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# Applicants' Rebuttal Presentation

October 6, 2022

**The Transaction Yields Significant Benefits**

# Applicants Strive to Create More Competition

We were not obligated to negotiate “protective conditions” that our rivals deemed sufficient

How We Approached  
Negotiated  
Resolutions

Reasonable Solutions for  
Impacts with a Bona Fide Nexus  
to Transaction

How Rivals Wanted  
Us To Negotiate



## What You've Heard – Customers

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*“They’ve done a good job, they’ve lived up to their promises and executed and we’ve seen dramatic improvement in service.” – J.D. Irving, Limited*

*“Canpotex supports the CP-KCS combination because it will extend service by an already trusted rail partner and enhance the reliability and resiliency for our supply chain to our customers. This will create new reach, creating new possibilities for us to support the growing volumes for the farmers we serve around the world.” – Canpotex Limited*

*“A forced sale of the [Springfield] line to CN would remove an efficient single-line [option] and forcing us to use a less efficient alternative.” “Haulage rights, we don’t see as a cure.”*  
– **Bartlett, a Savage Company**

*“For some of our facilities such as Council Bluffs, IA, other Class I railroads could provide service to Mexico...but we have continued to choose KCS single line routes because they best meet our transportation needs.”* **Bartlett, a Savage Company**



## What You've Heard – More Customers

*“[O]nce the CPKC merger is approved, the incredible efficiency of a single customer-centric rail carrier that connects Canada, the United States, Mexico, all within one network, one railway for the one trip plan, will in fact become precisely what our industry needs to meet meaningful market share gains in the merchandise category. . . CPKC railway is laser-focused on serving the needs of the industry and the public. . . Fortunately, with a successful launch of the CPKC railway, Canada, Mexico, and the United States will be better equipped, will have a better supply chain, create better businesses and the local communities in and around our rails will become only stronger” – David Fellon of Progressive Rail*

*“We believe the CPKC transaction will enhance that efficiency...new line service routes and investment opportunities. This increased efficiency is the reason we support the CPKC transaction...the CPKC will give Ray-Carroll more efficient rail options than it has today and the forced sale of the Springfield line will leave Ray-Carroll and its member owners with less efficient rail options than it has today.” – Beau Hepler, of Ray-Carroll County Grain Growers*

*“This transaction will unlock new routes, new options and new competition for Hapag-Lloyd and our customers. The CPKC combination will improve our access to markets along the west and gulf coast and thanks to the CP single line access to key U.S. Midwest markets, we will be able to access important destinations like Chicago and Minneapolis via ports such as Lázaro Cárdenas and New Orleans.” – Uffe Ostergaard of Hapag-Lloyd*

## What You've Heard – Even More Customers

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*“[W]e are very excited for the opportunity to create a three-country, temperature-controlled network underpinned by the single-line network that can really only exist with the CPKCS combination. . . [W]e will be able to have more competitive sources to move our goods between Mexico, the U.S. and Canada.”* – **Matthew Moore of Americold Logistics**

*“[S]o we see this opportunity with cooperation of the merger between KCS and CP as a boon for moving people who otherwise could not get to jobs between our two cities and the development of passenger service throughout the northern part of the state”* – **John Spain from the Baton Rouge Area Foundation**

*“The CPKCS combination is exciting for us because it opens up transportation options that do not exist today...The CPKCS combination will extend CP's reliable service to new single line operations to the U.S., with, specifically, routes from Mexico and Laredo, Texas to Livonia, Michigan and across Canada will be served more efficiently versus truck.”* – **Gerardo Magno of Mastronardi Produce Limited**

*“NFI supports the combination of two trusted rail partners and we, therefore, respectfully urge the board to approve the combination.”* – **Mark McKendry from NFI Industries**

*“[T]he SOLA Super Region supports STB's approval of this merger application and we acknowledge the agreement between CP and Amtrak to initiate New Orleans to Baton Rouge passenger rail service.”* – **Peter Wagner of Southeast Louisiana Super Region**

## What You've Heard – Our Adversaries

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*“BNSF believes that end-to-end mergers such as this are generally procompetitive and benefit the rail industry and the public.”* – **BNSF**

*“[Y]ou’ve gotta have a level of ownership to be able to make the investments at the line and the problem with trackage rights or haulage rights is that we’re not going to be able to make the investments that are needed to develop the line.”* – **Canadian National**

*“CP is an excellent operator.”* – **Norfolk Southern**

*“I agree, they are great operators.”* – **Canadian National**

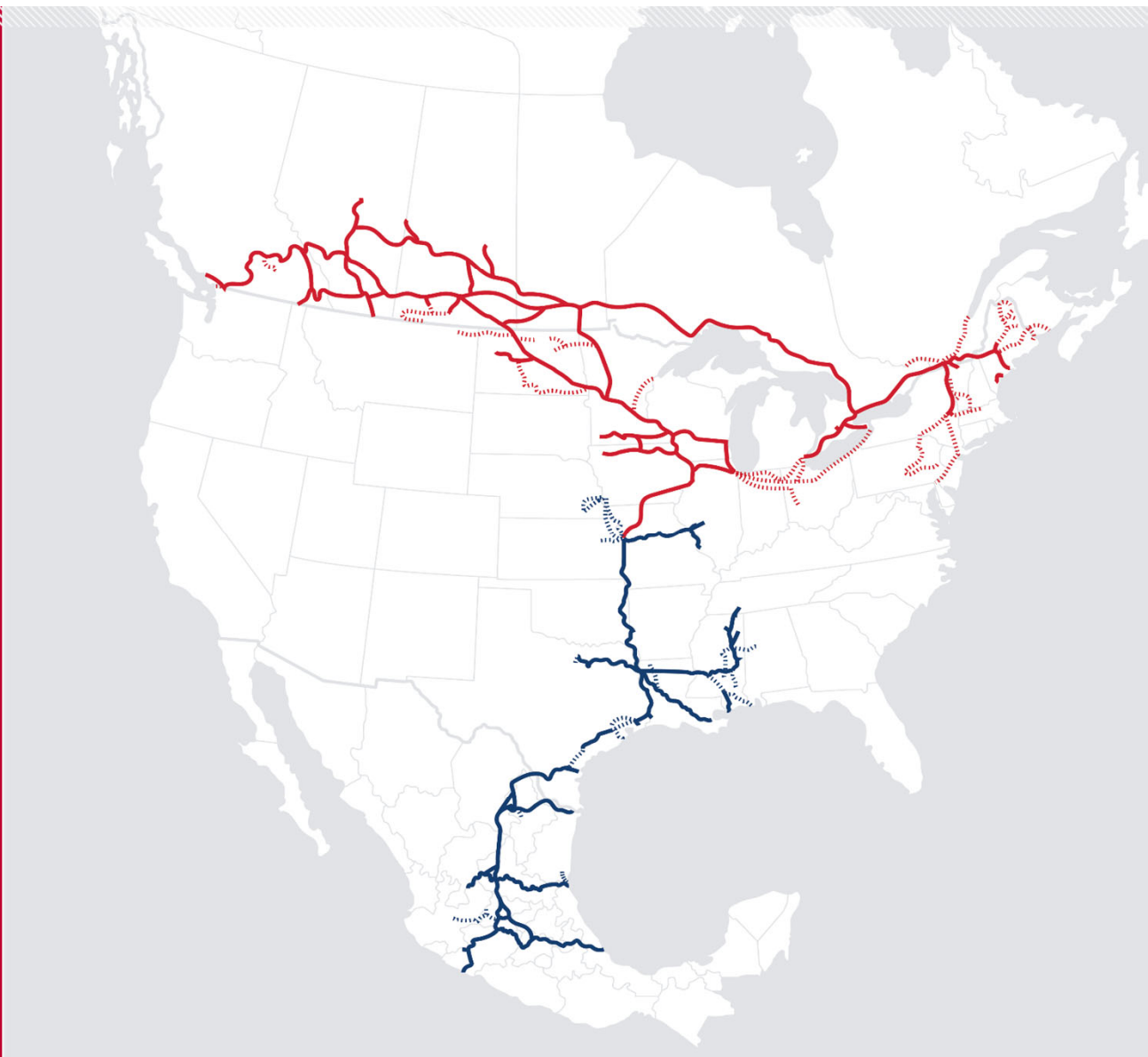
*“[W]e're capacity constrained right now in the United States. Most of our terminals are at a hundred percent capacity.”* – **Commissioner Carl W. Bentzel of Federal Maritime Commission**

## Transaction-Related Traffic Gains Almost Exclusively Originate and/or Terminate in the United States

- ✓ 93.3% of rail-to-rail diversions (216,675 units)
- ✓ 98.1% of traffic from new opportunities (229,171 units)
- ✓ 100% of traffic shifts from truck to rail (63,644 units)

\* Represents Year 3 fully phased in levels

Source: Baranowski O.V.S Workpaper "Miles by Country.xlsx"



**100% of anticipated traffic gains generate U.S. public interest benefits, even if traffic merely passes through the United States**

- Sparks a more competitive North American transport ecosystem
- Supports investment in robust U.S. rail infrastructure
- Generates new railroad employment in the United States (see Unifor testimony)
- Takes trucks off of U.S. highways
- Supports USMCA and Continent-wide economic development – good for the U.S. economy, U.S. consumers, and North American supply-chain resiliency

# Shippers Benefitting from New Competition

Every traffic gain by CPKC reflects additional competition (not just private revenue gains), and competition benefits even when incumbents respond and retain their traffic

**ALL**

# The Class 1 Competitive Response to CP/KCS Has Already Begun



ŠF dądgldq S dflilf U dlaurdg +F S , z loqr arqjhu eh sduw| wr wkh H P S surjudp 1ý X S z lokrz hyhu eh h{sdqglqj rxuuhodwlrqvk ls z lwk wkh F dądgldq Q dwlrqdo+F Q , dąg p dn.lqj wkh p rxu h{foxvlyh F dądgldq H P S sduwqhuř

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[Home](#) > [Customers](#) > [Announcements](#) > [Intermodal](#) > [Domestic Miscellaneous](#)

## EMP Service Change to/from Canada

**Announcement Number:** IM2022-124

**Categories:** Domestic Miscellaneous

**Posted Date:** September 9, 2022

Dear Intermodal Customer,

Effective October 8, 2022, the Canadian Pacific Railroad (CP) will no longer be party to the EMP program. As such, customers will not be able to waybill EMPs to or from the CP after this date. UP will however be expanding our relationship with the Canadian National (CN) and making them our exclusive Canadian EMP partner. UP and CN will provide service to and from all points in Canada on the CN network. We are collaborating with the CN on service, pricing and equipment allocation to provide a seamless transition to meet your intermodal needs to and from Canada.

All UP (and Mexico) originating rate documents with CP rates will be expired. Documents will be updated with routing and rates, including updated CN options by October 8, 2022.

For all Canadian originated traffic destined to the UP (and Mexico), please reach out to your CN representative for updated routing and rates.

If you have any questions, please contact your Union Pacific representative.

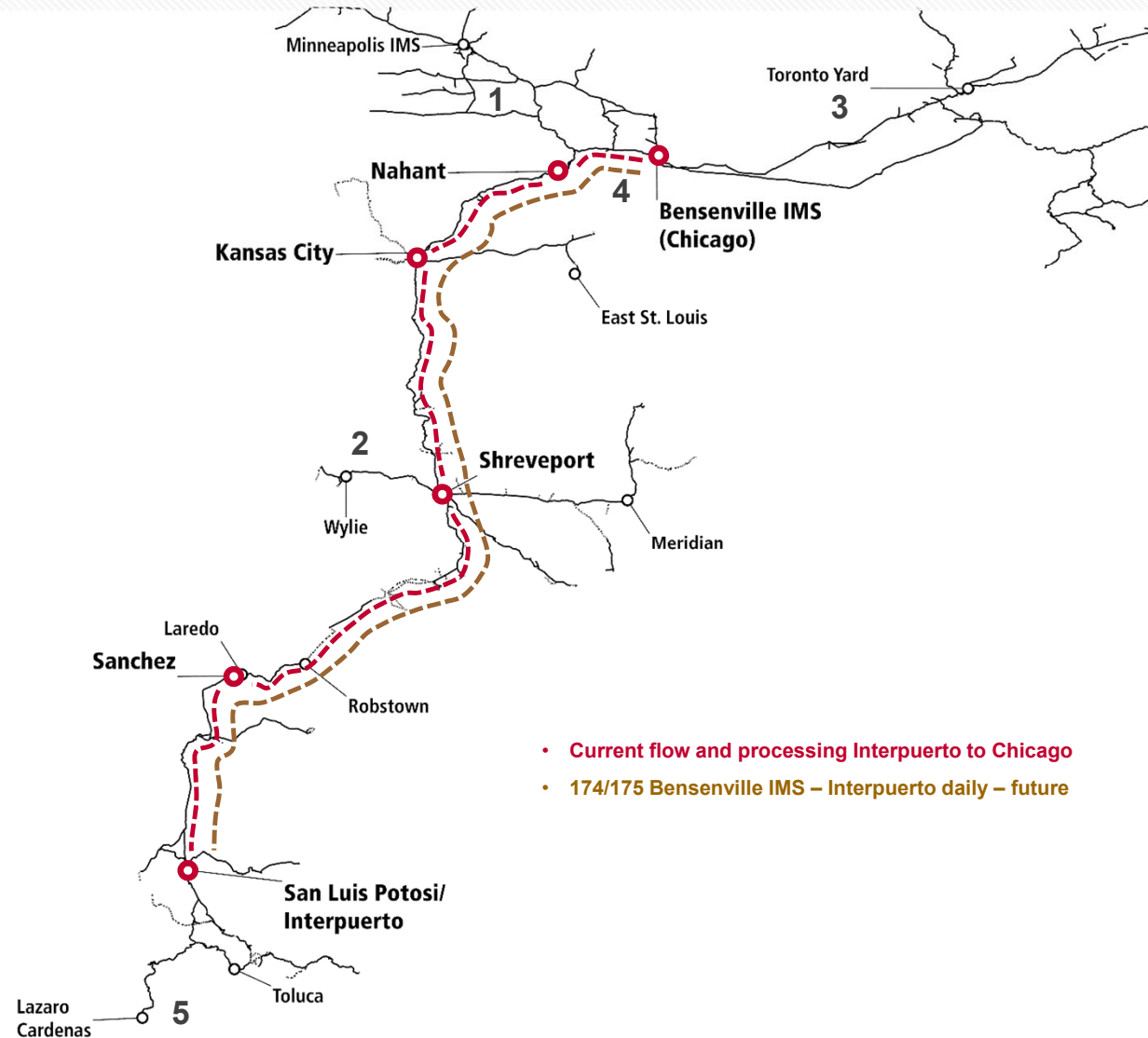


# **Operational Planning and Service Assurance**



# More Efficient and Effective Single-Line Services

- 5 long-haul, single-line, train pairs unlock the ability to compete
  - 160/161 Minneapolis – Toluca (Intermodal / Manifest)
  - 162/163 Bensenville – Wylie (Intermodal / Manifest)
  - 170/171 Toronto – Lázaro Cárdenas (Intermodal / Auto / Manifest)
  - 174/175 Bensenville – Interpuerto (Intermodal / Manifest)
  - 176/177 Bensenville – Lázaro Cárdenas (Intermodal)
- Balanced daily plans which create:
  - Velocity
  - Reliability
  - Service



## We Did Exactly What We Said We Would Do

“Applicants will be filing a robust Application under the pre-2001 rules, which will address all of the public interest considerations. As former-Commissioner Clyburn explains, ‘[a]pplying the New Merger Rules to the proposed CP/KCS combination is not necessary for the Board to appropriately and thoroughly evaluate the proposal.’ Clyburn V.S. (Exh. 1) at 6. **This is not to say that the Application will necessarily meet all of the formal requirements of the 2001 rules.** Those requirements have never been applied and there is uncertainty regarding exactly what would be required to meet them.” CP-8/KCS-8 at 17 (Filed Apr. 12, 2021)

“Applicants understand the Board’s keen interest in assuring that mergers of all shapes and sizes do not cause service disruptions, and Applicants are fully committed to ensuring that there will be no such disruptions when they combine CP and KCS. **The Board will have all the information it needs to satisfy itself that Applicants have carefully planned for the integration of these railroads and will implement measures to monitor and adjust service levels during the integration process so that shippers’ service levels are safeguarded (all under appropriate Board oversight, of course).**” Id. at 19.

## Pillar 3 – What Applicants Have Already Committed to Report

- Continue to report the metrics required pursuant to Ex Parte Nos. 724 and 770 during Board's oversight period, regardless whether the Board terminates those reporting requirements, for:
  - Specific corridors raised by other parties:
    - Laredo, TX to St. Paul, MN and Chicago, IL
    - Meridian Speedway
  - The following yards:
    - Shreveport
    - Kansas City
    - Bensenville
    - St. Paul
    - Wylie Intermodal Terminal
- In addition, report specifically on performance over trackage owned by third parties, including **Metra and UP**

## Applicants' Additional Reporting Commitments

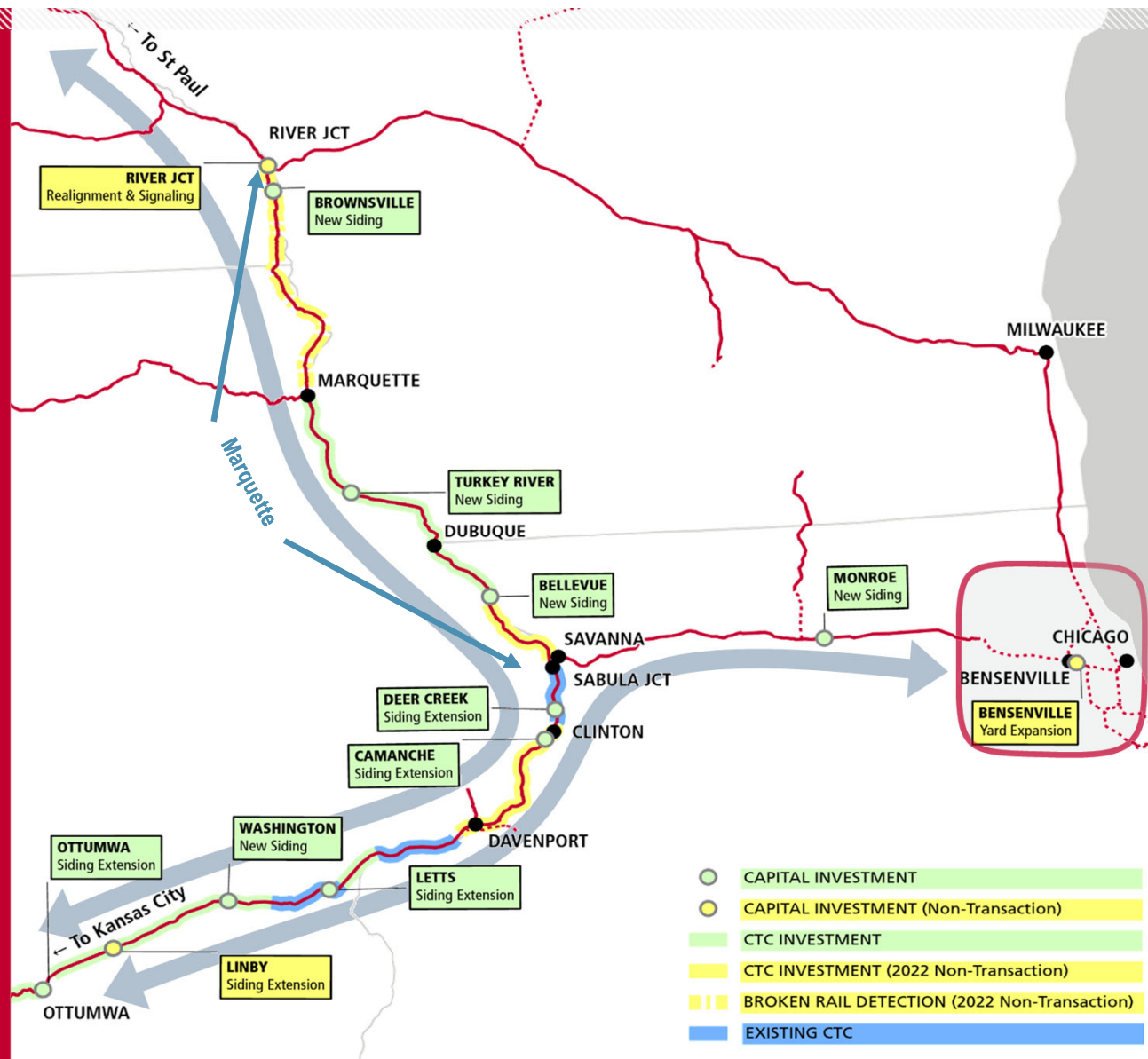
With respect to the areas of Chicago and Houston, Applicants commit to monthly reporting on the following metrics during the Board's oversight period:

- ✓ CPKC Train counts
- ✓ CPKC Train lengths
- ✓ CPKC Transit times
  
- ✓ And in Chicago: All delays to Metra trains on Milwaukee District-West and -North related to CP freight operations, whether or not they lead to poor Metra OTP

**Chicago**

# Significant Capital Investment to Ensure Safety and Service

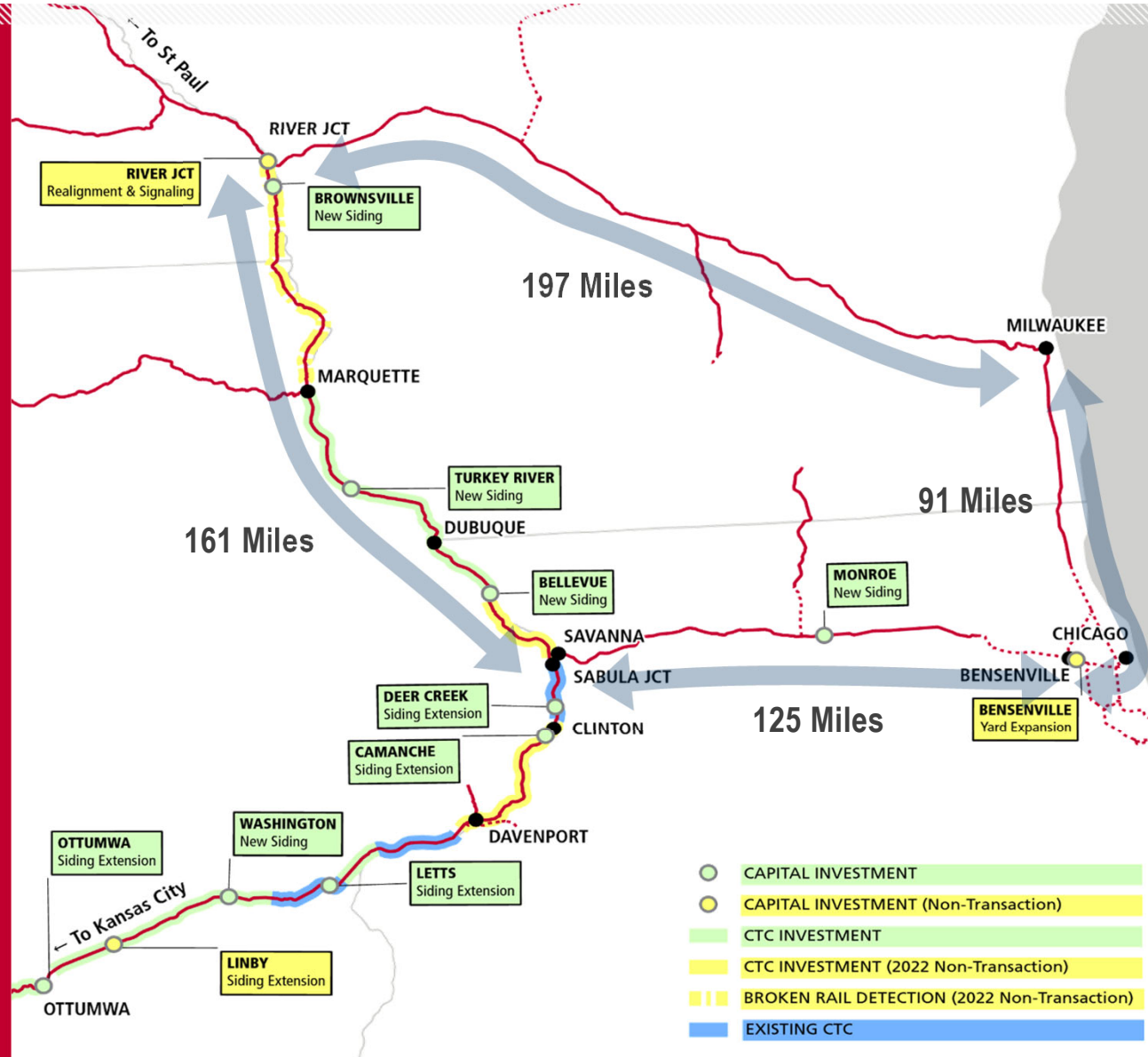
1. Our planned investments and our operations in the Chicago area demonstrate that there will be ample capacity to support the trains contemplated.
2. CP is committed to maintaining a very high level of service.
3. CP dispatching is critical to everyone's success.



# Milwaukee Detour

River Jct	Sabula Jct	161 Miles
Total Miles		161
River Jct	Milwaukee	197 Miles
Milwaukee	Bensenville	91 Miles
Bensenville	Sabula Jct	125 Miles
Total Miles		413

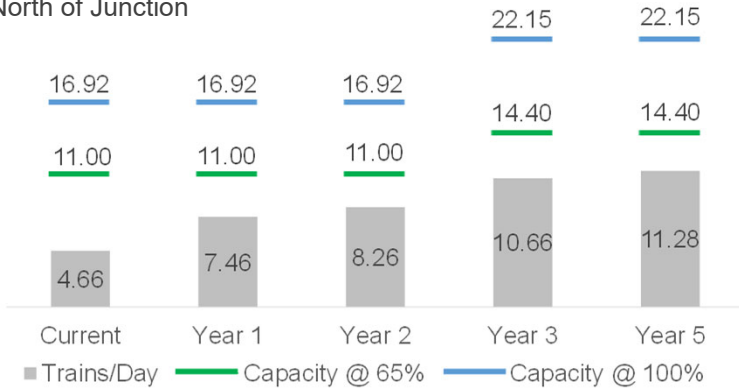
- Routing via Milwaukee and Bensenville is 252 miles out of route



# Marquette Subdivision Capacity

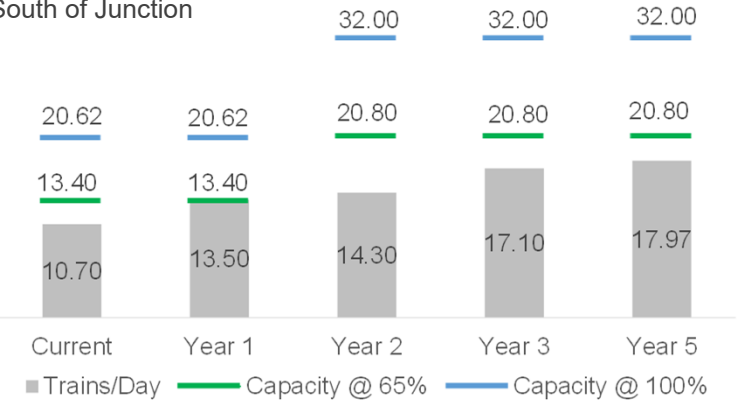
## MARQUETTE SUB CAPACITY

North of Junction



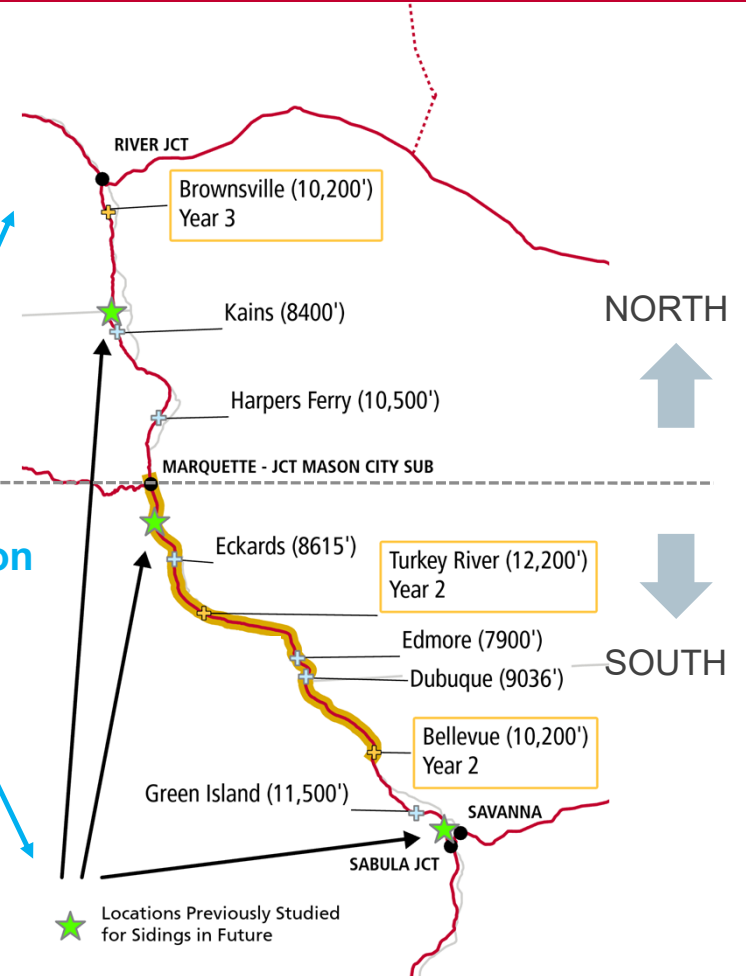
## MARQUETTE SUB CAPACITY

South of Junction



Note: Train counts sourced from Appendix A and T

## Marquette Subdivision

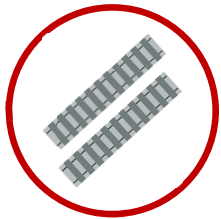




# Metra's Simulation Errors

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The discrepancies CP found in Metra's model compared to real world operating conditions were significant, widespread and numerous. The result was a simulation which did not accurately reflect real-world conditions.



## Missing Infrastructure

Missing or incomplete infrastructure drastically changes model output



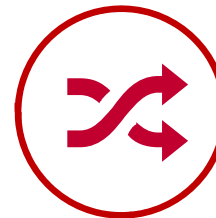
## Coding of Delays

Coding actual delay as a planned event dwell defeats the purpose of simulation



## Not using Randomization

Randomization is critical when modeling freight railroads to replicate variations seen in daily operations



## Priority Settings

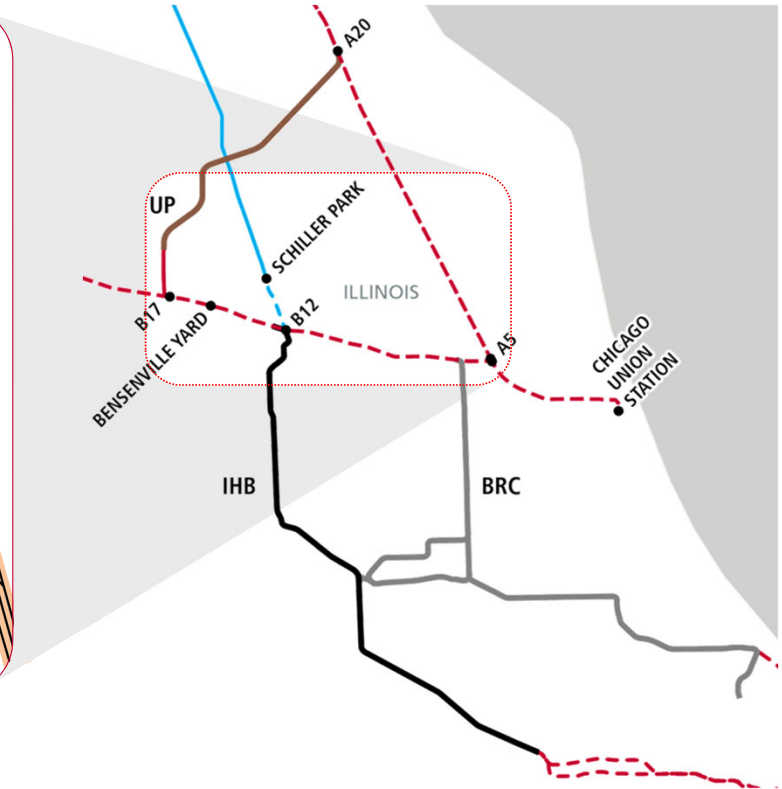
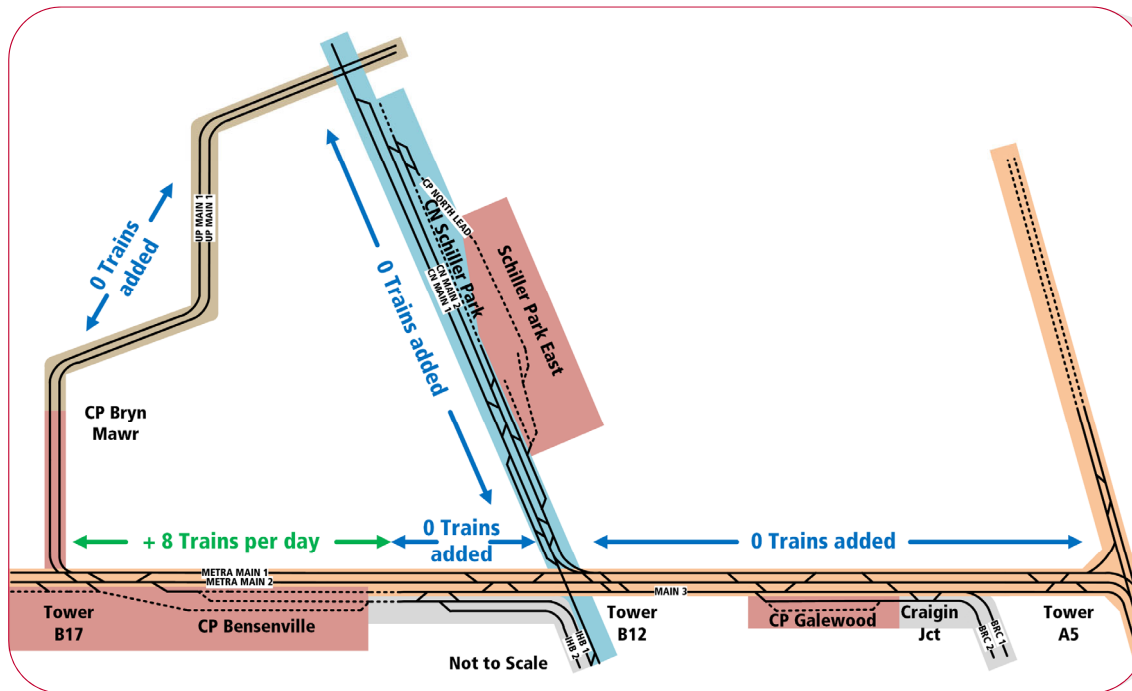
Inaccurate priority settings will mean inaccurate dispatch logic leading to skewed results

## Metra Discovery Timeline

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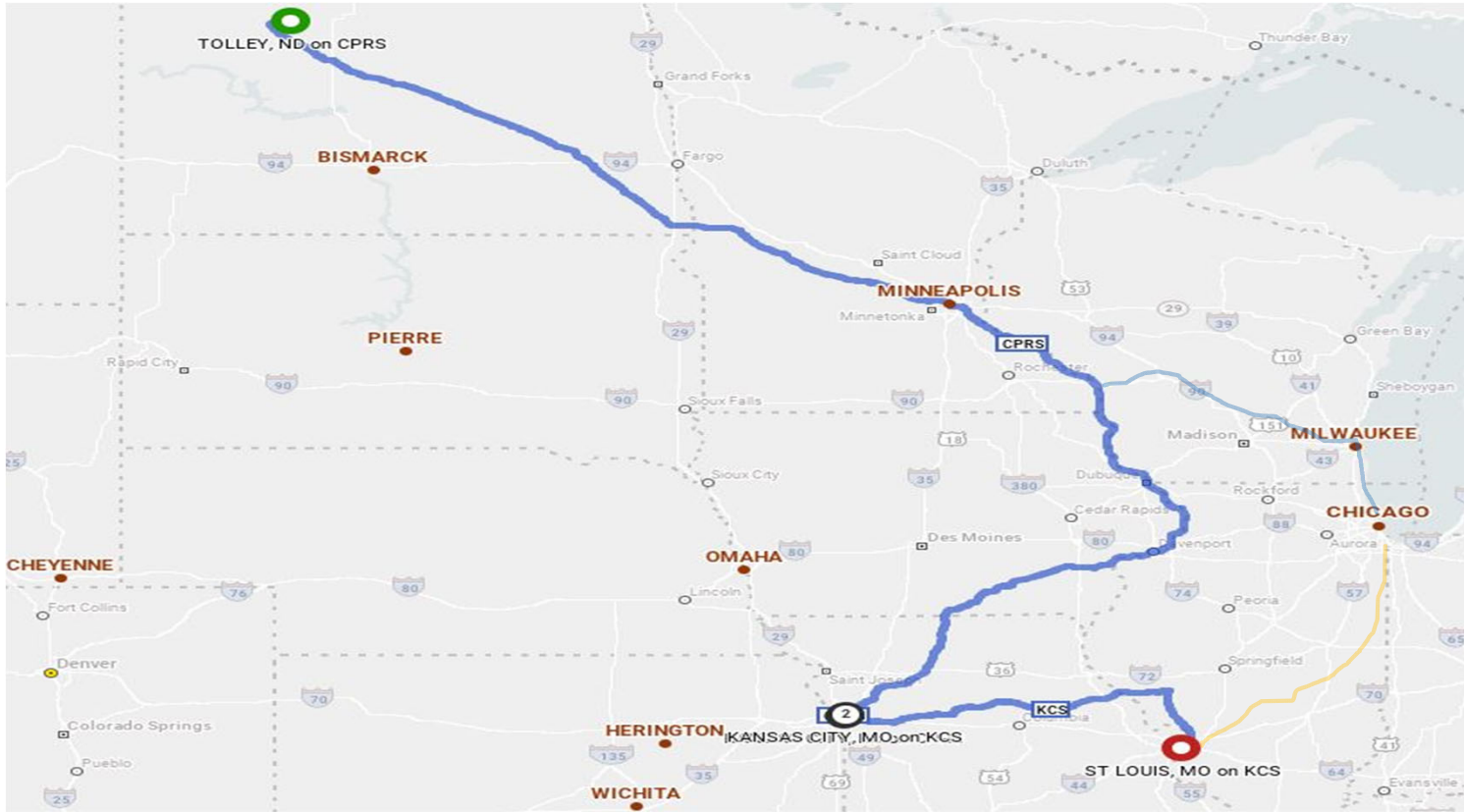
- December 2021 – January 2022: Metra requests timetables and track charts
- December 2021 – January 2022: Applicants meet with Metra repeatedly
- December 2021 – February 2022: Applicants produce the most current versions of Metra's requested documents
- Early February 2022: Metra has the RTC inputs it requested
- March 15, 2022: Metra files grievously flawed RTC model
- June – July 2022: Metra filed equally flawed revised models
- July 12, 2022: Applicants file Rebuttal RTC Report
- July – September 2022: Metra repeatedly filed prohibited rebuttal verified statements
- September 28, 2022: Mr. Mullholland heavily relies on latest rebuttal verified statement in testimony.

# Trains East of Bensenville



- Bensenville reconfiguration will transform the yard
- CP Intermodal and Automotive facilities at Schiller moving to Bensenville as part of the reconfiguration

# Potential Route – Tolley, ND to St Louis – CP / KCS



# Fixing Metra's Bad Math

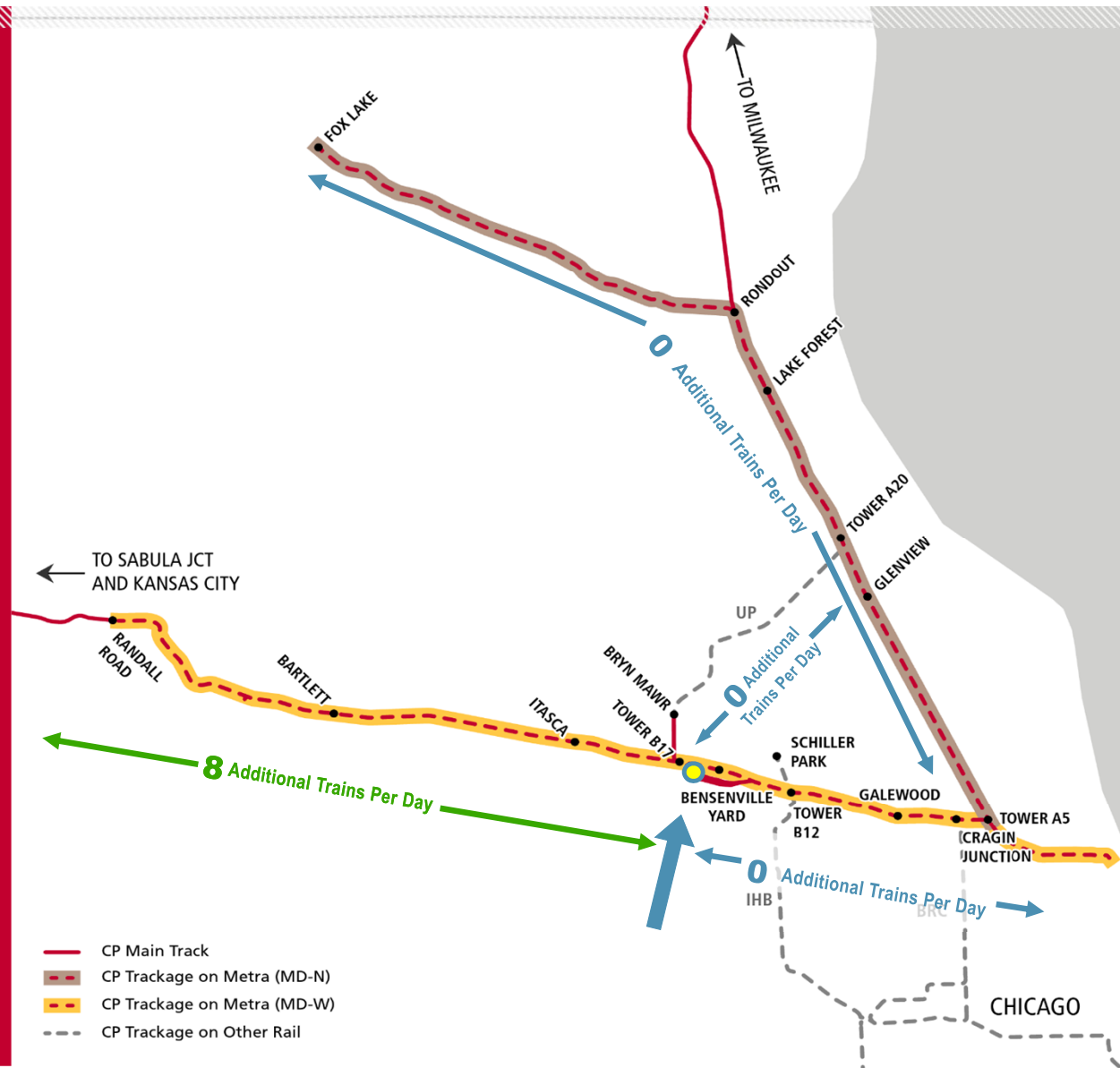
3 (existing)

~~+ 6~~ (Marquette)

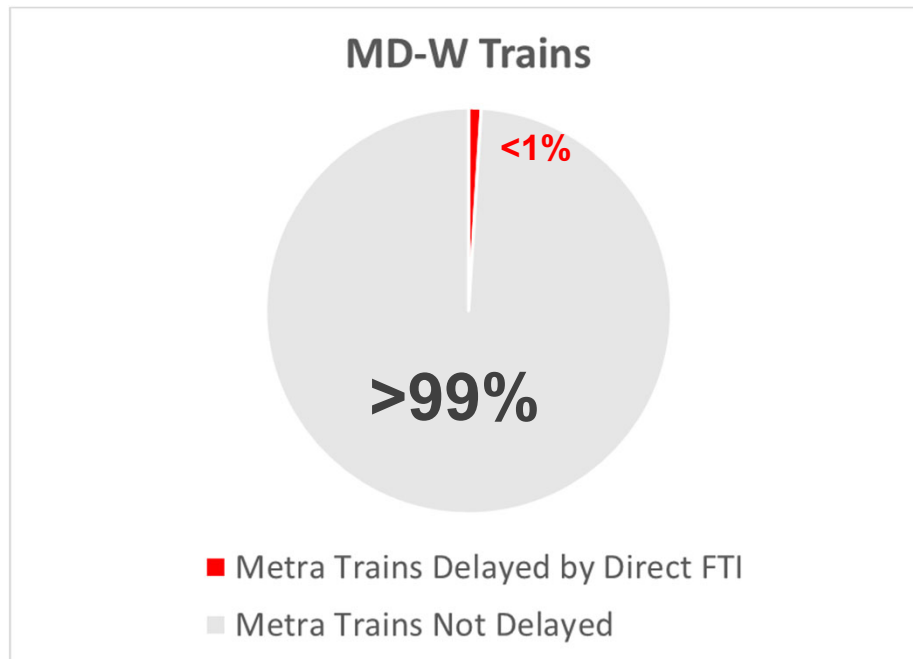
+ 8 (by Year 3)

~~+ 1~~ (?)

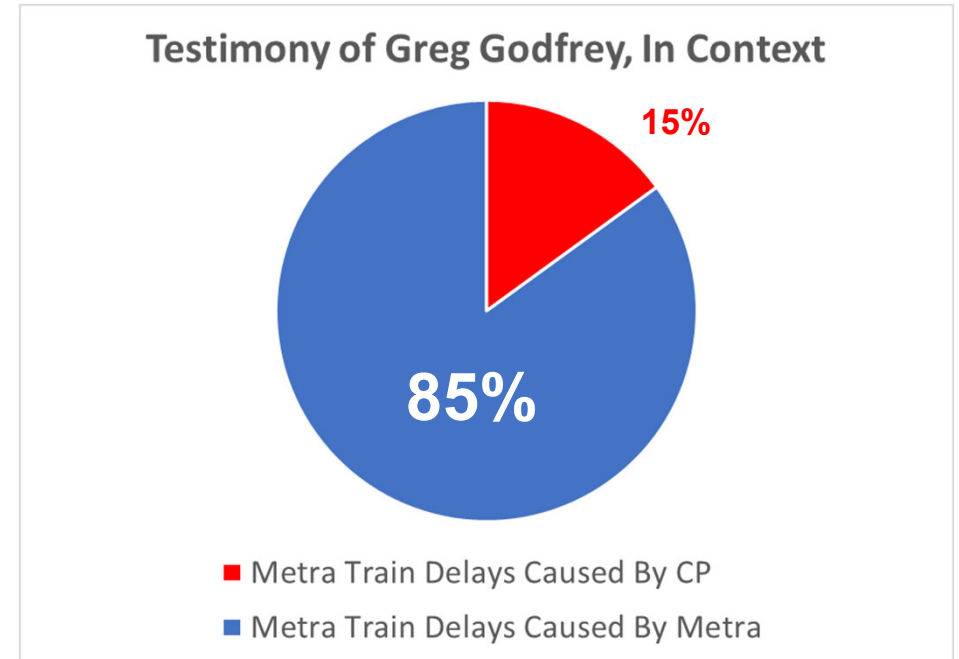
= 11



## Fixing Metra's Bad Math (Continued)



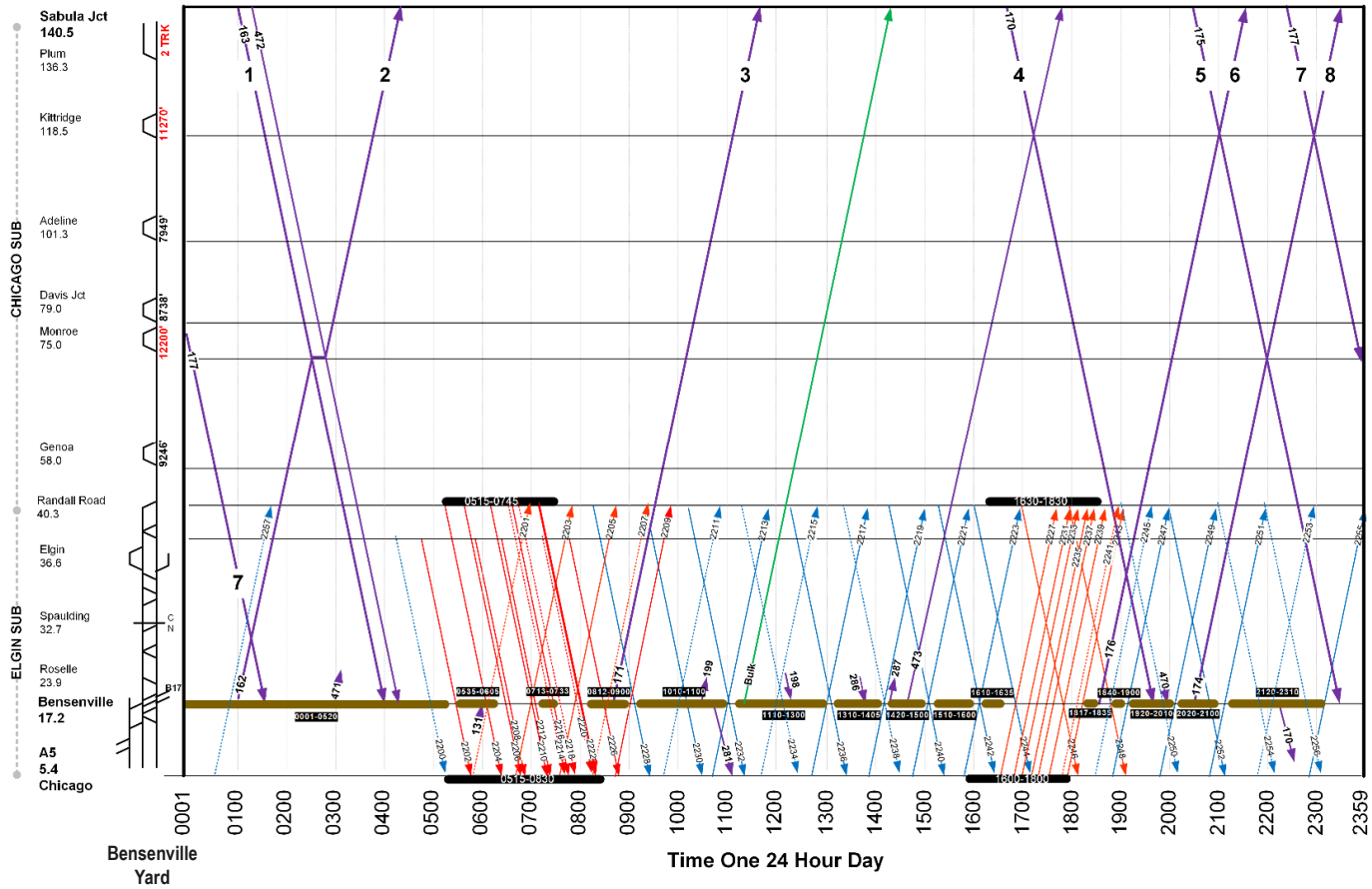
**Less than 1% of Metra's trains are delayed by CP**



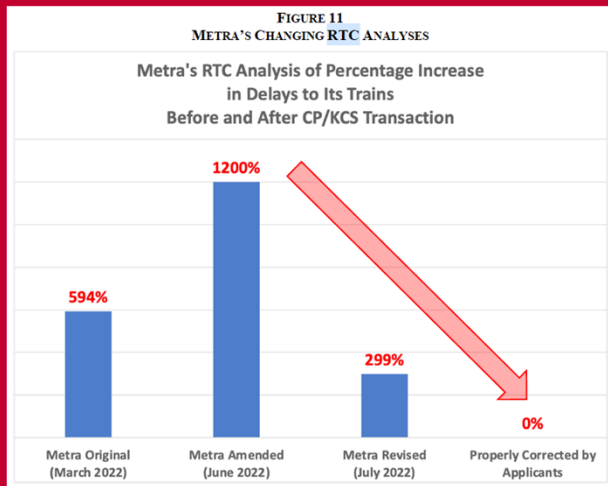
**85% of the train delays experienced by Metra are caused by Metra or otherwise outside of CP's control**

# The Operating Plan Will Avoid Impacts by Design

MAXIMUM Slots available vs. CURRENT Plus transaction related increase in trains



# RTC Modeling Incredibly Sensitive to Tiny Input Changes



CP-53/KCS-39, Vol. 1, page 175 (July 12, 2022)

Metra's consultant explained the impact of a single, tiny error:

**“MULHOLLAND:** So that was a regrettable mistake that we did correct in the record. What happened is was for one Metra train we had transposed a a -- a mileage marker were will – a mile post it was either like supposed to be you know for example a 100.12 and we had entered it in manually as a 100.21 for one train that Metra train unfortunately was sitting in a place that it would not sit in the real world and as a result of that one train several other Metra trains got backed up behind it and that error caused delays to those dozen or so trains on the last day that really cranked up the statistics.”

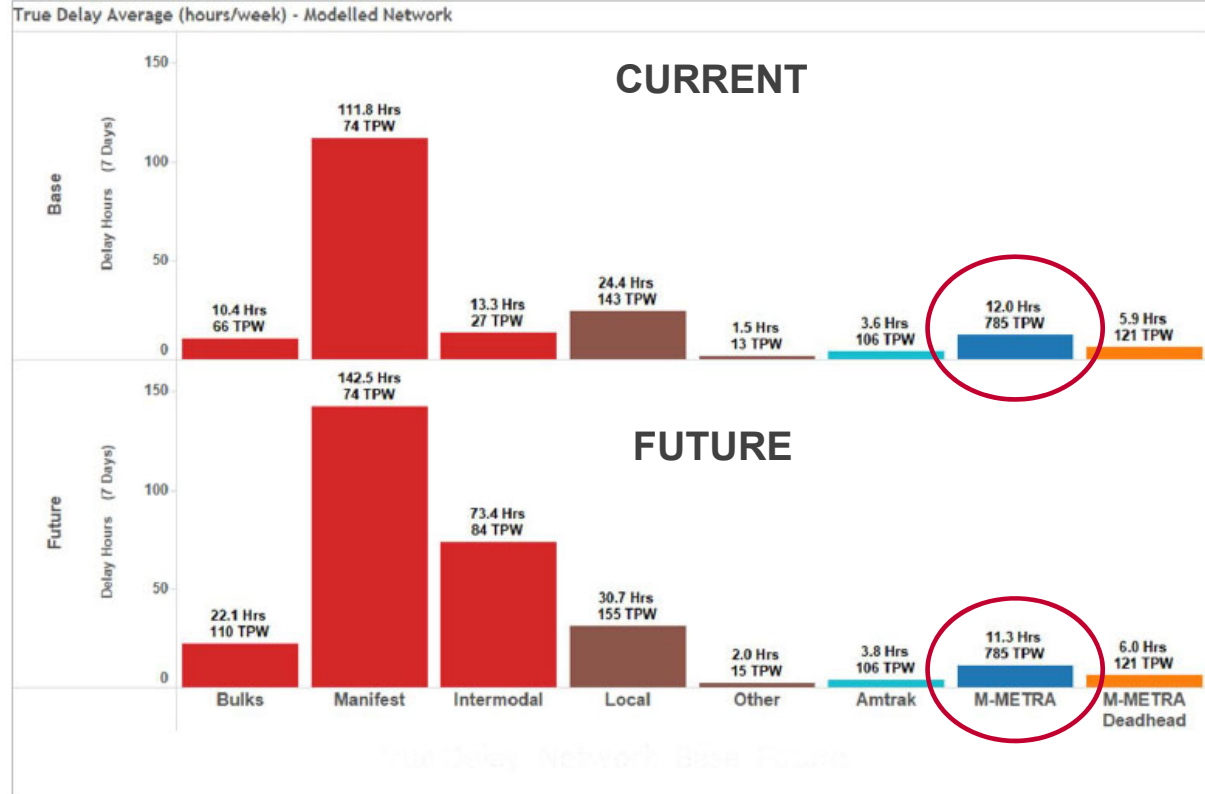
Hearing Tr. (Sept. 28, 2002) (remarks of Metra consultant Mulholland)



# Our Correction of Metra's RTC Analysis

No adverse impact on Metra.

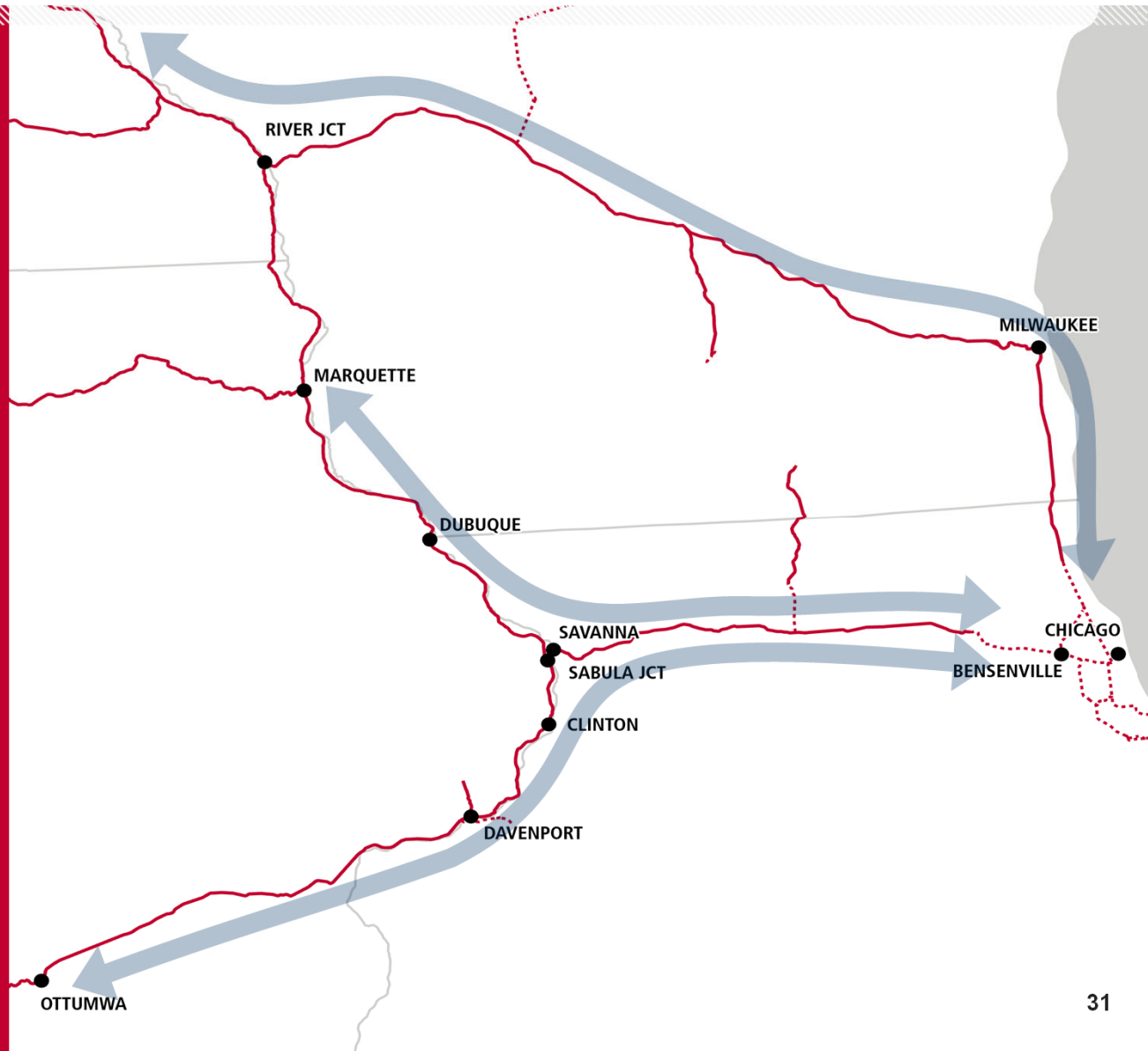
Figure 2.1 Modeled Network True Delay Base vs. Future



**Metra has renegotiated its agreement with CP multiple times, as recently as 2003 – freight railroad control of dispatching always preserved**

- Before Metra's existence: Milwaukee Road dispatched all trains
- **1982** – Agreement between Milwaukee Road Trustee and RTA: Milwaukee Road retains dispatching
- **1985** – Trackage Agreement between Milwaukee Trustee and Soo Line as Milwaukee Road's successor: Soo Line retains dispatching responsibility
- **1993** – Amendment Agreement **between Soo Line and Metra**: transfers maintenance to Metra; dispatching retained by Soo Line
- **2003** – Trackage Agreement **between CP and Metra**: addressed addition of ICE to joint trackage; CP retained dispatching

# Metra's Dispatching Would Be Counterproductive



# Metra On Time Performance

## METRA DISPATCHED LINES

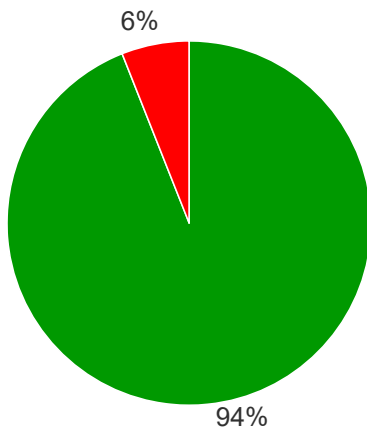
## CP DISPATCHED LINES

SWS (Southwest Service)

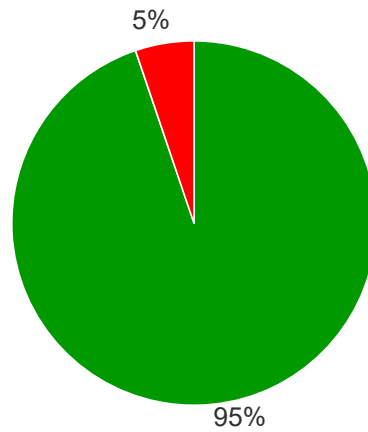
RI (Rock Island)

MD-W (Milwaukee District West)

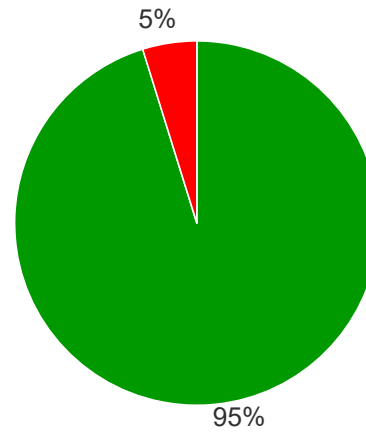
MD-N (Milwaukee District North)



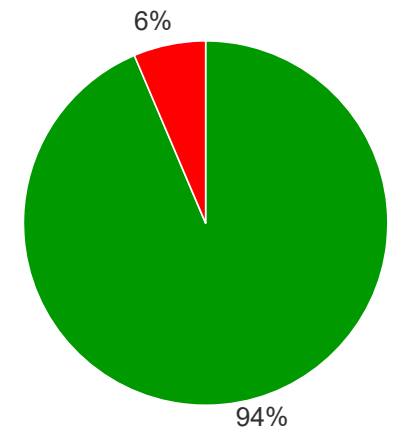
~1 freight train / day



~4 freight train / day



~3 freights / day on Elgin  
~4 freights / day off B17



~11 freights / day on C&M

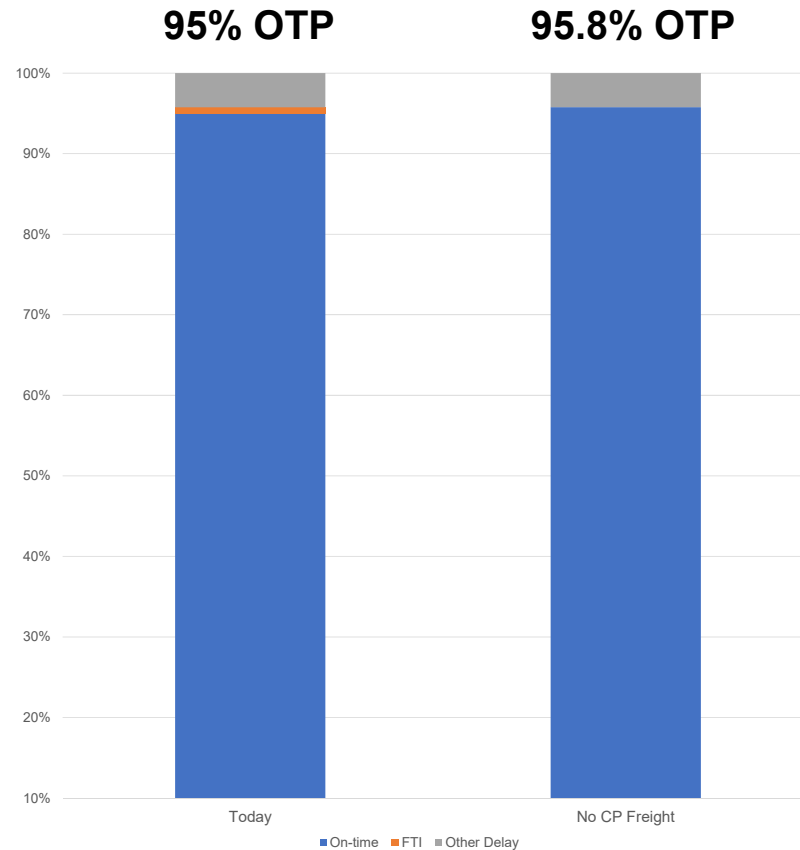
**PERFORMANCE ON METRA DISPATCHED LINES WITH FREIGHT TRAINS IS SIMILAR TO CP**

Source: Metra on time performance report – average 2016 - 2021

# Metra On-Time Performance

- Mr. Godfrey misled Board when questioning our pie chart
  - Implied CP delays 15% of Metra trains
  - In fact, he said 15% of delays are from CP trains
  - Means **85%** of delays have **NOTHING** to do with freight trains or CP dispatching decisions

## What if we removed all CP Freight Delays



Metra dispatching would not result in a material improvement to Metra on-time performance

**Metra  
dispatching  
would not  
eliminate delays  
from freight  
trains because  
“it’s the right  
thing to do for  
the network”**

*“I’ve personally given instructions and assisted to move a freight train several times during our rush hour because it’s the right thing to do for the network”*

**Greg Godfrey, Metra’s Consolidated Control Center  
Director, Hearing Tr. (Sept. 28, 2022)**

## CPKC's Commitments to Metra

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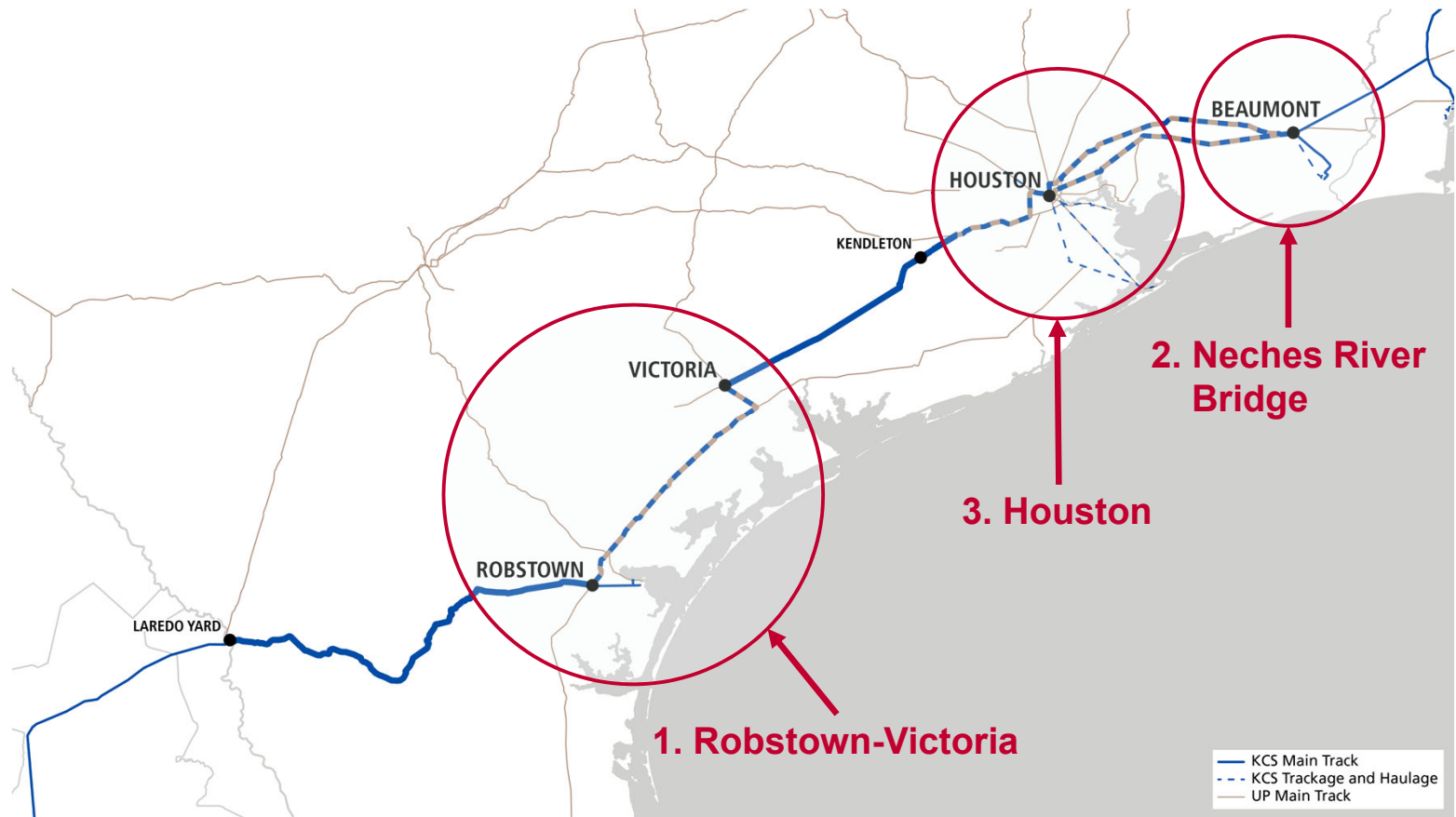
- ✓ Will not force CPKC freight trains operating between Kansas City and St. Paul, MN over the lines we share with Metra (except in emergency detour situations).
  - ✓ Will not object to Metra resuming of its full pre-COVID schedules on Metra's MD-W and MD-N lines.
  - ✓ Will work collaboratively with Metra on improved real-time communications about dispatching decisions that might have an impact on Metra's scheduled trains.
  - ✓ Will support collaborative assessments of proposed Metra operational changes outside peak windows (when Metra needs our consent to add trains).
  - ✓ Will support an agreed-upon escalation process to avoid or resolve disputes about issues impacting Metra train performance.
- ✓ Will report monthly on-time performance and delays due to freight train interference.
  - ✓ Will work collaboratively to reach agreement on a mutually agreed RTC model for MD-W and MD-N lines.
  - ✓ Will include in our quarterly reviews our best estimates of future freight demand on the MD-W and MD-N lines.



# Texas Shared Lines



# Texas Shared Lines Overview



# Brownsville Sub – Inari to Bloomington

UP Turner Presentation Slide 14:  
Header should be “TPD at End of 2025 vs. 65%”

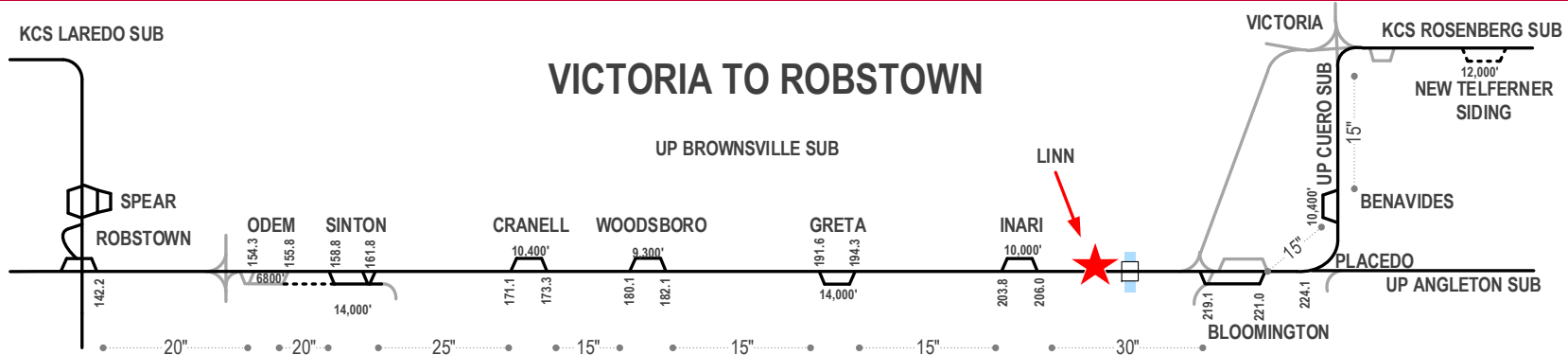
**The Brownsville Subdivision has a bottleneck problem under optimistic assumptions**

Inari-Bloomington, Applicants' assumptions (@5 min. spacing)			Inari-Bloomington, Applicants' assumptions (@10 min. spacing)		
Capacity 100%	Capacity 65%	TPD at End of 2022 vs 65%	Capacity 100%	Capacity 65%	TPD at End of 2022 vs 65%
41.1	26.7	1.7	36.0	23.4	-1.6

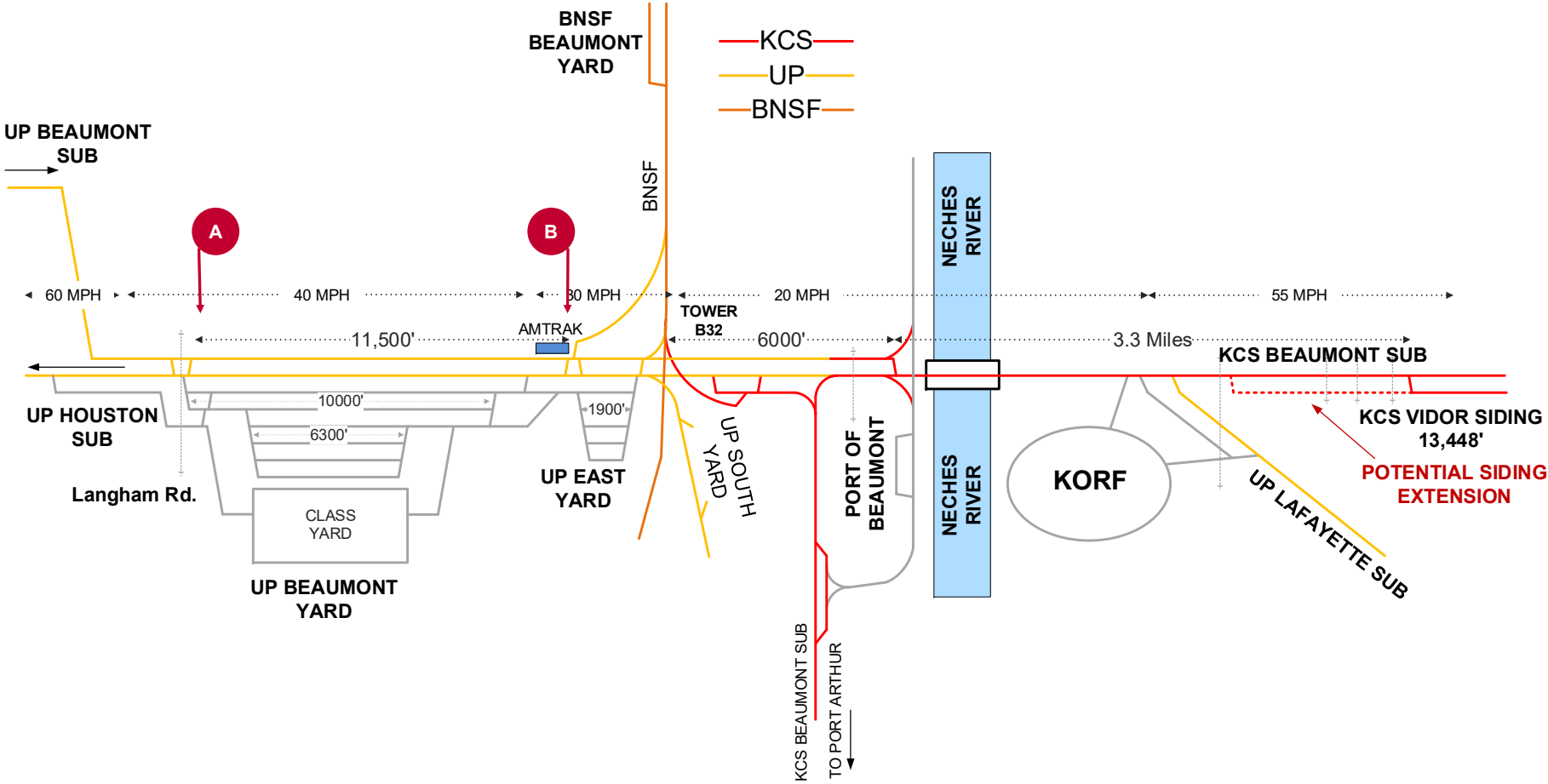
*Note: Red 'X' marks are present over the TPD values in the original slide.*

COMPLETE CORRECTED TABLE 1 FROM ELPICK / ORR RVS  
CAPACITY CALCULATIONS AND REMAINING CAPACITY – VICTORIA TO ROBSTOWN

Subdivision	Segment	Length	Time SB	Time NB	Capacity 100%	Capacity 65%	TPD at End of 2025 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	30	30	41.1	26.7	1.7
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



# Neches River Bridge

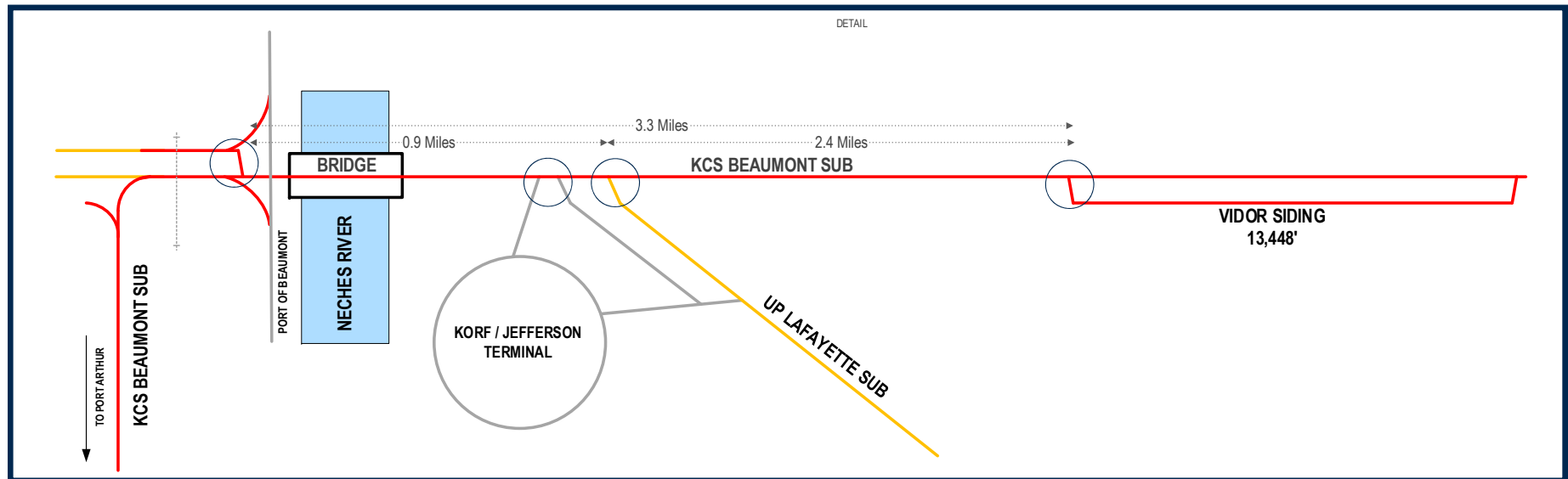


# Neches River Bridge

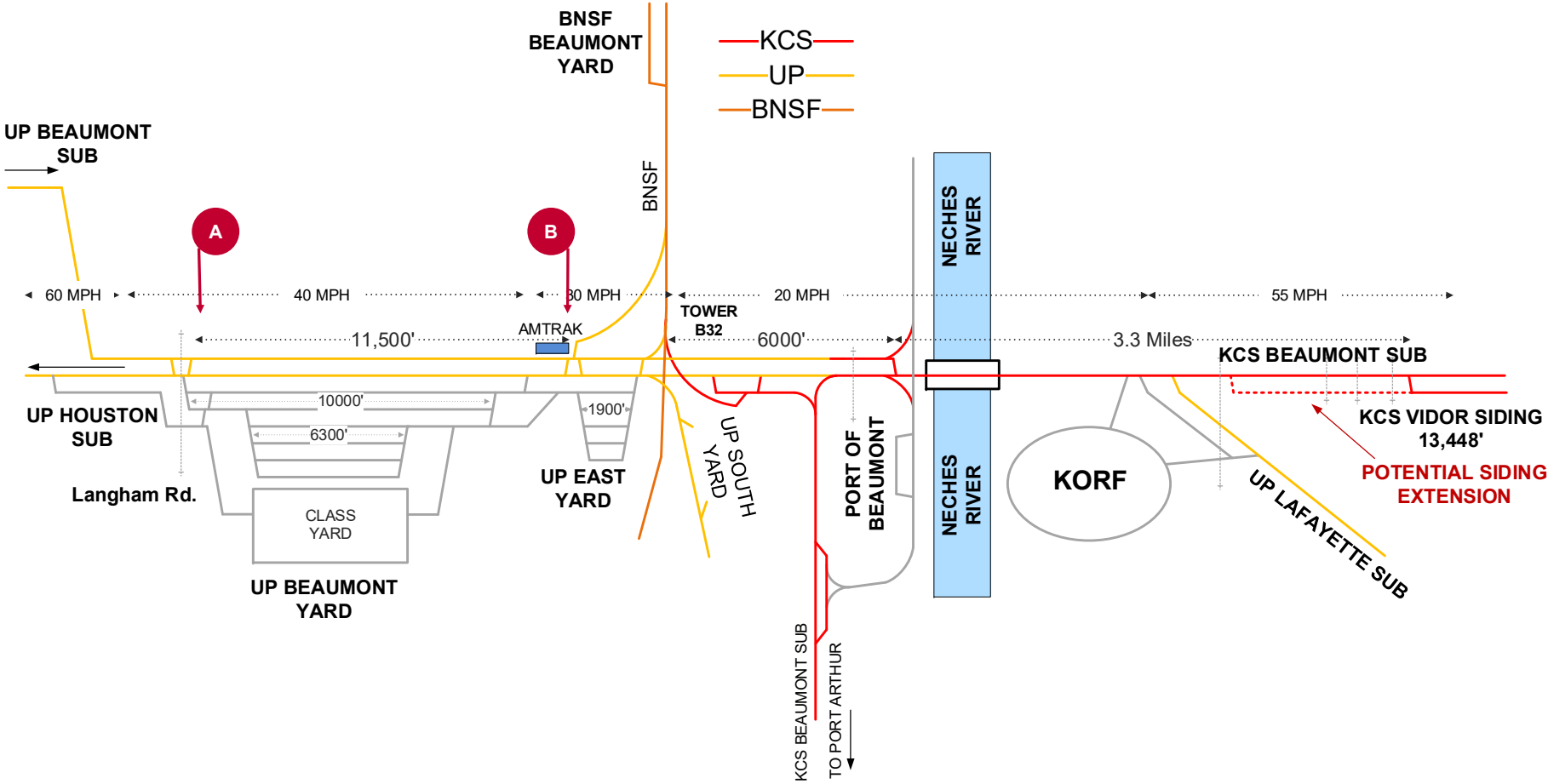
Standard single track analysis



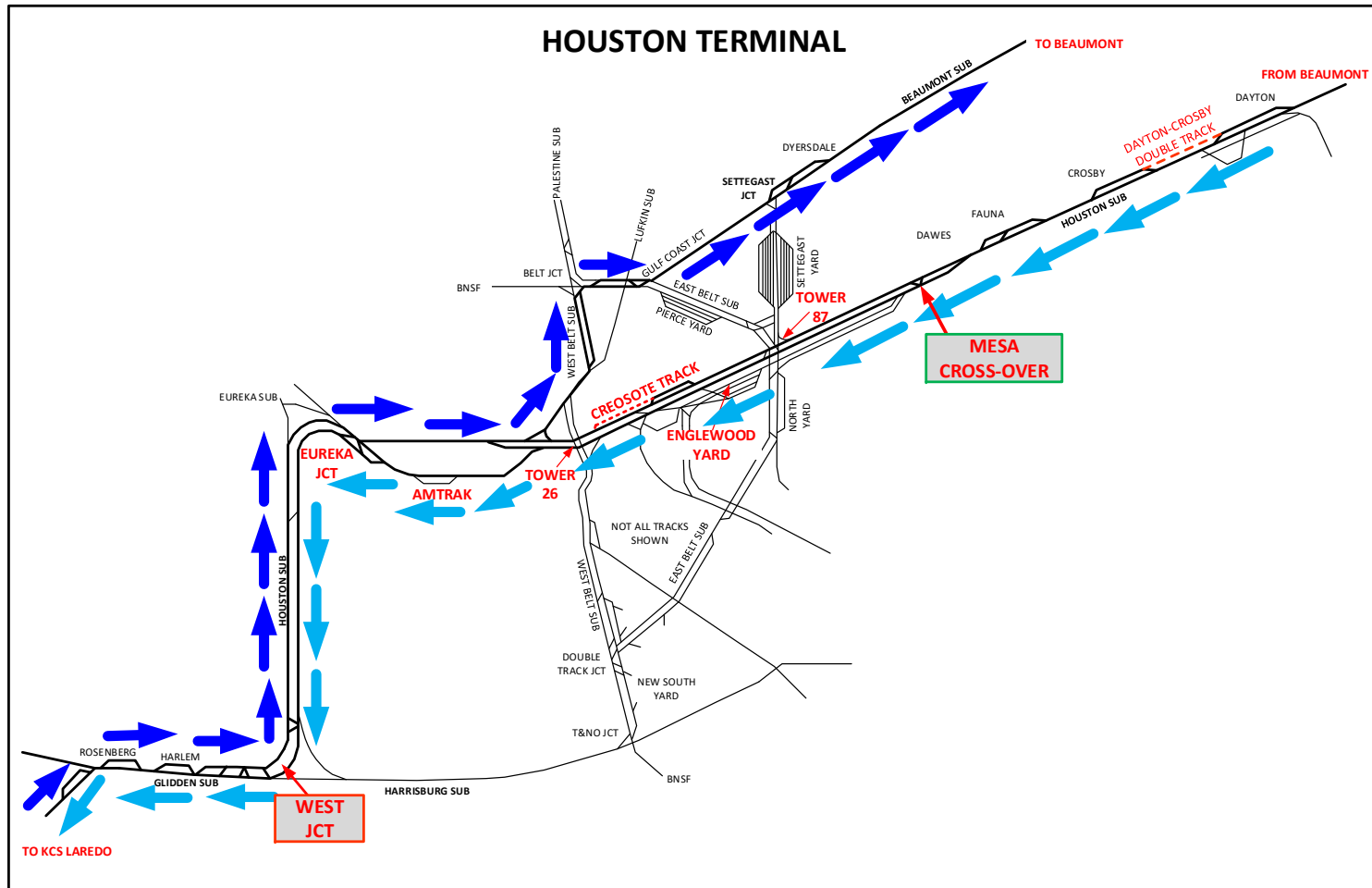
Complexity of Neches River single track



# Neches River Bridge

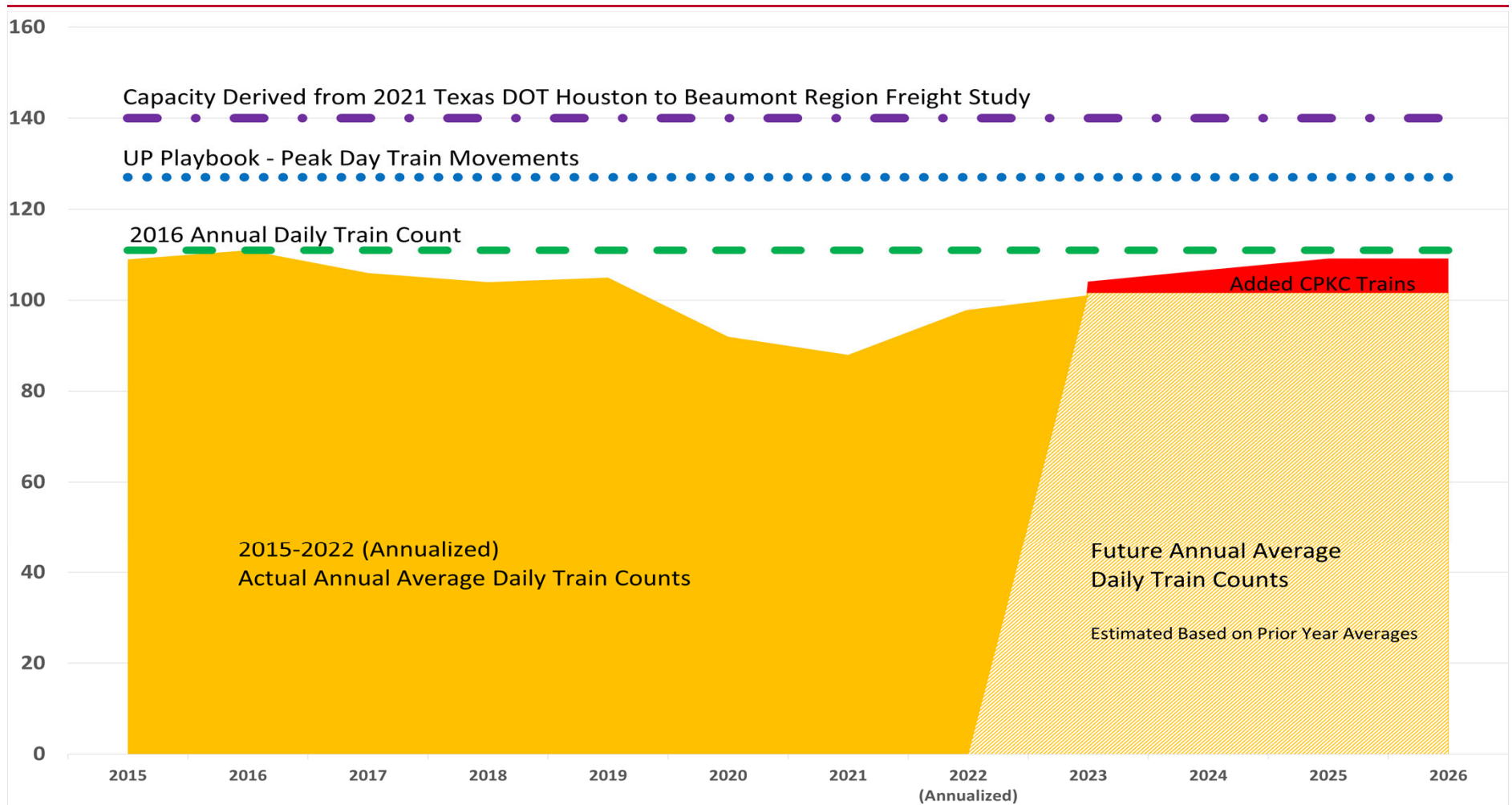


# Houston Terminal



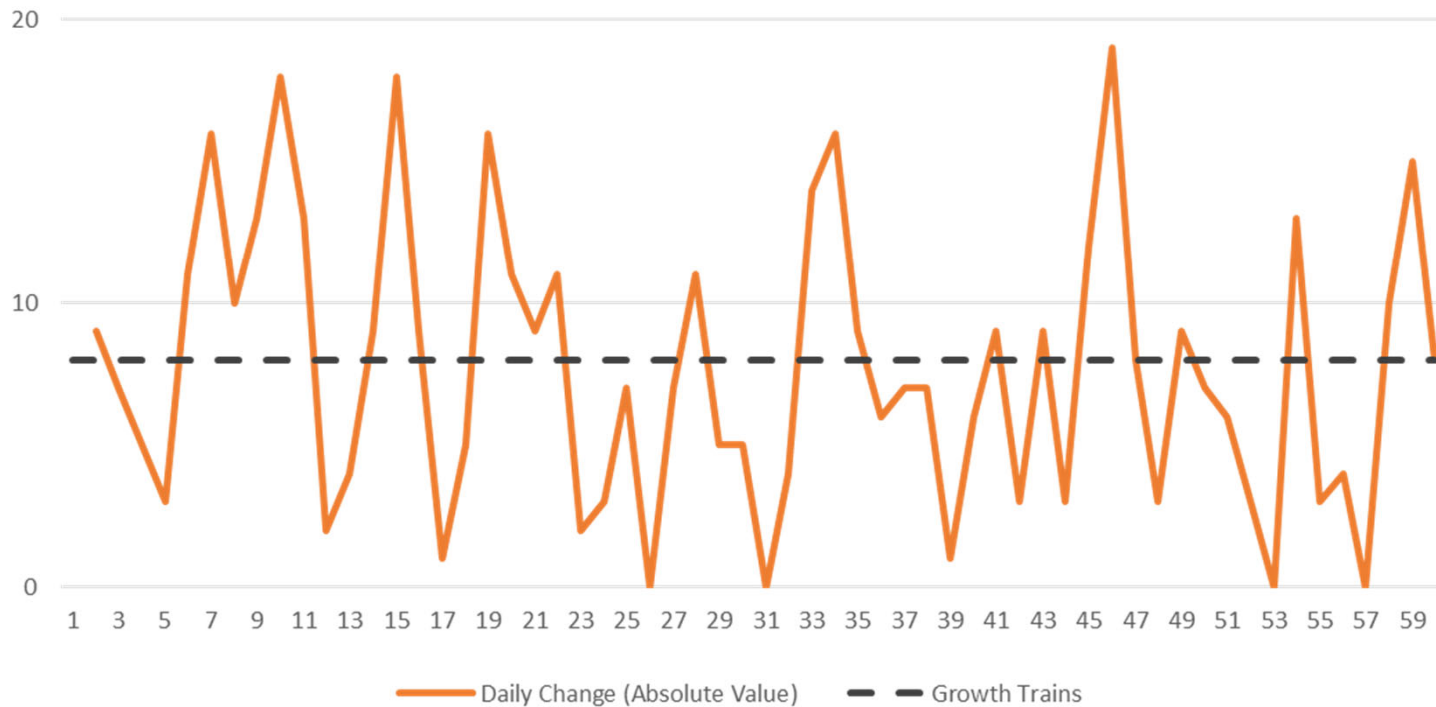
# HOUSTON & THE SHARED TRACK HAVE CAPACITY

PROJECTED TRAIN COUNTS ARE BELOW HISTORIC AVERAGES



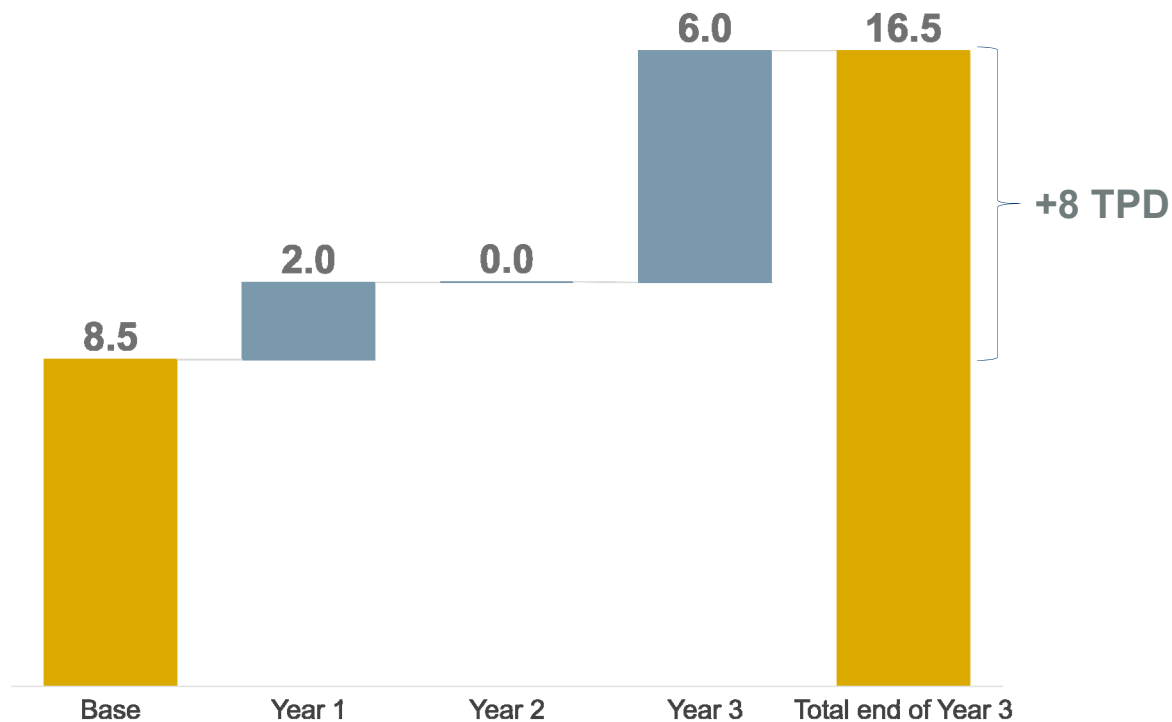
## Additional Eight Trains Is a Day's Work

8 train change is well within range of daily change in train volumes experienced in Houston since early August





# Incremental Trains through Houston



- Additional trains will be added gradually over time, as the traffic is won
- Total of approximately 8 trains per day added over the 3 years
- Inclusive of Intermodal, Automotive, Manifest and Grain to Mexico

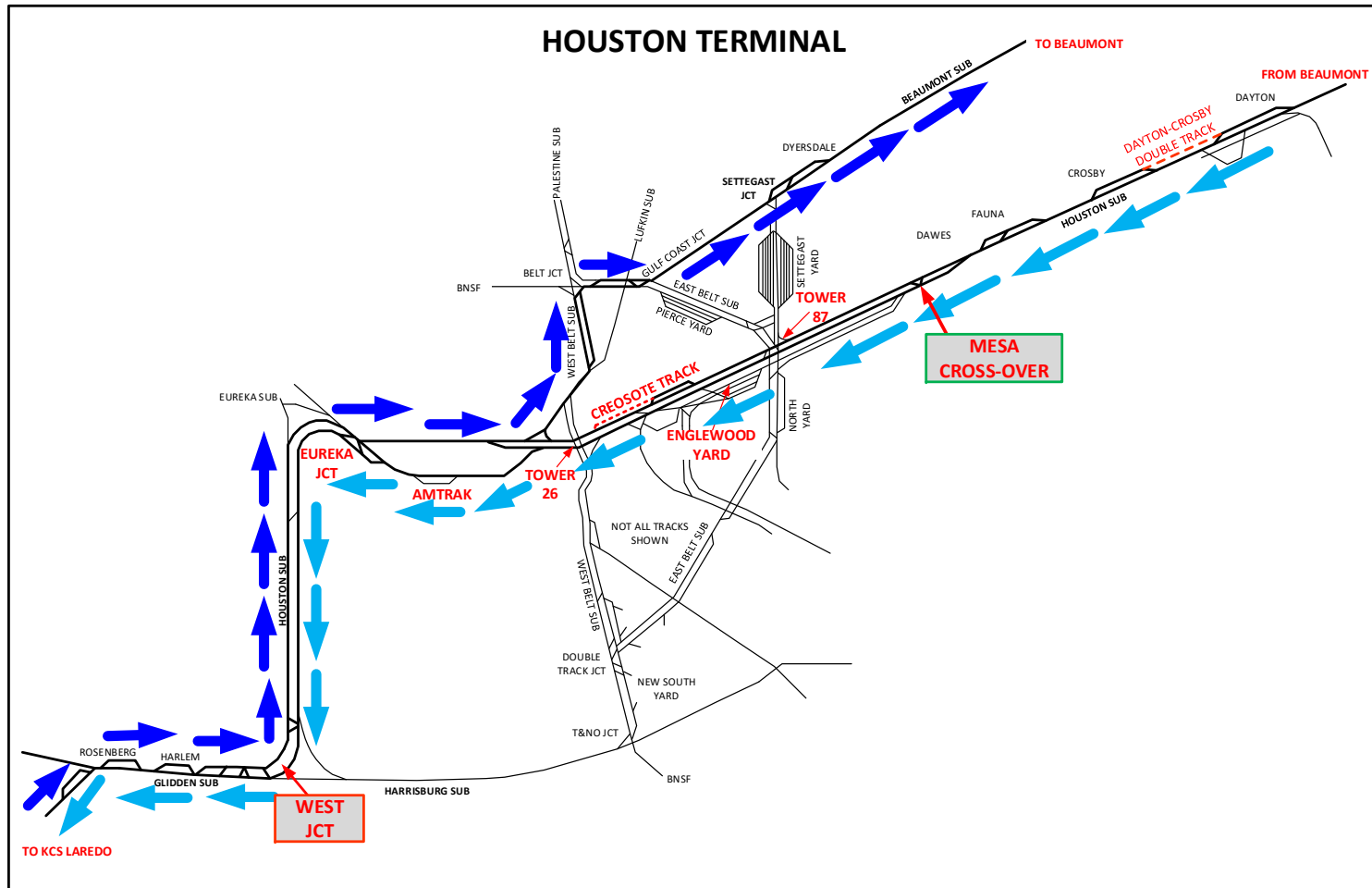
Source: Appendix A Amended Application – incremental trains of 7.57 on top of base 8.47.

# Southbound KCS Train Traversing Houston

August 1, 2022

- KCS Train 3G-KCMXI-30 moving through Houston
- Unit grain train (shipped by U.S. grain company)
- Origin – Elva, MB
- Destination – Mexico City
- 100 cars, 5,827 feet, 10,338 gross tons

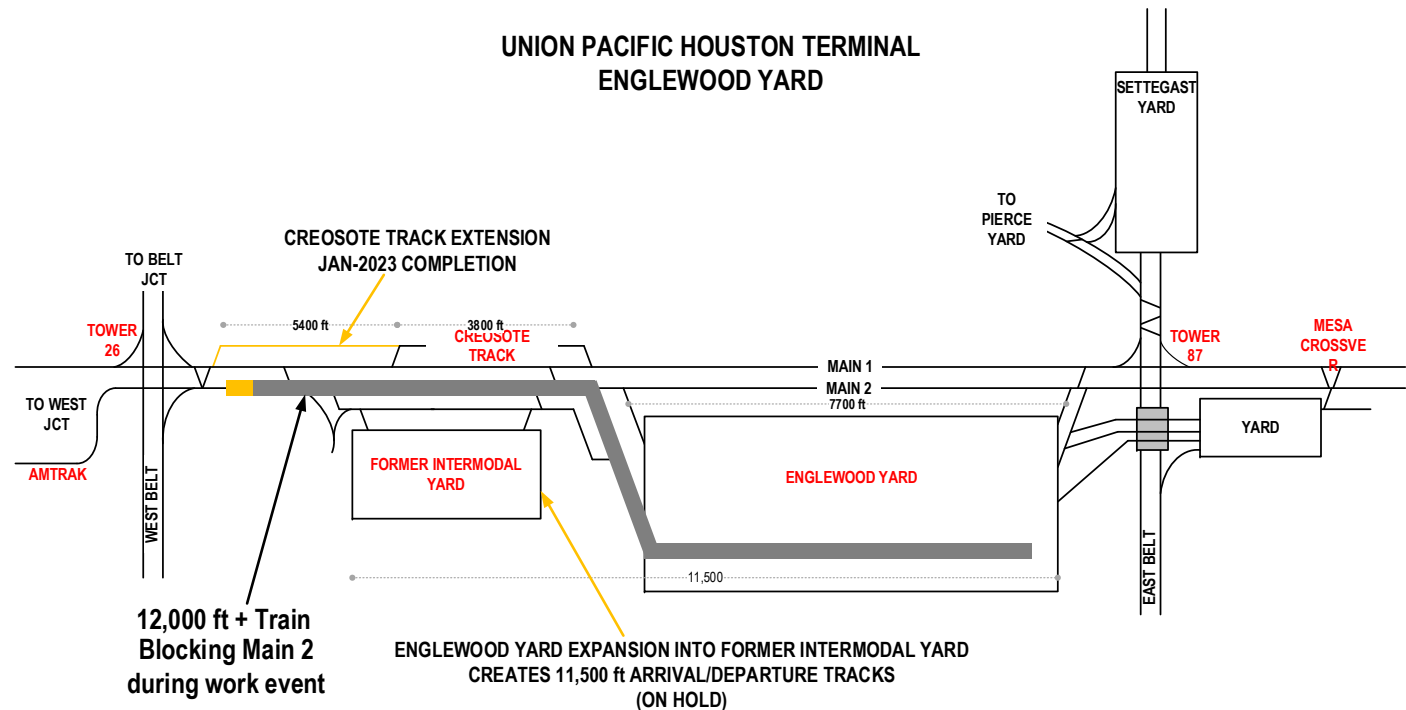
# Houston Terminal



**VIDEO**

# UP Englewood Yard

- Creosote track extension
- Enables bi-directional long through trains while a train works at the yard
- Will reduce interference in a key location
- Facilitate flow through the terminal



# STB-APPROVED AGREEMENTS PROVIDE PROCESS FOR HOUSTON

## “JOINT SERVICE COMMITTEE”

### TERMS FOR TEXAS MEXICAN RAILWAY COMPANY TRACKAGE RIGHTS

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.

**“...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.”**

**“...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.”**

### TEX MEX - MP/SP DISPATCHING PROTOCOLS

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.

**“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.”**

## Houston Collaboration Commitments

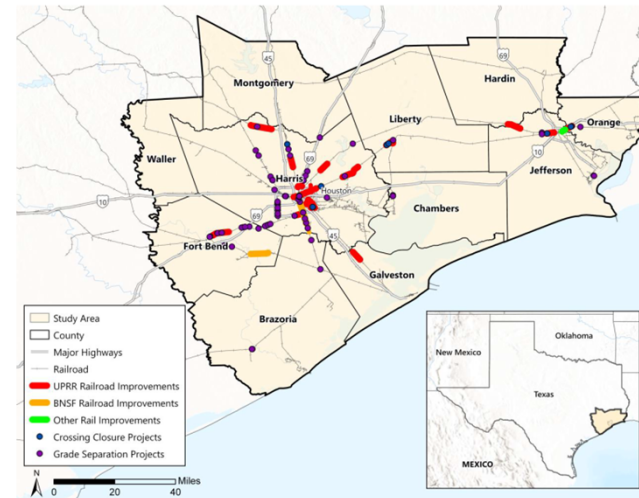
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- ✓ Adds specific metrics regarding Houston and Chicago
- ✓ Confirmed commitment to participate in fully collaborative engagement with UP and BNSF in Houston and with Metra in Chicago

# Houston through Beaumont Extensively Studied

1. Many studies have been performed over the years
2. Many recommendations are available to improve the flow through the Beaumont area and Houston itself
3. Some recommendations have been acted upon

Figure 1. Proposed Roadway and Railroad Improvements Map



September 2021

Executive Summary  
Houston-Beaumont Region Freight Study

ES - 3

Year	Study	Sponsor / Author
2007	Houston Region Freight Study	Tx DOT / HNTB Corp.
2013	Neches River Bridge Feasibility Study	Tx DOT
2019	Neches River Bridge Process Improvement Project	UP, BNSF & KCS / KCS Drafted
2019	Texas Rail Plan	Tx DOT
2021	Houston-Beaumont Region Freight Study	Tx DOT
2021	Texas Statewide Crossing Summary	Tx DOT



“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. . . . 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.**”

*UP/SP*, 1 S.T.B. at 565

**The Board’s Goal  
Was to Make  
KCS/Tex Mex a  
Stronger  
Competitor**

“While we have some reservations about BNSF's willingness and ability to attract sufficient traffic over the Laredo gateway, we have remedied this problem by **giving Tex Mex trackage rights to permit it to gain additional traffic**, as discussed below.”

*UP/SP*, 1 S.T.B. at 421

**The Board Wanted  
Tex Mex to Grow  
Its Traffic Over UP  
Trackage Rights**

# Tex Mex Trackage Rights Agreements Contemplated Mergers

## 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").

## EXHIBIT "B" GENERAL CONDITIONS

### 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.

**Authorized assignees include "the purchaser of substantially all of User's rail properties."**

# STB-Approved Agreements Provide KCS Equal Access

## AND ALLOCATE RESPONSIBILITY FOR MAINTENANCE, CHANGES, OR ADDITIONS

### 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

#### 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

**"2.2 Unless otherwise mutually agreed to by the parties in writing, Owner 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."**

**" 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."**

# STB-Approved Agreements Provide for Process

INCLUDING ALLOCATING 100% SOLE-USE ADDITIONS AND COST-SHARING DISPUTES

## 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

### 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

(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).

### "5(b) Additions ...

- (i) if the Change ... 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...shall be shared by MP/SP and Tex Mex on the basis that the parties' respective GTM's operated over the Joint Trackage...[for the past 12 months]..."

"5(c) In the event such Changes...are constructed at the sole cost and expense of one party, the other party shall be denied access... If the party [denied access] at some future date shall choose to use such Changes..., such right shall be granted ... on the first part upon payment of fifty percent..."

# Tex Mex Trackage Rights Agreements Provide for Arbitration

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## 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.

**“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.”**

# BNSF Settlement Agreement Included User-Funded Infrastructure to Implement the Transaction

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**

Pacifi  
Agree

(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

**“ . . . Any connections, sidings, or other support facilities to be paid for by BNSF . . . ”**



# Tex Mex Trackage Rights Agreements Included User-Funded Infrastructure to Implement the Transaction

## TERMS FOR TEXAS MEXICAN RAILWAY COMPANY TRACKAGE RIGHTS

The following terms (hereinafter referred to as the "Terms") shall govern rights provided

### 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

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.



Tex Mex paid for "balloon track" connection at Robstown, TX



**UP and BNSF  
Would Erect a  
“Competitors  
Apply Within”  
Sign at the  
Entrance to  
Shared Trackage**

# A VETO ON COMPETITION



# POTENTIAL HOUSTON BYPASS

- UP route between Laredo and Texarkana/Shreveport
- Could support 3-4 existing KCS trains per day requiring no work between Laredo and Texarkana
- Could support 7-8 trains per day with growth through Year 3
- Would require UP to grant trackage rights at compensation levels comparable to existing KCS-UP terms



# Vertical Competition Issues

“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.**”

“To preserve competition at Laredo, the Board ordered Tex Mex trackage rights over UP, thus allowing a KCS-Tex Mex routing to reach Laredo. Here, in contrast, 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.”

“Indeed, **the evidence demonstrates that the end-to-end configuration of the KCS/TM control transaction will benefit shippers by enabling KCS to offer expanded single-line service and to provide the benefits of efficient use of a NAFTA route connecting the Central United States with Mexico** (and Canada, through a marketing alliance with CN). In addition, KCS/TM will be able to achieve important cost-saving benefits without a wholesale restructuring of rail facilities. The evidence also demonstrates that customers of both KCS and TM will benefit from increased reliability and other service improvements and operating efficiencies fostered by the transaction...”

*Kansas City Southern – Control – The Kansas City Southern Railway Co., 7 S.T.B. 933 (Nov. 23, 2004) (citation omitted).*

# Vertical Foreclosure Allegations Analyzed and Rejected

In KCS/Tex Mex/TFM, UP and BNSF Argued the Exact Same “Raise the TFM/KCSM Factor” Theory of “Foreclosure”

**TABLE 1**

	BEFORE KCS-TFM CONTROL	AFTER KCS-TFM CONTROL	
		Example 1	Example 2
UP Factor	\$100	\$100	\$100
KCS Factor	\$105	\$99	\$95
TFM Factor	\$100	\$106	\$120
UP-TFM Rate	\$200	\$206	\$220
KCS-TFM Rate	\$205	\$205	\$215
Outcome	UP wins; shipper pays \$200	KCS wins; shipper pays \$205	KCS wins; shipper pays \$215

*KCS/Tex Mex/TFM, Finance Docket No, 34342,  
UP Comments (UP-7A) (filed Aug. 4, 2003), Gray V.S. at 28*

**Note the Similarity to Mr. Nober’s bar graphs,  
and the *lack of any division reduction by UP***

# There Is No Evidence of Likely Foreclosure

## **Individual Shippers:**

- Offered no evidence whatsoever; never complained about KCS interline rates under KCS/Tex Mex/TFM merger conditions

## **NITL Advocate Moreno:**

- Unfamiliar with NITL agreement; unable to cite to any evidence of foreclosure; not able to examine past record

## **Union Pacific:**

- No evidence of foreclosure despite passage of 17 years since KCS/Tex Mex/TFM

## **BNSF:**

- Newly invented claims of foreclosure by Tex Mex rate increases are contradicted by the record

In *KCS/Tex Mex/TFM*, UP [and BNSF] asserted that KCS would foreclose “huge volumes” of rail traffic

In its August 2003 Comments, UP demonstrated that KCS’s acquisition of TFM would have significant anticompetitive effects for huge volumes of cross-border traffic moving between the United States and Mexico via the Laredo Gateway. KCS competes with UP for a majority of the Laredo cross-border traffic via its own network as well as in cooperation with its interline partners (*see* UP-7B, Gray VS at 24-25 & Exh. J), and once it controls TFM, KCS will have both the incentive and ability to degrade UP-TFM competitive options to the disadvantage of shippers and U.S.-Mexican commerce. UP-7A at 34-55, 58-85; UP-7B, Gray VS, Hausman VS.

*KCS/Tex Mex/TFM*, Finance Docket No. 34342, UP Additional Comments (UP-11) (filed Sept. 30, 2004) at 13



**Mr.  
McBride's  
Sergeant  
Bluff  
example:**

**Was the  
*MidAmerican*  
Case  
resolved in  
STB's  
Bottleneck  
Ruling?**

MidAmerican Case

Docket No. 41626 concerns transportation to MidAmerican's power plant at Sergeant Bluff, IA, which is served only by the UP. MidAmerican's traffic currently originates at a mine in the Powder River Basin served by both UP and BN (see UP Comments, October 15, 1996, at 16), but moves to the generating station in single-line service under a transportation contract with UP that will expire at the end of 1997.

MidAmerican then filed a complaint challenging UP's single-car local rate from Council Bluffs to Sergeant Bluff, so that it could ask the Board to prescribe a local unit-train rate over the bottleneck segment. UP moved to dismiss the complaint, on the grounds that it does not provide local service for Powder River Basin coal over its Council Bluffs-Sergeant Bluff line, and that it does not maintain, and cannot be required to maintain, a multi-carrier through route for unit-train movements between Powder River Basin mine origins and the Sergeant Bluffs generating station that it can serve single-line.

**This situation cannot arise in this case: CPKC has committed not to assert its new single-line routes as a defense to obligation to quote separately challengeable Rule 11 rates.**



**Contrary to Mr. Nober's Claims, BNSF was well aware of the Tex Mex rate increase 16 years ago (in 2006-07)**

## **Mr. Nober's Claim**

BNSF only learned about Tex Mex's post KCS/Tex Mex rate increase through discovery in this proceeding, and knew nothing of it at the time (Hearing Tr., Sept. 30, 2022) (remarks of Roger Nober)

## **The Truth**

Documents produced **by BNSF** in discovery show awareness of Tex Mex rate increase in 2006-07

- BNSF 0002658 (HC)
- BNSF 0002720-27 at BNSF0002724 (Slide 4) (HC)

[BNSF HC discovery documents accompany HC version of this presentation]

# There Is No Transparency Issue

**CPKC Rule 11 Rates  
Will Fully Inform  
Customers, Not  
Necessarily UP and  
BNSF**

## BNSF's Claim Here

One of the biggest problems we face is that we do not know what rates are being offered by KCSM for the Mexico portion of the movement. In cases where carload shippers are seeking competitive options, we understand that KCSM quotes Rule 11 rates for the Mexican portion of BNSF-KCS-KCSM routings. In addition,

*CP/KCS, Finance Docket No. 36500, BNSF Comments  
(BNSF-9), Hirsch V.S. (filed Feb. 28, 2022) at 9 (BNSF-9-200)*

**Rule 11 Rates give customers control of ratemaking – customers will see both the CPKC (KCSM ) rate and BNSF rate**

**BNSF's proposed "I-5" mechanism would give BNSF control, allowing it to hide BNSF's division from the customer**

# BNSF's shift of traffic from Laredo to Eagle Pass is incontrovertible

## The Claim

In response to Chair Oberman question about shifts to Eagle Pass Gateway: “It’s totally different kinds of traffic going to totally different destinations.” (Tr., Sept. 29, 2022) (Remarks of Paul Hirsch)

## The Truth

In sworn testimony BNSF’s witness Hirsh told the Board BNSF DID “shift[] its traffic” from Laredo to Eagle Pass

The decline in BNSF’s traffic through Laredo did not represent a movement away from the Mexico market. Rather, BNSF shifted its traffic from the Laredo gateway, to the Eagle Pass border crossing, since it could no longer effectively use Laredo following the KCS/Tex Mex merger. Laredo, however, continues to be an

*CP/KCS, Finance Docket No. 36500, BNSF Comments (BNSF-9), Hirsch V.S. (filed Feb. 28, 2022) at 7 (BNSF-9-198)*



- KCSM
- FERROMEX
- FERROSUR
- FERROVALLE
- COAHUILA – DURANGO
- FERROCARRIL DE CHIAPAS Y MAYAB
- FERROCARRIL DEL ISTMO DE TEHUANTEPEC
- FERROCARRIL TIJUANA TECATE

**FXE's network overlaps with KCSM's network**

HANDOUT (BNSF0000166.pdf)

In an internal planning document, BNSF {{ }}

{{

**Competitive Choices  
Are Not Foreclosure**

}}

Source: {{}} BNSF0000166.pdf

“[T]here is always an opportunity to use truck in Mexico as the origination or destination and transload at the border. It's a little more complex, but we do that today and we can continue to do some of that.”



-Lance Fritz  
CEO, UP  
April 22, 2022

**UP will truck to the border if CPKC rates are too high**

# US / Mexico Border Crossings

- UP and BNSF have an advantageous access to Mexico especially for the upper Midwest markets vs the other Class I's
- Majority of Intermodal volumes in/out of Mexico are handled by UP and BN

## Mexico Mileage

US / Mexico Border: To Monterrey	
Laredo (KCSM)	150 mi.
Eagle Pass (UP)	275 mi.

## Total Mileage

US / Mexico Border: Monterrey > Chicago	
Laredo (UP)	1,491 mi.
Eagle Pass (UP)	1,624 mi.
Eagle Pass (BNSF)	1,707 mi.
Laredo → Robstown (BNSF)	1,716 mi.
Laredo → Jackson (CN)	1,797 mi.
<b>Laredo → Bensenville (CPKC)</b>	<b>1,857 mi.</b>





# How Competitive is Laredo Crossing Traffic? Northbound Truck and Containerized Traffic



- 2021 – **5.6m** Total NB Units (over **Laredo gateway**)
- 2021 KCS Intermodal approx. market share: **3.4%** of overall **NB Units (9.0% of Laredo gateway units)**

**Trucks at Laredo Gateway**

Mode	2005	2021
Trucks/Truck Containers	2,911,111	5,123,079
Laredo Rail Containers	316,402	508,192
Laredo Total Units	3,227,513	5,631,271
<b>Laredo Rail Market %</b>	<b>9.8%</b>	<b>9.0%</b>
All Gateways	10,083,722	15,024,651
<b>KCS Total Market %</b>	<b>3.1%</b>	<b>3.4%</b>

Source: Bureau of Transportation Statistics – Border Crossing/Entry Data  
Units: Load/Empty Rail & Truck Container and Trucks



# How Competitive is Laredo Crossing Traffic?

## *Automotive Plants – FXE Serves Multiple Plants*

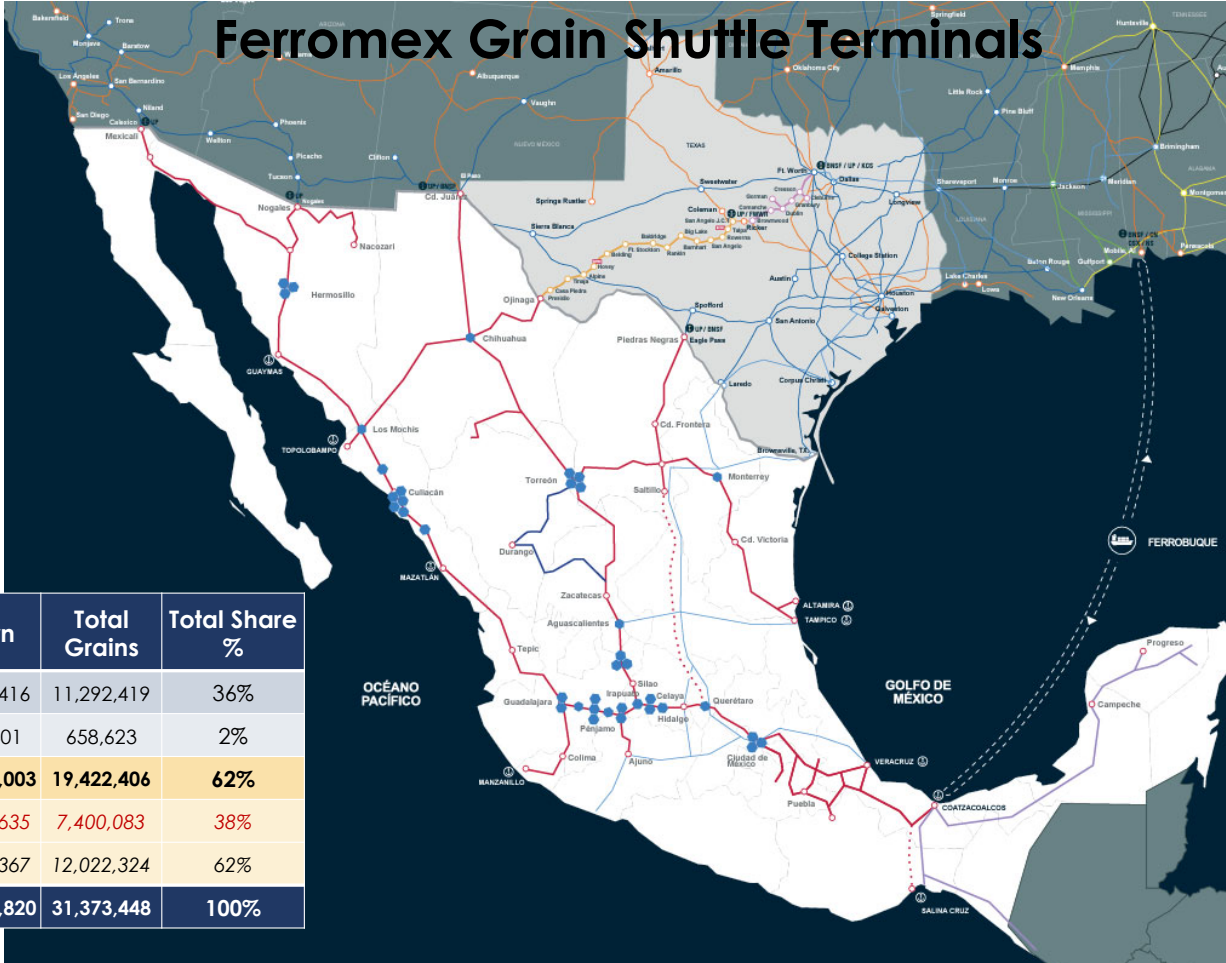
- **85%+: Mexico Automotive production destined for export** → majority moved to US/CAN markets requiring interchange reliance with Class I rails (UP and BNSF)
- **FXE serves 16 automotive plants within Mexico network**
  - KCSM serves 14 plants (direct & via switch)
- FXE competes head-to-head with KCSM at 10 automotive production plants in Mexico



# How Competitive is Laredo Crossing Traffic?

## Grain Shuttle Deliveries – FXE Footprint

- Ferromex offers rich destination footprint in Mexico for imported grain products
- Grain imports over **Laredo** only accounted for **24%** of total 2021 imports, while all other rail gateways made up **38%** of total imports
  - *Laredo makes up either UP or KCS interchange to KCSM*
- Union Pacific also participating in maritime imports that move via rail to Gulf Coast ports for furtherance to Mexico



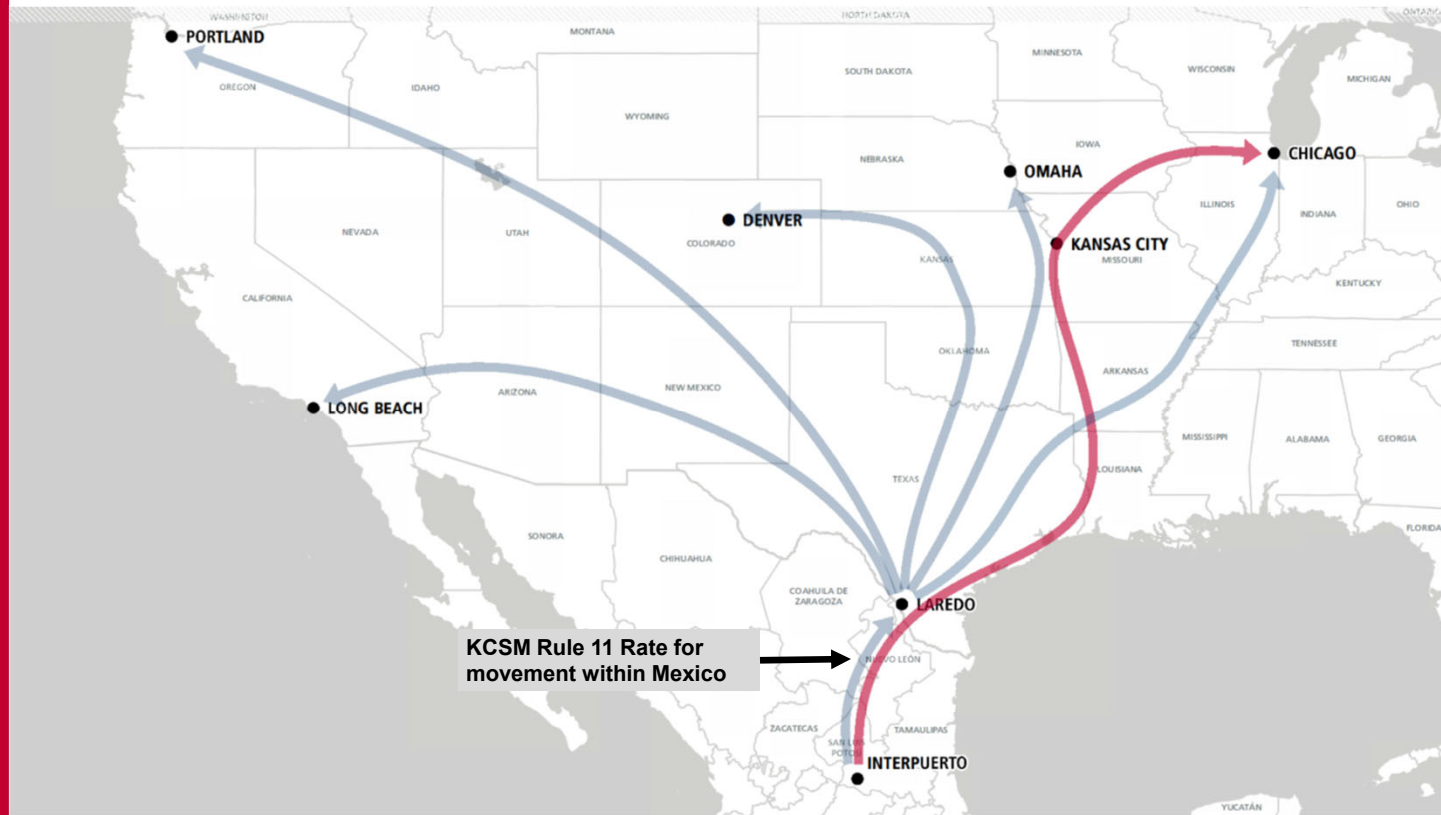
2021 Mexico Grain Imports MT:

Transport Mode	Wheat Flour	Edible Beans	DDGs	Soybeans	Wheat	Corn	Total Grains	Total Share %
Maritime	772	12,955	285,537	2,639,821	1,734,918	6,618,416	11,292,419	36%
Truck	67,329	42,492	33,900	9,702	4,799	500,401	658,623	2%
<b>Total Rail</b>	<b>107,477</b>	<b>188,756</b>	<b>1,753,526</b>	<b>3,395,204</b>	<b>3,603,440</b>	<b>10,374,003</b>	<b>19,422,406</b>	<b>62%</b>
<i>Laredo Rail</i>	<i>105,413</i>	<i>87,026</i>	<i>219,638</i>	<i>1,131,515</i>	<i>738,856</i>	<i>5,117,635</i>	<i>7,400,083</i>	<i>38%</i>
Other Gateway	2,064	101,730	1,533,889	2,263,690	2,864,583	5,256,367	12,022,324	62%
<b>Total Imports</b>	<b>175,577</b>	<b>244,203</b>	<b>2,072,964</b>	<b>6,044,727</b>	<b>5,343,157</b>	<b>17,492,820</b>	<b>31,373,448</b>	<b>100%</b>

Source: Analysis of Mexico Customs Data

**UP and BNSF theory is inconsistent with Mexican regulation**

**CPKC cannot raise Mexican rate to Laredo without doing so for all *unaffected* comparable traffic**



**In *KCS/Tex Mex/TFM*, UP proposed exactly what BNSF proposes now: the “I-5 Prop Rate Agreement”**

An agreement modeled on the I-5 Agreement could effectively implement the goal of preserving the Laredo Gateway on commercially reasonable terms. UP believes that an adaptation of that agreement to the Laredo setting would preserve its essential elements, as set forth in Gray Exhibit C, although these and all other issues would be open for negotiation with Applicants.

***KCS/Tex Mex/TFM*, Finance Docket No. 34342, UP Comments (UP-7A) (filed Aug. 4, 2003) at 94**

**In *KCS/Tex Mex/TFM*, UP acknowledged that the I-5 agreement was an *arm's length commercial agreement***

One effective approach might be a form of “proportional rate” agreement, perhaps modeled on an agreement reached between UP and BNSF in order to keep the Portland Gateway open on commercially reasonable terms following the UP/SP merger. In that case, the merging carriers and BNSF entered into an agreement that enhanced competition by transferring to BNSF a former-UP line in northern California, thereby creating a new BNSF single-line route between the Canadian border and the U.S. Southwest (the so-called “I-5 Corridor”). However, the railroads recognized that BNSF would no longer have incentives to work with UP on an interline basis via the Portland, Oregon gateway for traffic moving between BNSF-served points north of Portland (including points in Canada reached by BNSF indirectly) and points in UP’s territory south of Portland. BNSF and SP had previously cooperated closely on such movements. In order to preserve the UP-BNSF interline option as a competitive alternative to BNSF’s new single-line routes, UP and BNSF negotiated a mechanism – the I-5 Proportional Rate Agreement (“I-5 Agreement”). The I-5

***KCS/Tex Mex/TFM*, Finance Docket No. 34342, UP Comments (UP-7A) (filed Aug. 4, 2003), Gray V.S. at 42**



# UP and BNSF Approaches Regulate Mexican Rates

The rate charged by CPKC's Mexican carrier would be regulated by the STB conditions UP and BNSF seek

## UP's Approach Does So Directly

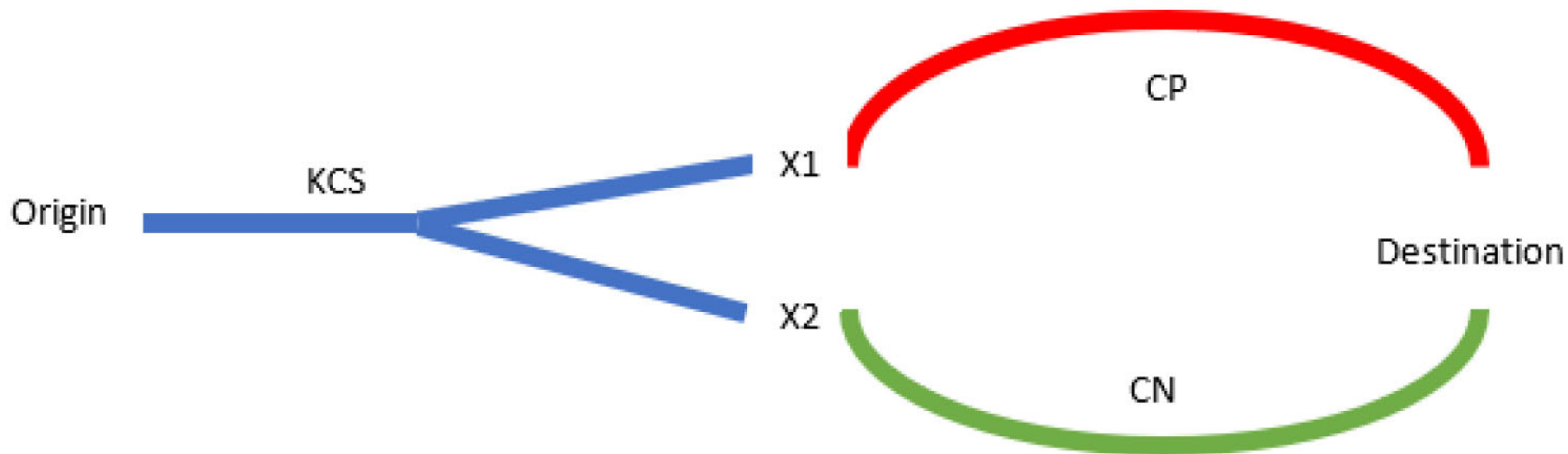
The rate solely within Mexico (Origin-Laredo or Laredo-Destination) is capped at  
Mileage Prorate x Single-Line Rate

## BNSF's Approach Also Does So

The Mexican rate factor (Origin-Laredo or Laredo-Destination) is capped at the "I-5 Matrix" Level

## Both Approaches Also Would Regulate Rates on Unaffected Traffic Within Mexico

The STB-regulated maximum rates (or rate factors) would also dictate maximum rates for other traffic solely within Mexico under Mexican regulation for "comparable traffic" based on nondiscrimination principle.



## Competitive Impact of CP/KCS Merger

### Scenario Assumptions

- Captive to KCS at Origin
- CP and CN serve Destination either directly or via Interswitching
- Pre-merger KCS is neutral as to CP and CN
- Post-merger CPKC can exercise long-haul rights to foreclose CN competition

### Remedies

- Prescribe Bottleneck Rate to X2
- KCS-CP Route = 1000 miles
  - KCS-CP Rate = \$10,000 = \$10 per mile
  - KCS to X2 Route = 500 miles
  - KCS to X2 Bottleneck Rate = \$10 x 500 miles = \$5000

# PRESERVING EXISTING GATEWAYS FOR AFFECTED TRAFFIC

“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.”

(Brooks RVS ¶ 13.)

Monterrey to Chicago	
Via Laredo Yard Center UP	1,491
Via Laredo to Robstown to BNSF	1,716
Via Eagle Pass Yard Center UP	1,624
Via Eagle Pass BNSF	1,707
Via Laredo Bensenville CPKC	1,857

Border to Monterrey	
Laredo KCSM	150 miles
Eagle Pass	275 miles





# Arbitration Commitment

- KCS remains bound by its agreement with NITL in *KCS/TexMex*
- CPKC will arbitrate claims regarding allegations of gateway closure
  - Available only to payors of freight
  - Safe harbor for existing rates (adjusted based on applicable inflation factor)
  - Service allegations covered
  - Same arbitration procedure as KCS-NITL agreement
  - No authority to prescribe

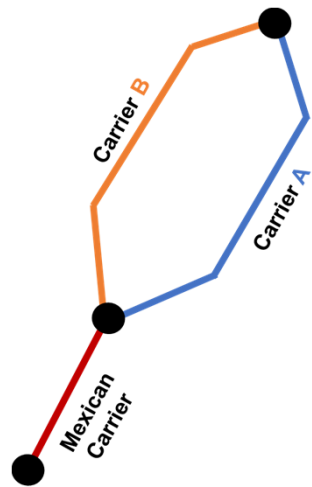
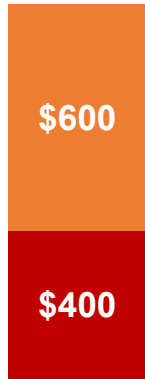
# **W. Robert Majure, PhD**

Vice President, **Cornerstone Research**

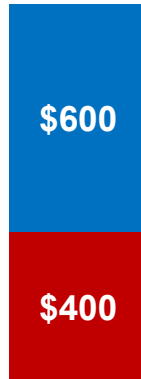
Retired Director of Economics,

**DOJ Antitrust Division**

Shipper Pays  
\$1,000

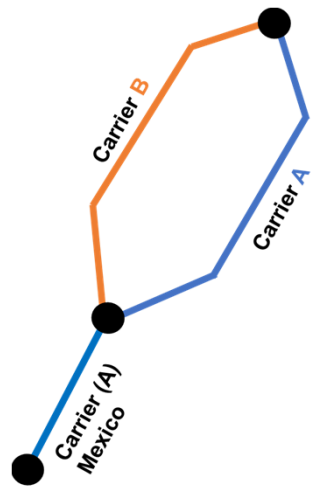


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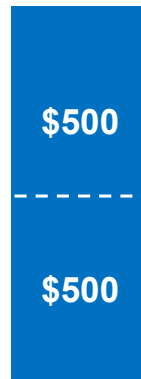


Mr. Nober's Example  
Shows that He Was  
Right in 2005

Shipper Pays  
\$1,100

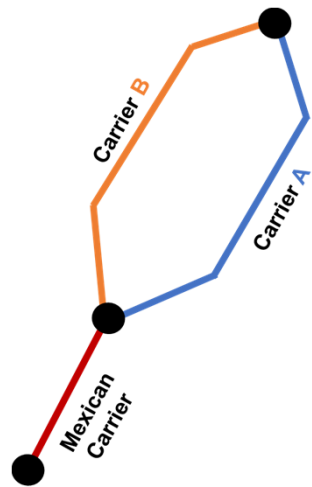
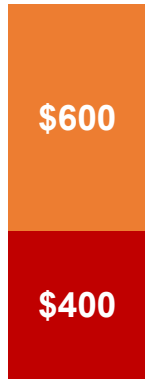


Shipper Pays  
\$1,000

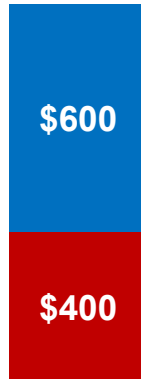


Mr. Nober's Example  
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Right in 2005

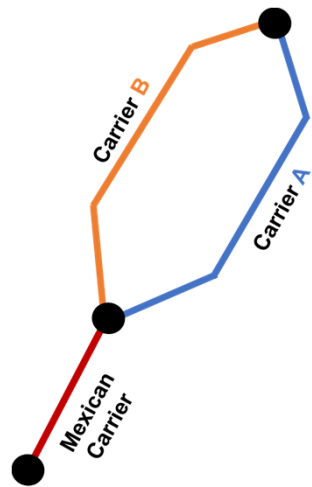
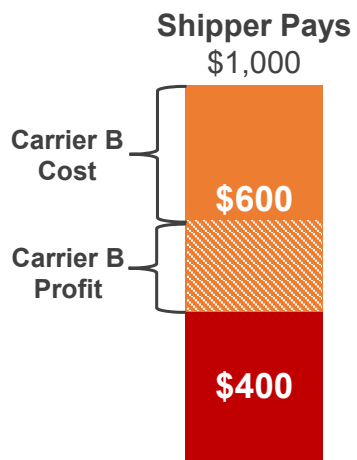
Shipper Pays  
\$1,000



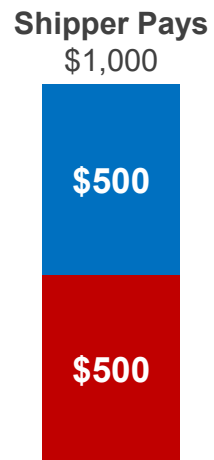
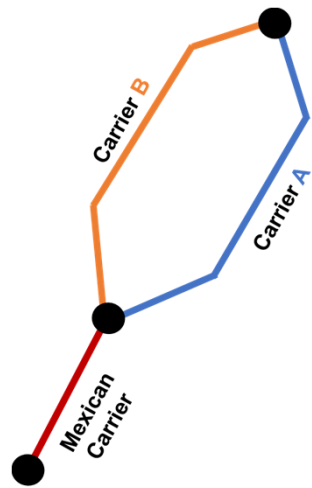
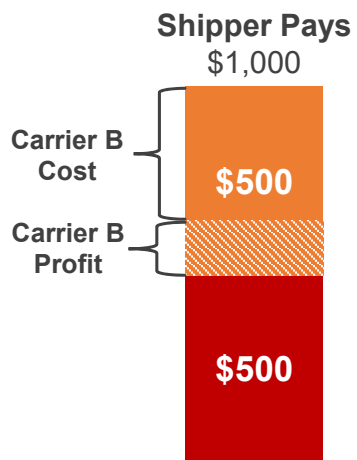
Shipper Pays  
\$1,000



Mr. Nober's Example  
Shows that He Was  
Right in 2005



Mr. Nober's Example Shows that He Was Right in 2005



Mr. Nober's Example Shows that He Was Right in 2004

## The I-5 agreement is complex

- It is a **56-page** document.
- It relies on a complex price grid that can have **1,920** cells:
  - **80 rows** to accommodate differences between **31 car types**
  - **24 columns** to account for differences in commodities
  - **5-step process** to populate each cell – takes **3 pages** just to describe
- A separate price grid is needed for each origin region-termination region pair and by car-count range.
- Price grids are updated and reported on a quarterly basis by a third-party administrator, but changes to the “market factors” underlying any cell in the grids would need to come back for Board approval.
- Imposed as a remedy, instead of an agreement between mutually interested parties, this framework would require extensive Board oversight to have the touted “flexibility.”

**The I-5 Agreement’s complications do not make it “market based.”**

**They make it infeasible to implement as a “remedy.”**



# Other Issues

## KCS's TIH Tariff

**CP has proposed a reasonable transition per the terms of Bayer Settlement Agreement**

- CP has proposed a reasonable 3-year transition period consistent with terms of Bayer Settlement Agreement.
- No shipper is handicapped in any way in its ability to challenge reasonableness of CP's tariff provisions (which are not unreasonable).
- Freezing KCS's tariff and requiring Board permission to change it would uniquely and inappropriately subject one small slice of the rail network to unique regulatory rigidity, without a showing of harm.
- Requiring a rollback of CP's tariff in this proceeding would be a classic example of remedying a pre-existing condition, beyond the Board's conditioning authority.
- This is not a "competitive" issue: CP and KCS do not compete for TIH traffic today.

“The Board **shall** approve and authorize a transaction under this section when it finds the transaction is consistent with the public interest. The Board **may** impose conditions governing the transaction, including the divestiture of parallel tracks or requiring the granting of trackage rights and access to other facilities.”

49 U.S.C. § 11324(c)

**I.C.C. Termination Act merely confirms Board authority to order divestiture**

# Cases Cited by CN Regarding “Potential” Competition Involved Non-Speculative 2-to-1 Reductions in Competition and Narrow Remedies

<u>Case</u>	<u>Issue</u>
<u>CN/IC</u>	<ul style="list-style-type: none"><li>• “Access Agreement” related to CN/IC merger gave KCS direct access to three shippers at Geismar but in the process ended KCS’s <i>in-progress pursuit of a build-in</i> that would have served three additional customers.</li><li>• Board treated those customers as suffering 2-to-1 reduction in competition and extended KCS haulage rights over IC to cover those customers.</li></ul>
<u>UP/SP</u>	<ul style="list-style-type: none"><li>• Merger of UP and SP would have reduced competitive options from 2 to 1 for shippers served by Longhorn Railway, which connected to UP and could have reached SP at Giddings, TX by reactivating the Giddings-Llano segment.</li><li>• Board regarded Longhorn as “a 2-to-1 shortline” and allowed BNSF to interchange with Longhorn should service be reactivated.</li></ul>
<u>CN/DMIR</u>	<ul style="list-style-type: none"><li>• Merger of CN and DMIR would have reduced competitive options from 2 to 1 for routes between two specific taconite mines and Duluth; mines served by DMIR could have built out to CN.</li><li>• DOJ sought conditions to preserve competition.</li><li>• Issue resolved by private settlement agreement allowing BNSF to access customers in the event of a future build out.</li></ul>

# CN Springfield Line Divestiture

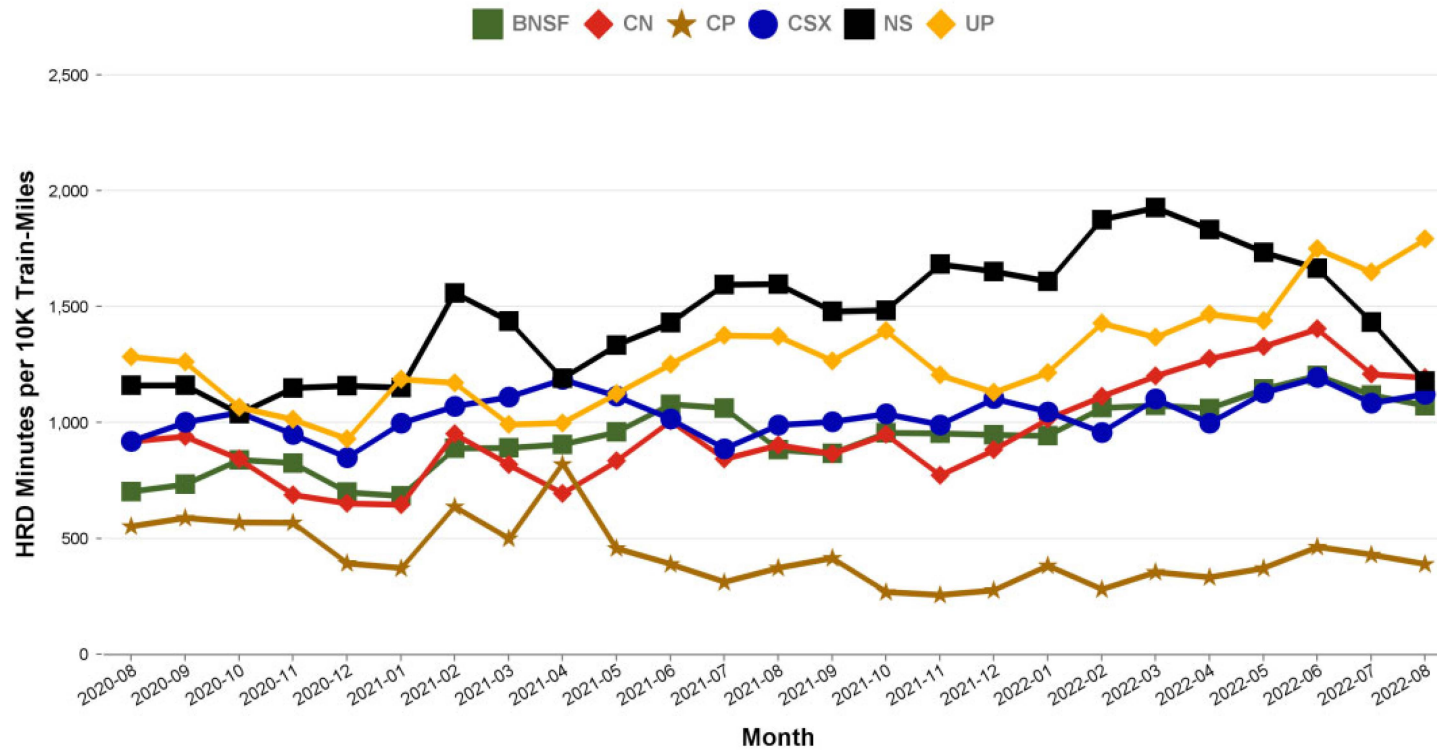
- CN has never approached KCS prior to CPKC transaction
- CN tried to remove service from Cockrell in 2019
- All of CN's interest arose in a KCS-takeover context
  - CN0001338 - HC

***“[Y]ou’ve gotta have a level of ownership . . . to develop the line” – Canadian National***

# Total Host-Responsible Delays

## 2 Year Snapshot

Total host-responsible delay (HRD) minutes per 10,000 train-miles incurred by Amtrak trains on each of the six major host railroads for the most recent two years.



# Houston Grade Crossings

- OEA analyzed UP Layette Sub past Englewood Yard - Terminal Sub – Glidden Sub applying all merger related growth trains to this route although they will be distributed over multiple routes
- At all 44 crossings, the gates down time per train decreases as a result of the merger
- None of these crossing have a decrease in safety
- No crossings experience a drop in the level of service

## FRA Top 10 Houston Crossings for Complaints\*

STREET NAME	CALLS
MILBY STREET	358
<u>Leeland Street</u>	350
LAWNDALE STREET	188
EASTWOOD STREET	170
LOCKWOOD DRIVE (within 5 <sup>th</sup> Ward)	166
Cullen Boulevard	164
JEFFERSON STREET	118
TELEPHONE ROAD	117
POLK STREET	114
McKinney Street	106

**None of these road crossings are at grade with the KCS primary route through Houston**

*\*Source: FRA Website*

# CPKC's Environmental Commitments

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## Houston

- CP is committed to being a good community partner
- We will meet regularly with communities about rail traffic
- If there are demonstrated merger impacts to communities, CP will work with them to address those concerns

## Chicago

- In absence of an agreement with the Coalition, CP would commit to:
  - Work on and pay for creating FRA approved quiet zones in each Coalition community
  - CP will pay to install a system to deliver notification of occupied railroad crossings to emergency responders
  - CP will pay to install ITS Interconnect for Advanced Warning Signs at specific locations
    - Advanced Warning Signs show a message about occupied crossings to inform vehicle drivers and pedestrians of occupied crossings
  - CP will pay to install Positive Train Control (PTC) tie-ins at crossings immediately adjacent to Metra platforms
    - Minimizes activation of the crossing lights and gates while loading passengers

*Note: Various components subject to Metra's approval*



# **Review of Our Commitments**

## CPKC's Commitments

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- ✓ **Five years of Board oversight**
  - ✓ **Adherence to settlement agreements**
  - ✓ **Compliance with SIP**
  - ✓ **Compliance with voluntary environmental mitigation commitments**
  - ✓ **Standard labor protection agreements**
- ✓ **CPKC will be ACCOUNTABLE to on-the-record commitments**
    - CPKC will keep affected gateways open on commercially reasonable terms and create no new bottlenecks
    - CPKC will honor its Service Promise
    - CPKC will honor its offer to extend Bayer agreement terms to all of KCS's TIH shippers
    - CPKC will collaborate with all users of Texas lines shared with CPKC to support coordinated operations and necessary infrastructure additions
    - CPKC will honor its commitments to Metra

## CPKC's Commitments to Metra

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- ✓ Will not force CPKC freight trains operating between Kansas City and St. Paul, MN over the lines we share with Metra (except in emergency detour situations).
  - ✓ Will not object to Metra resuming of its full pre-COVID schedules on Metra's MD-W and MD-N lines.
  - ✓ Will work collaboratively with Metra on improved real-time communications about dispatching decisions that might have an impact on Metra's scheduled trains.
  - ✓ Will support collaborative assessments of proposed Metra operational changes outside peak windows (when Metra needs our consent to add trains).
  - ✓ Will support an agreed-upon escalation process to avoid or resolve disputes about issues impacting Metra train performance.
- ✓ Will report monthly on-time performance and delays due to freight train interference.
  - ✓ Will work collaboratively to reach agreement on a mutually agreed RTC model for MD-W and MD-N lines.
  - ✓ Will include in our quarterly reviews our best estimates of future freight demand on the MD-W and MD-N lines.

## Additional Commitments

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- ✓ Adds specific metrics regarding Houston and Chicago
- ✓ Commitment to collaboration
  - ✓ Confirmed commitment to participate in fully collaborative engagement with UP and BNSF in Houston and with Metra in Chicago
- ✓ Reciprocal switching
- ✓ Keeping gateways open on commercially reasonable terms
  - ✓ Committed to arbitrate disputes with payors of freight regarding concerns about gateway closure
- ✓ Additional environmental commitments