith, "The Evolution of Rail Merger Policy," in *Proceedings – Twenty-fourth Annual Meeting*, Volume XXIV, Number 1 (Transportation Research Forum, 1983), available at https://ageconsearch.umn.edu/record/311628, pp. 558–565 at p. 564.

202 Comments of BNSF Railway Company, p. 47 ("By allowing Applicants to adjust their rates to reflect post-merger efficiencies, a proportional rate mechanism would avoid the issues associated with the anti-competitive 'rate equalization' conditions imposed by the ICC on mergers after its decision in Detroit, Toledo & Ironton R.R. et al. Control, Etc., 275 I.C.C. 455 (1950)."); Salop V.S., ¶ 121 ("Applicants might attempt to argue that the CRR formula will force rate equalization and deter rate reductions driven by lower costs in the same way as the now-discredited DT&I conditions. However, this criticism is not well-founded.").

203 Salop V.S., ¶¶ 121, 122.

"cheapest and most efficient transportation service possible."[204] In addition, these "remedies" may lead to higher rates for shippers, because CPKC may be unwilling to pay the tax – i.e., to forgo the lost profits on its interline rates,[205] or they may not benefit from improved single-line service altogether because CPKC will have reduced incentive to invest in it.

172. Thus, in contrast to Commenters' claims, the "remedies" they propose share the key competitive implications, such as a degree of rate equalization leading to less flexible rate setting and less benefit of single-line service to shippers, that made the DT&I conditions anticompetitive and ultimately led the Commission to revoke them.

4.2. CN's proposed divestiture seeks to resolve an alleged harm that does not exist and instead would create risk of harm to horizontal competition

173. In my Application Statement, I demonstrated that a combination of CP and KCS would not have any adverse horizontal competitive effects.[206] CN argues otherwise, claiming my analysis did not consider potential horizontal concerns related to KCS's line between Kansas City and Springfield, IL, which connects to a CN line between

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204 Interstate Commerce Commission Decision, Ex Parte No. 282 (Sub-No. 5), *Rulemaking Concerning Traffic Protective Conditions in Railroad Consolidation Proceedings* (Decided Mar. 9, 1982), 366 I.C.C. 122, 1982 WL 28412, p. 4 (citing *Seaboard Coast Line Railroad Company, et al.—Investigation of Control and Modification of Traffic Conditions*, Finance Docket No. 21215 (Sub-No. 2) (Served Feb. 22, 1979)), p. 5 ("In direct contrast [to the DT&I conditions], the recent legislation has emphasized the need for rail carriers to have the flexibility to make individual ratemaking and routing choices.").

205 *See* § 4.1.2.

206 Application Statement, §§ 4, 5.

Springfield and Chicago – specifically as part of a route with CN to serve Chicago and beyond.[207] CN uses this alleged competitive concern as a basis to demand divestiture of the entire KCS Springfield/St. Louis Line – to CN.[208]

174. In this section, I address CN's claims, and explain that CN's concern is exclusively about speculative potential future competition that has not been borne out by past experience. The CP/KCS combination presents no significant horizontal competitive concern based on traffic currently moving in corridors involving service over this line. CN's assertion is, instead, premised on a series of assumptions. First, that there are potential benefits which could be unlocked through investments in this line that require partnership with CN to achieve. Second, that these benefits outweigh the benefits of investments CPKC would make in this line and elsewhere on its network without such a partnership. And, finally, that CPKC would choose to forego a share in the benefits of such a partnership with CN. None of these assumptions are particularly justified, but the final assumption is contrary to basic profit-maximizing behavior and has no place in an economic analysis of competitive effects.

175. The analysis I presented in my Application Statement demonstrated that, with respect to traffic movements observed to occur, the CP/KCS combination creates no

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207 *Canadian Pacific Railway Limited, et al. – Control – Kansas City Southern, et al.*, Finance Docket No. 36500 (CN's Comments on Application and Request for Conditions dated Feb. 28, 2022) ("CN's Comments on Application and Request for Conditions"), p. 39 ("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.").

208 CN's Comments on Application and Request for Conditions, Part IV.A.

risk of significant horizontal concerns. My within-corridor analysis examined all corridors observed in the 2019 CWS, including those CN identifies as involving the Springfield/St. Louis Line, and demonstrated that in none of these corridors would there likely be a reduction in competition from a CP/KCS combination.[209] My initial screen identified {{{[redacted]}}} involving the Springfield/St. Louis Line that even warranted some detailed review: the {{{[redacted]}}} corridor. However, that further examination showed that shippers are unlikely to experience a significant competitive effect from not having an independent KCS on this corridor.[210] Similarly, my between-corridor analysis fully included traffic over the Springfield/St. Louis Line in demonstrating that the CP/KCS combination would not likely affect cross-corridor competition in any area in North America.[211]

176. Thus, CN's argument must be understood to be about traffic that is not currently moving over the Springfield/St. Louis Line. That is, the claim of competitive effects is an assertion about the magnitude of two unquantifiable amounts – the potential benefits of CP investment on this line *vs* the potential benefits of CN investments on this line. For the most part, CN's assertion in this regard is simply that CPKC will not

209 Application Statement, Exhibit 3.

210 This corridor screens as a potential 5-to-4 corridor. As I noted in my Application Statement, the Board has historically focused on 3-to-2 and 2-to-1 reductions as most relevant. Shippers in the corridor would have four independent single-line routes available {{{[redacted]}}}, even without an independent KCS. Moreover, KCS's observed involvement in the corridor was minimal, {{{[redacted]}}}, consistent with the KCS routing option not being one of the better options among the many available to shippers. *See* Application Statement, ¶ 70.

211 Application Statement, §§ 5, 7, and backup materials.

have an incentive to invest because it has another line to Chicago.[212] CN has offered no support for the proposition that CPKC would not maintain the Springfield/St. Louis Line.[213] However, to the extent one does assume there is a project that would enhance options for some shippers to Chicago or beyond in a way that CPKC cannot achieve without partnering with CN, there is no rational basis to assume CPKC would choose to spite CN rather than choosing the course of maximizing its return to its own shareholders. Consequently, there is no basis for predicting any difference in the potential that will be realized and there is no effect on potential competition to justify CN's demand to be given the Springfield/St. Louis Line.

177. Further, the proposed divestiture is not harmless. Forcing CPKC off the Springfield/St. Louis Line would impair the benefits of the CP/KCS combination, ultimately depriving shippers of some of the enhanced competition the CP/KCS combination would otherwise generate.

212 CN's Comments on Application and Request for Conditions, pp. 40–41, 44.

213 CN's Comments on Application and Request for Conditions, §§ III.A.1–2.

5. OTHER COMMENTERS THAT RAISE ISSUES OF "COMPETITON" DO NOT RAISE AN ISSUE OF COMPETITIVE EFFECTS DUE TO A CP/KCS COMBINATION

178. I have been asked by counsel to review Comments from several parties expressing particular concerns they describe as related to competition. In this section, I explain that the issues raised in those Comments do not concern competitive effects of a CP/KCS combination. Some do not appear to involve issues of competition at all. Others appear to be general concerns about the importance of competition among Class I railroads – something a CP/KCS combination will not worsen and is likely to improve. To that end, the "remedies" called for in these Comments would be counter-productive – restraining the ability for a CP/KCS combination to reverse the perceived trend and enhance competition and expand shippers' choices.

179. First, several Commenters have asserted a competitive effect in the possibility of CPKC adopting CP's tariff and insurance requirements for transporting TIH/PIH hazardous chemicals. I understand that CP and KCS currently have different provisions covering transportation of these materials and that these Commenters would like for the Board to preserve the terms they view as more favorable to them for movements on the current KCS network.[214] I have reviewed these Commenters' claims. I believe that it is plausible that CPKC will attempt to follow a consolidated

[214] *Canadian Pacific Railway Limited, et al. – Control – Kansas City Southern, et al.*, Finance Docket No. 36500 (Comments and Request for Conditions of The American Chemistry Council, The Fertilizer Institute, and The National Industrial Transportation League dated Feb. 28, 2022), p. 2; *Canadian Pacific Railway Limited, et al. – Control – Kansas City Southern, et al.*, Finance Docket No. 36500 (Amended Comments of The Chlorine Institute dated June 9, 2022), p. 4; Letter from Karenanne Stegmann (OxyChem) to Martin Oberman, et al. (Surface Transportation Board), "RE: STB Finance Docket No. 36500, Canadian Pacific Railway – Control – Kansas City Southern," February 28, 2022, p. 2.

policy which necessarily involves some change. However, the reason for such change is not any loss of competition. CP and KCS's current management have each made their own business decisions regarding the potential liabilities associated with transporting hazardous materials and those decisions affect their respective choices of tariff and insurance provisions. These business decisions reflect the experience and knowledge of each railroad's management. As with any business combination or indeed any change in management, it is efficient for the combined CPKC to benefit from the combination of that experience and knowledge into a common management team. This process may well result in a consolidated policy, which necessarily involves some changes for movements over at least one of the two railroads' current systems, but for reasons that are not a reflection of competition between the two railroads. Thus, the choice of provisions that the combined firm will make for the CPKC network is not an indication of any potential competitive effect of the CPKC transaction.

180. Second, Texas International Terminals ("TxIT"), a multi-modal facility for deep draft vessels located along the Galveston Ship Channel, identifies conditions which it believes could enhance competition.[215] These conditions appear unrelated to any competitive effect of the CP/KCS combination and instead appear aimed at improving TxIT's relative competitive position, rather than preserving competition. Specifically, TxIT requests the Board to require CPKC to market to shippers some

[215] *Canadian Pacific Railway Limited, et al. – Control – Kansas City Southern, et al.*, Finance Docket No. 36500 (Comments and Request for Conditions of Texas International Terminals Ltd dated Feb. 28, 2022) ("TxIT Request for Conditions, 2022"), pp. 2–3.

KCS access rights to Galveston so that TxIT can add CPKC to the existing competition it enjoys between UP and BNSF.[216] I understand these access rights were granted to KCS after the UP-MKT transaction, and that KCS has "not effectuated or sought to aggressively market" these rights to date.[217] On its face, TxIT's preference for KCS to "aggressively" utilize its Galveston rights cannot be an issue of the CP/KCS combination reducing competition in any market. KCS made an independent decision that predates the CP/KCS combination and which precludes any potential competitive effects from the combination. Conditions that would force a different choice on CPKC are presumptively impositions of a bad business decision that would inhibit CPKC from using its resources to compete most effectively where it can do so.

181. Third, several Commenters raise concerns about international trade policy and their belief that U.S. wheat producers are at a competitive disadvantage relative to Canadian wheat producers. In particular, three associations of U.S. wheat growers – the NAWG, USWA, and NDWC – argue that by extending CP's network in the U.S. and into Mexico a CP/KCS combination would distort competition between Canadian wheat growers and U.S. wheat growers.[218] Even assuming the premise of unfair

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216 TxIT Request for Conditions, 2022, pp. 8–9.

217 TxIT Request for Conditions, 2022, p. 4.

218 *Canadian Pacific Railway Limited, et al. – Control – Kansas City Southern, et al.*, Finance Docket No. 36500 (U.S. Wheat Associates Comments and Request for Conditions dated Feb. 28, 2022) ("USWA Request for Conditions, 2022"), pp. 4, 14–16; *Canadian Pacific Railway Limited, et al. – Control – Kansas City Southern, et al.*, Finance Docket No. 36500 (North Dakota Wheat Commission Request for Conditions dated Feb. 28, 2022) ("NDWC Request for Conditions, 2022"), p. 5; Letter from David Milligan (National Association of Wheat Growers) to Martin Oberman, et al. (Surface Transportation Board), "RE: Canadian Pacific Railway Limited – Control – Kansas City Southern (Docket No. FD 36500)," February 28, 2022 ("NAWG Request for Conditions, 2022"), p. 2.

international competition were accurate, merger review is not about insulating U.S. shippers from competition with other shippers. The push for such a strategy in these Comments amounts to preventing competition by preventing a CP/KCS combination from offering some shippers the benefit of more competitive terms.

182. In arguing that the Board should keep these concerns in mind when evaluating the CP/KCS combination, these wheat industry Comments mischaracterize the issues as related to potential competitive effects of the combination.[219] I understand that John Brooks has reviewed the Canadian policies that Commenters point to and has explained that these policies do not apply to wheat movements from Canada to U.S. or Mexican destinations, and thus could not be relevant for the competitive effects of the CP/KCS combination on U.S. wheat growers.[220] In addition, in my Application Statement, I evaluated whether the CP/KCS combination would result in potential reductions in competitive options for shippers, including U.S. wheat growers and destinations that might substitute Canadian sources of wheat, and showed the combination would not result in adverse competitive effects.[221] The CP/KCS combination could affect competition in markets accessed by U.S. wheat growers by *enhancing* competition through new single-line options connecting growers, including those in the Upper Midwest and Canada, to destinations on the KCS

219 USWA Request for Conditions, 2022, pp. 2–3. *See also* NAWG Request for Conditions, 2022, pp. 1–2; NDWC Request for Conditions, 2022, p. 5.

220 Reply Verified Statement of John Brooks, *Canadian Pacific Railway Limited, et al. – Control – Kansas City Southern, et al.*, Finance Docket No. 36500, July 12, 2022 ("Brooks R.V.S."), ¶ 81.

221 Application Statement, ¶ 12, §§ 4, 5.

network, including those in the South Central United States and Mexico.[222] That enhanced competition should be encouraged both in merger review and in international trade negotiations so that markets, rather than regulators, determine the success of individual shipper groups in their competition with one another.

183. Finally, a number of Commenters, including some of the shipper groups discussed above as well as others, have requested that the Board impose various forms of open access, reciprocal switching conditions, and rate restrictions that are loosely based on a general observation that past consolidation in the rail industry has reduced competition and harmed shippers.[223] However, that concern is misguided as to the CP/KCS combination.

184. Unlike a number of past consolidations, the CP/KCS combination is an end-to-end railroad merger. As I demonstrated in my Application Statement, the CP/KCS combination would not generate any significant reduction in competition within any corridor nor the competition between corridors (either source or destination

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222 Mr. Brooks also comments on the potential benefits to U.S. wheat growers from the CPKC transaction. *See* Brooks R.V.S., ¶¶ 76–78.

223 TxIT requests that the Board "require Applicants to adhere to their pledge to maintain open gateways and interchanges, and impose conditions which allow for enforcement of these conditions." *See* TxIT Request for Conditions, 2022, p. 9. The PRFBA requests that the Board require reciprocal switching for "any shipper on the new CP/KCS system that is subject to market dominance or receives inadequate service" as a condition of the merger. *See Canadian Pacific Railway Limited, et al. – Control – Kansas City Southern, et al.*, Finance Docket No. 36500 (PRFBA Request for Condition dated Feb. 28, 2022), p. 12. The IMA requests that the Board "limit any rate increases to captive shippers for five years after the transaction is approved to 10 [percent] of that time." Other conditions stipulated by the IMA align very closely with the proposals from the wheat grower associations. *See Canadian Pacific Railway Limited, et al. – Control – Kansas City Southern, et al.*, Finance Docket No. 36500 (IMA-NA Request for Conditions dated Feb. 28, 2022), pp. 12–13.

competition).[224] In that regard, this combination stands out from almost every past rail merger for how purely end-to-end it is. There is no loss of competition from this transaction for these proposed remedies to resolve.

185. And, as a particularly end-to-end railroad merger, the CP/KCS combination presents opportunities to enhance competition with improved options to shippers and enhanced competition through new single-line service. The Comments reflect these shippers' perception that past railroad mergers have generally been associated with a trend of reduced competition and worse options for shippers, but a CP/KCS combination is the kind of merger that goes against any such trend. It is, indeed, a chance to mitigate the history about which these shipper organizations express concern and to enhance the competition for affected shippers.

186. To the extent that past railroad mergers may have reduced competition and harmed shippers, the solution is not to burden the CPKC with unwarranted conditions that would limit CPKC's ability to compete better in markets it will serve. As I showed with respect to the "remedy" proposals of BNSF and UP, imposing such a restriction on CPKC would tax the ability of CPKC to compete and would lead to less competitive prices for shippers. Perversely, the only beneficiaries of such a restriction are the very railroads whose past consolidations these shippers identify with lost competition. The proposed restrictions insulate those railroads from the new competition a CP/KCS combination would otherwise bring for shippers. To advance

[224] Application Statement, ¶ 12, § 5.

the Board's objective of fostering rail competition, and to address the concern of these shippers, the better way to proceed is to force the railroads responsible for that concern to face an unfettered CPKC.

6. TECHNICAL APPENDIX: ANALYSIS SHOWING THE ANTICOMPETITIVE EFFECT OF THE PROPOSED MILEAGE-PRORATE "REMEDY," ADDITIONAL DETAILS

187. In section 4.1.2, I show that the proposed mileage-prorate "remedy" would create a tax on Mexican revenues. In demonstrating this, I focused on the following question: under the proposed "remedy," what single-line rate would CPKC need to set in order to maintain the Mexican-segment revenue CPKC would earn in the absence of the "remedy"? And, I showed this would be true under the following "revenue neutrality condition:" $SQ + dSq = PQ + rq$, where Q is CPKC's current single-line volume and q is CPKC's current interline volume, and that $S > P$ when $r > dP$. In this appendix I provide additional details and explanation of this analysis.

188. Without the "remedy," CPKC would earn total revenue of $PQ + rq$ on these movements. On its single-line movements, without the remedy, CPKC earns P. On the interline, KCS earns r. Thus, total CP and KCS revenues without the remedy would be $PQ + rq$. Note that one could also redefine P to be the pre-combination total price on an interline between CP and KCS (with CP's portion being $P - r$ and KCS's portion being r) and get the same relationship. Under the "remedy," CPKC would earn total revenues of $SQ + dSq$.[225]

189. Thus, for CPKC to remain revenue neutral after the "remedy" is imposed, CPKC needs to charge a single-line price S so that $SQ + dSq = PQ + rq$. This equality is the "revenue neutrality condition" I discussed above. This describes the condition for which CPKC earns the same total revenues on its single-lines and interlines with UP

[225] CPKC earns S on each single-line movement and dS on each interline movement.

(or BNSF) as CPKC did without the "remedy." To the extent the effect of the "remedy" is to incent CPKC to charge a higher single-line rate than it would have absent the "remedy" in order to maintain its pre-merger revenues, this could incent some shippers to switch to the KCS-UP (KCS-BNSF) interline. If the *S* that satisfies revenue neutrality is greater than *P,* then the "remedy" has created an incentive for CPKC to raise single-line prices after the combination.

190. It is straightforward to show that the single-line price that satisfies revenue neutrality will be greater than the pre-"remedy" interline price for all traffic where $r > dP$. The revenue neutrality condition shows that $SQ + dSq = PQ + rq$. Rearranging terms to solve for S, shows that $S = (PQ + rq) / (Q + dq)$. Using this we know that $S > P$ when $(PQ + rq) / (Q + dq) > P$, which can be rearranged to be $r > dP$. The inequality compares the rates that KCS currently earns on interline movements with other carriers, such as UP, BNSF, or CP, to the mileage-based prorates it *would* earn on a CPKC single-line service if current rates were prorated according to KCS's share of total movement mileage.

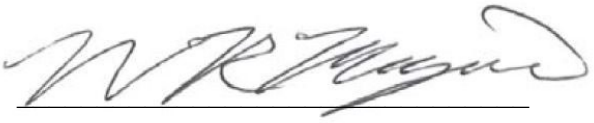
191. Instances in which $S > P,$ i.e. when single-line rates are higher compared to the interline alternative, could lead some shippers to switch away from the single-line option to the interline option. In a scenario with diversion to a competing interline route, the S^* that achieves revenue neutrality is generally larger than the *S* with no diversion, confirming that there would still be incentive for CPKC to raise its single-line rate in order to maintain its pre-merger revenue. In particular, the revenue neutrality condition becomes $S^*(Q - e) + dS^*(q + e) = PQ + rq,$ where $e < Q$ is a

positive number denoting the diversion from the single-line to the interline option for the given price difference. The revenue neutrality condition can then be re-arranged to solve for $S^* = (PQ + rq) / [Q + dq + (d - 1)e]$, and since $(d - 1) < 0$, then $[Q + dq + (d - 1)e] < (Q - d)$. This implies that $S^* > S$, suggesting that there is a greater incentive for CPKC to raise its single-line rates when there is diversion.

VERIFICATION

I, W. Robert Majure declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further I certify that I am qualified and authorized to file this statement.

Executed this 12th day of July, 2022



W. Robert Majure

APPENDIX A

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Vice President

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ACADEMIC BACKGROUND

1990 – 1994 **Massachusetts Institute of Technology** Cambridge, MA
Ph.D., Economics
Specialization: Industrial Organization, Microeconomics, Econometrics
Thesis: Disequilibrium Game Theory

1986 – 1990 **University of Virginia** Charlottesville, VA
B.A., Economics and Mathematics

PROFESSIONAL EXPERIENCE

2019 – Present **Cornerstone Research, Inc.** Washington, DC
Vice President
Provide financial and economic analysis for commercial litigation matters. Support experts in preparing for deposition and trial testimony.

2010 – 2018 **Antitrust Division – U.S. Department of Justice** Washington, DC
Director of Economics
Senior career executive supervising the Antitrust Division's Economic Analysis Group. Helped formulate economic evidence and testimony for cases in industries such as software (*U.S. v. H&R Block, Inc., et al.*), telecommunications (*U.S. and Plaintiff States v. AT&T Inc., et al.*), video (*U.S. v. AT&T Inc., DirecTV Group Holdings, LLC, and Time Warner Inc.*), publishing (*U.S. v. Apple, Inc., et al.*), airlines (*U.S., et al. v. US Airways Group, Inc. and AMR Corp.*), oilfield services (*U.S. v. Halliburton Co. and Baker Hughes Inc.*), and health insurance (*U.S. and Plaintiff States v. Aetna Inc., and Humana Inc.* and *U.S. and Plaintiff States v. Anthem, Inc. and Cigna Corp.*).

2003 – 2010 **Antitrust Division – U.S. Department of Justice** Washington, DC
Chief of Competition Policy Section
Managed a section of about 18 economists and other staff. Supervised economic analysis of antitrust investigations in various industries including computer software (*U.S. v Oracle Corp.*), real estate (*U.S. v Kentucky Real Estate Commission*), and telecommunications (*U.S. v Cingular Wireless et al*). Testified in *U.S. v SBC Communications Inc. and AT&T Corp.* and *U.S. v. Verizon Communications Inc. and MCI, Inc.* Consulted on appellate arguments of the United States in Circuit Court (including *FCC v Prometheus Radio Project*).

1997 – 2003 **Antitrust Division – U.S. Department of Justice** Washington, DC
Assistant Chief of Economic Regulatory Section

Assisted with the management of a section of about 18 economists and other staff. Supervised economic analysis of antitrust investigations in various industries including telecommunications (*U.S. v WorldCom and Sprint*), computer software (*U.S. v Mathworks and Wind River*), publishing, radio and television advertising (*U.S. v Univision and Hispanic Broadcasting Corp*), electricity, and airlines. Consulted on appellate arguments of the United States in Circuit Court and the U.S. Supreme Court (including *Iowa Utilities Board v FCC and U.S.*).

1994 – 1997 **Antitrust Division – U.S. Department of Justice** Washington, DC
Economist
Performed economic analysis in antitrust investigations. Applied developments in the fields of industrial organization, microeconomics, and econometrics to practical questions raised in antirust analysis. Examined mergers or practices in telecommunications (including *U.S. v Sprint and Joint Venture Co.*), computer software, and banking. Testified in the merger of Union Pacific Railroad and Southern Pacific Railroad (before the Surface Transportation Board).

TESTIMONY

Library of Congress Copyright Royalty Judges Case No. 16-CRB-0009 CD (2014-17) – Submitted testimony in re: Distribution of Cable Royalty Funds on behalf of joint sports claimants.

STB Finance Docket No. 36500 – Submitted testimony in support of the application by Canadian Pacific Railway Limited, *et al.* to combine with Kansas City Southern, *et al*. Testified in deposition.

STB Finance Docket No. 36514 – Submitted testimony on behalf of Canadian Pacific Railway Limited analyzing prospective combination of Canadian National Railway Company, *et al.* with Kansas City Southern, *et al.*

Real Estate Exchange, Inc. v Zillow, Inc. et al. – Filed declaration in support of motion for preliminary injunction.

U.S. v SBC Communications Inc. and AT&T Corp. and *U.S. v. Verizon Communications Inc. and MCI, Inc.* – Filed declarations in Tunney Act proceeding to explain the economic analysis of the United States for the proposed mergers and of the proposed consent decrees.

ICC Finance Docket No. 32760 – Submitted testimony on behalf of the U.S. Dept. of Justice analyzing prospective merger of Union Pacific Railroad and Southern Pacific Railroad. Testified in deposition.

PUBLICATIONS

"Evaluating Innovation Theories of Harm in Merger Review: Economic Frameworks and Difficulties" with Nathaniel Hipsman and Jessica Liu in *Getting the Deal Through—Merger Control 2022* September 2021

"Comparing Vertical Merger Guidelines Across Jurisdictions" with Peter Davis and Kostis Hatzitaskos in *Law360* February 2020.

"Revisiting Guidance on MFN Terms" with Andrew Sfekas in *Antitrust Chronicle* September 2019.

"Economics at the Antitrust Division 2016-2017: Healthcare, Nuclear Waste, and Agriculture," with A. Gerstle, H. Knudsen, D. Williamson, and J. Lee, *Review of Industrial Organization,* Vol 51, Issue 4, 2017, pp. 515-528

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HONORS AND AWARDS

President's Award for Meritorious Executive	2017
Assistant Attorney General's Award for Excellence	2015
Attorney General's John Marshall Award for Legal Advice (Nominated)	2004
Assistant Attorney General's Award for Excellence	2001
Distinguished Service Award	1997
National Science Foundation Fellowship	1990 – 1993
Phi Beta Kappa	1989

CONFERENCE PARTICIPATION

8th Annual Bill Kovacic Antitrust Salon 2020
Discussed vertical merger guidelines and enforcement issues in a panel hosted by George Washington University School of Law and *Concurrences Review*.

"New Debates and Tensions in Antitrust: The 2020 Vertical Merger Guidelines" 2020
Discussed newly issued vertical merger guidelines with attorneys and economists in government and private practice.

ABA panel "Sequences & Sparks: Life Sciences Innovation Mergers." (podcast) 2020
Discussed issues of innovation competition, potential competition, and merger enforcement.

DOJ Workshop on Proposed Vertical Merger Guidelines 2020
Discussed issues of vertical merger analysis and suggested modifications to draft guidelines.

ICN Chief/Senior Economist Workshop 2016
Discussed tools and techniques of current interest with senior economists representing competition authorities around the world.

FCC Roundtable on Media Ownership Policies 2001
Discussed economic issues related to prospective changes in the FCC's rules governing media ownership.

PERSONAL

U.S. Citizen. Married with two daughters and one son.

APPENDIX B

Majure Reply V.S. Materials Relied Upon

Verified Statements

Expert Statement of W. Robert Majure, Ph.D., *Canadian National Railway Company, et al. – Control – Kansas City Southern, et al.* , Finance Docket No. 36514, June 28, 2021, and backup materials.

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APPENDIX C

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36500

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

MAJURE R.V.S. EXHIBIT C-1

{{[redacted]
[redacted] }}

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36500

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

MAJURE R.V.S. EXHIBIT C-2

{{[redacted]}}

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36500

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

MAJURE R.V.S. EXHIBIT C-3

{{[redacted]}}

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36500

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

MAJURE R.V.S. EXHIBIT C-4

{{[redacted]}}

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36500

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

EXHIBIT P

REPLY VERIFIED STATEMENT OF RICHARD BROWN AND NATHAN ZEBROWSKI

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36500

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

REPLY VERIFIED STATEMENT OF RICHARD W. BROWN AND NATHANIEL S. ZEBROWSKI

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I. INTRODUCTION

1. We are Richard W. Brown and Nathaniel S. Zebrowski of FTI Consulting, Inc. We previously submitted a verified statement to the Surface Transportation Board ("STB") in this proceeding on October 29, 2021, included in Canadian Pacific Railway's ("CP") Application for Control of Kansas City Southern ("KCS"). In that opening verified statement ("O.V.S."), we estimated the amount of existing railroad traffic the combined CP/KCS system would attract, commonly referred to as "rail-to-rail diversion" traffic. We determined that CPKC will attract 216,675 units of existing railroad traffic annually, representing $513.1 million in revenues at 2019 levels, by the third year of combined operations. Details on our methodology and results are provided in our O.V.S.

2. In this statement, we address various claims made by other Class 1 railroads concerning our estimate of traffic CPKC is likely to attract.[1] Generally speaking, the railroads do not dispute that the categories of traffic we identified as likely to shift to CPKC would be affected by the proposed Transaction, nor do they argue there were categories we should have identified but did not. Instead, the railroads express in various ways the view that much of the traffic we estimated would move to CPKC would only do so via foreclosure because CPKC routes would often be somewhat longer than existing routes. CN further alleges that we erred by not adjusting diversion percentages on a lane-by-lane basis to account for differences in relative route lengths. Despite making these assertions, none of the railroads address the analysis provided in our initial statement demonstrating that modest differences in relative route lengths minimally affect traffic shares. In fact, CN's own rail-to-rail diversion analysis corroborates

[1] We did not identify any claims directly addressing or critiquing our estimate in the comments of non-Class 1 railroad parties.

both that the diversion percentages we apply are reasonable, and that it would be inappropriate to adjust them formulaically as a function of route length.

3. CSX and CN mistakenly believe we should have assumed that rate reductions will be required to attract traffic to CPKC, and the absence of such reductions means CPKC can only attract traffic by foreclosing competitors. By design, our study estimates the amount of traffic that CPKC would attract absent foreclosure. As we explain, if we had assumed CPKC reduced its rates while railroads competing for eligible traffic did not, we would have found higher levels of traffic moving to CPKC.

4. Additionally, various other claims made by the railroads are unfounded, as we explain. These claims include allegedly understating traffic that CPKC may attract, making technical errors developing revenue estimates, and double counting existing and growth-related traffic diversion volumes. None of the railroads' comments merit any adjustments to our initial estimate of traffic that CPKC may attract. We believe our estimate is reasonable and accurate and fully supports the sufficiency of CP's Application.

5. This statement also addresses the rail-to-rail traffic diversion estimates put forward by Mr. David Hunt in support of CN's Responsive Application. As discussed in Section III, there are several major flaws and inconsistencies that make his methodology unreliable and his results unrealistic. First, approximately one third of his diversion traffic is specialized RoadRailer service that CN does not provide. Second, he found substantial amounts of additional diversion traffic by forcing his model to ignore the fact that CN already has existing single-line routes to St. Louis. These and numerous other problems are addressed in detail in Section III.

6. At the request of counsel for CP and KCS, we also provide an analysis of the traffic moving on KCS's Kansas City-Springfield/St. Louis Line, as well as an analysis of historical traffic patterns over corridors where KCS's Springfield Line could be used as part of a KCS-CN interline routing alternative for movements in corridors between Kansas City and/or Mexico, on one end, and Chicago, Detroit, or Toronto on the other end. This analysis shows that in recent history, the Springfield Line has rarely been used (in fact almost not at all) by traffic moving over these corridors (including traffic that travelled over these corridors as part of a broader movement). Instead, the traffic moves over a wide variety of other routes, many of which are single-line. Thus, there appears to be no practical cases where a CP/KCS combination could theoretically affect competition or lead to the foreclosure of any interline routes.

7. We have organized the remainder of our statement into three sections. Section II responds to critiques of our traffic study, specifically: Section II(A) explains that our identification of traffic groups providing opportunities for traffic CPKC will attract is sound and largely undisputed; Section II(B) explains that our process for estimating the traffic CPKC will attract uses the most appropriate approach supported by the data, and addresses the various incorrect claims made by other railroads concerning route circuity, foreclosure, and rate changes; Section II(C) discusses why our revenue estimates are accurate and the criticisms raised by CN are wrong; and Section II(D) describes how the existing railroad traffic we estimate will move to CPKC is aligned with the growth traffic estimated in the Verified Statement of Jonathan Wahba and Mike J. Naatz ("Wahba/Naatz O.V.S."). Section III addresses CN's Responsive Application, including Mr. David Hunt's flawed rail-to-rail diversion estimates. Section IV provides an analysis of traffic patterns relevant to KCS's Springfield line.

II. OUR TRAFFIC STUDY PROVIDES A RELIABLE ESTIMATE OF THE LIKELY IMPACT OF THE CP/KCS COMBINATION ON RAIL TRAFFIC

A. Our Identification of Traffic Groups Providing Opportunities for Shifting to CPKC Is Sound and Largely Undisputed

8. To start, we initially identified 33 individual groups of commodity-specific regional traffic flows, totaling 569,166 units (at 2019 levels), which represents the individual rail freight movements where shippers would gain new competitive options immediately after the CP/KCS combination, regardless of what portion actually moves to CPKC.[2] Class 1 railroads offered various critiques of this population, to which we will respond in this section. Specifically:

- BNSF's witness Benton Fisher argues we may have generally understated the population of theoretically divertible traffic;
- CSX queries whether two of the groups involving automotive diversions to Kansas City are properly treated as Transaction-related; and
- CN questions the validity of two other groups of lumber and grain traffic not tied to specific existing 2019 station-to-station movements.

9. Besides these limited items, no railroads or shippers raised any specific concerns about the validity of the 33 traffic groups or argued other groups should have been included. We explain below why the alleged issues raised by the Class 1s, all minor in nature, are either invalid or do not justify adjustments to our estimate. We also affirm our initial findings accurately identified the amount of traffic that would benefit from new competitive options under the CP/KCS combination.

[2] *See* Table 5 of our O.V.S.

1. BNSF Witness's Speculation Why Our Estimate May Be Understated Does Not Justify Increasing Our Estimate

10. BNSF's Witness Benton Fisher offers three reasons suggesting why he believes we may have underestimated the amount of traffic that would be attracted to CPKC single-line service. However, he does not attempt to quantify the additional amount he believes will move to CPKC. None of the reasons he provides merit adjustments to our estimate.

11. First, Mr. Fisher suggests that the amount of traffic we identified as potentially moving to CPKC may have been understated due to the exclusion of 361,000 units during the initial screening process.[3] This is the same alleged issue raised by UP in its November 19, 2021, filing petitioning the STB to reject the Application as incomplete, and sufficiently addressed by Applicants in their November 22, 2021 reply. Again, it may be addressed with a simple look at the traffic in question—a step neither BNSF nor UP appeared to have taken as a part of formulating their criticisms: the large majority of the traffic in this category is clearly not eligible to move to CPKC.[4] Over 210,000 of the 361,000 excluded units are intermodal movements originating or terminating in locations where CP or KCS do not currently have intermodal facilities.[5] As we explained in our initial statement, and as Applicants explained in the

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[3] *See* BNSF-9, Verified Statement of Benton V. Fisher ("Fisher V.S.") at 13-14. We confirm the correct figure is 361,000; not the 380,000 figure inadvertently referenced in our O.V.S.

[4] This is seen based on review of the traffic characteristics for all 361,000 units in question that are readily available in our workpapers. *See* "8 – Diversion Identification.xlsx," tab "Calculations," at Columns B to AA.

[5] Specifically, these locations are: 1) The northeastern states of New York, Pennsylvania, New Jersey, and Massachusetts; 2) Portland, OR; 3) Memphis, TN; and 4) Houston, TX. *See* workpaper "8 - Diversion Identification Reconciliation.xlsx," at tab "Non-Divertable Summary." Regarding Houston, while KCS does have an intermodal facility at Kendleton outside of Houston, due to trackage rights restrictions this facility cannot be used for traffic moving to/from CP-served territories, as explained in footnote 11 of our initial statement.

November 22, 2021 filing[6], our estimate is limited to traffic that can be handled by existing CP and KCS facilities, clearly excluding intermodal traffic without intermodal facilities.[7] Another nearly 50,000 units involve traffic originating or terminating in Kentucky, Ohio, or other states where CP has only limited operating rights over other carriers' lines, and where CP generally does not provide direct service options.[8] It also would not have been inappropriate to include in our estimates much of the remaining traffic—about 100,000 units, representing less than one-tenth of all traffic screened, for various reasons. As examples, this traffic may be automotive traffic moving to destinations where CP or KCS have no automotive facilities, or, consist of movements originating or terminating in Houston where KCS likely does not have local access rights. As explained in our initial statement, we considered the small portion of this traffic remaining as too heterogeneous to reliably classify as potentially moving to CPKC.[9] Unsurprisingly, neither BNSF nor UP identified any subset of the 361,000 units in question they assert would likely be attracted to CPKC.

12. Second, Mr. Fisher identifies minor discrepancies in our assignment of four lanes (out of the thousands we reviewed) to traffic groups.[10] Specifically, he provides "as examples" four lanes where we included only a portion of the traffic in the automotive line of business as

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6 *See* CP-33/KCS-21, Applicants' Reply to Union Pacific's "Petition to Reject Application as Incomplete" at 6 and 7.

7 This is not to say that in the future CPKC could not pursue investment initiatives seeking to attract such types of growth-related traffic. We take no opinion on this, but only point out that these hypothetical future opportunities are properly not included in the scope of our study of existing rail-to-rail traffic that could be attracted to CPKC.

8 *See* workpaper "8 - Diversion Identification Reconciliation.xlsx," at tab "Non-Divertable Summary." Much of this traffic was only picked up in the initial screening model due to anomalous station reporting in the CSM as explained in footnote 11 of our initial statement.

9 *See* Brown/Zebrowski O.V.S. at 17.

10 *See* Fisher V.S. at 14.

eligible for diversion.[11] These four lanes are not just examples of such discrepancies; they in fact comprise nearly all of such cases.[12] Accordingly, addressing this minor lane classification issue would involve adding a few hundred units at most to our estimate of over two hundred thousand units—a negligible impact on our findings that does not warrant adjustment.[13]

13. Third, Mr. Fisher claims that the CWS understates UP's Mexico-U.S. cross-border traffic by approximately 20 percent overall, which he argues may in turn result in our estimate being understated. [14] His concern is largely moot due to our use of KCSM 100-percent traffic tape data, not CWS data, for quantifying the majority of diversions involving this traffic group. Only about {{{[redacted]}}} estimated diverted units involving UP's Mexico-U.S. cross-border traffic, i.e., the portion interchanged with FXE and not included in KCSM 100% traffic tape data, are derived from CWS data.[15] To put this in context, even assuming the 20 percent understatement ratio estimated by Mr. Fisher was an appropriate adjustment to apply, this would only increase our diversion estimate by about {{{[redacted]}}} of 216,675

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[11] This minor discrepancy is mostly related to inadvertently omitting shipments reporting the 7-digit STCC code for trucks while including shipments reporting the 7-digit STCC code for automobiles.

[12] *See* Fisher V.S. at 14 where Mr. Fisher claims there to be "many instances of shipments of the same commodity on the same traffic lane for which Applicants dropped a portion…and concluded another portion would divert to new single-line service on the combined CP-KCS system." The four examples identified account for 730 units that were dropped due to this minor lane classification issue. After review of the remainder of lanes screened in our diversion process, we only found an additional 110 units that may be affected by this type of classification issue identified by Mr. Fisher. *See* workpaper "8 - Diversion Identification Reconciliation.xlsx," at tab "Lane Classification Analysis."

[13] Mr. Fisher also speculates that there may be additional discrepancies based on application of radial adjustments, but does not provide any examples of this.

[14] *See* Fisher V.S. at 16 and 17.

[15] The 55,440 units of traffic originating in Mexico as reported in the 2019 CWS cited by Mr. Fisher do not include the large portion of traffic originating in Mexico that is reported in the CWS as originating at a border crossing location such as Laredo, Eagle Pass, or El Paso. As such, this figure does not provide a meaningful reference point.

estimated units.[16] However, applying such an adjustment would be speculative at best, since Mr. Fisher's calculations provide no way to know whether the portion of UP's Mexico-U.S. cross-border traffic eligible to move to CPKC is proportional to the entire set of traffic on which his adjustment is based. Our approach[17] is consistent with the guiding principle of past rail-to-rail diversion studies to use the best data available at the time the study is performed.[18]

2. CSX Witnesses Wrongly Assert that Two Relatively Small Traffic Groups of New Traffic Are Not Merger-Related

14. CSX witnesses Julie Carey and Albert Bremser question whether two groups of traffic, consisting of automotive traffic moving from Canada to Kansas City and Mexico to Kansas City, are properly treated as Transaction-related since, for the two groups respectively, CP and KCS can already serve both origin and destination territories.[19] As explained in our initial statement and discovery responses, the Transaction will improve CPKC's ability to attract

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[16] *See* workpaper "8 – Diversion Identification Reconciliation.xlsx," at tab "Cross-border CWS Summary."

[17] The 2019 100% traffic tape data produced by UP and BNSF after our traffic diversion study was performed confirm the CWS data available to us at the time is well-aligned with the traffic flows interchanged with FXE at Eagle Pass relevant to our study. Excluding southbound grain, which our diversion methodology treats separately from waybill data (it is instead based on overall U.S. trade export statistics) BNSF and UP's internal waybill data report {{[redacted]}} loaded revenue units through Eagle Pass, and the CWS data reports {{{[redacted]}}} units through Eagle Pass. This difference of {{{{[redacted]}}}} indicates that the drivers of the overall differences Mr. Fisher observes are related to other traffic flows not relevant to our quantification of diversions. *See* workpaper "CWS and Tape Data Comparison.xlsx," at tab "Summary Figures."

[18] *See, e.g.*, *Burlington Northern Inc. and Burlington Northern R.R. Co. – Control and Merger – Santa Fe Pacific Corp. and the Atchison, Topeka and Santa Fe Ry. Company*, Finance Docket No. 32549, BN/SF-7, Verified Statement of Mark Hornung (*BN/ATSF* Rail-to-Rail Diversion study), at 6 (in workpapers); *see also Canadian National Ry., et al. – Control – Illinois Central Corp., et al.*, Finance Docket No. 33556 at 4, CN-IC 7, Verified Statement of George Woodward (*CN/IC* Rail-to-Rail Diversion study) (in workpapers).

[19] *See* CSX-8, Verified Statement of Professor Julie M. Carey and Dr. Albert W. Bremser ("Carey/Bremser V.S.") at 33. Their vague suggestion that perhaps CP could acquire rights to use IFG from KCS without the combination is unfounded and contrary to the expressed views of CP company witness Mr. John Brooks related to past coordination efforts between the two independent companies. *See* Brooks O.V.S. at paragraphs 30-6.

such traffic because it will enable CP to gain access to an automotive ramp in Kansas City (at International Freight Gateway) for the first time as well as create economies from increased automotive movements across the combined system through Kansas City.[20]

3. CN Witness Erroneously Rejects Two Groups of Traffic Not Directly Linked to Specific Station-to-Station Movements

15. CN's Witness David Hunt claims that we have no basis for including lumber traffic from Canada to Dallas or grain traffic from the Midwest to Mexico because, unlike the rest of the rail traffic predicted to shift to CPKC in our estimate, these amounts are not directly tied to individual station-to-station moves in the 2019 traffic data.[21] Mr. Hunt's reasoning is at odds with the purpose of a rail-to-rail traffic analysis and is not followed by his own approach for estimating traffic shifts for purposes of CN's Responsive Application.

16. As previously explained both in our O.V.S. and by Mr. Wahba and Mr. Naatz, these traffic shifts are likely because CP origins capable of supplying volumes of lumber and grain will benefit from single-line access to destinations demanding these commodities.[22] In other words, had CP and KCS functioned as a combined system in 2019, and single-line service been available, incremental amounts of traffic to certain KCS and KCSM destinations would likely have originated on locations on CP. This is driven by the common sense fact that grain does not grow at grain elevators, and trees do not grow at sawmills. Instead, producers choose which rail origin to move their grain and lumber products to from the field, and this decision is influenced by what route options and destinations are efficiently accessed at the different origin alternatives. Mr. Hunt recognizes in his own diversion study that grain "has some flexibility in

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20 *See* Brown/Zebrowski O.V.S. at ¶¶ 14 and 66.

21 *See* CN-13, Verified Statement of David Hunt ("Hunt Comments V.S.") at 21-23.

22 *See* Brown/Zebrowski O.V.S. at ¶¶ 36-44, 79-81 and Wahba/Naatz O.V.S. at ¶¶ 21-22, 96-98.

rail loading and unloading locations," indicating he agrees with the core premise specific to our grain diversion analysis.[23] Indeed, one of the fundamental features driving beneficial railroad combinations is the creation of enhanced single-line transportation linkages efficiently connecting underutilized origins supplying product with new destination options demanding this product. Not accounting for such synergies would have been inappropriate, and opened us to criticism from railroads and others that our estimate failed to address groups of traffic that CPKC would be reasonably anticipated to attract.

17. Mr. Hunt also disputes our application of a 15 percent growth rate to this lumber diversion calculation. We applied this growth rate in order to properly account for a known and quantifiable change in the market. That said, this adjustment only results in approximately {{[redacted]}} additional diversion units, so its effect on our overall diversion estimate is negligible.[24] In response to Mr. Hunt's allegation that there was no analysis to support these figures, we refer to the verified statement of Messrs. Wahba/Naatz referencing the "demand for lumber for the hot housing and construction markets...especially the Dallas/Fort Worth metropolitan area…," *see* Wahba/Naatz O.V.S. at ¶ 97, to changes in BNSF and UP's lumber traffic levels between 2019 and 2021 reported in their Quarterly Commodity Statistics, and to 2019 to 2021 changes in local housing starts in the Dallas area.[25]

18. Mr. Hunt's claim is ironic because he estimates diversions involving the Port of Montreal in CN's Responsive Application in a comparable manner, although he provides

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23 *See* CN-14, Verified Statement of David Hunt ("Hunt Application V.S.") at 37.

24 {{[redacted]}} *See* Brown/Zebrowski O.V.S. at ¶ 81.

25 *See* workpaper "Available Lumber Figures.xlsx," at tab "Summary Figures."

significantly less supporting analysis and rationale.[26] The purpose of a rail diversion study is to analyze where shifts of existing rail traffic are expected to occur and identify the corresponding amount of diversion traffic.[27] It is appropriate, and even necessary, to include any diversions from anticipated traffic pattern changes in a diversion study, as we both have done in different instances with different degrees of support. His suggestion that we did not provide explanations for this traffic appears to overlook substantial portions of our initial statement providing explanations.[28]

B. Our Estimate of the Portion of Traffic Likely to Be Attracted to New CPKC Options Uses the Most Appropriate Approach Supported by the Data and Provides Accurate Results

19. As discussed above, the other railroads express few concerns with our identification of traffic that will have new competitive options introduced by the Transaction. The issues they do raise relate to the portion of traffic attracted to CPKC single-line routes from these railroads' existing routes. We address their various claims and explain why our method is the most appropriate data-supported approach, and provides accurate results.

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[26] Specifically, his diversion estimate assumes that 15 percent of volumes currently moving through New York and New Jersey ports would instead move through the Port of Montreal were CN to gain a single-line route to Kansas City. He does not provide any source for this 15 percent assumption, which appears strictly as a hard coded figure in his workpapers. *See* Hunt Application V.S. at 19-20. In contrast, as discussed in our initial statement, our assumption that CPKC would gain a 5 percent market share in specific grain origin areas is provided by CP's Vice President Jonathan Wahba, who based this specific assumption on his overall knowledge of the grain market, as detailed in his verified statement. Our assumption that CPKC would gain a 5 percent market share at CP-accessible lumber origins to supply Dallas is also directly related to an understanding of the current market shares of lumber supply to the Dallas area, and KCS's capacity to handle additional lumber to supply the Dallas area. *See* Wahba/Naatz O.V.S. at ¶¶ 21 and 98 and Brown/Zebrowski O.V.S. at ¶ 80.

[27] *See* 1180.7 (a) which includes analysis identifying "the anticipated effects of the transaction on traffic patterns."

[28] *See* Brown/Zebrowski O.V.S. at ¶¶ 36-44 and 79-81.

20. The other railroads do not deny that CPKC will have abundant opportunities to compete, but argue that the portion of traffic we estimate CPKC will attract is overstated, or depends on theorized use of foreclosure tactics or specific rate reductions not included in the scope of our study to achieve. As we explain, these claims are incorrect, and misconstrue the nature of the analysis we performed to estimate the portion of traffic that will shift to CPKC. We estimate that 201,707 of 569,116 units of the traffic potentially susceptible to movement over CPKC routes (i.e., "eligible" for potential diversion) will be attracted to CPKC within three years of the combination. This figure is determined by applying, on a lane-specific basis, several different diversion percentages that vary depending on the route options available to the traffic. The diversion percentages are set based on the average distributions of actual traffic shares observed across hundreds of county-to-county pairs with route options comparable to those of the divertible traffic. Overall, our analysis considered traffic distributions among routes presenting different types of competitive situations involving over 100 million units of traffic in the 2015-2019 CWS travelling on over 1,000 distinct county-to-county pairs.

21. For example, when determining the appropriate diversion percentage to apply to carload traffic currently using an independent interline route, i.e., where a new CPKC single-line route would be competing against an interline route not involving CP or KCS, we look at the average share of traffic that uses a single-line route option for county-to-county pairs where there is at least one interline route option involving two other railroads that is also used. In this case, there are 221 such county-to-county pairs involving rail movements over 1,000 miles in the

2015-2019 CWS data and the average share using the single-line route option is 56 percent. Our use of a 50 percent diversion rate for comparable traffic is driven by this data finding.[29]

22. Our data-driven approach is based on average traffic share distributions across hundreds of individual regional traffic flows for rail traffic with route options and competitive characteristics similar to those of the divertible traffic. Applying average shares derived from this analysis to hundreds of identified divertible lanes with like characteristics provides an accurate and statistically sound method for estimating the average amount of traffic that will move to CPKC in a given period across eligible lanes.

1. The Criticisms of CN's Witness David Hunt Related to CPKC Route Length Are Contrary to Both What His and Our Data Analysis of Traffic Distributions Show

23. CN's Witness David Hunt alleges that our estimate of the portion of eligible traffic CPKC would attract is overstated due to CPKC often having relatively longer routes. However, to reach this conclusion, he dismisses the results of our data analysis and his own data analysis on the topic, both of which show that it would be wrong to conclude that modest differences in route mileage strongly influence the portion of traffic a competing carrier is likely to attract. Mr. Hunt submitted both a Verified Statement supporting CN's Comments addressing CP's Application ("Comments V.S."), including our estimate of rail-to-rail traffic shifts CPKC will attract, and a separate Verified Statement supporting CN's Responsive Application, which estimated diversions relating to the proposed forced divestiture of KCS's Springfield line to CN

[29] As explained in our opening statement and in discovery responses to UP, BNSF, and CSX, considering all relevant factors—including relative route length and the larger size of the Class 1 railroads that would compete against CPKC—we select a 50% diversion percentage as a reasonable assumption to use in our estimate. Given the overall breadth of the analysis, and use of average outcomes across large sets of traffic, we think using a more specific diversion percentage, e.g., 56%, would provide an unjustified level of precision disproportionate to the purpose of the study. Such a level of detail would not materially alter the results of our study and could lead to a misleading sense of precision.

("Responsive V.S."). In Mr. Hunt's Comments V.S., his main criticism is that our approach does not accurately identify the specific movements of traffic that will be attracted to CPKC, and overstates the amount of traffic that will move to CPKC. Specifically, he asserts that we err (i) by not adjusting individual lane diversion percentages based on differences in relative route lengths, (ii) by not basing our diversion percentages on any data analysis[30] and, (iii) somewhat contradictorily, our data analysis demonstrating that differences in route length do not heavily influence traffic shares is flawed.[31] We agree that distance is an important component to consider in transportation modelling, which is why our initial statement discusses and analyzes the issue of relative route length in depth,[32] but Mr. Hunt errs by concluding that the distance component must be used in a formulaic way to adjust predicted traffic shares, regardless of what the relevant data analysis actually shows.

24. While he calls our statistical analysis "flawed," he does not provide any reasons disputing our methodology. The data analysis we conducted was properly performed and correctly interpreted to show that traffic shares are only minorly influenced by modest differences in route length. For example, Figure 1 below, which is a reproduction of Figure B3 in our initial statement, very clearly shows that there is no definitive pattern of rail traffic shares changing as relative route distance changes.

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30 *See* Hunt Comments V.S. at 13 ("…they offer no data, analysis, or other evidence to support such inflexible percentage-based diversion assumptions").

31 *See* Hunt Comments V.S. at 9. ("They conducted a statistical analysis comparing the relationship between rail carriers' length-to-haul and their historical market share…" and "…using their flawed analysis as justification…[they] applied a set of fixed percentage-based diversion rules.").

32 *See* Brown/Zebrowski O.V.S. at ¶¶ 28 & 30-31 and Appendix B.

FIGURE 1
REPRODUCING FIGURE B3 FROM BROWN/ZEBROWSKI O.V.S.{{{

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It would be wrong to review the above data and conclude, as Mr. Hunt appears to do, that diversion percentages should formulaically be adjusted on a lane-by-lane basis based on relative route mileages. Accordingly, we correctly used diversion percentages that do not vary based on relative mileages, rather than introduce misleading assumptions about the effects of relative route length that were unsupported by the data.[33] While use of that sort of approach is unsupported,

[33] As explained in our initial statement, even though we conclude it is inaccurate to formulaically adjust diversion percentages based on relative route lengths, this does not mean we dismissed the effects of relative route lengths on traffic shares as Mr. Hunt wrongfully claims (*see* Hunt Comments V.S. at 14: "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"). Specifically, based on review of the data we recognized that on aggregate the "carrier having the shorter route likely to take a slightly larger share of the traffic," and "we have considered that CP/KCS single-line routes for the diversion opportunities average 10 to 20 percent longer than those of the shortest rival route." (Appendix B ¶¶ 6 and 15). This is one of the factors that led us to select diversion percentages that "err on the side of conservatism in estimating the likely lane shares that CPKC offerings would achieve."

the data does support treating diversion routes that are significantly longer that other existing options as unlikely to attract rail traffic shifts. Accordingly, we applied a filter to remove from consideration potential shifts to routes that were more than 50% or 500 miles longer than the shortest possible existing route.[34] In contrast, despite fixating on how diversion percentages should be adjusted formulaically based on relative route length, Mr. Hunt in his own analysis did not apply any such filter to avoid (incorrectly) identifying diversions to highly-circuitous routes.[35]

25. Tellingly, if Mr. Hunt's method for estimating rail-to-rail diversions for the CN Responsive Application were applied to our analysis, the majority of new CP/KCS single-line routes would be considered *similar to or more efficient* than existing routes. Mr. Hunt states that each interchange adds impedance equivalent to between 350 and 650 route miles, so by his own standards, single-line CP/KCS routes would be *preferable* to interline routes even if they were 350 to 650-miles longer, and, as Mr. Hunt notes, CPKC routes will on average be only 217-miles longer. [36] In other words, although he claims that our estimate is overstated due to CP/KCS often having somewhat longer routes, his own analysis recognizes that on average CP/KCS has more

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[34] As explained in our discovery response to BNSF, this filter was informed based on the observation that few lanes had multiple routes participating where one route was more than 50% longer than the other. *See* CP response to interrogatory number 2 in BNSF's second set of discovery requests ("The witnesses' examination of traffic distributions described in their Appendix B (Application Vol. 2 at 2-175 to -184) demonstrates that in the majority of cases where multiple rail routes are used to connect the same county-to-county pairs, the route lengths are within 50 percent of one another.").

[35] As a result, he predicts traffic diverting to much more highly circuitous lanes. For example, he would divert {{{[redacted]}}} from CP's local lane between Calgary and Kansas City to the CN route using KCS's Springfield line which is over 500 miles longer. *See* Hunt workpaper "HC- 2022January_R2R_Auto_v4.xlsx," tab "New2Existing," at Rows 53 and 54.

[36] Even assuming there was only one junction on the existing route, and it were assigned the lowest 350-mile equivalent impedance, this would still be higher than the 217-mile average additional length of CP/KCS routes he cites.

favorable single-line routes for diversion traffic than currently moves on interline routes, which represents over two-thirds of our estimated diversion traffic.[37]

26. In addition, Mr. Hunt's approach produces results where relative route lengths barely influence diversion percentages. In fact, Mr. Hunt's approach goes so far as to produce *higher* diversion percentages precisely because the routes are *longer*. For example, Mr. Hunt's approach would divert 39.2% of carload traffic from a 1,000 mile interline-line route to a 1,000 mile new single-line route, but would divert 39.7% to a 2,000 mile new single-line route. In other words, he would divert more traffic to a route simply because it is twice as long, which clearly contradicts his criticisms of us for not lowering diversion percentages when routes are relatively longer. In other cases, while the diversion percentages would slightly decline based on relative route length, the changes are negligible. For example, his approach would divert 39.2% from one 1,000 mile single line route to a 1,000 mile new single-line route, but would divert 38.5% to a 2,000 mile new single-line route.[38]

27. Not only does his diversion analysis contradict his criticisms of our treatment of relative route distances, but his own analysis provides statistical confirmation that our determination not to adjust diversion percentages based on relative route lengths is correct. At a high level, this occurs because he uses insufficient statistical techniques to "fit" the coefficients of his regression model against the data. Consequently, he does not generate the standard statistical information required to see that the coefficient in his model that is related to mileage is statistically insignificant. Specifically, he compares the traffic shares predicted by his "logit"

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[37] *See* workpaper "8 - Diversion Identification Reconciliation.xlsx," at tab "Interline Share."

[38] The above percentages show results for his grain/other model, but similar results are also produced for Mr. Hunt's automotive and intermodal models. *See* workpaper "Diversion Percentage Analysis.xlsx," at tab "Summary Figures."

equation with actual traffic shares across lanes served by multiple routes, and forces Microsoft Excel to solve for the coefficients in this equation that yield the minimum square of the difference between the two shares across all observations. However, this approach does not allow for measuring the relevant statistical parameters required to properly assess the resulting coefficients, in particular, the standard deviations necessary to construct confidence intervals to determine whether the coefficients are statistically significant.

28. To address this deficiency, we imported his regression data for each of his three regressions (which underlie his intermodal, automotive, and carload "logit" equations) into a standard statistical software platform (called "R") and re-ran the analysis using the same regression parameters and equation form as he did. We generated similar coefficients, but found that the coefficients related to mileage are statistically insignificant in each case.[39] Table 1 below provides the statistical parameters we developed for assessing Mr. Hunt's regression for predicting non-automotive carload diversions.

[39] The reason why our coefficients are slightly different is because his method using "Solver" in Excel differs from a proper application of regression fitting equations contained in a standard statistical software program. As such, we view our results as more accurate.

TABLE 1[40]
STATISTICAL PARAMETERS FOR ASSESSING HUNT REGRESSION

Results:	Mr. Hunt's Coefficients Determined Using Statistically Incomplete Excel "Solver" Method	Coefficients Fitted Using Statistical Software	P-value (greater than 5% is statistically insignificant at the 95% confidence level)	Statistically Significant?
Intercept	n/a	2.510	0.0%	Yes
Junction Frequency Variable	-2.099	-2.306	0.0%	Yes
Impedance (mileage-related) Variable	**-0.044**	**-0.045**	**24.8%**	**No**

29. Table 1 shows that his mileage-related variable is not statistically significant. We confirmed this is also the case for his automotive and intermodal diversion equations, as detailed in our workpapers.

30. In other words, Mr. Hunt did not perform his regressions in a statistically robust way and failed to identify his mileage-related coefficients are statistically insignificant. This is important because in past diversion studies, when a coefficient in the regression model was statistically insignificant, it was dropped from the equation predicting diversion percentages.[41] That his own regressions confirm that such a variable is not statistically significant undercuts his criticism that we erred by not including this variable in our analysis.

31. The examples Mr. Hunt provides where he claims our diversion percentages err by not changing based on relative mileage illustrate the illogic of his criticisms. In Table 2

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40 *See* workpaper "Regression Fitting Analysis.xlsx," at tab "Final Table."

41 *See* CN-IC-7, Woodward V.S. at II-25.

below, we apply the traffic shares his approach would assign to the lane examples where he alleges our diversion percentages are too high and/or do not properly change based on relative mileage.[42]

TABLE 2[43]
THE EXAMPLE DIVERSION LANES USED BY MR. HUNT TO ATTEMPT TO CRITICIZE OUR DIVERSION PERCENTAGES SUPPORT THE SUPERIORITY OF OUR METHOD

From Exhibit 4-1 in CN Comment Verified Statement of David Hunt:							FTI Calculation:
Origin	Destination	Current RR	Current RR Miles	CPKC Miles	Difference in Miles	Assigned Diversion Percentage	Diversion Percentage Under Mr. Hunt's Method
New Orleans, LA	Superior, WI	BNSF	2023	1675	-348	25%	21.1%
New Orleans, LA	Elkhart, IN	NS	1075	1476	401	25%	27.3%
Chicago, IL	San Angelo, TX	BNSF	1274	1499	225	25%	27.5%

32. Table 2 shows that for each example he raised in attempts to criticize our use of a 25% diversion percentage, diversion percentages under his approach would both be generally similar to ours, and would minimally change depending on mileage. The one case where his approach yields a slightly lower diversion percentage than we would use is, nonsensically, the lane between New Orleans and Superior where CPKC has the shorter route. In light of this, his criticisms that our diversion percentages are overstated and do not identify the specific traffic that will be attracted to CPKC should be rejected.

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[42] We apply this method by including routes that were not historically used, since his approach does this in at least some instances. Were we not to include such routes, this would result in higher estimated diversion percentages, but the dynamics of how they varied minimally based on relative mileage would not change.

[43] *See* workpaper "Diversion Percentage Analysis.xlsx," at tab "Summary Figures."

2. The Diversion Levels We Estimate Accurately Account for the Effects of Relative Route Distance, and Assertions by Other Railroads to the Contrary Overlook Both What the Data Show and the Real-World Factors That Drive Shipper Choices

33. Although the preceding sections have already refuted the mistaken notion that modestly longer CP/KCS routes would fail to attract to CPKC the levels of traffic we predict, given the prevalence of this theme echoed by other railroads, we provide additional context on why our data-driven findings on the role of relative route length are reasonable and accurate in light of the dynamics of shipper preferences and railroad industry operations.

34. Several other railroad witnesses, including Carey/Bremser for CSX and Messrs. Haley, Salop, and Rocker/Turner for UP, all suggest in one way or another that CP/KCS's relatively longer routes would fail to attract traffic to CPKC voluntarily, and, based on this flawed premise, reason that CPKC would attempt to use foreclosure tactics.[44] The views of UP are particularly relevant, because our study estimates that approximately {{[redacted]}} intermodal containers and {{[redacted]}} carloads would shift from routes involving UP through Laredo to CPKC single-line routes as a result of the Transaction.[45] While none of the other railroads' witnesses purport to have performed any traffic analysis to support their critiques and do not offer any substantive criticisms of our traffic analysis, we further explain why our results are reasonable.

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[44] *See* Carey/Bremser V.S. at 30-31; UP-10, Verified Statement of Thomas Haley at 21-22; UP-10, Verified Statement of Kenny Rocker and John Turner ("Rocker/Turner V.S.") at 8-11; and UP-10, Verified Statement of Steven Salop at 29-31.

[45] *See* workpaper "8 - Diversion Identification Reconciliation.xlsx," at tab "UP Traffic Through Laredo."

35. For starters, it should be recognized that there are many aspects that influence how shippers value competing transportation options, and the relative weight shippers assign different aspects. For example:

- A shipper that cares most about running consistent operations based on predictable supply chain schedules may value service reliability the most.
- A shipper with adequate storage inventory and railcar capacity may value price above service factors. Shippers that owned their own rail cars would also factor equipment utilization levels and turn times into the equation when determining the lowest cost option.
- A shipper with more complicated or intense industry switching service or changing requirements may prefer one line haul carrier over a second regardless of rates or service times.
- A shipper with multiple origins or destinations may select a line haul carrier based on the best option for all of its business, which may mean suboptimizing a single location.

These are just a few examples, and shippers may value multiple elements of service and price simultaneously at different relative weights, but this list illustrates why we cannot base shipper preferences solely on the relative length of different routes. If this were true, the traffic that could be attracted to CPKC would already be travelling on the shortest existing route. As we have already demonstrated, and the other railroads have not disputed, this is not the case.[46]

36. This reality is well recognized in the railroad industry. For example, Oliver Wyman released a survey in 2020 that found the three elements of railroad service the shippers valued most were "on-time performance, shipment visibility, and the availability of equipment and capacity."[47] Since route length or fastest transit time (which is not synonymous with route

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46 *See* Brown/Zebrowski O.V.S. at Table 6.

47 *See* workpaper "2020 Rail Service Survey Article.pdf."

length) are not even identified as any of the top elements of service, any assertions about the singular importance of relative route length should be viewed skeptically.

37. Even when shippers value transit time above all else, it would be wrong to suppose the shorter route would necessarily provide the faster transit time. For example, assuming average train velocity of 20 miles per hour, a CP/KCS single-line route would have the same transit time as an interline route up to 480 miles longer using the rule of thumb convention that an interchange adds 24 hours.[48] UP and KCSM car event data {{[redacted]}} for the UP-KCSM interchange at Laredo, where it takes on average {{[redacted]}} between when a car arrives on KCSM at Laredo, TX and when it departs on a UP train from Port Laredo, TX.[49] UP's witness Mr. Haley provides a useful reference in his estimate that UP's route would take 32.8 hours between Laredo to Chicago while the existing KCS/CP interline route would take 47.4 hours.[50] In this case, the 14.6-hour additional pure running time from Laredo to Chicago on CP/KCS cited by Mr. Haley could be overcome on saved interchange time alone.

38. Other factors may also explain situations where the longer route provides a faster transit time. For instance, a route that is five percent longer with average train speed that was five percent faster would have the same transit time as the other route. Based on publicly reported service data in the STB's EP 724 docket, CP and KCS average train velocities are

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[48] For instance, this convention was referenced by CSX's Executive Vice President of Operations Jamie Boychuk at the Board's January 13, 2022 hearing on the CSX/Pan Am Merger: CSXT/Pan Am, Finance Docket No. 36472, Hearing Tr. (Jan 13, 2022) at 139, lines 8-10 (incl. in workpapers). *See* workpaper "Hearing Transcript.pdf."

[49] *See* workpaper "Transit Time Analysis.xlsx." For intermodal, while interchange times are expected to be faster, it still takes on average {{[redacted]}} between when a unit arrives on KCSM at Laredo, TX and when it departs on a UP train from Port Laredo, TX.

[50] *See* Haley V.S. at 21. This analysis effectively represents the pure running time and accounts for no time for yard dwell, line congestion, actual train speeds, crew change availability, or any other variety of items that influence actual transit time.

between 5 to 7 percent higher on average than UP since 2019.[51] In addition, increasing the frequency of when the railroad provides switching service to pick up or deliver carloads to the customer's facilities could overcome a difference in transit time. For example, providing switching service at the origin and destination three times a week instead of two would eliminate the end-to-end transit time difference.[52] This process of establishing the appropriate frequency of origin and destination switching services in calculating the required end-to-end transit times is discussed in the amended operating plan.[53]

39. Actual relationships between route length and transit time are not linear, which is at odds with the view that CPKC would not be able to provide competitive service levels due to relatively longer routes. Using UP's car event data and waybill data, we surveyed how route miles compared to transit time for movements across UP's system that moved through Laredo.[54] The results of this analysis show that transit times vary widely regardless of route length, and it is frequently the case that longer routes have shorter transit times.

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51 *See* workpaper "Historical Train Speed Reporting.xlsx," at tab "Summary."

52 Seven days in a week divided by two industry switch visits per week implies 3.5 days between switches, meaning a car on average is waiting 1.75 days for pickup from the time it is released, or placement from the time it reaches the serving yard. This same figure is 1.16 days under a scenario with 3 industry switch pick-ups per week, which implies more than a 1-day savings of adding one industry switch visit per week at the origin and destination. 7/(2*2)=1.75, 7/(3x2)=1.16, and (1.75-1.16)x2=1.16 day transit time reduction.

53 *See* Elphick/Orr amended operating plan verified statement at ¶ 162. ("As CPKC integrates the two networks, in-depth reviews of local service levels may reveal opportunities to adjust local assignments to provide further improvements in the service provided to customers. CP plans to approach this process – referred to as "white-boarding" – on a customer-specific basis to design services that consider end-to-end customer transit time along with the service timing and frequency that meets the customer's needs.")

54 We defined the transit start time based on "IR" and "RL" events and transit end time based on "ID", "AP", and "OD" events.

FIGURE 2[55]
UP FY2019 TRANSIT TIMES AND ROUTE LENGTH FOR CARLOAD SHIPMENTS THROUGH LAREDO

40. The distribution in the scatter plot in Figure 2 above illustrates that there is {{ }} even when focusing on a single railroad's network, and that shipments traveling longer distances frequently have shorter transit times. In particular, movements {{ }}.

41. This poses both challenges and opportunities for each railroad contending to provide the ideal service parameters demanded by shippers in a myriad of individual circumstances. Many elements of CPKC's operating plan, including train schedules, line

[55] *See* workpaper "Transit Time Analysis.xlsx."

capacity and velocity, planned maintenance outages, switching frequency, and intermediate handlings, will affect the transit times and service levels CPKC is able to provide to customers. It is unfounded to discount CPKC's opportunities to compete on the narrow basis of relative route length, or that one of its routes is simulated to have a running time that is {{[redacted]}}

42. Critiques about relative route length and transit time also overlook the importance of service reliability. As the above scatter plot in Figure 2 shows, typical shipments through Laredo may spend anywhere between {{[redacted]}} travelling on UP's system and frequently have {{[redacted]}}.[56] Regarding the paramount importance of service reliability, Adriene Bailey, a partner at Oliver Wyman, stated at the recent RailTrends 2021 conference: "Variability is the root of all evil."[57] Our initial statement emphasized how the focused, repetitive train movements on the CPKC main north-south corridor would be conducive to such reliability. We also understand CP/KCS planned operations will emphasize the use of daily scheduled trains to minimize the possibility of service disruptions and coordination breakdowns.[58]

43. To illustrate such variation in a situation directly relevant to diversion traffic CPKC would compete to attract, the below chart shows transit time in days from when

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56 *See* workpaper "Transit Time Analysis.xlsx."

57 *See* workpaper "Wyman Variability Article.pdf."

58 *See* CP's May 13, 2022 Amended Operating Plan at ¶ 139. "Based on CP's long experience with PSR, it is understood that daily service for all lines of business in all directions creates a predictable daily schedule that encourages the railroad and its customers to collaborate to achieve predictable and reliable operations… This experience informed the approach to designing a consolidated plan for the CP/KCS system that took advantage of its greater scope and density with both efficiency and service reliability as the primary objectives."

containers were received by UP from KCSM at Laredo to when they were released at UP's Yard Center intermodal terminal in Chicago.

FIGURE 3[59]
2019 UP-KCSM TRANSIT TIMES FOR
LAREDO TO CHICAGO INTERMODAL MOVES

{{ }}

44. Figure 3 shows that UP's intermodal shipment times typically vary between {{ }} days in this lane. In this context, assertions, like those made by UP's witnesses, that CPKC would be unable to provide a reliable service within these time parameters because the simulated running time of its route is 14-hours longer are clearly unfounded.

45. Similarly, the below figure shows the transit time in days from when automotive shipments were received by UP from KCSM at Laredo, Mexico to when they were placed at UP's automotive facility in Chicago.

[59] *See* workpaper "Transit Time Analysis.xlsx."

FIGURE 4[60]
2019 UP TRANSIT TIMES FOR LAREDO TO CHICAGO FINISHED VEHICLE MOVES

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46. Figure 4 shows that shipment times typically vary between {{[redacted]}}, though at times, it takes longer. It would again be wrong to conclude CPKC would be unable to provide competitive service levels due to having a route simulated to have a running time that was 14 hours longer than UP's. Instances where CPKC can narrow the standard deviation with improved reliability, even assuming for the sake of argument overall average transit times are slightly longer, would likely result in the ability to offer the most attractive service option to many shippers.

47. The notion that longer routes may be unable to attract traffic is also at odds with UP's experience competing against BNSF for intermodal traffic moving from the Laredo gateway to Chicago. According to Mr. Haley, UP's route is 1,420 miles and BNSF's route is

[60] *See* workpaper "Transit Time Analysis.xlsx."

1,708 miles. He also estimates BNSF's simulated running time is about 7 hours longer than UP's.[61] Despite this difference, BNSF was able to attract {{{[redacted]}}} of intermodal volumes on this corridor in 2019 and {{{[redacted]}}} in 2020.[62] The below charts show BNSF transit time typically varying between {{[redacted]}} days from Laredo to Chicago, compared to UP's transit time varying between {{[redacted]}}. It also illustrates how much actual transit times differ from the simulated running times estimated by Mr. Haley.

61 *See* Haley V.S. at 21

62 *See* workpaper "Recent Laredo to Chicago IM Shares.xlsx," at tab "Summary Figures."

FIGURE 5[63]
2019 BNSF AND UP 10-DAY ROLLING AVERAGE TRANSIT TIMES FOR LAREDO TO CHICAGO INTERMODAL MOVES COMPARED TO MR. HALEY'S SIMULATED RUNNING TIME {{

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63 *See* workpaper "Transit Time Analysis.xlsx."

As shown in Figure 5, while UP tends to have {{[redacted]}}, this is not always the case. Moreover, even though {{{[redacted]}}}. In line with this result, it is reasonable to expect that CPKC, whose route is nearly identical in length to BNSF's as identified by Mr. Haley, would also be able to {{{[redacted]}}} of traffic in this corridor.

48. Figure 5 also plots Mr. Haley's simulated running times for the BNSF and UP routes. For each railroad, the gap between Mr. Haley's theoretical figures and actual performance is measured in {{[redacted]}} demonstrating that the alleged seven extra hours required on a CPKC route (according to Mr. Haley's modeling) would not remotely be disqualifying. Indeed, the seven-hour gap between Mr. Haley's modeled BNSF running time and CPKC's running time corresponds quite closely to the gap between UP and BNSF, and {{[redacted]}}.[64]

49. It should also be recognized that longer routes do not lead to higher rates as some other railroad witnesses have suggested, without any support.[65] To demonstrate this, we examined the pricing for movements of comparable types of traffic between county-to-county pairs in our initial traffic distribution analysis.[66] For example, Figure B1 in our Appendix B included 524 individual county-to-county carload traffic flows of at least 1,000 miles in length

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[64] Mr. Haley claims that BNSF's route is seven hours faster than the CP/KCS route in terms of running time, but it is unreasonable to think that the reason that BNSF could attract significant shares of traffic on this lane and CP/KCS could not is simply a function of this seven hour difference. *See* Workpaper "Recent Laredo to Chicago IM Shares.xlsx," at tab "Summary Figures." {{[redacted]}}

[65] *See* Rocker/Turner V.S. at 11-12.

[66] Our analysis controlled for specific traffic characteristics that impact rates, including 7-digit STCC, Car Ownership, and Shipment Size.

for which two Class 1 carriers offered single-line routes that were used between 2015 and 2019. There are 521 unique lanes within these county-to-county pairs where two Class 1 carriers each move the same traffic type. As shown in Figure 6 below, 55% of the time the carrier with the longer route offered the lower rate.

FIGURE 6[67]
RELATIVE RATE LEVELS (X-AXIS) AND RELATIVE ROUTE MILES (Y-AXIS) FOR EQUIVALENT CARLOAD MOVEMENTS BETWEEN COUNTY-TO-COUNTY PAIRS SERVED BY TWO SINGLE-LINE CARRIERS IN 2015-2019 (CWS DATA)

{{{ }}}

50. A similar story is also observed for the 33 county-to-county pairs in Figure B2 of our Appendix B analysis where two Class 1 railroads offer single-line intermodal service.[68] As seen in Figure 7 below, 61% of the identified lanes are instances where the carrier with the longer route offers the lower rate.

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67 *See* workpaper "Rate and Distance Analysis.xlsx," at tabs "Summary Charts" and "Summary Figures."

68 *See* Brown/Zebrowski O.V.S. at 66, Appendix B, ¶ 7.

FIGURE 7[69]
RELATIVE RATE LEVELS (X-AXIS) AND RELATIVE ROUTE MILES (Y-AXIS) FOR EQUIVALENT INTERMODAL MOVEMENTS IN COUNTY-TO-COUNTY PAIRS SERVED BY TWO SINGLE-LINE CARRIERS IN 2015-2019 (CWS DATA)

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51. The outcomes observed in the above charts – showing the railroad with the longer routes often offering the lower rate – are aligned with basic knowledge of how railroad carriers operate and compete. As referenced in our initial statement, the nature of differential pricing permits railroads to remain competitive and often offer lower rates even assuming, for sake of demonstration, their variable costs were modestly higher.[70]

52. In summary, it should not be expected that CPKC would *always win* on service, transit time, rate, or any number of other factors that a given shipper values any more than it

[69] *See* workpaper "Rate and Distance Analysis.xlsx," at tabs "Summary Charts" and "Summary Figures."

[70] *See* Brown/Zebrowski O.V.S. at fn.16.

should be proposed that any other *competing railroad would always prevail* on these factors. Because of the multiple factors that shippers consider, basing diversion percentages on average expected traffic shares historically achieved among carriers competing across many different lanes is appropriate. This context is important to understanding the findings from our analysis showing that relative route distance does not heavily influence traffic shares within modest distances where the alternative routes are no more than 50 percent different in length. With all these factors in mind, we identified traffic that fit within reasonable mileage thresholds, and CP's operating team analyzed our choices in depth to determine whether CPKC would be capable of providing effective service.

3. The Levels of Shifting Traffic We Estimate Are Those That Would Occur Without Changes in Relative Rate Levels and Do Not Depend on "Foreclosure" of Other Options

53. As discussed above, our percentages of traffic likely to shift to CPKC are supported by actual historical distributions of traffic in similar competitive situations. Accordingly, they represent the most reasonable estimates of what would have occurred under the status quo in 2019 had CP and KCS functioned as a combined railroad, holding other factors equal. In light of comments made by various railroad witnesses[71], it should be emphasized that, as we explained in our initial statement, our estimate of traffic that would move to CPKC are those that would occur absent any hypothesized anti-competitive conduct such as foreclosure. [72] Our estimates also do not assume or depend on changes in rate levels. Rather, they represent how traffic would tend to divide among carriers and their associated route options based on existing traffic distribution patterns in the freight railroad industry.

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71 *See* Carey/Bremser V.S. at 31-35, Rocker/Turner V.S. at 13, and Hunt V.S. at 9.

72 *See* Brown/Zebrowski O.V.S. at ¶ 33.

54. ***Our Traffic Gain Estimates Assume No "Foreclosure."*** The amount of traffic we estimate CPKC would attract from existing routes is based on traffic share distributions for competitive transportation lanes without any hypothetical route foreclosure occurring. For each county-to-county geography we consider, there are multiple active route options used by shippers, which is contrary to a situation where traffic would only travel on a given route because all of the other options were foreclosed. As such, our analysis shows that CPKC is already anticipated to attract substantial amounts of new traffic from competing in the marketplace without using hypothetical foreclosure strategies, which supports the conclusion that CPKC *would not* engage in such strategies.

55. The traffic distributions we rely on that are most relevant to illustrating this point are for so-called "dependent interline" situations, i.e., where a railroad that solely serves one end of the movement could theoretically try to disincentivize traffic from travelling on available interline route options, so as to keep the traffic on its single-line route all the way to the other end. As with all of our estimates, we based our analyses of these situations on actual data points reflecting shipper routing choices. In situations where single-line and dependent interline routes could be used for rail service between a given county-to-county pair, the data showed that dependent interline routes were available and actually chosen by many shippers. These are situations where foreclosure is by definition not occurring despite the *theoretical ability* of the railroad with sole access at one end to engage in foreclosure strategies.[73] In other words, the

[73] There is no reason to believe that foreclosure is occurring in other lanes where the single-line route is exclusively preferred by shippers over a dependent interline. This presumably reflects the shipper's preference for single-line service in many if not all instances. While accounting for such single-line only lanes could arguably justify using higher diversion percentages, we focus on those situations with an active dependent interline route specifically to ensure there is no possibility of route foreclosure implied in our diversion estimate.

amount of traffic we estimate CPKC would attract is based on average traffic shares that single-line routes have historically attracted while making interline route options available as well.[74] The data thus demonstrate in these situations that shippers tend to favor the single-line route option, but at least one interline route also remains an option that is chosen at least some of the time, and on which the single-line carrier willingly participates.[75] As a result, the amount of traffic we estimate shifting as a result of the Transaction represents what CPKC would attract without engaging in any hypothetical foreclosure strategies.

56. ***Our Traffic Gain Estimates Are Not Dependent on Rate Level Changes.*** Our analysis of traffic share distributions, which feed into our diversion percentages, do not assume changes to existing rate levels. The traffic shares we observe have already been established, presumably based on factors including various rate levels offered among the competing railroads. As such, it would not be appropriate to adjust the assumed rate levels underlying these traffic distributions without also considering whether traffic distributions should be adjusted as well. For example, consider a shipper that was indifferent between two carriers in all regards except rate: were we to assume that one carrier reduced its rate, and the other did not, this would justify higher levels of traffic moving on the carrier with the lower rate than estimated by our

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[75] It is reasonable to assume continued participation of other Class 1 railroads on dependent diversion lanes for a variety of reasons, including the possibility of them already offering favorable service and rates in some cases, being willing to compete on rate and improve their service in other cases, and having the ability to make competitive responses leveraging their franchise strength were CPKC to try to force a shipper to choose a routing alternative it does not voluntarily prefer. Specifically, given that other Class 1 railroads participate in {{[redacted]}}, it is reasonable to assume that any attempts to remove another Class 1 railroad's participation in a dependent interline route forcibly against a shipper's wish could result in KCSM losing existing business it has with that shipper both on the lane in question to an FXE-routing and to many other locations where the CPKC system could not reach without interlining. *See* workpaper "KCSM Crossborder Traffic Summary.xlsx," at tab "Summary Figures."

diversion percentages, which are rate-neutral.[76] We recognize that the CP/KCS combination is reasonably expected to increase competition and lead to rate reductions (or reductions to future rate increases that would otherwise occur) both arising from CPKC's own improved efficiency or competitive responses, or both, and this enhanced competition is among the principal benefits of a CP/KCS combination.[77] The key point here is that for the purpose of estimating traffic shifts, we appropriately used existing rate levels so that rates among carriers are the same relative to each other, regardless of whether or how much overall rate levels may change in the future, which we do not attempt to predict. Instead, as determined through the bidding process, CPKC would sometimes win and sometimes lose a particular piece of business based on how the shipper weighs – both from price and service perspectives – the transportation offers available to it at the time from railroads competing for the traffic. This rate-neutral approach is typical to rail traffic diversion studies.

C. We Accurately Estimate the Revenue Levels CPKC Will Earn for Diverted Traffic on a Pro Forma 2019 Basis

57. To estimate incremental revenues for traffic attracted to CPKC, we used actual 2019 revenues when available, and when not available we estimated prevailing rate levels for individual diversion lanes, calculated from available revenue information for comparable movements. Such estimates were only required for "extended haul" diversions where the waybill record for the existing interline move is rebilled and does not report end-to-end revenues. In these cases, we examined the data in two ways: by looking at the average end-to-end

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[76] We note the reason we applied a 5% reduction to the limited subset of traffic shifting from other single-line traffic to CPKC was because we recognized CP would need to differentiate its service in some regard from the existing service, which would typically involve relatively shorter routes, in particular for intermodal moves on the Dallas-Chicago corridor which constitutes over 80% of the traffic at issue. *See* Wahba and Naatz O.V.S. at ¶ 52.

[77] *See* Brown/Zebrowski O.V.S. at ¶¶ 32 and 89.

revenues for the most comparable set of traffic moving in the same end-to-end corridor less existing CP and KCS divisions (the "end to end approach"), and by looking at the segment revenues for the most comparable set of traffic moving over the same segment where CP or KCS would extend the haul under the diversion (the "segment approach"). Where one of the two approaches yields a "poor" set of comparable traffic (usually because the geography of the most comparable shipments are only detailed at the freight region or country level), and the other approach does not, we default to the approach that has the better match. In these cases, the "segment approach" typically has a more precise match than the "end to end approach," and accordingly we default to the "segment approach" in the limited instances where both approaches have matches that are not "poor."

58. Mr. Hunt's claim that we significantly overstated revenues is based on his apparent failure to understand how our revenue estimating process works, i.e., what he characterizes as discrepancies between actual revenue levels and those we estimated, are actually differences between two estimated levels, which we then review to determine which is most appropriate to use.[78] He claims we wrongfully selected the "segment approach" to estimate revenue for 52,927 units, but he not only fails to articulate if one approach is preferable and why, he also overlooks that over 90% of these units (47,421 to be exact) are cases where the "segment approach" had a match that is not "poor," and the "end to end approach" had a match that is "poor."[79] Thus, even if we had defaulted to the "end to end" approach where both approaches had matches that were not "poor," revenues for this traffic would not have differed substantially because the "segment approach" would still have been selected in most cases, as is logically

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[78] *See* Hunt Comments V.S. at 15-19.

[79] *See* workpaper "8 - Diversion Identification Reconciliation.xlsx," at tab "Segment Revenue Reconciliation."

appropriate, due to having the better match. We note that Mr. Hunt does not dispute the appropriateness of choosing the more precise match; he instead erroneously believes that our logic "defaults" to the segment approach at this stage in the process, when actually it "defaults" to the more precise match. For the minimal amount of the traffic where both approaches had non-poor matches and it may have been justifiable to use either approach, we believe defaulting to the "segment approach" was the better option due to the observation that the segment approach generally yielded the more precise match. Defaulting to the "end to end approach," however, would have resulted in revenues only approximately $3.6 million lower overall – a trivial impact on our results.[80] In this light, Mr. Hunt's allegation that we overstated revenues by nearly $50 million is simply a function of his inaccurate understanding of our process, and should be dismissed.

59. Mr. Hunt makes two other similarly erroneous claims that also appear to be a function of his inaccurate understanding of our process for estimating revenues. First, he incorrectly suggests that we use revenues that are sometimes higher than known actual revenues. The one example he cites to try to substantiate this claim is for a rebilled move.[81] However, because this was a rebilled moved, we did not have complete end-to-end revenues and had to estimate the revenues. His comparison between partial revenue amounts for the rebilled move and estimated revenues for the complete end-to-end moves is an irrelevant apples-to-oranges comparison.

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[80] *See* workpaper "8 - Diversion Identification Reconciliation.xlsx," at tab "Segment Revenue Reconciliation."

[81] *See* Hunt Comments V.S. at 20. *See* workpaper "8 - Diversion Identification Reconciliation.xlsx," at tab "Calculations," Column A (Row ID) = 2693, Column T (Rebill Code) = 3.

60. Second, Mr. Hunt also cites to an example where a column in our calculation spreadsheet shows a negative revenue amount for non-CP/KCS revenues on a certain movement.[82] His suggestion that this is indicative of an error in our process is misleading, since, as our workpapers clearly show, these amounts have no bearing on our revenue calculations. As is the case for all of the limited instances where there are negative revenues in this column for diversion traffic, this move is rebilled, which means that non-CP/KCS revenue amounts listed in this column are incomplete and should not be used to develop revenue levels for the complete end to end route(which is why we had to estimate revenues instead).

61. Mr. Hunt identifies a minor coding error in our conversion of Canadian dollars to U.S. Dollars.[83] This affects a total of 21 units of traffic, and would impact total revenues by less than 0.01%.[84] We deem it unnecessary to make a correction given the minimal impact.

62. CSX witnesses Carey/Bremser also make certain claims about our process for estimating incremental revenues that should be addressed.[85] First, they fault us for not basing incremental revenues on rates for single-line movements.[86] This claim ignores that we use existing rate levels whenever they are available, and these largely consist of single-line movements.[87] Second, they wrongfully assert that we overstate revenues by using masked CWS

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82 *See* Hunt Comments V.S. at 20. *See* workpaper "8 - Diversion Identification Reconciliation.xlsx," at tab "Calculations," Column A (Row ID) = 11797, Column T (Rebill Code) = 1.

83 *See* Hunt Comments V.S. at 23-24 and workpaper "HC- Currency Conversion Error.txt."

84 *See* workpaper "8 - Diversion Identification Reconciliation.xlsx," at tab "Canadian Revenue Reconciliation."

85 Their primary concern, related to the alleged need to model the effect of future competition on existing rate levels, is addressed above.

86 *See* Carey/Bremser V.S. at 34.

87 *See* our O.V.S. workpapers "6a - Revenue Matching.sql" and "6b - Revenue Matching.xlsx."

revenues. [88] This is factually incorrect. We use the same unmasked CWS data that they presumably also obtained access to per the terms of the CWS approval agreement they signed.[89]

D. Our Rail-to-Rail Diversion Estimates Are Complementary to, and Do Not Conflict with, the Other Anticipated Traffic Gains Identified by Other Applicant Witnesses

63. CN's witness Mr. Hunt also alleges that we "missed" certain diversion traffic which was then included in the growth traffic estimate by Mr. Wahba. As a threshold issue, his claim is self-contradictory because after saying we "missed" the traffic, which implies it exists and can be attracted to CPKC, he proceeds to remove this traffic from his restatement of diversions, presumably because he believes it does not exist or is not divertible. Putting this aside, the traffic he references is appropriately not covered in our work because it did not move in 2019, and is appropriately included in the work of Mr. Wahba because it would move in the case of the CP/KCS combination. The scope of our rail diversion estimate, traffic that would have been attracted to CPKC had it existed in 2019, and how our study relates to the growth traffic of Mr. Wahba, is described in detail in our initial estimate[90], so it is unclear why Mr. Hunt would claim this exclusion is either "unusual" or "unexplained."

64. Nonetheless, we provide the details of the specific instances he cites to explain why they are complementary. The LPG growth traffic included in Mr. Wahba's statement are new volumes gained by CP after 2019, so, by definition, they are not included in our estimate

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88 *See* Carey/Bremser V.S. at 35.

89 *See* STB 07/08/2021 Waybill Agreement WB21-37 filing 302693, at 8.

90 *See* Brown/Zebrowski O.V.S. at 4. ("We examine whether the traffic moving between individual origins and destinations in 2019 would have moved differently were CP and KCS functioning as a combined system." *See* also Footnote 1. ("Our analysis based on 2019 traffic data does not consider other potentially significant traffic opportunities that would arise from (a) post-merger changes in traffic patterns (except for grain); (b) investments by CPKC in growth opportunities unlocked by a combined CP/KCS network; or (c) diversions to CPKC intermodal offerings from the highways (so-called truck-to-rail diversions)").

based on 2019 traffic. The soybean and DDG growth traffic are also not included in our rail-to-rail diversion estimate. Mr. Wahba explains how each is based on focused business initiatives targeting specific receivers in Monterrey, NL. The only soybean diversions we include are based on the five percent market share increase estimated by Mr. Wahba, which by design was developed separately from diversion amounts under this specific initiative. Moreover, we do not include any DDG traffic in our estimate involving the receivers in Monterrey that are part of his growth traffic estimate (specifically, {{[redacted]}}), so there is no possibility for a double-count for this group of traffic.[91]

III. THE RAIL TRAFFIC DIVERSION ESTIMATES OFFERED IN SUPPORT OF CN'S RESPONSIVE APPLICATION ARE FLAWED

65. We have been asked by counsel for CP and KCS to evaluate Mr. Hunt's estimate of the amount of rail traffic that would shift to CN as a result of CN's proposed acquisition of KCS's Kanas City-Springfield/St. Louis line (the "Springfield Transaction"). For the reasons discussed below, we believe his estimate is flawed and produces unrealistic and invalid results.

A. Mr. Hunt's Diversion Percentages Are Effectively Random

66. As discussed above, Mr. Hunt's method for estimating diversion percentages is deeply flawed. To summarize, he bases estimates on models that use coefficients that are statistically insignificant and produce diversion percentages that contradict real-world expectations (for example, by diverting more traffic as relative route length becomes longer).

67. The thoroughly arbitrary nature of his approach is shown by comparing what his diversion model predicts regarding the allocation of rail traffic among alternative routes with

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[91] In fact, we only include {{[redacted]}} total diversion carloads of DDGs (STCC codes 2085940 and 2082330) to the entire Mexican state of Nueva Leon. None of these are to {{[redacted]}}. *See* workpaper "DDG Traffic Detail.xlsx".

how that traffic actually is distributed. Mr. Hunt's predictions are determinative of every diversion percentage he applies, yet as the chart in Figure 8 shows, they entirely fail to accurately predict any actual traffic shares.[92]

FIGURE 8[93]
MR. HUNT'S REGRESSION MODEL PREDICTS TRAFFIC SHARES THAT BEAR NO RESEMBLANCE TO ACTUAL TRAFFIC SHARES{{

{{{ }}}

68. The black diagonal line in Figure 8 depicts Mr. Hunt's predicted traffic shares and the red dots represent the actual traffic shares he is trying to predict. Were his model a sound

[92] This shows results for his grain/other regression model, but similar results are also produced in his automotive and intermodal regression models.

[93] *See* workpaper "Diversion Percentage Analysis.xlsx," at tab "Final Charts," at Columns D-N.

representation of reality, the red dots would be expected to track fairly closely to the black line. The chart clearly shows the two have nothing in common.

69. As a result of modelling predicted traffic shares that bear no resemblance to actual traffic shares, and then using these as the basis for determining the amount of traffic that would divert as a result of the Springfield Transaction, Mr. Hunt's approach also produces diversion percentages that are illogical and obviously flawed in terms of how they relate to one another. Mr. Hunt's approach differs from previous diversion studies both by using coefficients that are not statistically significant and basing his estimates purely on theoretically modelled pre-transaction traffic shares not related to actual traffic shares.[94]

70. The consequences of this flawed approach are apparent in the results generated by his process. For example, his diversion percentages are nearly identical whether a new CN single line route would be competing against an existing single-line route or against an existing interline route. A new CN-Springfield route in a market where CN currently handles no traffic would attract 39.2% of the traffic whether the existing route is single-line or interline.[95] This is illogical. As his own assignment of junction impedance indicates, all else equal, a single-line

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[94] *See* CN/IC-7, Woodward V.S. at II-26: "The traffic allocation process uses a complex set of rules that compares the market share estimate of the eligible route to the pre-transaction market shares of the railroads in the eligible route. The eligible route will replace pre-transaction routes involving railroads in the eligible route up to the level of the eligible route market share or the pre-transaction market share, whichever is greater." Although the exact process cannot be precisely determined from available information, it appears diversion percentages under the Woodward approach are based on the difference between actual pre-transaction market shares (as opposed to modelled) and predicted post-transaction market shares, rather than based on differences in two purely hypothetical predicted market shares as done by Mr. Hunt. *See also BN/*SF-7, Hornung V.S. (BN/ATSF rail-to-rail diversion study) at II-46 to II-47 ("the potential amount of diversion equals the estimated market share on the post-BN/Santa Fe consolidate route, minus the market share in base 1993 on routes involving both BN and Santa Fe").

[95] This example assumes all routes are 1,000 miles in length. This analysis shows results for his grain/other model, but similar results are also produced for his automotive and intermodal models. *See* workpaper "Diversion Percentage Analysis.xlsx," at tab "Summary Figures."

route should be more preferable to an interline route than to another a single-line route, and thus attract a higher relative share of traffic from the interline route. As another example, his diversion percentages are also illogically higher when a new single line route competes against two existing interline routes instead of one. For example, a new CN-Springfield route in a market where CN currently handles no traffic would attract 47.2 percent of the traffic when competing against two existing interline routes, compared to the 39.2 percent of traffic that would be attracted when competing against only one interline route.[96] This finding contradicts expectations because competing against two routes instead of one should not result in gaining a higher share of the total traffic available. In summary, his diversion percentages are not supported by any valid data analysis nor are internally consistent, and represent figures that are effectively random.

B. The Majority of Diversion Volumes Mr. Hunt Identifies Are Based on Unfounded Premises

71. Even putting aside his deeply flawed process for determining the portion of traffic that will shift to CN, the base traffic he identifies as eligible for diversion is beset by problems. First, nearly one-third of Mr. Hunt's total diversions consist of NS traffic moving between Kansas City and St. Louis, on one end, and Detroit, on the other end, in specialized RoadRailer service, which is jointly and exclusively offered by NS and its subsidiary Triple Crown.[97] Despite characterizing this as the "primary" diversion opportunity in his study, Mr. Hunt does not explain how CN would attract this traffic (in fact, the only place he acknowledges this is

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96 *See* Workpaper "Diversion Percentage Analysis.xlsx," at tab "Summary Figures."

97 All traffic he identifies moving between Detroit and Kansas City, as well as some between St. Louis and Detroit, is in RoadRailer service. This traffic is identified as RoadRailer based on the "Intermodal Equipment Flag" field in the CWS. *See* workpaper "CN Diversion Analysis.xlsx," at tabs "Summary Figures" and "2019 CWS RoadRailer Summary."

RoadRailer traffic is in his workpapers where he unsuccessfully attempts to adjust their shipment weights as will be explained later in this statement).[98] RoadRailer is a specialized service only offered domestically by NS and Triple Crown in this one corridor since 2016.[99] As seen in the images in Figure 9 below, RoadRailer service uses a unique type of equipment where the chassis has both rubber and steel wheels, and a special operation that moves the chassis directly between rail and road, without lifting a container between the road and railroad flat car as done for other intermodal service.

FIGURE 9
NORFOLK SOUTHERN'S UNIQUE ROADRAILER EQUIPMENT

98 "The primary rail-to-rail diversion opportunity for a CN acquisition of the Springfield Line will be intermodal shipments between Detroit and Kansas City." *See* Hunt Application V.S. at 14.

99 *See* workpaper "Triple Crown Article.pdf."

72. Nowhere in its Responsive Application has CN indicated that it intends to make the necessary investments to offer this service, nor does Mr. Hunt explain why customers using the current service would convert to a different type of CN intermodal service between Kansas City and St. Louis. When asked in discovery to provide all documents related to this estimate, CN acknowledged that the reason it was included was merely because it was identified as intermodal traffic in the CWS data.[100] This is an insufficient explanation to justify why this service would be attracted to CN, which presumably does not even possess the right type and amount of rail equipment to handle these RoadRailer volumes, or explain why customers would be interested in converting away from RoadRailer service to another type of intermodal service. Simply put, this group of traffic should not be viewed as realistically moving to CN.

73. Second, there is a fundamental disconnect between how Mr. Hunt describes the benefits to CN of acquiring the Springfield Line related to traffic originating or terminating in the St. Louis area, and how he estimates diversions for this traffic. At the beginning of his statement, he describes how CN – which already serves St. Louis – would reduce its existing single-line route between St. Louis and points north by approximately 50 miles as a result of acquiring the Springfield Line.[101] However, he does not calculate diversions associated with the effect of this single-line route improvement, but instead calculates diversions based on the notion that the transaction would convert an *interline CN route to* a single-line route via Springfield.[102]

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[100] *See* CN's response to CP's Fourth Set of discovery requests at request number 6. "CN responds that RoadRailer traffic was reported as intermodal in the STB Carload Waybill Sample. It was therefore included in the Springfield Line intermodal rail-to-rail diversion study." *See* workpaper "CN Response to CP Fourth Discovery.pdf."

[101] *See* Hunt Application V.S. at 6.

[102] For example, *see* workpaper "CN Diversion Analysis.xlsx," at tab "New2Existing – Auto", at row 21. This shows the effect of switching from a 547-mile route with one junction to a 547-route with no junctions as originally calculated by Mr. Hunt. In reality, the impact of the Springfield Transaction is

This construct is artificial. As Mr. Hunt recognizes, CN already has a single-line route via Du Quoin, IL.[103] Nonetheless, Mr. Hunt diverts traffic assuming the impact of CN acquiring the Springfield line was CN switching from an interline route to a single-line route, rather than switching from one single-line route it already uses to another single-line route that is 50 miles shorter.

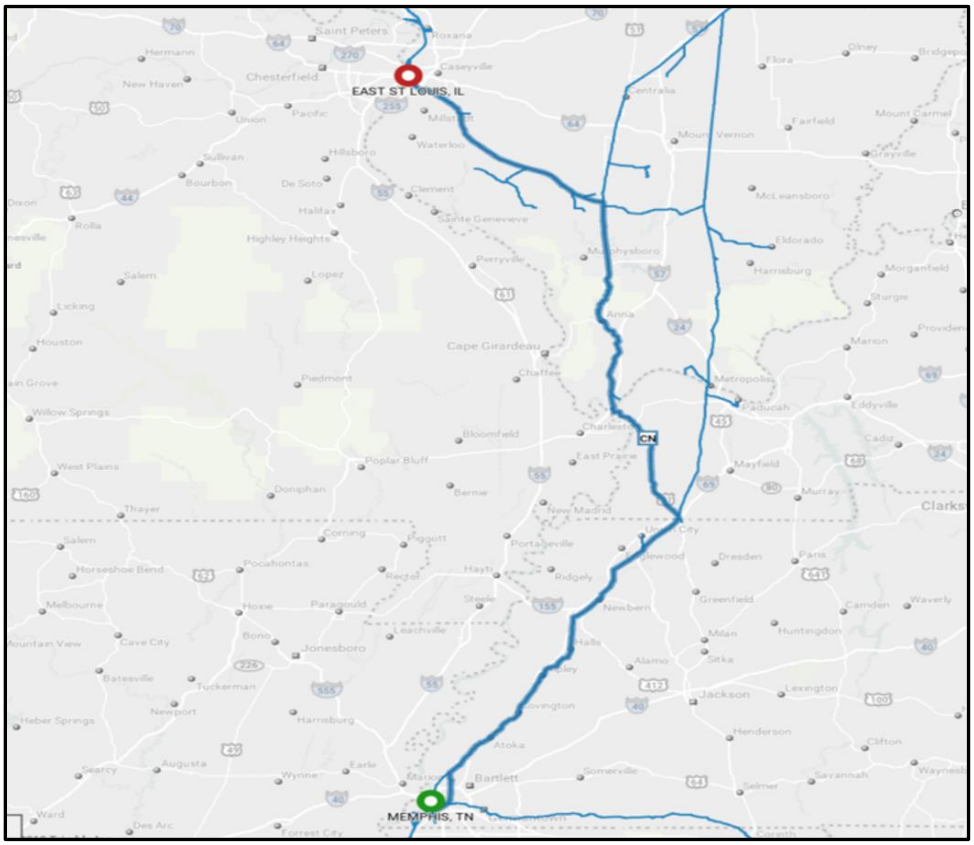
74. Third, the remainder of Mr. Hunt's division estimates involving St. Louis incorrectly assume that acquiring the Springfield Line would have any modelled impact on CN's ability to attract traffic moving between St. Louis and the south. Similar to above, he calculates diversion amounts associated with removing a junction at East St. Louis for such traffic, but such movements do not and would not use this junction either before or after the transaction.[104] To illustrate, the map in Figure 10 below depicts one auto movement Mr. Hunt diverts to a CN route between East St. Louis and Memphis. In this case, CN's existing route has no junction, so a junction would not be eliminated were CN to acquire the Springfield line, contrary to Mr. Hunt's assumption in his calculations.

switching from the existing single-line route, to a new single-line route that is 50-miles shorter, which is corrected in workpaper "CN Diversion Analysis.xlsx," at tab "New2Existing – Auto Corrected," Cells P22, Q22, and Z22.Under his process this correction would result in {{{[redacted]}}} carloads diverting instead of the {{{[redacted]}}} that he originally estimated. *See* workpaper "CN Diversion Analysis.xlsx," at tabs "New2Existing – Auto Corrected" and "Existing2New – Auto Corrected" for further examples.

[103] *See* Hunt Responsive Application V.S. at 5.

[104] For example, *see* workpaper "CN Diversion Analysis.xlsx," at tab "New2Existing – Auto" where Column B (Mkt) = 4. This shows the effect of switching from a 714-mile route with one junction to a 714-route with no junctions as originally calculated by Mr. Hunt. In reality, the impact of the Springfield Transaction is switching from the existing single-line route, to a new single-line route that is the same length, which is corrected in workpaper "CN Diversion Analysis.xlsx," at "New2Existing – Auto Corrected," cells P16, Q16, and Z16. Under his process this correction would result in {{{[redacted]}}} carloads diverting instead of the {{{[redacted]}}} that he originally estimated. *See* workpaper "CN Diversion Analysis.xlsx.," at tabs "New2Existing – Auto Corrected" and "Existing2New – Auto Corrected" for further examples.

FIGURE 10
EXAMPLE MOVEMENT BETWEEN EAST ST. LOUIS AND MEMPHIS WHERE MR. HUNT'S DIVERSION CALCULATIONS MISTAKENLY ASSUME THERE WOULD BE A CHANGE IN THE NUMBER OF JUNCTIONS[105]



75. Applying his process correctly to account for the actual impact of the proposed acquisition for shipments involving Saint Louis, would have a dramatic impact on his results, where instead of the {{{[redacted]}}} units Mr. Hunt estimates, his own methodology would properly have found only {{{[redacted]}}}.[106]

105 Generated using PC Miler 27 using the "Practical Route" setting.

106 *See* workpaper "CN Diversion Analysis.xlsx," at tab "Summary Figures."

76. While there may be valid reasons for why traffic not impacted by route synergies could move to CN due to effects of a proposed transaction, it is inappropriate to, without any explanation, estimate these diversions by forcing the model to generate diversion percentages based on changes in routes that would not occur as a result of the Springfield Transaction.[107]

77. Fourth, Mr. Hunt provides no explanation for how he quantifies the level of diversions involving shifts from other East Coast ports to the Port of Montreal, which comprise over 20 percent of his diversion traffic (and a majority of the traffic not already flawed for the reasons explained above). He simply assumes {{[redacted]}} estimated containers (which is roughly 15 percent) moving between locations he characterizes as "Eastern Ports" and Kansas City and St. Louis will divert to CN. He neither examines the current modal shares, or carrier shares among the portion that is moving by rail. His 15 percent assumed diversion percentage appears only as raw and unfounded assumption. He neither claims to have obtained this figure from knowledgeable CN personnel, performed any analysis to justify it, nor provided any explanation for why he views it as reasonable.

To illustrate the significance of the flaws we have described, the chart in Figure 11 below summarizes his different buckets of diversion traffic in light of the four specific problems discussed above. Figure 11 shows that approximately two-thirds of the rail-to-rail diversion volumes calculated in his study are unrealistic.

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[107] It may be possible that Mr. Hunt is trying to reflect that CN does not have local access to certain KCS-served customers within the Saint Louis area, and that he believes by acquiring the Springfield Line, CN would gain local access and thus eliminate a junction. However, concluding that such diversions were likely would require reviewing the individual customers' access options within the St. Louis terminal to make such determinations, which Mr. Hunt does not appear to do. To the extent CN is attempting to acquire the Springfield line to gain additional access to customers in the St. Louis terminal area, rather than address alleged competitive dynamics of the proposed CP/KCS combination, it would presumably be required to explain why such an intervention by the STB would be appropriate or relevant to the proposed CP/KCS combination.

FIGURE 11[108]
SUMMARY OF DIFFERENT GROUPS OF TRAFFIC IN MR. HUNT'S RAIL DIVERSION STUDY FOR CN'S PROPOSED SPRINGFIELD LINE ACQUISITION

78. There are also methodological problems related to how he determines what traffic to consider for diversions in the first place that further add to the unreliability of his study. As a result of a lack of documentation showing what logic he used to select traffic for further review that is potentially divertible,[109] and apparent inconsistencies in the traffic he did select, there is no clear way to discern how he screened for divertible traffic. It follows there is no way to evaluate whether his approach was justifiable. Notably, anomalies abound in the hard-coded results he did provide, making it difficult to determine the exact criteria he used when applying the "geographic filters" he says he did.

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[108] *See* workpaper "CN Diversion Analysis.xlsx," at tab "Summary Chart."

[109] *See* Hunt Application V.S. at 36. "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." CP asked direct and detailed questions about how the traffic he selected was identified, which appear only as hard-coded figures in his workpapers, but CN's only response was to cite CP back to the hard-coded figures asked about in the first place. This is insufficient, because the question is not what traffic was selected, but what methodology was used to select it.

79. For instance, he describes the geographic selection criteria for "in-scope" intermodal traffic as the "areas served by" the newly planned terminals at East St. Louis and Kansas City,[110] which he defines for intermodal movements as "traffic within the same BEA or neighboring BEA at both the origin and destination." However, he identifies a significant amount of intermodal traffic terminating at Omaha, which is not a neighboring BEA and is over 160 miles away from Kansas City.[111] There is no discussion in his statement of what treatment he intends for Omaha-related intermodal diversions or why. The only context he provides related to Omaha is in his workpapers, where he notes that auto traffic is "unlikely to truck to Omaha" and removes it from his diversion estimate. This serves to raise further questions about why he includes thousands of potentially divertible intermodal units to or from Omaha in his diversion model workpapers. In many cases, it appears that any consistent set of logic used would have captured two similar lanes of traffic, although he only selected one. For example:

- He diverts traffic on the Montreal to Kansas City auto lane, but not on a Saint-Luc to Kansas City auto lane. Saint-Luc is in Montreal and served by CN.[112]

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110 *See* Hunt Application V.S. at 36. "[T]raffic within the same BEA or neighboring BEA at both the origin and destination was considered to be competitive."

111 *See* Hunt Application workpaper "HC-2022January_R2R_Intermodal_v4.xlsx," at tab "Existing2New," at Rows 18-20. While perhaps he intended to use the "catchment" areas from his truck-to-rail diversion study instead of "neighboring BEAs," were this to be the case, it is not clear why he only looked at the Omaha BEA but not other BEAs such as Lincoln, Springfield, and Joplin that are also listed. *See* Hunt Application V.S. at 26. Similar anomalies in the areas he selects can be seen in other instances. For example, although he says he is selecting grain at the BEA level, he also selects, and then cuts from his diversions, traffic from BEAs not touching the Springfield Line such as Des Moines. *See* Hunt Application workpaper "HC-2022January_R2R_Grain_v4.xlsx," at tab "Raw-CN," Rows 174-176, and at tab "Raw-STB," Rows 5-6, 9, 11, 13-16, 18, 24, 28-29, 70-80.

112 *See* Hunt Application workpaper "HC-2022January_R2R_Auto_v4.xlsx," at Tab "Raw-CN," at Row 55. *See also* workpaper "Missed Diversion Traffic Analysis.xlsx," at tab "Kansas City to St. Luc Autos."

- He diverts traffic on the Kansas City, MO to New Westminster auto lane, but not on the Fairfax, KS to Vancouver auto lane. New Westminster is in Vancouver and served by CN.[113]
- He diverts traffic on the Kansas City to Joffre auto lane, but not on the Kansas City to Quebec City lane. Joffre is only 15-miles from Quebec and both are served by CN.[114]

80. If there is any logic that explains such apparent discrepancies, Mr. Hunt should have provided it. Absent such an explanation, the study's methodology and results cannot be viewed as coherent, much less reliable.

81. There are additional problems affecting the traffic that was selected stemming from the portion that was "cut." For example, Mr. Hunt states that Memphis to Omaha automotive traffic is "unlikely to compete with [a] UP direct route" and thus eliminates it, but he diverts a significant amount of Memphis to Omaha intermodal traffic from UP.[115] Since intermodal traffic is generally the most time-sensitive traffic railroads handle, it is unclear why CN could compete on intermodal but not on automotive between the same geographies. In a similar case, he excludes grain movements from St. Louis to the south because he states there is no route improvement, but includes auto movements in these same corridors that likewise have

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113 *See* Hunt Application workpaper "HC-2022January_R2R_Auto_v4.xlsx," at Tab "Raw-CN," at Rows 52. *See also* workpaper "Missed Diversion Traffic Analysis.xlsx," at tab "Kansas City to NWM Autos."

114 *See* Hunt Application workpaper "HC-2022January_R2R_Auto_v4.xlsx," at Tab "Raw-CN," at Rows 56. *See* also workpaper "Missed Diversion Traffic Analysis.xlsx," at tab "Kansas City to Quebec Autos."

115 *See* Hunt Application workpaper "HC- 2022January_R2R_Intermodal_v4.xlsx," at tab "Existing2New," at Rows 18-20. *See also* Hunt Application workpaper "HC-2022January_R2R_Auto_v4.xlsx," at tab "Raw-STB" at Row 72.

no route improvement.[116] To reiterate, while there may be explanations for these seeming contradictions, but Mr. Hunt provided none in his statement or in discovery.[117]

82. Moreover, while Mr. Hunt states CN's commercial team provided guidance on "geographic regions they viewed as opportunities for traffic gain," his estimate does not always conform to their stated views and he does not explain why. For example, Mr. Przednowek's Verified Statement notes that "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,"[118] but Mr. Hunt excluded grain traffic to St. Louis from the Midwest, citing in his workpapers that there is "no advantage for grain to St. Louis."[119]

C. Mr. Hunt's Revenue Estimates Are Methodologically Unsound and Overstated

83. Mr. Hunt's revenue estimates suffer from serious issues as well. First, where actual revenues are unavailable, his estimates boil down to assuming CN will either earn {{{[redacted]}}} per incremental car mile, depending on commodity group, as derived from CWS system-wide averages for GTW. Such a level of extreme simplicity is not typical in rail-to-rail diversion study and conflicts with prevailing rate levels on the traffic lanes he diverts, which is why we opted for a more precise and sophisticated approach when

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116 *See* Hunt Application workpaper "HC- 2022January_R2R_Auto_v4.xlsx," at tab "New2Existing," at Rows 4-13 and 20-22. *See also* Hunt Application workpaper "HC-2022January_R2R_Grain _v4.xlsx," at tab "Raw-CN" at Rows 90-91 and at tab "Raw-STB," at Rows 60, 64, and 66-69.

117 CP asked direct and detailed questions about how the traffic he selected was identified, which appear only as hard-coded figures in his workpapers, but CN's only response was to cite CP back to the very same hard-coded figures.

118 *See* Przednowek Responsive Application V.S, at 4.

119 *See* Hunt Application workpaper "HC- 2022January_R2R_Grain_v4.xlsx," at tab "Raw-CN," Rows 44, 48, and 50, at tab "Raw-CPKCS," Rows 34-36 and 43-45, and at tab "Raw-STB," Rows 34-36, 39, 42, and 44, where it states "<- cut - no advantage for grain to St Louis" in the Column labeled "Cuts."

calculating lane specific prevailing rate levels, taking into account movement characteristics such as STCC, Car Type, and Car Ownership, since such factors impact rate levels as well.

84. We analyzed Mr. Hunt's diversions where actual revenues are unavailable and found many cases where prevailing rate levels are substantially lower than the system-wide averages he uses. For example, we were able to precisely match to moves in the 2015-2019 CWS for two automotive lanes from Ontario to Kansas City and Kansas City to Ontario, in terms of Origin/Destination SPLC, First Digit AAR Car Type, 4-Digit STCC, and Car Ownership, with prevailing rate levels of {{{[redacted]}}} on each lane respectively. This represents 34% and 41% reductions (after accounting for his 5% reduction) respectively from the revenue levels Mr. Hunt developed using system-wide revenue per car mile estimates for these diversions.

85. Mr. Hunt's process of relying on average revenues per car mile instead of prevailing rate levels is also illogical – and contrary to market-based rate-making – because this results in CN earning more incremental revenues than the incumbent carrier simply because it has the longer route.[120] For example, on an Automobile lane diverted from Kansas City, MO to Regina, SK, CN's proposed route is about 280 miles longer than the current route on CP. As a result, CN calculates a revenue per car of {{[redacted]}}, whereas the revenue per car mile that Mr. Hunt's approach would have developed based on the current, shorter route mileage would by {{[redacted]}}, which amounts to a 20% increase in CN's calculated rate simply because CN has the longer route.[121]

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[120] *See* workpaper "CN Revenue Analysis.xlsx," at tab "Main," where Column W (Revenue Grouping) = "No Historical Revenue - Rev/Car Approach Used and Shorter Relative Route" or "No Historical Revenue - Rev/Car Approach Used and Longer Relative Route."

[121] *See* workpaper "CN Revenue Analysis.xlsx," at tabs "Summary Figures" and "Main," at Rows 136 and 137

86. Mr. Hunt also makes a technical error that significantly overstates revenues for his "primary" category of diversions. Specifically, as noted in his workpapers, he intended to proportionally reduce his revenue estimate to account for the relative lower weight of Triple Crown RoadRailer shipments compared to other intermodal shipments, but he instead increased revenues by multiplying by "12.86/9.5" rather than by "9.5/12.86." Due to this error on top of his otherwise inaccurate process, the end result of his calculation is that CWS data shows intermodal units moving between Detroit and Kansas City have revenues of {{{[redacted]}}} per unit, while Mr. Hunt estimated CN would earn {{{[redacted]}}} for each diverted unit.[122]

87. For all the reasons Mr. Hunt articulates in his criticisms of our diversion study – which, as we explain above, is reasonable and reliable – his estimates of diversion traffic truly are flawed and random, and as a result render all downstream operational, environmental, financial and other analyses required to evaluate CN's application to acquire the Springfield line meaningless.

IV. TRAFFIC DATA SHOW THAT KCS-CN ROUTES VIA SPRINGFIELD PLAY NO MEANINGFUL COMPETITIVE ROLE

88. At the request of counsel for Applicants, we also provide an overview of traffic using KCS's Springfield Line by movement category (overhead, locally served, and CN-KCS interchanged), as well as an analysis of historical traffic patterns over corridors where KCS's Springfield Line could theoretically be used as part of an interline route. Our analysis of current traffic uses 2019 Combined CP/KCS traffic tape data as was submitted in our O.V.S.

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[122] *See* workpaper "CN Revenue Analysis.xlsx," at tab "Summary Figures." It should also be noted that Mr. Hunt does not even apply the Triple Crown adjustment to all Triple Crown traffic. *See* Hunt workpaper "HC- 20220208 Rev Adjustment v03.xlsx," at tab "Main," where at Cells U4 and U13 are blank but should include the same Triple Crown Adjustment as Cells U6 and U15.

89. Using 2019 Combined CP/KCS 100-percent traffic tape data, we summarized the amount of traffic moving in the following buckets: overhead, local, and CN-KCS traffic interchanged at Springfield. This is depicted in Table 3 below.

TABLE 3[123]
2019 TRAFFIC ON KCS SPRINGFIELD LINE BY MOVEMENT CATEGORY

Movement Category	2019 Units	Percent
Traffic Locally Served on Springfield Line	{{{[redacted]}}}	{{{[redacted]}}}
Overhead Traffic on Springfield Line	{{{[redacted]}}}	{{{[redacted]}}}
CN-KCS Springfield Interchange Traffic	{{{[redacted]}}}	{{{[redacted]}}}
Total 2019 KCS Springfield Line Traffic	**{{{[redacted]}}}**	**100.0%**

90. Table 3 shows that the CN-KCS interchange traffic at Springfield is an {{{[redacted]}}} component of KCS's use and operation of the Springfield Line, which {{{[redacted]}}}

91. We further analyzed available data to assess the role that the Springfield Line plays in various rail traffic corridors of potential interest, particularly where CN says that the line competes with CP's route between Kansas City and Chicago. Our analysis of historical traffic patterns uses primarily 2015-2020 CWS data, as well as 2019 CN and Combined CP/KCS traffic tape data for Toronto movements.

92. The results of this analysis show that practically no traffic moving over the following corridors has used KCS's Springfield Line.

- Between Kansas City and Chicago
- Between Kansas City and Detroit

[123] *See* workpaper "2019 Springfield Line Traffic Summary.xlsx," at tab "Summary Table." Figures include originations/terminations at St. Louis but not Kansas City (which KCS may still be able to serve without using the Springfield Line).

- Between Kansas City and Toronto
- Between Mexico and Chicago
- Between Mexico and Detroit
- Between Mexico and Toronto

93. Specifically, an {{{[redacted]}}} of total traffic moving over these corridors used the CN-KCS interchange at Springfield in the past five years (or the past one year for Toronto corridors). Figure 12 below table summarizes these results.

FIGURE 12[124]
HISTORICAL ROUTES USED IN CORRIDORS RELEVANT TO KCS'S SPRINGFIELD LINE BETWEEN 2015 AND 2020

{{{[redacted]}}}

[124] Source: STB Carload Waybill Sample. Carloads on corridors including Toronto reflect 2019 traffic flows from CN and Combined CP/KCS traffic tape data. Mexico corridors include traffic rebilled at the Mexican border. Intermodal containers are converted to carloads at a containers-to-carloads ratio of 5-to-1. *See* workpaper "Historical Springfield Line Analysis.xlsx," at tab "Chart."

APPENDIX A

In Appendix A of our O.V.S, we described the processed used to generate 100-percent traffic tapes for the combined CP and KCS systems. At request of counsel, we have supplemented this data table is certain ways described below using 2019 traffic tape data produced by BNSF, UP, NS and CSXT.

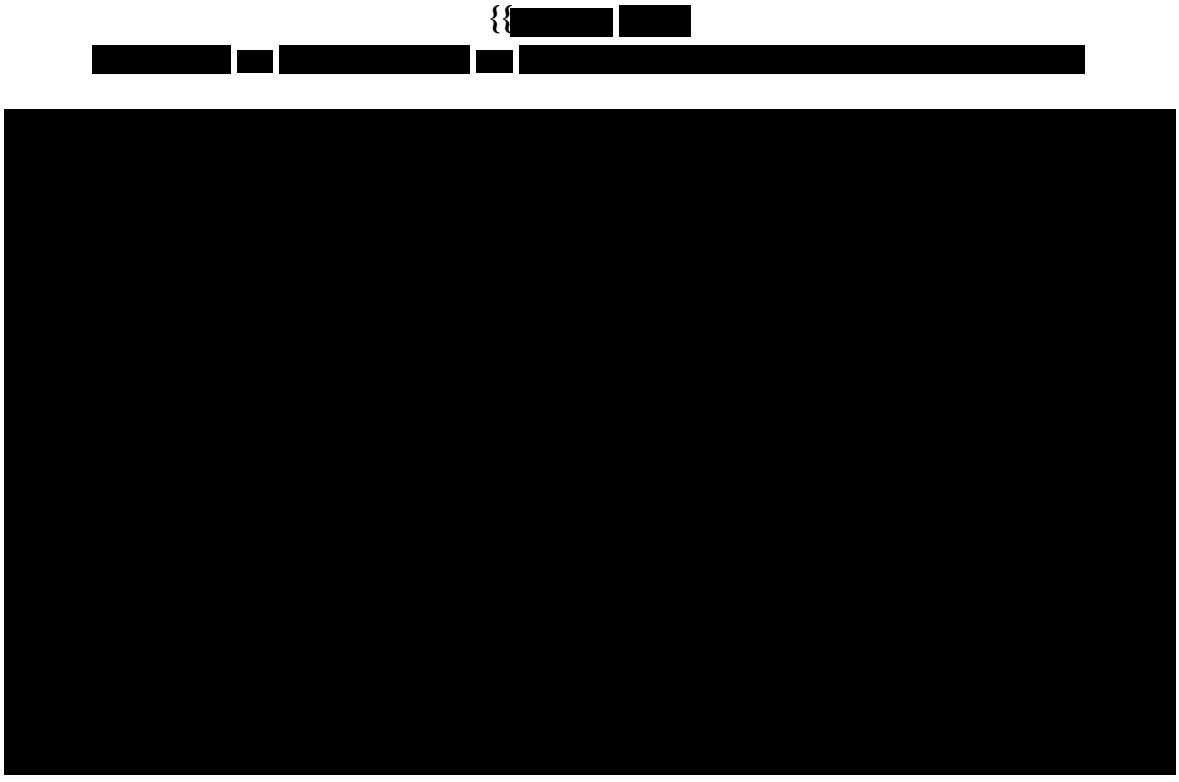
First, we added records to the data table from BNSF and UP traffic tape data for loaded interline shipments with FXE, and loaded CN shipments between the United States and Canada (interline and local). Prior to adding records, we first removed limited internal duplicates from the data based on unique combinations of waybill date and car/container initial and number. We did not add records where CP, KCS, or KCSM participated on the route to the extent these were already covered by existing records for the same movement in the base data table. We also only added a single copy of a movement that was in multiple of the additional carriers' traffic tapes, e.g., for a FXE-BNSF-UP movement, we only added the record from the BNSF traffic tapes to the extent it was also included in UP traffic tapes. Where certain variables in the additional carriers' traffic tapes were confirmed to align with variables already in the base data table, we structured them in the same field, and otherwise appended fields onto the original data table layout containing these variables.

Second, we appended revenue and routing fields for interline records onto the updated data table from the traffic tapes of all available carriers participating on the route. Specifically, for all records involving CN, CP, and KCS interline movements, as well as for BNSF-FXE and UP-FXE interline movements, we appended available revenue and routing fields from each of the carriers' respective traffic tape data onto the base record for the movement in the data table, e.g., for a KCSM-UP movement, we appended revenue and routing fields from the UP record

onto the base KCSM record for the same movement in the data table. Movements from different carriers' traffic tapes were matched together based on unique combinations of waybill date and car/container initial and number.

Third, we applied logic to develop standardized routing location and railroad fields for each interline movement (e.g., for a CP-BNSF movement, SPLC 1, SPLC 2, SPLC 3, RR1, RR2, RR3, etc. as derived from CP traffic tapes; SPLC 1, SPLC 2, SPLC 3, RR1, RR2, RR3, etc. as derived from BNSF traffic tapes). Using this standardized information, we developed PC Miler miles for each segment of the route, e.g., Miles 1, Miles 2, Miles 3, etc. PC Miler miles were developed in PC Miler Version 27 using the "practical" route option.

The below table summarizes the records we added and appended based on this process. Details our provided in our workpapers.



[125] *See* workpaper subfolder "Appendix A".

VERIFICATION

I, Richard W. Brown, declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this statement.

Executed this 12 day of July, 2022.

Richard W. Brown

VERIFICATION

I, Nathaniel S. Zebrowski, declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this statement.

Executed this 12 day of July, 2022.

Nathaniel S. Zebrowski

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36500

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

EXHIBIT Q

REPLY VERIFIED STATEMENT OF MICHAEL BARANOWSKI

BEFORE THE

SURFACE TRANSPORTATION BOARD

Finance Docket No. 36500

Canadian Pacific Railway Limited, et al. – Control – Kansas City Southern, et al.

REPLY VERIFIED STATEMENT
OF
MICHAEL R. BARANOWSKI

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REPLY VERIFIED STATEMENT
OF
MICHAEL R. BARANOWSKI

1. My name is Michael R. Baranowski. I am a Senior Managing Director of FTI Consulting, Inc. which is located at 8251 Greensboro Drive, McLean, VA 22102, and leader of the firm's Network Industries Strategies ("NIS") practice. I submitted a Verified Statement on behalf of Applicants Canadian Pacific ("CP") and Kansas City Southern ("KCS") in this proceeding on October 29, 2021 (which I refer to as my "V.S."). A detailed statement of my qualifications is attached as Exhibit No. 1 to my V.S.

2. In my V.S., I developed the total savings in operating expenses that would result from the Transaction. I also calculated the costs (and net revenues) associated with the incremental Transaction-related traffic that other Applicant witnesses (Jonathan Wahba and Mike Naatz, Richard Brown and Nathan Zebrowski, and Bengt Mutén) anticipated the combined CPKC system would attract as a result of the Transaction, using a Uniform Rail Costing System ("URCS") application for 2019 that I constructed for the consolidated CPKC system. Those estimates were not affected by any of the changes reflected in the Amended Operating Plan filed in May.

3. Table 1 below summarizes the savings the combined CPKC system will achieve over the first three years of combined operations.

TABLE 1[1]
CPKC CUMULATIVE OPERATING SAVINGS SUMMARY
(IN USD, EXCLUDES SAVINGS RELATED TO MERGER-RELATED TRAFFIC ADDITIONS)

Item	Year 1	Year 2	Year 3
Operating Metrics	52.59M	52.59M	52.59M
Fuel Savings	26.57M	28.19M	29.79M
Locomotive Depreciation and Lease	10.15M	10.15M	10.15M
Freight Car	0.00M	1.79M	2.60M
Procurement	4.18M	12.05M	20.54M
Total	**93.5M**	**104.8M**	**115.7M**

4. Table 2 below summarizes the net revenues that the combined CPKC system will generate from incremental Transaction-related traffic gains.

TABLE 2[2]
SUMMARY OF CPKC MERGER BENEFITS

	Year 1 (2023)	Year 2 (2024)	Year 3 (2025)
Diverted Carloads/Units	195,093	351,620	509,490
Incremental Revenues	$418.0M	$726.7M	$1021.9M
Incremental Costs by Category:			
Engineering – Maintenance of Way	$18.1M	$28.6M	$38.8M
Mechanical	$10.2M	$17.1M	$23.4M
Transportation	$91.1M	$148.6M	$204.8M
Equipment Requirements and Utilization	$1.3M	$6.5M	$13.6M
Intermodal Operations	$8.6M	$17.0M	$25.7M
Total Incremental Costs	$129.2M	$217.8M	$306.3M
Net Merger Benefits	**$288.9M**	**$508.8M**	**$715.6M**

5. I have been asked by Applicants to respond to a variety of criticisms of my development of Transaction-related savings and net revenue from incremental traffic attracted to CPKC as a result of the Transaction raised in the comments of a number of Class 1 carriers in this proceeding ("Opposition Carriers"). I have reviewed those criticisms and conclude that they

[1] CP-25/KCS-13, Verified Statement of Michael Baranowksi (filed October 28, 2021) ("Baranowski V.S.") at 11.

[2] Baranowski V.S. at 26.

are without merit. The substantial benefits to this Transaction from the savings and net benefits that I have estimated are real opportunities on which CPKC will capitalize. The criticisms of my estimates are not well-founded and do not undermine my confidence in my methodology or my estimates for reasons discussed below.

6. In large part they are purely anecdotal, merely observing that the approach that I have taken here is different from the approaches taken by other witnesses in prior merger proceedings and speculating that the merger savings that I calculated cannot be achieved in the timeframe contemplated. None of them question the fact that my approach was reasonable and appropriate for purposes of analyzing this Transaction.

7. Opposition Carrier witnesses also opine that the costs that I develop to handle the additional carload and intermodal volumes that will be attracted to the combined CPKC system are lower as a percentage of revenues than what they have observed in prior mergers. To the extent that they compare my results to other benchmarks, those comparisons are based on manipulations of data that clearly produce wrong results. In addition, they ignore that these prior mergers involved railroads that had not adopted the efficiency components of operations like those underpinning precision scheduled railroading as adopted by CP, KCS, and the future CPKC.

8. While certain Opposition Carrier witnesses discuss specific cost components they believe are not accurately reflected by my analysis, no witness has presented an alternative set of results.

9. I have also been asked to summarize revenue to variable cost ratios for BNSF and UP intermodal and carload shipments to and from Mexico via Laredo, TX.

10. In Section I of this Reply Verified Statement (R.V.S.), I address the relatively minor criticisms of my estimate of the operating expense savings that will be generated by the combination of CP and KCS. In Section II, I refute the criticisms of my estimates of the costs required to handle CPKC's anticipated Transaction-related traffic gains. In Section III, I summarize BNSF and UP revenue to variable cost ratios for intermodal and carload shipments to and from Mexico via Laredo, TX.

I. THE CLASS 1 CRITICISMS OF MY ESTIMATES OF TRANSACTION-RELATED OPERATING COST SAVINGS ARE NOT WELL FOUNDED

A. There Is No Basis for Assertions that the Operating Savings I Estimated Cannot Be Achieved in the Proposed Timeframe

11. My analysis of the timing of cost reductions is based on the pace of Transaction implementation set forth in the Application. Given CP's and KCS's strong operational track record and history of effective merger implementation and the extensive planning that was already well underway for the post-control integration of CP and KCS at the time of my statement and that has continued during this proceeding, my assumptions and estimates continue to be reasonable.

B. My Savings Estimates Are Based on Valid and Verifiable Calculations Drawing from Data Customarily Relied Upon in the Railroad Industry

12. CN witness Mark E. Zmijewski opines that my calculations of Transaction-related operating expense savings are not verifiable.[3] This criticism is inaccurate. I provided ample workpapers from which my calculations could be verified. Table 3 below summarizes the workpapers provided in support of my merger-related operating expenses savings in my V.S.

[3] CN-13, Verified Statement of Mark Zmijewski (filed February 28, 2022) ("Zmijewski Comments V.S.") at 58.

TABLE 3
SUMMARY OF WORKPAPERS PRODUCED IN SUPPORT OF TRANSACTION-RELATED SAVINGS

FILENAME	DESCRIPTION
Base to Optimized Fuel Savings Summary.xlsx	Transaction-related synergy fuel-related savings calculations
Base to Optimized Operating Plan Summary.xlsx	Transaction-related savings calculations applicable to operating metric differences between base and optimized operating plans
CPKCS Procurement Synergies Study.xlsx	Transaction-related procurement savings calculations and assumptions
Freight Car Savings.xlsx	Summary of Transaction-related freight car savings

13. Not only is my analysis reliable and verifiable, it is also consistent with approaches to rail costing used both in Board proceedings and by railroads in the ordinary course. For example, as explained in my V.S., fuel savings attributable to CPKC are aligned with CP's internal projections while procurement savings are based on real opportunities for increased volume-related price adjustments and best practices.

II. THE CLASS 1 CRITICISMS OF MY ESTIMATES OF CPKC'S COSTS TO HANDLE TRANSACTION-RELATED TRAFFIC GAINS ARE NOT WELL FOUNDED

14. The criticisms of my development of the costs attributable to the shipments that would be attracted to the CPKC system as a result of the Transaction ("Attracted Shipments") can be grouped into five categories. First, CN witness Hugh Randall[4] and UP witness Thomas C. Haley[5] suggest that certain costs are missing from my analysis, and that based on their observations, my operating expenses are too low. Second, Mr. Randall asserts that the operating expense methodology I use differs from the methodology used by applicants in prior mergers.[6]

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[4] CN-13, Verified Statement of Hugh Randall (filed February 28, 2022) ("Randall Comments V.S.") at 32.

[5] UP-10, Verified Statement of Thomas Haley (filed February 25, 2022) ("Haley Comments V.S.") at 10.

[6] Randall Comments V.S. at 33.

Third, Mr. Randall[7] and CN witness Carl Van Dyke[8] suggest that my development of operating expenses attributable to the Attracted Shipments is untethered to the Operating Plan or the MultiRail tool used to develop the Operating Plan for scheduled train service. Fourth, Dr. Zmijewski opines that my operating costs are not verifiable.[9] And fifth, CSX witnesses Julie M. Carey and Alfred W. Bresmer[10] and BNSF witness Benton V. Fisher[11] suggest that my cost estimates do not include the actual joint facility costs that will be triggered by the Attracted Shipments. I address each of these categories in the remainder of this section.

A. My Estimates Did Not Omit Categories of Expenses

15. A number of Opposition Carrier witnesses complain that I omitted certain cost elements associated with the Attracted Shipments or that the costs I attributed are too low.

16. First, my estimates included the relevant costs. I explained clearly in my V.S. that the buildup of costs that I attributed to the Attracted Shipments reflect the following two categories:

- URCS cost components that are affected directly by the Attracted Shipments; and
- Costs that are not accounted for in other analyses undertaken by CP.

17. The only categories of costs that I omitted from my estimates were (a) those calculated and presented by other Applicant witnesses and (b) those that would not be affected by the addition of the Attracted Shipments. My critics simply ignore the fact that my analysis

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7 *Id.*

8 CN-13, Verified Statement of Carl Van Dyke (filed February 28, 2022) ("Van Dyke Comments V.S.") at 29.

9 Zmijewski Comments V.S. at 60.

10 CSX-8, Verified Statement of Julie Carey and Albert Bremser (filed February 28, 2022) ("Carey & Bremser Comments V.S.") at 37.

11 BNSF-9, Verified Statement of Benton Fisher (filed February 28, 2022) ("Fisher Comments V.S.") at 38.

had to both avoid double counting costs that other witnesses estimated and adding costs unaffected by incremental traffic gains.

18. As my V.S. explained, I took account of the cost analysis of these other witnesses by making the following adjustments to standard URCS costing procedures:

- Elimination of all overhead expenses. The merger-related changes to general overhead and administrative expenses are addressed in the Verified Statement of Dean Vargas;
- Elimination of all overhead expenses attributed directly to the maintenance of way, mechanical, and transportation departments. The merger-related changes to these departments are addressed in the Amended Operating Plan. Further, departmental overheads are not affected by the addition of the Attracted Shipments;
- Elimination of all carload clerical costs. These costs are largely IT related and changes to IT as a result of the merger are addressed in the Verified Statement of James Clements; and
- Elimination of all road and equipment ownership costs, with the exception of a portion of depreciation and lease costs associated with additional locomotives and freight car equipment required to accommodate the Attracted Shipments as set forth in the Amended Operating Plan. To be clear, ownership costs in URCS include both depreciation expenses, which represent the return of investment and return on investment. Additional capital requirements needed to accommodate the Attracted Shipments are addressed in the Operating Plan. Adding depreciation expenses from URCS would result in a double count of those capital ownership costs.

19. My estimates, together with estimates presented by other Applicant witnesses, thus encompassed all of the costs that would arise from the incremental Transaction-related traffic, without double-counting. Because the costs my analysis attributed to the Attracted Shipments meet my stated criteria of being affected by the addition of the diverted traffic shipments and not addressed elsewhere in the CP Application, any observations related to cost elements not included as part of my analysis are invalid.

20. Second, claims by a number of Opposition Carrier witnesses that my cost estimates are too low are incorrect. They make this allegation based on their observations of an

"operating ratio" attributable to the incremental new shipments of 30%.[12] Relatedly, Mr. Van Dyke argues that the projected incremental traffic, which is sizeable, would not move from truck or other railroads at the variable cost-to-revenue ratio levels reflected in my statement.[13]

21. These allegations are incorrect for reasons similar to those discussed above. Both of these Opposition Carrier witnesses' concerns fail to consider that the costs I attribute to the incremental shipments are only the URCS unit costs that are affected directly by those shipments,[14] a subset of total costs, whereas reported operating ratios *include* all such costs. As an example, in my analysis I did not identify any additional maintenance of way overhead costs directly. Under a standard URCS application, a portion of maintenance of way overhead cost would be attributed to the Attracted Shipments. Specifically, the service units for the Attracted Shipments would be added to the service units generated by the existing CP and KCS shipments and the cost for maintenance of way overhead spread over the larger combined shipment volumes. Because my analysis focused only on the incremental cost to the combined CPKC of handing the Attracted Shipments, I did not find it necessary to redistribute costs not directly affected by the additional volumes to those volumes. Therefore, a comparison to an operating ratio is a comparison of apples and oranges.

22. Equally important, comparing the 30 percent figure to typical railroad operating ratios is invalid. Reported operating ratios are based on aggregate revenues and costs for enterprise-wide bodies of traffic. Thus, instead of looking at only the costs and revenues specific

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[12] Randall Comments V.S. at 27.

[13] Van Dyke Comments V.S. at 16.

[14] Again, costs evaluated by other witnesses are not included in my estimates because they are addressed elsewhere in the Application. Incremental costs in the categories of depreciation, general and administration, and other cost elements that are addressed elsewhere in the Application or are otherwise not affected by the addition of the Attracted Shipments are excluded from my analysis, as they should be.

to the *incremental* traffic, comparisons of the revenue-to-cost relationship for the combined CPKC should be considered in assessing, from a top-down perspective, the overall reasonableness of the results. Table 4 below compares the combined CPKC pro forma 2019 operating ratio for the U.S. portion of the system, including the revenues and costs attributable to the Attracted Shipments, with the actual 2021 U.S. operating ratios for CP, KCS, and pro forma CPKC combined for the U.S. network.

TABLE 4
CPKC'S PRO FORMA OPERATING RATIO VALIDATES MY COST ESTIMATES[15]

Comparison of 2019 CPKC U.S. Operating Ratio Including U.S. Portion of Transaction-Related Traffic Increases (Revenue and Cost to CP and KCS 2021 Operating Ratio)				
Description	**CP 2019 (Soo)**	**KCSR 2019**	**Incremental Traffic (U.S. Portion)**	**Total**
2019 Overview				
Revenue ($000s)	1,581,634	1,484,821	775,117	3,841,572
Expenses ($000s)	1,075,661	1,147,854	232,359	2,455,874
Operating Ratio	0.68	0.77	0.30	0.64
2021 Overview				
Revenue ($000s)	1,575,619	1,572,087	n/a	3,147,706
Expenses ($000s)	970,660	1,117,264	n/a	2,087,924
Operating Ratio	0.62	0.71	n/a	0.66

23. Table 4 shows that the pro forma 2019 operating ratio for the U.S. portion of the combined CPKC is 0.64, which unsurprisingly is two points higher than the 2021 CP U.S. operating ratio of 0.62 and two points below the 2021 combined CPKC operating ratio of 0.66. Put another way, the combined operating ratio for the U.S. portion of the combined CPKC included in the Application is in line with the operating ratios achieved by the CP's and KCS's U.S. operations in 2021, despite the lower "variable cost-to-incremental-revenue ratio" that

[15] *See* workpaper "Operating Ratio Calculations.xlsx," at tab "Summary Table."

Opposition Carrier witnesses misleadingly cite to suggest that my cost estimates were unrealistically low.

24. Mr. Randall further asserts that the combined CPKC operating expenses for the first three years of consolidated operations are understated by nearly $2.47 billion dollars. He bases this alleged shortfall by comparing the historical cost per gross ton mile from 2015 to 2019 for CP and KCS with the projected average cost per gross ton mile for the combined CPKC during the first three years of operation derived from the Application income statement ("CPKC Projected Average Cost"). Mr. Randall's assertion is that the CPKC Projected Average Costs are understated because the CPKC Projected Average Cost of $0.0126 is below the historical 2015–2019 average cost per thousand gross ton miles that he observed for CP-U.S. and KCS-U.S. combined and separately for BNSF, CSX, NS, and UP combined.

25. Mr. Randall provides no explanation of why the observed historical average operating expense for what he describes as the "Big Four" is at all relevant to the combined CPKC network.[16] The arbitrary nature of his finding becomes apparent by changing only one assumption from his analysis. Specifically, by using the historical average cost per thousand gross ton miles for BNSF over the 2015 to 2019 timeframe instead, the combined CPKC operating expenses would appear overstated – not understated – by approximately $1.82 billion.[17] This confirms that my estimates are in a reasonable range.

26. Mr. Randall's analysis also does not consider the efficiencies of the combined CPKC system as outlined in the Amended Operating Plan. As Mr. Elphick explains, upon

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[16] Randall Comments V.S. at 26.

[17] *See* workpaper "Oliver Wyman OPEX Worksheet – Restated.xlsx," at tab "Summary for OPEX VS - BNSF Only," at Cell D181.

authorization of control, CPKC would begin to make changes to improve service and efficiency on the combined network through new train services and longer-distance train profiles and longer-distance blocking. The practical effects of these efficiencies would be to lower operating expenses per thousand gross ton miles to below the historical levels observed for the independent CP and KCS over the 2015 to 2019 timeframe.

B. Differences from the Precise Approach Taken in Other Merger Cases Do Not Undermine the Validity of My Estimates

27. CN witness Randall argues that the approach I developed for costing the Attracted Shipments differs from the approach taken in prior mergers.[18] It is important to note that nowhere does Mr. Randall indicate that the approach that I have taken is wrong. It is only that in his view, the approach I have taken is different.

28. The heart of Mr. Randall's criticism seems to be that in prior mergers, applicants' approaches were organized differently and included what he describes as a "system model" to derive operating statistics from the operating plan, and that those operating statistics were then input into 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.[19] The results of the costing model are then inputs into the "financial model."

29. While my analysis may not follow a structure that Mr. Randall views as familiar or routine, all of the required steps he outlines are included. To the extent that there is any meaningful deviation, it relates to the CP and KCS combination being a truly end-to-end merger.

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[18] Randall Comments V.S. at 30.

[19] *Id.* at 29.

Specifically, economies associated with internal network re-routing or network rationalization that may have been available to applicants in mergers with more overlapping routes – potentially leading to more efficient routing alternatives and a reduction in train miles, car miles and gross ton miles – are not present here. As such, there is no need for a so-called "system model" to recompute operating statistics here. It is most important to identify the incremental costs that the combined CPKC will incur to handle the Attracted Shipments, which I have done.

30. The "financial model" Mr. Randall believes is necessary for this analysis – i.e., the tool used to develop the pro forma financial statements – *was* used by Applicants and described in the Verified Statement of Dean Vargas. The end-to-end nature of the CP and KCS consolidation produces a financial model that is straightforward, beginning by adding together the financial results of the independent CP and KCS systems. The only pieces that then need to be added to comport with Mr. Randall's view are the revenue and operating expense estimates associated with the Attracted Shipments, which *is precisely what my analysis did*. Specifically, my approach:

- Created a consolidated set of URCS inputs;
- Adjusted the consolidated URCS costs for improved efficiencies generated by the Operating Plan;
- Identified the specific cost URCS cost components affected by the Attracted Shipments;
- Developed URCS-related operating statistic inputs specific to the Attracted Shipments;
- Multiplied the diverted shipment operating statistics by the relevant URCS unit costs to determine incremental operating expenses;
- Aggregated incremental operating expenses by diverted shipment traffic category and operating expense grouping consistent with the requirements of the financial model; and
- Provided results to Mr. Vargas.

C. My Operating Expense Estimates Are Tethered Directly to the Operating Plan (and Amended Operating Plan)

31. In a similar criticism, Mr. Van Dyke criticizes my development of the operating expenses attributable to the Attracted Shipments because I did not use MultiRail as the basis for my operating expenses, which he believes are untethered to the Operating Plan.[20] Mr. Van Dyke's critique is incorrect and meritless.

32. First, the Attracted Shipments included in my costing analysis were provided by Messrs. Brown and Zebrowski (and included the estimates of incremental traffic gains forecasted by Applicant witnesses Jonathan Wahba and Michael Naatz, and Bengt Mutén). Those same shipments were provided to the Operating Plan team for processing in the development of the Operating Plan. In other words, the Operating Plan and my cost analysis rely on exactly the same set of Attracted Shipments.[21]

33. Second, my costing of the Attracted Shipments did incorporate the applicable efficiency adjustments generated from the MultiRail process within the Operating Plan for scheduled train movements which, for purposes of reporting consolidated system-wide effects, were combined with bulk train shipments not addressed within MultiRail. Specifically, my analysis incorporated the following costing adjustment produced by the operating plan MultiRail process:

- Improved fuel consumption efficiency by 2.0%, 1.8% and 1.7% in years 1, 2 and 3 respectively;
- Reduced locomotive units per train by 4.0%, 2.0% and 2.4% in years 1, 2 and 3, respectively;

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[20] Van Dyke Comments V.S. at 28.

[21] The Attracted Shipments for which I developed CPKC handling costs generate approximately 196.5 million gross ton miles per day.

- Increased trailing tons per train by 3.5%, 3.4% and 3.3% in years 1, 2 and 3, respectively; and
- Increased average crew miles per train by 0.7% in years 1 through 3.

34. Mr. Van Dyke also suggests that I failed to consider the effects of growth-related traffic in the Operating Plan in my development of costs.[22] Consistent with the development of the pro forma financial results showing the effects of the proposed consolidation on base year 2019 financials, my costing of Attracted Shipments focused only on the incremental cost of handling those shipments. Accounting for productivity from the efficiency gains attributable to organic growth traffic as suggested by Mr. Van Dyke would have resulted in even lower incremental costs for the Attracted Shipments.

35. Last, Mr. Van Dyke asserts that costs attributable to block swaps and other intermediate switching and intermodal lifts required to handle the Attracted Shipments are not included in costs I developed.[23] Again Mr. Van Dyke is wrong. The costs I developed for the Attracted Shipments include inter and intra-train ("I&I") switching cost at the standard URCS switching intervals for carload and intermodal shipments. I&I switches include block swaps and intermediate switching of freight cars from one train to another. Accordingly, the costs I developed *do* include these allegedly missing costs, for all intermodal Attracted Shipments.[24]

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22 *Id.* at 9.

23 Van Dyke Comments V.S. at 33.

24 *See* Baranowski V.S. workpaper "URCS Phase III Calculation For Growth Traffic.xlsx," tab "Phase III Calculation" rows 154 and 256.

D. My Cost Estimates Are Based on Valid and Verifiable Calculations Drawing from Data Customarily Relied Upon in the Railroad Industry

36. As he did with my development of operating expense savings attributable to the Transaction, Dr. Zmijewski, relying in part on the testimony of Mr. Randall, expresses that he is "aware of no facts, calculations, or detailed methodology for the Baranowski VS's calculation of incremental cost per diverted unit" and goes on to conclude that my development of the cost attributable to the Attracted Shipments is not verifiable.[25] It is not clear to me the scope of the analysis – if any – conducted by Dr. Zmijewski in making his assertion, but in addition to my V.S., in which I explained the methodology that I used to determine the costs attributable to the Attracted Shipments, I included the workpapers in Table 5 pertaining exclusively to that analysis.

[25] Zmijewski Comments V.S. at 59.

TABLE 5
SUMMARY OF WORKPAPERS PRODUCED IN SUPPORT OF DIVERTED SHIPMENT COSTS

FILENAME	DESCRIPTION
2019 CTA Annual Report Final – signed	Canadian Pacific Railway - Canada 2019 Annual Report
CP Operating Plan Output Cost Metrics Model.xlsx	Spreadsheet model developed by CP to quantify operating metric differences between base and optimized operating plans, including the effects of diversions, productivity and organic growth
CP SOO and CPR comparison table.xlsx	Comparison of relative CP SOO and CP Canada 2019 cost metrics
Incremental URCS Unit Costs.xlsx	URCS unit cost line items included in costing of Attracted Shipments
Summary of URCS Costing Adjustments to Diverted Shipments.doc	Description of costing adjustments applied to Attracted Shipments
URCS Diversion Costing Metrics Adjustments	Spreadsheet calculating productivity related costing adjustments between base and optimized plan and equipment-related costing adjustments
2019 URCS Phase II Model for Combined CP and KCS.xlsx	Spreadsheet starting with STB 2019 URCS Phase II model, combining CP and KCS inputs, and applying calculations discussed in statement
URCS Phase III Calculation For Growth Traffic Input.xlsx	Traffic characteristics developed for running URCS Phase III for rail-to-rail, truck-to-rail, and growth-related traffic provided by other witnesses
URCS Phase III Calculation For Growth Traffic.xlsm	URCS Phase III calculations required for incremental cost estimates discussed in my statement

37. Dr. Zmijewski further asserts that many of the claimed efficiencies engendered by the merger are not verifiable or merger-specific under a framework typically employed by the DOJ/FTC known as the *Merger Guidelines.*[26] Yet, this framework, by Dr. Zmijewski's own admission, is not applicable to the acquisition of KCS by CP, nor does it prescribe specific standards, methods, or tests, to verify claims of efficiency.[27]

38. As I explained above, my approach is fully consistent with the approach used routinely in the railroad industry, both for the purposes of Board proceedings and ordinary

[26] Zmijewski Comments V.S. at 35.

[27] *Id.*

course railroad costing. Further, based on conversations with CP, the incremental costs of handling the Attracted Shipments that I develop are in line with both CP's experience and expectations related to the efficiencies available from the combined system and the costs of handling additional volumes. In sum, the efficiencies achieved by this Transaction have been estimated in the same way the railroads approach such matters in the ordinary course and in regulatory proceedings and should not be rejected for failing to meet Dr. Zmijewski's own self-imputed litigation-style standards.

E. The Specific Manner in Which Joint Facility Costs Are Considered Does Not Materially Affect My Estimates

39. CSX witnesses Drs. Carey and Bresmer observe correctly that the costs that I developed and attributed to the Attracted Shipments rely on system-average URCS costs instead of lane-specific costs to cover the economic costs associated with haulage agreements or trackage rights agreements. Though they acknowledge that I included these costs, they nevertheless assert that URCS system-average costs may understate the fees attributable to a specific route.[28] In contrast to Drs. Carey and Bremer, who acknowledge that I included costs to cover haulage and trackage rights agreements, BNSF witness Mr. Fisher observes that the costs that I attribute to these Attracted Shipments do not include the URCS line item costs that are specifically related to joint facilities expenses.[29]

40. I disagree that joint facility costs are not considered properly in my analysis. Consistent with Drs. Carey's and Bresmer's view, my analyses include an estimate of the CPKC economic costs attributable to haulage or trackage rights for the Attracted Shipments.

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[28] Carey & Bremser Comments V.S. at 35, fn.151.

[29] Fisher Comments V.S. at 38.

Specifically as I explained in my V.S., the URCS running track costs include maintenance of way, maintenance of way administration, joint facility costs and other costs related to operating and maintaining right of way from which I identified those specific line items affected by the Attracted Shipments. Although my analysis did not identify the specific URCS joint facility-related unit cost elements as directly affected by the Attracted Shipments, my analysis does include the operating mileages over the trackage rights segments and the full URCS related variable costs for tie, rail, OTM and ballast maintenance costs. Ties, rail, OTM and ballast maintenance costs are typically a significant component of joint facility compensation. Further, unlike for fuel, crew, and locomotive costs discussed above, I did not make any efficiency adjustments to the unit costs for components relating to the below-the-rail cost associated with trackage rights segments. As such, my costs for the Attracted Shipments include appropriate consideration for trackage rights-related costs associated with Attracted Traffic including KCS's trackage rights over UP-owned lines in Texas.

41. Although I disagree with the critiques about my methodology and resulting cost levels, I performed a sensitivity analysis after reading these critiques. If I were instead to add URCS "joint facility" costs to my analysis on top of the maintenance-related costs already included in my analysis, the costs attributable to the Transaction-related shipments would increase by only $7.1 million, from $306.3 million to $313.5[30] million, before determining how to adjust the costs that I included in my analysis. In short, my methodology included costs for the haulage and trackage rights segments, was reasonable, and produced valid and reasonable results.

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[30] *See* workpaper "URCS Phase III Calculation For Growth Traffic with Joint Facility Costs.xlsm," at tab "Final Summary," at cells F13 and G13.

III. CALCULATIONS OF BNSF AND UP REVENUE TO VARIABLE COST RATIOS

42. I have been asked to provide revenue to variable cost ("RVC") ratios for BNSF and UP intermodal and carload shipments moving to and from Mexico via Laredo, TX. I identified from the Board's 2019 Confidential Carload Waybill Sample ("CWS") the BNSF and UP shipments moving through the Laredo, TX gateway based on the following criteria:

- All BNSF shipments with reported on or off junctions at Robstown or Corpus Christi and originating or terminating in Mexico.
- All UP shipments with a reported on or off junction at Laredo and originating or terminating in Mexico.

43. To develop the RVC ratios and average revenue above variable costs, I used the variable cost developed by the Board and reported in the CWS, and identified the actual BNSF and UP shipment revenue from the BNSF and UP waybill data produced in discovery. My results are summarized in Table 6 below and details of my calculations are set forth in my work papers.[31]

TABLE 6
BNSF AND UP AVERAGE RVC RATIOS AND AVERAGE REVENUE ABOVE VARIABLE COST FOR SHIPMENTS MOVING THROUGH LAREDO

{{{

[redacted]

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[31] *See* workpaper "Laredo RVC Calculations.xlsx" at tab "Summary."

VERIFICATION

I, Michael Baranowski, declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this statement.

Executed this 12 day of July 2022.

Michael Baranowski

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36500

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

EXHIBIT R

REPLY VERIFIED STATEMENT OF BENGT MUTÉN

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36500

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

REPLY VERIFIED STATEMENT OF BENGT MUTÉN

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1. My name is Bengt Mutén, and I am a Consulting Principal with S&P Global in its Economics and Country Risk practice. My office is located at One Financial Center, Suite 1900, Boston, Massachusetts 02111. I submitted a Verified Statement supporting the Application filed on October 29, 2021. I am submitting this Reply Verified Statement, first, to respond to certain criticisms of my truck-to-rail diversion analysis and Applicants' rail-to-rail diversion estimates; and second, to address flaws in the Verified Statement of David T. Hunt, submitted by Canadian National Railway Company ("CN").

I. CRITICISMS OF MY ANALYSIS ARE INCORRECT

2. In my analysis of truck-to-rail diversions, I set an upper limit of 70.9 percent for the rail intermodal share of traffic in any particular corridor. BNSF witness Benton Fisher criticizes this ceiling as "a broad assessment" that results in inappropriately understated diversion estimates.[1] This ceiling, however, was entirely appropriate.

3. As I explained in my Verified Statement, this ceiling allowed me to remove potentially unreliable outliers in the data and avoid overestimating potential diversions. In line with the standard practice of expert transportation analysts, I reviewed the rail intermodal traffic and lane shares to remove outlier data that would have an unreliable impact on the outcome of the analysis. To remove unreliable outliers in the data, I sorted all the BEA-to-BEA flows sequentially in order of intermodal share, and then excluded the top 20 percent of flows. The maximum intermodal share among the remaining flows was 70.9 percent. Excluding the top 20 percent of flows is a safeguard that is particularly useful when considering potential diversions across a large geographic area and a broad range of commodities, as the breadth of information

[1] BNSF-9, Verified Statement of Benton Fisher ("Fisher V.S.") at 15.

tends to produce unreliable outliers. Thus, given the substantial scope of the CP-KCS transaction, I removed outliers to produce a more reliable dataset and applied the resulting 70.9 percent ceiling.

4. While there were instances where actual rail intermodal share in certain corridors, compared to total dry van and refrigerated traffic, exceeded the upper limit I set for my analysis, I found those instances to be unrepresentative exceptions that would be inappropriate to rely upon in reaching conclusions about the likely body of truck traffic susceptible to being attracted by new CPKC intermodal services. It is possible that some number of these exceptional corridors were among those subject to diversion in my analysis. However, I did not have the ability to identify the specific reasons why rail intermodal share might have exceeded the limit in a particular corridor. To illustrate, for example, in the Norfolk BEA to Chicago BEA lane, Transearch data showed 1,395 moves in dry van or refrigerated trucks, while the expanded Confidential Waybill Sample ("CWS") showed {{{[redacted]}}} trailers or containers, for a rail intermodal share of {{{[redacted]}}} percent. But it would be inappropriate to apply this figure more generally, because it is likely that intermodal share in this lane is driven by import container flows arriving at the Hampton Roads and moving inland by rail. This would not be a useful model for most of the flows considered for CP-KCS. There may be other reasons that explain the outlier observation in other lanes. However, even had I wanted to exclude just import containers from my analysis, it would not have been possible to do so, because the CWS import/export flag in most cases is "9," representing unknown status.

5. Mr. Fisher makes another misguided critique when he notes: "[a] third source of understatement of the likely level of rail and truck traffic diversions involves the source of the data," as the "Board's Carload Waybill Sample does not fully represent transborder shipments,

especially rail traffic volumes moving to/from Mexico."[2] First, my analysis did not rely solely on CWS data. I used CWS data in conjunction with Transearch data and 100-percent data from KCS, KCSM, and CP actual waybills, which produced a reliable and accurate data source, as shown by the fact that the count of cross border rail traffic from those sources matches the count of cross border rail traffic in the Bureau of Transportation Statistics.

6. Second, the CWS does include essentially all cross border traffic to and from Mexico. A significant share is shown as rebill traffic received or forwarded at the border crossing, but by using CWS data in conjunction with Transearch rail volumes, I was able to estimate the Mexico origins and destinations.

7. Third, even if there was an undercount of rail flows, which there was not, this would have led to an overstatement – not an understatement – of diversions, since Transearch starts with total overland trade, and truck volumes are presumed to be *the remainder* after rail and pipeline flows are netted out.

II. MY ANALYSIS DOES NOT UNDERMINE THE TESTIMONY OF OTHER APPLICANT WITNESSES

8. CN witness David Hunt also errs in his criticism of Applicants' projected rail-to-rail traffic shifts when he erroneously applies my analysis to facts to which it does not apply. For example, Mr. Hunt inaccurately relies on my Verified Statement to criticize FTI's analysis regarding rail-to-rail diversion to longer routes.[3] In broad terms, it is true that a shipper's freight

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[2] BNSF-9, Fisher V.S. at 16.

[3] Mr. Hunt states: "[t]he relationship between route length and route choice is a well-established concept in transportation modeling. 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. 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.' CP witness Mutén's truck-to-rail diversion model includes two parameters

Mutén R.V.S. at 4

mode choice is typically a trade-off between time (whether absolute or relative) and the cost and other options avalable to the shipper. (Even here, however, Mr. Hunt's criticism based on route length is an oversimplification, in that route length is only one of many factors that determine transit time.)

9. What Mr. Hunt most crucially overlooks, however, is that FTI was undertaking a fundamentally different analysis, involving fundamentally different service parameters, than my analysis. Distance directly impacts both time and cost for truck shipments, whereas that is not necessarily true for rail shipments. In other words, distance is a far better proxy for time and cost in truck shipping than in rail shipping. It is therefore to be expected that a truck-to-rail diversion study would be more sensitive to route circuity than a rail-to-rail traffic analysis.

10. In addition, Mr. Hunt fails to properly apply my analysis to the facts when he criticizes Messrs. Wahba's and Naatz's perishable diversion estimates.[4] Mr. Hunt

based on route distance, overall truck distance and the difference between truck and rail distances." CN-13, Verified Statement of David Hunt ("Hunt V.S.") at 8.

Mr. Hunt also notes "[i]t 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' – are utterly inconsistent with both prior traffic diversion modeling and witness Mutén's truck-to-rail diversion analysis." *Id.* at 9.

[4] "Witnesses Wahba and Naatz also project that CPKC will earn an additional $54.4 million in incremental revenues from perishables truck-to-rail diversions. 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. 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 $0.06 million. 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.' 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. Applications 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." *Id.* at 34-35.

misunderstands the relationship between my analysis and Messrs. Wahba's and Naatz's analysis. Their analysis assesses the potential of new CPKC single-line rail service connecting origins in Mexico with destination markets in the United States to attract perishables traffic that is moving by truck today, but not via the same path. Because the new CPKC service represents a route that does not exist today, I was not able to incorporate it into my analysis using my methodology. The underlying truck flows of perishables from Mexico to the United States, however, do show up in the data. To the extent my analysis identified diversions of perishable traffic from truck to rail, I manually removed those moves from my analysis to avoid double-counting those diversions.[5]

11. To be more specific, the Transearch database shows movements of perishables from Mexico to the Upper Midwest as they currently occur, primarily in two distinct flows: first, perishables flow to distribution centers in Texas, and then, the perishables flow from those distribution centers to their final destinations, such as Chicago. Messrs. Wahba and Naatz identified flows from origin to final destination for which a direct, single-line CPKC service could be competitive by replacing those two moves with a single-rail intermodal move. In my diversion analysis, I initially found a small amount of likely diversions of perishables on the existing legs. Because Messrs. Wahba and Naatz were forecasting both legs to be replaced by new flows (that do not yet exist), I manually and correctly removed those potential diversions to avoid double-counting the same freight.

III. MR. HUNT'S PROJECTIONS OF FUTURE INTERMODAL TRAFFIC ON THE SPRINGFIELD LINE APPEAR IMPLAUSIBLE BECAUSE OF FLAWS IN HIS METHODOLOGY

12. CN witness Mr. Hunt forecasts huge shifts in truck traffic from highways to CN's

[5] *See* Application, Mutén V.S. at 22.

proposed new route between Kansas City and Chicago if CN is permitted to acquire KCS's Kansas City-Springfield Line. These predictions are implausible for several reasons.

13. First, Mr. Hunt's model is flawed, as it completely ignores important factors influencing shipper choice. The most serious omission is that Mr. Hunt's model does not take shipment time or the variability of shipment time into account at all. The mode choice in Mr. Hunt's model is driven by comparing Uniform Rail Costing System costs for the rail portion (with modeled truck operator costs added for the drays), with modeled truck operator costs for the existing highway flow. Changes in relative costs drive his results.

14. In reality, however, shippers' choices between trucks and rail intermodal service *are not solely based on relative out-of-pocket costs* (*i.e.*, *transportation charges*), but on a much broader array of logistics costs that are affected by service levels and service reliability – including the inventory costs associated with shipment time and the cost of safety stock needed in case of delays. Those other costs are typically higher for rail flows (including intermodal) than for truckload flows because of longer shipment time and greater variability, but Mr. Hunt's model does not account for those additional costs at all.[6]

15. Second, Mr. Hunt inappropriately included in his analysis several lanes with well-developed and efficient direct intermodal service, and he diverted substantial volumes of truck traffic in those lanes to CN's theoretical new service. For example, in 2019 Norfolk Southern carried {{{[redacted]}}} units between Kansas City and Detroit and {{{[redacted]}}} units between St. Louis and Detroit, and BNSF carried {{{[redacted]}}} units between Kansas City and Chicago. In effect, Mr. Hunt's analysis incorrectly treated these lanes as if there was not any existing rail

[6] Mr. Hunt's workpapers show only the URCS rail costs and modelled truck costs. There is no mention of shippers' indirect costs.

intermodal service today, and asked, if rail costs are lower that truck costs with rail attract trucks off the highway. Mr. Hunt's analysis improperly ignored that the remaining pool of truck traffic in these lanes reflects choices by shippers who, for whatever reason, have *already rejected* the intermodal option. While a second competing option over a somewhat more circuitous CN available route might attract some of this portion of this traffic, it certainly would not divert the same share that a brand new service would attract, as Mr. Hunt's analysis inappropriately assumes.[7]

16. Third, Mr. Hunt wrongly forecasts diversions to CN's hypothetical rail intermodal service despite the fact that in many lanes the service would require significant drays *away from the destination* to the origin ramp, *back towards the origin* from the destination ramp, *or both*. While intermodal service can be competitive despite meaningful drayage distances when the drays are *in the ultimate direction of travel*, other drays that are contrary to the flow of traffic are unlikely to be cost effective. Mr. Hunt's analysis nonetheless predicts (incorrectly in my view) significant diversions that would require inefficient drays. For example, Mr. Hunt predicts diversions of truck flows between Evansville, IN and Detroit, despite the need for the origin dray to drive approximately 535 miles away from Detroit to reach CN's planned St. Louis ramp and be loaded on a train that would head back towards Detroit. To the extent this traffic is susceptible to intermodal diversion at all, it likely would be from a ramp in Chicago. Although Chicago is 129 miles farther from Evansville than St. Louis, Chicago is much closer to the ultimate rail destination. Similarly, it is unlikely that the drays from Springfield, MO, Columbia, MO, and Joplin, MO first going west to Kansas City before starting their journey east (or vice versa) will create diversions. The number of highway miles needed to reach Kansas City would

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[7] CN-13, Hunt V.S. at 9.

have the shipment much closer to its ultimate destination (or a ramp in Chicago closer to the destination). Thus, it is unlikely that this traffic will convert given that these movements involve drays that will not be cost effective.

17. Fourth, as illustrated by the Evansville-St. Louis drayage example, many of Mr. Hunt's diversions involve shipments that would not need to use KCS's Kansas City-Springfield Line. Mr. Hunt's model of estimated future intermodal traffic on the Springfield Line assumes diversions to and from a proposed CN intermodal ramp in St. Louis. Diversions attributable to this ramp account for 22.8 percent of the intermodal diversions in Mr. Hunt's model. But St. Louis is already served by CN, and a route between St. Louis and Chicago via KCS trackage would be only 50 miles shorter than CN's existing, parallel rail route. CN is and has been free to build this St. Louis ramp without the requested divestiture of the Springfield Line – thus, these gains Mr. Hunt's analysis predicts are unrelated to CN's Responsive Application and should not be considered as diversions stemming from the requested diversion. Even if properly treated as related to CN's proposed transaction, Mr. Hunt's analysis overestimates the extent of potential diversions, as it fails to account for the new route's insignificant impact on route distance and the limited cost savings it will create. Using Mr. Hunt's own cost model, the route would only create a savings of 1.4 percent, or $173,000, annually.[8]

[8] *See* CN-13, Hunt V.S. at 28.

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VERIFICATION

I, Bengt Mutén, declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this statement.

Executed on this 12 day of July, 2022.

DocuSigned by:
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Bengt Mutén

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36500

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

EXHIBIT S

REPLY VERIFIED STATEMENT OF BISON TRANSPORT

Recruiting:
1-800-GO-BISON
recruit@BisonTransport.com

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204-833-0112 F
800.668.4321

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Calgary:
234090 Wrangler Rd.
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Canada T1X 0K2
403-444-0555 P
403-203-5707 F

Edmonton:
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Sherwood Park, AB
Canada T8H 2J6
780-416-7736 P
780-416-0961 F

Langley:
9818-198 B St.
Langley, BC
Canada V1M 2X5
778-298-4605 P
778-298-4607 F

April 21, 2022

RE: STB Finance Docket No. 36500

ATTN: Surface Transportation Board

My name is Darren Loewen, Director of Intermodal at Bison Transport ("Bison"). My business address is 1001 Sherwin Rd, Winnipeg, MB R3H 0T8.

Bison is a North American transportation company that specializes in full truckload, intermodal, logistics & less-than-truckload. Bison moves goods between Canada, the USA, and Mexico and believes that the CP-KCS merger will create efficiencies for our transportation network. Because of that, we are writing to express our support for the merger.

As a transportation provider moving goods between Mexico, the USA and Canada, we can see the benefit of a single-line rail option to serve all three markets. A single carrier to move our rail intermodal shipments will allow for a much simpler process with:

- Less need for trucks to move containers between interline partner rail terminals.
- Less complex routings that will create more competitive alternatives for Bison and its customers.
- The ability to compete with over-the-road transport and allow for new truck-to-rail conversions that are not possible today.

We have worked with both CP and KCS for many years and have been pleased with both of their commitments to on time delivery and safety. We fully expect CPKC to meet or exceed those same standards.

Certain parties in this matter have filed comments with the Board proposing conditions on the merger. Having reviewed those proposals, we see no benefits stemming from the proposed conditions. We also believe the proposed conditions present a serious risk of inhibiting the new, combined railroad's ability to effectively compete in the market. Because competition in the rail transportation market is good for Bison and good for our customers, we urge the Board to approve the Merger without conditions.

Sincerely,

Darren Loewen

Director of Intermodal

Bison Transport
dloewen@bisontransport.com
(204)223-6095 (Cell)

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36500

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

EXHIBIT T

REPLY VERIFIED STATEMENT OF CENTRAL MISSOURI AGRI-SERVICE, LLC

CENTRAL MISSOURI
AGRIService LLC

211 N. Lyon Ave. • Marshall, MO 65340 • (660) 886-6976

Verified Statement of John Fletcher

1. I am John Fletcher, General Manager of Central Missouri Agri-Service, LLC (CMAS), and I am submitting this verified statement to oppose the responsive application filed by Canadian National (CN) in STB Finance Docket 36500. We support of the Canadian Pacific (CP)-Kansas City Southern (KCS) Transaction and urge the Board to approve it without granting the CN responsive application.

2. CMAS was formed and began operations on September 1, 1999. CMAS is a joint venture of Fletcher Grain Company, MFA Incorporated, and Cooperative Association Number 1 of Slater, Missouri.

    a. Fletcher Grain Company began operations in Marshall, Missouri in the 1910s, selling seed and feed to farmers and purchasing produce from farmers in the Marshall and surrounding areas. In the last half of the century the company experienced concentrated growth in the areas of grain handling, fertilizer and crop protection products, seeds, and livestock feed.

    b. MFA Incorporated is a state-wide cooperative; organized in 1914 in a schoolhouse near Brunswick MO. MFA operates agricultural related businesses throughout the state of Missouri and in surrounding states.

    c. Cooperative Association Number 1 was founded in 1919. It was the first local cooperative founded under the 1919 state law providing for farmer owned cooperatives.

3. Our facility is located at Marshall, Missouri, and is served by KCS. It is located on the line from Kansas City to Springfield, Illinois, that CN asks the Surface Transportation Board to force KCS to divest to it. CN claims that it will grant haulage rights to CPKC if the line is divested to it.

4. We opened the Marshall facility in 2015 after investing about $25 million in it. It includes loop tracks to build in efficiencies.

5. Of the more than 5,000 cars we shipped in 2021, fewer than 10 percent move East.

6. The economics of our single-line hauls with KCS to serve customers to the south and west would be undermined if the line were divested to CN. We are also concerned that haulage is not a real solution to allow us to continue to efficiently move our grain to our customers. Added interchanges between CN to CPKC would not be as efficient as our single-line haul on the KCS system.

7. Moreover, most of our shipments – indeed about 80% -- move to Mexico. We ship a substantial percentage of our volume to Mexico via KCS-KCSM. This is our route of choice, which we use because it is best for us -- and not as some allege because we are coerced to do so.

8. The line in question has been treated as a stepchild for as long as I can remember prior to KCS acquiring it. This has occurred because either the owner didn't care, or because the owner was a short line and couldn't afford to be competitive. Since KCS acquired this line, it has been significantly upgraded, traffic has increased, and the service level has greatly increased. I would hate to see the improvements of the last twenty years abandoned in favor of an unknown quantity.

VERIFICATION AND CERTIFICATION

I, John Fletcher, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified und authorized to file this verified statement. I also certify that I have this day served a copy of the foregoing Verified Statement upon all other parties of record by depositing a copy in the U.S. mail in a properly addressed envelope with adequate first-class postage thereon prepaid, or by other, more expeditious means.

Executed April 8, 2022

John Fletcher

General Manager

Central Missouri Agri-Service

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36500

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

EXHIBIT U

REPLY VERIFIED STATEMENT OF CHS, INC.

CHS
5500 Cenex Drive
Inver Grove Heights, MN 55077-1721

Creating connections to empower agriculture

Reply Verified Statement of Kevin Hall in STB Finance Docket 36500

1. My name is Kevin Hall. I am Vice President, Supply Chain & Continuous Improvement, Agriculture for CHS Inc. ("CHS").
2. CHS is a diversified global agribusiness cooperative owned by farmers and local cooperatives across the United States. First organized in 1929, CHS employs more than 10,000 dedicated people around the globe who provide our owners and customers with a strong, efficient supply chain, access to global markets, and products and services for agricultural businesses and rural communities.
3. As stated in CHS' April 2021 letter, CHS supports the approval of the CP-KCS merger. CHS continues to support the CP-KCS merger, because we believe it will create new, single routes that will be more efficient than existing interline routes and will benefit farmers.
4. The increased efficiencies and market access created by the CP-KCS merger would be an impetus for rail-using companies, such as CHS, to make the most of those benefits by considering making new investments in supply chain infrastructure to be served by CPKC. Without the CP-KCS merger and the aforementioned benefits, such investments would be unlikely to provide a strategic rationale or rate of return sufficient to justify the capital investment.

VERIFICATION AND CERTIFICATION

I, Kevin Hall declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified und authorized to file this verified statement. I also certify that I have this day served a copy of the foregoing Verified Statement upon all other parties of record by depositing a copy in the U S mail in a properly addressed envelope with adequate first-class postage thereon prepaid, or by other, more expeditious means.

Executed April 25, 2022

Kevin A Hall

Kevin A. Hall
Vice President Supply Chain and Continuous Improvement
Agriculture
CHS Inc.

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36500

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

EXHIBIT V

REPLY VERIFIED STATEMENT OF HAPAG-LLOYD (AMERICA) LLC

Hapag-Lloyd

Surface Transportation Board

Finance Docket No. 36500

Reply Verified Statement of Uffe Ostergaard

1. My name is Uffe Ostergaard. I am President for Hapag-Lloyd (America) LLC.

2. Hapag-Lloyd (America) LLC previously wrote in support of the CP-KCS Transaction in March 2021. We submit this Verified Statement to further express our views on one specific benefit we expect the Transaction to generate efficient and effective intermodal service between the port of Lazaro Cardenas and destinations in the United States and Canada.

3. Much ocean freight from Asia bound for the United States and Canada flows through various Canadian and United States ports, including Los Angeles and Long Beach. While it is undeniable that those ports will continue to be lynchpins in the global supply chain, it is also evident that the volumes shipping through most ports often strain their capacity, creating delays.

4. The port of Lazaro Cardenas could handle some of this ocean freight from Asia to the United States and Canada, reducing the strain on other key gateways.

5. The lack of efficient single-line intermodal service from the port of Lazaro Cardenas to major distribution hubs in the United States and Canada, however, has limited the potential of Lazaro Cardenas to serve this function. Currently, KCS serves Lazaro Cardenas, but only reaches as far as Kansas City. Intermodal service from Lazaro to places like Chicago, Detroit, and Toronto is thus necessarily interline service.

6. The combined CP-KCS network, however, will create efficient, single-line service from Lazaro Cardenas to those U.S. and Canadian population centers, making Lazaro a valuable relief valve for freight that would otherwise further clog other ports.

7. We understand that some commenters have called into question whether intermodal service on CPKC from Lazaro to the U.S. Midwest is really an option shippers would choose. We believe that it will be. Reliable, efficient rail service will make Lazaro a reasonable alternative to overcrowded Southern California ports.

8. While the combined rail-water distance from some Asian ports to key Midwest and Canadian destination markets via the Port Lazaro Cardenas is somewhat farther than for other U.S. West Coast ports, the extra distance is not a major handicap in providing reliable service to reach end-markets. The key is reliability and efficiency, and the Port of Lazaro Cardenas, couples with efficient CPKC single-line rail service, will offer a very attractive alternative for companies like Hapag and our many intermodal customers. We are so excited about this new option that we have embarked on trial shipments through Lazaro Cardenas in recent months with a number of beneficial cargo owners ("BCOs") that are looking for alternatives and flexibility. Providing more options to U.S. shippers must be a priority and this solution will bring a larger part of the rail network to the intermodal market and support competition as well.

9. We believe this strengthening of Lazaro Cardenas and thus of the global supply chain is a very likely outcome of the CP-KCS Transaction. For this reason, and the reasons expressed in our earlier letter, we support the CP-KCS Transaction.

VERIFICATION AND CERTIFICATION

I, Uffe Ostergaard, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified und authorized to file this verified statement. I also certify that I have this day served a copy of the foregoing Verified Statement upon all other parties of record by depositing a copy in the U S mail in a properly addressed envelope with adequate first-class postage thereon prepaid, or by other, more expeditious means.

Executed April 20, 2022

Uffe Ostergaard

President

Hapag-Lloyd (America) LLC

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36500

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

EXHIBIT W

REPLY VERIFIED STATEMENT OF HARDISTY ENERGY TERMINAL

USD GROUP

HARDISTY ENERGY TERMINAL

STB Finance Docket No. 36500

My name is Josh Ruple and I am Executive Vice President, Chief Operating Officer of US Development Group, LLC ("USDG") and a member of the Board of Directors at Hardisty Energy Terminal GP Ltd., the General Partner of the Hardisty Energy Terminal Limited Partnership ("HET"). In March 2021, HET wrote to the Board to express our support for the Proposed Merger of Canadian Pacific ("CP") and Kansas City Southern Railway ("KCS"). Both USDG and HET continue to support the Proposed Merger based on our belief that it will benefit our joint customers.

I write to emphasize the importance of this merger to the future growth in our DRUbit™ by Rail™ Network. As we explained in the March 2021 letter, HET is a partnership between USDG and Gibson Energy ULC formed for the purpose of building and operating a Diluent Recovery Unit ("DRU") to create DRUbit™, a safer and more efficient shipment of heavy Canadian crude oil to markets outside of Canada. Historically, Canadian heavy crude is shipped by pipeline in the form of "Dilbit," which is bitumen with diluent blended to lower viscosity, making it more suitable for pipeline transportation. For destinations not reached by pipeline, rail offers the only viable means of transportation, and traditionally crude shipped by rail has been in the same "Dilbit" form. This is despite the fact that for crude-by-rail shipments the diluent serves no further purpose and has certain drawbacks in that it adds weight and volume to the shipment; it increases the risk of transportation handling; and adds to the flammability of the blended product.

HET's DRU facilities remove the diluent just prior to loading the bitumen onto a railcar, creating a product we call DRUbit™. DRUbit™ is a safer, and more economical, way to ship Canadian heavy crude by rail. DRUbit™ ships by rail as a non-hazardous and non-flammable commodity and with approximately 20% -30% less CO_2e emissions than currently available rail and pipeline alternatives, respectively. Replacing Dilbit rail shipments with movements on our DRUbit™ by Rail™ Network is very much in the public interest. And switching from dilbit to DRUbit™ requires further infrastructure investments at both origin and destination, respectively. Some of those infrastructure projects are already in progress and/or are completed, including at our Hardisty and Port Arthur facilities which opened in August 2021 and were fully operational in December 2021.

I understand that certain commenters have asserted that, because our DRUbit™ by Rail™ Network is already operational, the proposed CP/KCS combination cannot be responsible for forecasted increases in DRUbit™ shipping. In our estimation, this assertion isn't fully supported. We have plans to invest in additional capacity through future DRUbit™ by Rail™ Network expansions. This additional capacity is currently planned in additive DRU infrastructure in Hardisty, coverting additional existing Dilbit rail shipments into safer DRUbit™ shipments and capacity increases at our Port Arthur rail destination to connect our joint customers to the Gulf Coast refining market. This additional capacity, market access

811 MAIN STREET, SUITE 2800 HOUSTON, TX 77002 | P 281.291.0510 | F 281.291.0321

USD GROUP

HARDISTY ENERGY TERMINAL

and resulting investments are largely dependent on efficient rail transportation from Canada to the Gulf Coast. We believe the CP/KCS combination will create new, efficient, single-line connections relevant to our DRUbit™ by Rail™ Network, served at origin by CP's network, and many of our customers in the Gulf, served by KCS at destination. The efficiencies created by the transaction, including improved cycle times and more reliable service, will enhance the DRUbit™ by Rail™ Network value proposition for our joint customers, which will in turn allow us to commercialize the increased volumes needed to justify further capacity investment. Put simply, we believe that our goal of additive Dilbit to DRUbit™ shipment transition is substantially more likely to increase in a world with CPKC than in one without.

For these reasons, and for the reasons expressed in the March 2021 letter, we respectfully urge the Board to approve the Proposed Merger as soon as possible.

Respectfully,

Josh Ruple
Executive Vice President, Chief Operating Officer – US Development Group LLC
Member of the Board of Directors – Hardisty Energy Terminal GP Ltd.

VERIFICATION

I, Josh Ruple, declare under penalty of perjury that the foregoing is true and correct, to the best of my knowledge. Further, I certify that I am qualified und authorized to file this verified statement.

Executed this 2ND day of May, 2022

Josh Ruple

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36500

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

EXHIBIT X

REPLY VERIFIED STATEMENT OF NEW COOPERATIVE INC.

NEW COOPERATIVE INC.
2626 1st Ave. South | P.O. Box 818 | Fort Dodge, IA 50501

Reply Verified Statement of NEW Cooperative, Inc.
STB Finance Docket 36500

I am Dan Dix, General Manager at NEW Cooperative Inc. ("NEW Coop"). I have been General Manager since 2015.

I write on behalf of NEW Cooperative Inc, a coop owned by Iowa farmers.

As we wrote in our March 2021 letter, we support the CP-KCS combination. We believe that the combined CPKC network will provide substantial benefits to our 8,000 member owners. We believe that those benefits will enable us to make an investment that we otherwise could not.

I write today to advise the STB of a potential investment that is contingent on the approval of the CP-KCS combination. This combination provides us the possibility to build a greenfield grain elevator to ship corn and soybeans in Northern Iowa, to capitalize on new, efficient single-line routes on CP-KC from Iowa to grain destinations on the KCS, including Mexico. We estimate that this project will cost $30,000,000. We believe this investment will bring further benefits to our members and the supply chain as a whole, but is only viable in light of opportunities created by the CP-KCS combination. We again urge the STB to approve the combination.

VERIFICATION AND CERTIFICATION

I, Dan Dix, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified und authorized to file this verified statement. I also certify that I have this day served a copy of the foregoing Verified Statement upon all other parties of record by depositing a copy in the U S mail in a properly addressed envelope with adequate first-class postage thereon prepaid, or by other, more expeditious means.

Executed April 15, 2022

Dan Dix

General Manager
NEW Cooperative Inc.

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36500

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

EXHIBIT Y

REPLY VERIFIED STATEMENT OF RAY-CARROLL COUNTY GRAIN GROWERS, INC.

RAY-CARROLL COUNTY GRAIN GROWERS, INC.

post office box 158 / richmond, missouri 64085

816-776-2291

STB Finance Docket 36500

Verified Statement of Ray Carroll County Grain Growers, Inc

Dear Surface Transportation Board Members:

I am Beau Hepler, General Manager of Ray Carroll County Grain Growers ("Ray Carroll"). Ray Carroll strongly opposes the Inconsistent Application filed by Canadian National ("CN") in this proceeding.

Farmers are experts in making things grow. As a full-service cooperative, Ray-Carroll County Grain Growers provides the services and technical expertise to help our local producers thrive. We've been proud to serve our member-owners since 1931.

Customers count on us for grain, agronomy, precision agriculture, insurance, energy, and feed solutions. There is a reason why Ray-Carroll has continued to grow since local farmers formed the cooperative more than 80 years ago. Guided by an 11-member board of directors, Ray-Carroll is focused on providing members and customers with high-quality products and services as we move forward together.

We are pleased to support the CP-KC transaction and believe that it opens up more possibilities for us. In fact, we anticipate making new investments in this corridor in the foreseeable future. If this transaction is approved it will open new business opportunities for us.

We have been moving forward thanks to the options we have for our grain. In 2004, we purchased the elevator in Slater, MO, from Farmland Industries. In 2013, we constructed a new shuttle loading elevator in Corder, MO, that we continue to upgrade and expand. We have invested heavily in the expansion of our Corder, MO facility. We have spent this money as we see the opportunity to continue gaining efficiencies and the ability to grow our market share in the region. Both of our elevators at Coder and Slater, MO, are located on the KCS line between Kansas City and Springfield, Illinois. This is the line that CN has asked the Surface Transportation Board to force divesture to the CN, while granting haulage rights back to KCS.

We oppose CN's Inconsistent Application and request for divestiture of this line. The markets that we serve are Mexico and other points reached via KCS's line via Kansas City to the west of our facility. In fact, in 2021, we shipped nearly 6,500 cars, of which 94% of our shipments moved West and to Mexico while only 6% moved East. With 5,270 of those cars (or 81% of our cars) terminating in Mexico, you can see that the vast majority of our product is shipped to Mexican markets via KCS-KCSM. That route is efficient. We have chosen to because they are the best option available to us on the merits.

If the line were divested to CN, we believe that the options for our grain would be constrained. Moreover, granting CPKC haulage rights over the line is not a solution to our lost options. Haulage, which would require CN to take our railcars toward Kansas City for interchange with CPKC, is a much less efficient process than we have today with single-line service from KCS.

Ray Carroll supports the CPKC Transaction and urges the Board to approve it without granting CN's Inconsistent Application.

VERIFICATION AND CERTIFICATION

I, Beau Hepler, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified und authorized to file this verified statement. I also certify that I have this day served a copy of the foregoing Verified Statement upon all other parties of record by depositing a copy in the U S mail in a properly addressed envelope with adequate first-class postage thereon prepaid, or by other, more expeditious means.

Executed April 12, 2022

Beau Hepler

General Manager

Ray Carroll

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36500

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

EXHIBIT Z

REPLY VERIFIED STATEMENT OF RICHARDSON INTERNATIONAL LIMITED

RICHARDSON

STB Finance Docket 36500

Verified Statement of Robert Bielik

My name is Robert Bielik and I am Vice-President, Transportation, of Richardson International Limited ("Richardson").

I and Richardson are aware of, and support the CP-KC Transaction and encourage the Surface Transportation Board to confirm its approval.

Richardson recently acquired St. Louis-based Italgrani USA, Inc., the largest durum miller in North America. The transaction assets included a milling facility in St. Louis that specializes in semolina and durum flour products, along with grain storage and crop inputs facilities situated at Tolley, Powers Lake, and Benedict (North Dakota); and a commodity trading office in Minneapolis.

Richardson has reviewed the CP-KC Transaction and believes it opens new markets to our company. More specifically, we expect to be able to access new markets for our grain handling facilities located in North Dakota to ship grain to the Gulf area as well as Mexico. Additionally, the CP-KC network resulting from the Transaction will also allow Richardson to source durum for milling at its KCS-served St. Louis durum milling facility from its extensive CP-served network in southern Saskatchewan and from its newly-acquired elevators in North Dakota over new CP-KC single-line routes. Furthermore, the CP-KC Transaction would result in the connection of the St. Louis durum milling facility to important markets in the West and in Mexico over an existing KCS single-line route, which is very important to our business plan. The Springfield Line is an important part of that single-line route.

It is our understanding that Canadian National has asked the Board to order the KCS rail line between Springfield, Illinois, and Kansas City to be divested to it, while granting haulage operating rights back to KCS. We oppose Canadian National's request that the Board divest the Springfield Line to it because it would eliminate single-line service—both on routes that currently exist and routes that will become available as a result of the CP-KC Transaction—that are important to us. Retaining the rail line into St. Louis via the Springfield Line as part of the CPKC network is important to achieving the benefits of a single-line haul over those new routes.

Richardson International Limited
2800 One Lombard Place, Winnipeg, MB, Canada R3B 0X8 P. 204.934.5961 F. 204.947.2647
www.richardson.ca

RICHARDSON

VERIFICATION AND CERTIFICATION

I, Robert Bielik, declare that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this verified statement. Executed April 8, 2022

Robert Bielik
Vice-President, Transportation
Richardson International Limited

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36500

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

EXHIBIT AA

REPLY VERIFIED STATEMENT OF SPARX LOGISTICS INC.

SPARX logistics

1. SPARX logistics Inc. ("SPARX") submits this verified statement in support of the CP-KCS Transaction.
2. SPARX is a leading global logistics provider.
3. SPARX recently introduced a new ocean service from China to the port of Lazaro Cardenas in Mexico, specifically targeting customers with final destinations in the central United States.
4. We believe this service will alleviate some of the congestion, and associated delays, the ports of Los Angeles and Long Beach, creating a valuable option for our customers. Considering the congestion on the USWC the routing via LZC improves the overall transit times into the Midwest of the USA.
5. KCS's reliable intermodal service is a key component of the success of this enterprise. However, the fact that the KCS network does not reach beyond Kansas City requires that some customers must use less efficient interline routings to reach Chicago and points beyond.
6. The CP-KCS Transaction promises to substantially increase the value of routings through the port of Lazaro Cardenas by extending efficient, single-line intermodal service to Chicago, New York, Toronto, and other important destinations. We would like to extend this service into ATL/SAV/NJ and Columbus,OH.
7. We understand that some commenters in this proceeding have questioned whether the market will realistically support a route from Asia through Lazaro to the U.S. Midwest. We clearly believe it can.
8. We have proven through our actions that we believe ocean shipping from Asia to Lazaro Cardenas is a viable way to reach destinations in the Central and Eastern United States. We believe that the CP-KCS Transaction can only strengthen this exciting new option, making it better for our shippers and their customers.
9. For these reasons, SPARX supports the CP-KCS Transaction.

VERIFICATION AND CERTIFICATION

I, Markus Heinken, confirm that the foregoing is true and correct .

SPARX Logistics Inc., Miami, April 18th, 2022

Markus Heinken

VP Global Ocean Procurement

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36500

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

EXHIBIT AB

REPLY VERIFIED STATEMENT OF TERNIUM MEXICO, S.A. DE C.V.

Ave. Munich 101
Col. Cuauhtémoc
San Nicolás, N.L.
Tel 52 81 8865 2828
www.ternium.com

April 29, 2022

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W. Washington,
DC 20423-0001

Re: Verified Statement FD 36500, 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 Adrián Estrada Montemayor, and I serve as General Counsel and Institutional Affairs VP of Ternium México, S.A. de C.V. ("Ternium"). I reach out to you in order to confirm our previous communication dated June 25, 2021, in support to the Canadian Pacific - Kansas City Southern merger ("CPKC Transaction").

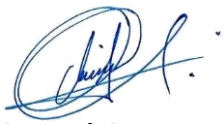
As I mentioned before, Ternium is one of the largest railway service users in Mexico and has a long-standing strategic commercial relationship with Kansas City Southern México, S.A. de C.V. ("KCSM"); using railway infrastructure, Ternium ships (i) slabs from Port of Brownsville and Lázaro Cárdenas, Michoacán to our industrial facilities in Nuevo León, (ii) scrap and direct reduced iron (DRI) to our facilities in Nuevo León and Puebla and (iii) all kinds of steel products from our industrial facilities in Mexico to serve our customers in the region. With KCSM´s railway service, our most relevant manufacturing footprint is covered.

Railway competition is paramount for large rail users like us, therefore we trust that the CPKC Transaction would enhance competition, bring efficiencies and generate flexibility for all rail users in the North American market. Moreover, we expect that the CPKC Transaction will boost the existing rail network and provide new routing and interchange options for rail users, generating competition with other large rail and truck carriers.

Given the foregoing, Ternium supports the CPKC Transaction and respectfully urges the STB to approve it under its current merger guidelines, so the companies can be fully integrated to unlock the benefits of the strategic combination.

Should you have any question or comment on the above, please feel free to contact me.

Sincerely,



Ternium México S.A. de C.V.
Adrián Estrada Montemayor
General Counsel and Institutional Affairs VP

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36500

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

EXHIBIT AC

REPLY VERIFIED STATEMENT OF BRAD SANDERS, USD GROUP

USD GROUP

STB Finance Docket No. 36500

Reply Verified Statement of Brad Sanders

1. My name is Brad Sanders and my business address is 811 Main St, Suite 2800, Houston, TX 77002. I am Executive Vice President, Chief Commercial Officer of US Development Group, LLC ("USDG"). In my role, I am responsible for developing the commercial strategies and the proper execution of them for USDG.

2. USDG has previously submitted to the Board letters supporting approval of the proposed CP/KCS combination. As expressed in our previous letters, USDG supports swift approval of the CP/KCS combination because of the significant benefits we and our customers expect to realize from this transaction. We believe the single-line benefits and new investments made possible by the CP/KCS transaction will provide the improved rail efficiency and economics necessary to support further investment in our DRUbit™ by Rail™ Network.

3. USDG and its partners operate the Hardisty Energy Terminal. In 2021 we began shipping DRUbit™ from our DRU (diluent recovery unit) near Hardisty, Alberta to the Port Arthur Terminal on the U.S. Gulf Coast for sale to numerous refining customers in the United States and international locations by pipe and vessel. Our joint customer chose CP and KCS to provide rail transportation on an interline basis.

USD GROUP

4. Canadian bitumen shipped as DRUbit™ uniquely ships by rail in the United States and Canada as non-hazardous and non-flammable, and with approximately 20% -30% less CO2e emissions than currently available rail and pipeline alternatives, respectively.

5. Switching from dilbit to DRUbit™ requires substantial infrastructure investment. At origin, diluent recovery units are required to transform dilbit to DRUbit™. At destination, additional, specialized infrastructure is required to remove DRUbit™ from railcars for final delivery to refineries. Some of those infrastructure projects are already in progress and/or are completed, including at our Hardisty and Port Arthur facilities. We are proud of the success of our Phase I DRUbit™ Hardisty operation. However, given the volatility in the crude market, additional investments to expand the capacity of the Hardisty facility – what we call Hardisty DRUbit™ Phases II and III – and counterpart unloading facilities are not assured.

6. We believe the CP-KCS Transaction will provide compelling support for additional investments, and in the process enable crude moving by rail as dilbit (sometimes through the crowded Chicago gateway) to be converted to DRUbit™ moving on new CPKC routes. Our Hardisty facility is on the CP network, and many of the refineries to which we ship can ben accessed on the KCS network. The CP-KCS Transaction will connect those origins and destinations in efficient, single line routes that do not exist today, resulting in improved cycle times and reliability. We believe the efficiencies unlocked by the CP-KCS Transaction will make further investments in DRUbit™ more economically viable.

USD GROUP

7. We understand that some comments have questioned whether increased DRUbit™ traffic on CPKC can fairly be attributed to the efficiencies of the CP/KCS Transaction. We answer that question in the affirmative. We believe the Transaction will create more efficient, new single line routes from origins near the Alberta oil sands, on CP's network, to destination refineries on KCS's network, without which new DRUbit™ traffic is much less likely to arise. We understand that CPKC will support new investment in capacity (longer sidings, etc.) on the CP-KCS North-South route connecting Canada with the Gulf Coast, enabling improved cycle times and reliability and the ability to move more product on the same number of trains, which impacts cost, efficiency, and capacity. These efficient new routes promise to incentivize further investment in DRUbit™ infrastructure, thereby speeding up the transition to more efficient, safer DRUbit™.

8. For the reasons stated above and drawing specific attention to the significant additional sustainability benefits that we believe the DBR™ Network will create with the CP-KCS combination, USDG urges the Board to approve the CP-KCS proposed combination as expeditiously as possible. We look forward to seeing the new CPKC as a stronger competitor in the industry.

Respectfully,

Brad Sanders
Executive Vice President, Chief Commercial Officer
USD Group LLC

VERIFICATION

I, Brad Sanders, declare under penalty of perjury that the foregoing is true and correct, to the best of my knowledge. Further, I certify that I am qualified und authorized to file this verified statement.

USD GROUP

Executed this 20th day of APRIL, 2022

Brad Sanders

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36500

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

VOLUME III, EXHIBIT 98

DEPOSITION OF PATRICK OTTENSMEYER (FEBRUARY 22, 2022) (EXCERPTS)

BEFORE THE SURFACE TRANSPORTATION BOARD

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FINANCE DOCKET NO. 36500

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CANADIAN PACIFIC RAILWAY LIMITED, ET AL.

- CONTROL -

KANSAS CITY SOUTHERN, ET AL.

_____

HIGHLY CONFIDENTIAL

- - -

Tuesday, February 22, 2022

- - -

Remote Zoom videotaped deposition of PATRICK J. OTTENSMEYER, beginning at 9:08 a.m. EST, before Christina S. Hotsko, RPR, CRR, when were present on behalf of the respective parties:

A P P E A R A N C E S (Via Zoom)

On behalf of BNSF Railway:
ADRIAN L. STEEL, JR., ESQUIRE
Mayer Brown, LLP
1999 K Street, Northwest
Washington D.C. 20006-11-1
(202) 263-3237
asteel@mayerbrown.com
LAUREN GOLDSCHMIDT, ESQUIRE
Steptoe & Johnson, LLP
1330 Connecticut Avenue, Northwest
Washington, D.C. 20036
(202) 429-3000
lgoldschmidt@Steptoe.com

On behalf of Canadian Pacific:
DAVID L. MEYER, ESQUIRE
Law Office of David L. Meyer
1105 S Street, Northwest
Washington, D.C. 20009
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david@meyerlawdc.com
ADAM S. PARIS, ESQUIRE
ALEXA M. COVER, ESQUIRE
Sullivan & Cromwell, LLP
1888 Century Park E
Los Angeles, California 90067
(310) 712-6663
parisa@sullcrom.com

On behalf of Canadian National Railway:
MATTHEW J. WARREN, ESQUIRE
JOSEPH V. CONIGLIO, ESQUIRE
Sidley Austin, LLP
1501 K Street, Northwest
Washington, D.C. 20005
(202) 736-8996
mjwarren@sidley.com

A P P E A R A N C E S (Continued)

On behalf of Allied Rail Unions
RICHARD S. EDELMAN, ESQUIRE
Mooney Green Saindon Murphy & Welch, P.C.
1920 L Street, Northwest, Suite 400
Washington, D.C. 20036
(202) 783-0010
redelman@mooneygreen.com

On behalf of Union Pacific Railroad:
MICHAEL L. ROSENTHAL, ESQUIRE
SAHEL SRA, ESQUIRE
Covington & Burling, LLP
One CityCenter
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Washington, D.C. 20001-4956
(202) 662-5448
mrosenthal@cov.com

On behalf of Kansas City Southern:
W. TODD MILLER, ESQUIRE
WILLIAM A. MULLINS, ESQUIRE
ERIN GLAVICH, ESQUIRE
Baker & Miller, PLLC
2401 Pennsylvania Avenue, Northwest, Suite 300
Washington, D.C. 20037
(202) 663-7823
wmullins@bakerandmiller.com

On behalf of CSX Transportation:
PAUL A. CUNNINGHAM, ESQUIRE
JILL COLLINS, ESQUIRE
NEILL KLING, ESQUIRE
Harkins Cunningham, LLP
170 K Street Northwest, Suite 300
Washington, D.C. 20006
(202) 973-7601
pac@harkinscunningham.com

A P P E A R A N C E S (Continued)

On behalf of Norfolk Southern:

CHRISTOPHER ABBOTT, ESQUIRE
Weil Gotshal & Manges, LLP
2001 M Street, Northwest, Suite 600
Washington, D.C. 20036
(202) 6822-7197
christopher.abbott@weil.com

Also Present:

Scott Forman, Video Technician
Peter Curran, Veritext Tech
Cassandra P. Quach, In-House Counsel

reasonable rates and service, but we'll stay with rates for the second.

I mean, is KCS under an obligation to actually make that happen? That's what I would call an affirmative -- and then understand that it is happening and confirm, internally at least, that such rates are being offered. That's an affirmative obligation.

MR. MEYER: Object to the form.

THE WITNESS: Again, I would say the evidence of fulfilling the obligation is the presence of growth that we have demonstrated over the last 20 years and the absence of any complaints or issues with shippers that -- that we are not fulfilling our obligation. Or interline partners.

BY MR. STEEL:

Q. So it's KCS' position that it's up to shippers to tell you whether or not they believe you are complying with the obligation you accepted from the board?

MR. MILLER: Objection to form.

Misstates his testimony.
BY MR. STEEL:
Q. You may answer.
A. I'll give you the same answer I gave you before. The -- the presence of growth that we've seen over Laredo with shippers and with our interline partners and the absence of complaints or issues that we are not fulfilling our obligations.
Q. Okay. The -- just a couple of quick questions.
It's possible -- or is it possible that the increase in growth could have come from practices and policies that drove business to KCS and precluded other equally efficient routes from securing? Not saying you did, but that it's possible.
A. I don't believe our growth record reflects that. We have grown with our interline partners in addition to growth on our own network.
Q. So the --
A. Again, the absence of any complaints or

issues from our interline partners over the last 20 years would be pretty powerful evidence that we have not violated our obligations under those agreements.

Q. So just to wrap this little segment up -- it will be my last question -- I'll just ask it again, and you can answer it or not answer it, and we'll move on. I think it's important for us to know and for the board to know whether or not KCS believes that it has, again, an affirmative obligation to actually ensure -- take "actually" out -- to ensure that your company offers commercially reasonable rates.

Do you have that obligation? Just a yes or no, please.

MR. MILLER: Objection. Asked and answered.

BY MR. STEEL:

Q. I didn't hear that, but you can answer, I think.

A. Yes.

Q. You do have an obligation? Thank you,

sir.

Does KCS have policies, practices, instructions, or training for its employees concerning how they should implement the open gateway and commercially reasonable terms commitments? Are you aware of any?

A. You asked a number of questions there.

Q. Okay.

A. Go back to the beginning. Policies, practices --

Q. -- instructions or training documents/materials about implementing the open gateway commitments, how to do that.

A. The reality is our -- our policies, our practices are more focused on these -- the environment that we're in, the competitive market for traffic, desire to grow our cross-border business on our network and with our interchange partners.

We're much more focused on those considerations. There's, I would say, general awareness of obligations but not extensive

training. If you're talking about our sales and marketing force on the -- with -- fixed sales and marketing group of those requirements, it's more focused on how do we grow, how do we grow our own network, how do we work with our interchange partners at the border, near the border to drive growth in cross-border traffic.

Q. Thank you.

So just to be clear, you're indicating that there are policies, practices, instructions, or training that are provided to employees about how to implement the open gateway commitments?

A. You cut out there a little bit. Can you restate that question?

Q. Yeah. I'll just take the time to read it.

Does KCS have policies, practices, instructions, and/or training to implement the open gateway and commercially terms -- reasonable terms commitments?

MR. MILLER: Objection. Asked and answered.

MR. STEEL: Well -- okay.

THE WITNESS: I think I've, you know, accurately described our practices regarding how we look at pricing decisions, how we make pricing decisions, based on the market realities, the modal competition, more market-based practices as opposed to the -- I think the practice that you described which is more driven by compliance with the obligations of the agreement.

BY MR. STEEL:

Q. That's fine. And I appreciate that.

MR. STEEL: But let me just ask Mr. Mullins if -- Mr. Mullins is aware of the discovery responses on that same question, but if any such documents are located, Mr. Mullins, if you would let us know about those.

BY MR. STEEL:

Q. Does KCS -- and you may or may not know this.

Does KCS track rate offers which KCSM makes to other carriers or to shippers? Could we go, for instance, and ask and find for 2019

offering where BNSF or UP -- where the shipper had come and said --

MR. STEEL: Sorry, Bill, I'll shorten it quickly.

BY MR. STEEL:

Q. -- the shipper came and said, I want to use BNSF or UP to get to Laredo and then I want to go to Monterrey?

Do you know whether or not the offers that KCSM made to KCS, in a sense, for a single-line movement, and let's say the offer to UP or the shipper for their movements? Do you all track those? Do you know?

MR. MILLER: Objection to form. Adrian, the last thing is compound, but -- again, you have sort of three --

MR. STEEL: Okay. All right.

MR. MILLER: -- questions --

MR. STEEL: That's fine.

MR. MILLER: Do you want to pause and re-ask your question?

C E R T I F I C A T E

I do hereby certify that the aforesaid testimony was taken before me, pursuant to notice, at the time and place indicated; that said deponent was by me duly sworn to tell the truth, the whole truth, and nothing but the truth; that the testimony of said witness was taken by me in stenotypy and thereafter reduced to typewriting under my direction; that said statement is a true record of the proceedings; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this statement was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

CHRISTINA S. HOTSKO, RPR, CRR