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

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

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

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

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

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

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

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

REBUTTAL IN SUPPORT OF RESPONSIVE APPLICATION

PUBLIC REDACTED VERSION

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In its Responsive Application, CN committed to investing $250 million to upgrade the Springfield Line to offer a compelling new single-line service for automotive, intermodal, and grain rail customers that could take 80,000 long-haul trucks off the highways annually. It further demonstrated that divestiture of the Springfield Line to CN was necessary to prevent the foreclosure of this Line—which, between Kansas City and Chicago (to points in Michigan and eastern Canada), runs parallel to CP's line—that would otherwise result from the proposed CP/KCS merger.[1] CP has now confirmed this very point: In his Reply Verified Statement, CP's President and CEO, Keith Creel, acknowledges that CP opposes CN's Responsive Application because CN would "poach some of the traffic opportunities that CPKC would otherwise pursue in the Kansas City-Chicago lane."[2]

Mr. Creel's candor explains CP's and KCS's overheated opposition to CN's Responsive Application. Mr. Creel understands that, under CN's stewardship, the Springfield Line would be upgraded and used to connect Kansas City directly with

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[1] All abbreviations have the same meaning as they had in CN's Responsive Application. Canadian National Railway Company ("CNR") and its United States rail carrier affiliate, Illinois Central Railroad ("ICRR"), are collectively referred to as "CN."

[2] Applicants' Response to Comments and Requests for Conditions, Opposition to Responsive Applications, and Rebuttal in Support of the Application, *Canadian Pacific Railway Limited, et al.—Control—Kansas City Southern, et al.*, STB Docket No. FD 36500 (filed July 12, 2022) ("CP/KCS Rebuttal"), Vol. 2 of 3, Reply Verified Statement of Keith Creel ("Creel Reply V.S.") ¶ 22.

key automotive and intermodal markets in Michigan and eastern Canada. CP, on the other hand, has no capital investment plans for the Line besides basic maintenance.[3] CP projects virtually no transaction-related growth over the Springfield Line other than organic growth. CP's lack of incentive to invest in the Springfield Line is unsurprising: As Mr. Creel confirms, CP sees the Line as redundant to CP's parallel Kansas-City-to-Chicago line. Instead of supporting competition, CP and KCS seek "unconditioned approval" of the proposed merger.[4]

The Surface Transportation Board ("STB" or "Board") however, is tasked with ensuring that a CP/KCS merger is "consistent with the public interest."[5] And in exercising that mandate, the Biden Administration has stated its view that the STB should take steps to "further competition in the rail industry."[6] Allowing CP to acquire a key KCS rail asset and prevent it from being used to compete effectively with CP's legacy service—particularly where CN stands willing to invest $250

[3] *See* Railroad Control Application, *Canadian Pacific Railway Limited, et al.—Control—Kansas City Southern, et al.*, STB Docket No. FD 36500, Vol. 1 of 4, at 41 (filed Oct. 29, 2021) ("CP/KCS Application") (showing no planned capital investment on Springfield Line).

[4] *See* CP/KCS Rebuttal, Vol. 1 of 3, at 264, 314. Note, page references to Volume 1 of the CP/KCS Rebuttal correspond to the page numbers at the bottom left side of the July 29, 2022, replacement version of Volume I.

[5] 49 U.S.C. § 11324(c).

[6] Exec. Order No. 14036, 86 FED. REG. 36,987 (July 9, 2021) ("Executive Order on Competition") ("encourage[ing]" the Chair of the Surface Transportation Board to "further competition in the rail industry"), *available at* https://www.whitehouse.gov/briefing-room/presidential-actions/2021/07/09/executive-order-on-promoting-competition-in-the-american-economy.

million to ensure the Line's potential is maximized—would subvert, not further, competition in the rail industry and disserve the public interest.[7]

In stark contrast, the merger condition proposed in CN's Responsive Application will clearly promote competition and further environmental and other important public interests. Divestiture will not only enable a new, efficient single-line service that connects Kansas City with important markets in Michigan and eastern Canada, it will produce enormous environmental benefits by taking 80,000 trucks off the road every year. CN projects that two-thirds of the traffic diverted to the Springfield Line would be truck-to-rail conversions (and that divestiture would result in more diverted trucks than the entire proposed CP/KCS transaction).[8]

As such, this condition will meaningfully reduce highway traffic and greenhouse gas ("GHG") emissions while also significantly improving transportation quality and competitive options for customers on the Line. Customers with through traffic over the Line would benefit from new options that are not available today, including new and expanded intermodal and automotive facilities near Kansas City, Missouri, and in East St. Louis, Illinois. And as other stakeholders such as Chicago suburban communities have noted, CN's plans for the Springfield Line would create

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[7] *See, infra*, § II.B.

[8] *See* Amended Application & Exhibits, *Illinois Central Railroad Co.—Acquisition of a Line of Railroad Between Kansas City, MO, and Springfield and East St. Louis, IL—Kansas City Southern Railway Co.*, STB Docket No. FD 36500 (Sub-No. 1), et al. (filed June 9, 2022) ("CN Amended Responsive Application"), Ex. 12A, Verified Statement of David Hunt in Support of Springfield Divestiture to CN, at 8; *see also* Exhibit 3, Third Verified Statement of David T. Hunt ("Hunt Third V.S.").

an alternative route for north-south traffic between the Line and Michigan and eastern Canada that could avoid the congestion that a merged CPKC's traffic would otherwise cause in Chicagoland.

Congress has expressly authorized the Board to condition mergers on divestiture.[9] Here, both the Board's competition policies and the broader public interest standard strongly support imposition of the requested condition.

CP and KCS nonetheless bizarrely allege that the Responsive Application is a "Transaction-killer" and a "dagger aimed into the vital organs" of their merger.[10] But divestiture of the Springfield Line to CN will not affect any claimed transaction benefit or impose any costs on a merged CPKC. First, they assert that CN's acquisition of the Line will harm a merged CPKC's ability to offer single-line service to shippers on the Line. This makes no sense. If the Responsive Application were granted, a merged CPKC would be able to offer single-line pricing to Springfield Line customers through the haulage rights CN will grant, with better service than KCS provides today, in part because of the substantial capital improvements and improved service on the Line to which CN has committed. Carload shippers on the Line would receive the same or more frequent service on the same trains used for CN traffic. Springfield Line customers shipping unit trains to destinations on KCS would receive service that mirrors what KCS performs today, with KCS run-

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[9] ICC Termination Act of 1995, H.R. Conf. Rep. 104-422, 1995 WL 767862, at *191 (Dec. 18, 1995).

[10] CP/KCS Rebuttal, Vol. 1 of 3, at 231 (internal quotation marks omitted).

through power and a step-on-step-off crew change in Kansas City, similar to the existing crew change between former Gateway Western and KCS in Kansas City. Interchange traffic with partners like CSX in East St. Louis moving to or from Kansas City would receive better service, with service six times a week rather than four. And the new siding at Cockrell will support the Springfield gateway between Kansas City and Chicago (and further to Michigan and eastern Canada), including interchange with other railroads in Springfield, such as the shortline Illinois & Midland Railroad.

Second, CP and KCS incorrectly assert that the Responsive Application would diminish their capacity at the International Freight Gateway ("IFG"). Not so. CN plans to invest tens of millions of dollars in facilities in the IFG to support separate CN operations.[11] IFG, which is located on a former military base, has ample space and ability to accommodate operations of two railroads. It is telling that CP and KCS have submitted no capacity analysis or documentary evidence demonstrating that IFG lacks capacity to accommodate CN's planned services to add a new daily mixed auto/intermodal train each day. While equal ownership is essential to prevent operational discrimination against CN, CN will pay its way, construct its own separate facilities, and coordinate with CP and KCS to ensure that CN's operations do not interfere with traffic of a merged CPKC using the facility.

[11] *See* CN Amended Responsive Application, Ex. 13, Operating Plan, at 74, 125.

Finally, CP and KCS claim that they would be harmed because divestiture would allow CN to compete for Kansas City-Chicago traffic and hurt "densities" on CP's parallel line north from Kansas City (the "CP Kansas City Line").[12] Of course, divestiture of the Springfield Line to CN would preserve—indeed, promote—competition between the Springfield Line and the existing CP Kansas City Line. But from the public interest perspective, this is a desirable feature, not a flaw.

This Rebuttal is organized as follows. **Part I** responds to the Coalition to Stop CPKC and recounts the substantial public interest benefits of the Responsive Application. Those benefits have inspired support from a host of stakeholders, including the Coalition—which is comprised of Chicago communities concerned about CP's plan to concentrate densities on lines through their communities—as well as intermodal, grain, and automotive customers on the Line who see benefits from preserving competition over this important corridor; customers whose facilities are located on the Line or who ship to facilities on the Line; public officials supporting CN's commitment to invest in the Line; and customers who recognize the benefits of preserving and promoting competition in this corridor who will gain commercial access to two railroads and an owner committed to invest in the Line to improve service and transit times.

Part II addresses what the CP/KCS Rebuttal confirms—that allowing a merged CPKC to consolidate control of the parallel CP Kansas City Line and the KCS Springfield Line will reduce competitive options for rail customers and harm

[12] *See* Creel Reply V.S. ¶ 22.

the public interest—and that this is an appropriate case for the Board's exercise of its statutory authority to condition mergers on divestiture. CP and KCS argue that the Board should not consider this harm because the Springfield Line is not *currently* used to transport significant volumes of north-south traffic. But Mr. Creel's assertion that, in CN's hands, the Springfield Line will siphon traffic off a merged CPKC's Chicago-Kansas City route constitutes an admission that the two lines are competitive. This claim is also inconsistent with Board precedent and the positions of the Department of Justice and the Federal Trade Commission ("FTC") that a merger that eliminates the incentive to efficiently deploy an important asset can be anticompetitive. It is also inconsistent with the testimony of CP's own economist, who testified that parallel (and quite distant) rail lines compete against each other. And CP's and KCS's assertion that CN secretly does not believe in the potential of the Springfield Line is unsupported and illogical. KCS itself recognized the enormous potential of the Springfield Line for north-south traffic—it signed a merger agreement with CN touting the parties' plans for the Springfield Line in press releases, analyst conferences, and investor presentations, {

}} The fact that KCS—currently contractually bound to do what CP says[13]—has suddenly

[13] The CP/KCS merger agreement provides that CP has complete control over the STB process and the positions KCS may take as to any condition requested in the STB process. *See* CP/KCS Application, Vol. 4 of 4, at 81 (Agreement and Plan of Merger) ("Parent [*i.e.*, CP] shall . . . have the final authority over the development, presentation and conduct of the STB case. Parent shall take the lead in all meetings and communications with any Governmental Entity in connection with obtaining such Consents …. The Company and its Subsidiaries [*i.e.*, KCS] shall not initiate

discovered that using the Springfield Line to compete for truck traffic is "unrealistic"[14] clearly illustrates the competitive harm that would result from putting the Springfield Line in the hands of an owner who wants to concentrate traffic on the parallel CP Kansas City Line.

Of course, as noted, the Board's authority is not limited to mechanically applying the antitrust laws but to ensuring that this merger furthers the "public interest."[15] Divestiture would indisputably generate competitive, environmental, and social benefits. Critical automotive and intermodal markets would gain new and faster single line service, millions of truck miles would be averted, congestion in Chicago could be avoided, and there would be increased investment and jobs in upgrading the Springfield Line. CP would face a vigorous rail competitor to its Kansas City to Chicago route (and beyond), and its desire to avoid that is not a valid basis for denying the Responsive Application.

Part III responds to CP's melodramatic rhetoric about "violent harm" from a divestiture that it describes as "a dagger aimed into the vital organs" of a CP/KCS

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any such discussions or proceedings with any Governmental Entity, or take or agree to take any actions, restrictions or conditions with respect to obtaining any Consents in connection with the Mergers and the other transactions contemplated by this Agreement without the prior written consent of Parent.").

[14] CP/KCS Rebuttal, Vol. 2 of 3, Reply Verified Statement of Michael A. Naatz ("Naatz Reply V.S.") ¶ 102.

[15] 49 U.S.C. § 11324(c) ("The Board shall approve and authorize a transaction under this section when it finds the transaction is consistent with the public interest.").

merger.[16] In fact, the Responsive Application has been narrowly tailored to maintain the existing competitive options without harming CP's and KCS's anticipated merger synergies and benefits, and instead provides benefits to customers, who would have better service, continued commercial access to a merged CPKC, an improved physical plant, and a second competitive option with CN. A merged CPKC would continue to have single-line access to customers on the Line, and its traffic over the Line would benefit from CN's investments in capacity, as would traffic moving over the Line from other connecting rail carriers in East St. Louis, Kansas City, and Springfield. CP's and KCS's allegations that haulage would not be effective is belied by their own extensive use of haulage to compete successfully in other rail corridors; their claims that haulage would not be "single-line" contradicts their repeated contrary assertions in this proceeding and other proceedings. Similarly, CN's proposed use of and investments in IFG would not harm a merged CPKC. The facility has ample unused land to accommodate CN's planned investments, and CP and KCS have produced no evidence to the contrary. Their post-merger plans reflect no plans to grow IFG to add new intermodal or automotive capacity; instead, they plan to change crews and block traffic at the facility. Indeed, there is no evidence that a merged CPKC will be harmed in any cognizable way by divestiture.

[16] CP/KCS Rebuttal, Vol. 1 of 3, at 12, 231 (internal quotation marks omitted). Note, CN's citations to Volume 1 of the CP/KCS Rebuttal correspond with the page numbers in that document on the left side of the footer and do not correspond with the differing page numbers on the right side.

Part IV responds to Amtrak's comments about the Responsive Application. Amtrak asserts that—even assuming that the Responsive Application is necessary to remedy a competitive harm—it nonetheless should be denied because the two new CN trains would run over portions of lines where Amtrak currently operates: 57 miles between Homewood and Gilman on ICRR's line and less than 30 miles between Godfrey and East St. Louis on the portion of line jointly owned by Union Pacific and KCS. Amtrak is dissatisfied with the pre-existing performance of passenger trains between Homewood and Gilman, Illinois, and between Godfrey, Illinois, and East St. Louis. The Board should not deny a condition that would undoubtedly serve the overall public interest—for customers, the economy, and the public as a whole—by preserving and increasing competition, taking trucks off the road, and avoiding merger-related congestion and disruption in Chicago communities simply because two new freight trains per day would travel over lines also used by Amtrak. These lines have adequate capacity to accommodate the two additional freight trains per day that CN plans to run by growing customer demand as a result of the Springfield Line divestiture and CN's subsequent investment in the Line. Indeed, the Board has long held that Amtrak is not entitled to merger conditions limiting freight train volumes over lines where it operates because Amtrak has other remedies to pursue if it believes that a host railroad is not affording it appropriate priority in the future.

Part V makes some clarifications and commitments in response to comments from Allied Rail Unions regarding labor protective conditions.

This Rebuttal in Support of CN's Responsive Application is supported by four verified statements.

First, Doug MacDonald, CN's Chief Marketing Officer, primarily responds to arguments made by CP and KCS. He reiterates CN's long-standing interest in the Springfield Line and restates CN's commitment to develop the Springfield Line in a way that preserves and unlocks the Line's competitive full potential.

Second, Derek Taylor, CN's Vice-President, Transportation, Southern Region, addresses arguments made by CP and KCS. He reaffirms the Responsive Applicant's commitment to increasing service on the Springfield Line, which would be superior to existing KCS service on the Line as a result of CN's capital investment. He explains the commitments regarding service that CN made in the Responsive Application Operating Plan and the accompanying proposed haulage agreement. He also explains how current haulage arrangements and interchange with KCS functions from an operating perspective. He further explains CN's plans for the IFG and how CN's investments and planned operations would not interfere with operations of a merged CPKC. Finally, Mr. Taylor discusses why there is ample capacity on the Homewood-to-Gilman line segment on Amtrak to accommodate the two new freight trains per day that are anticipated as a result of the divestiture.

Third, Hugh Randall, Senior Advisor to and a Partner Emeritus of Oliver Wyman, responds to and rebuts CP's and KCS's newfound claims that haulage rights would prejudice their ability to develop single-line service. Mr. Randall documents the extensive use of haulage in the industry, including by CP and KCS, and the ways in which the proposed haulage arrangement would be indistinguishable from KCS's current service. And he summarizes the enormous public interest benefits of the divestiture.

Fourth, David Hunt, Vice President at Oliver Wyman, responds to CP's and KCS's misguided criticisms of his traffic studies showing that CN's acquisition of the Springfield Line would result in substantial truck-to-rail diversions where 80,000 long haul trucks per year would move by rail. As Mr. Hunt explains, his diversion analysis reasonably assumes that CN would compete effectively to divert a significant amount of the enormous truck market in the Kansas City-Chicago corridor (including over 15% in the Detroit-Kansas City lane). Mr. Hunt shows that CP's and KCS's criticisms are riddled with methodological errors and misleading assumptions and provide no basis to doubt the substantial potential to convert long-haul truck movements to rail movements.

I. DIVESTITURE OF THE SPRINGFIELD LINE TO CN CREATES SUBSTANTIAL PUBLIC INTEREST BENEFITS, AS SUPPORTERS HAVE RECOGNIZED.

The Coalition to Stop CPKC and many other commenters and stakeholders have observed the public interest benefits of the proposed divestiture of the Springfield Line.[17] CP and KCS do not seriously dispute that granting CN's Responsive Application would produce substantial public benefits. They admit that

[17] Additional letters of support for the divestiture are included herein as an Appendix. These letters are from the government of Quebec and three customers.

granting the Responsive Application would preserve a competitive route for north-south traffic that would compete with the CP Kansas City Line.[18] And they admit that CN would be investing substantially in the Springfield Line, while a merged CPKC would plan zero merger-related capital investment in the Line.[19] Nor do they contest that CN's plan to convert 80,000 long-haul truck shipments to rail service would carry significant public benefits, from lower carbon emissions to less highway congestion to reduced public expenditures for highway maintenance.[20] Instead, they weakly suggest that CN's traffic diversion studies might be too optimistic; David Hunt thoroughly rebuts those claims in his Third Verified Statement.

A wide range of stakeholders support the Responsive Application and recognize the benefits it would create. The Board has received more than 75 support letters from diverse parties, including government officials and shippers of all sizes and traffic types, urging approval of CN's Responsive Application.[21] For example, a number of government stakeholders support divestiture. Congressman Mrvan wrote the Board in support, recognizing that the divestiture will bring new, faster corridor

[18] *See* Creel Reply V.S. ¶ 22.

[19] *See* CP/KCS Application, Vol. 1 of 4, at 41 (confirming no merger-related investment in Springfield Line); *cf. id.*, Verified Statement of Jonathan Wahba and Michael J. Naatz ("Wahba & Naatz V.S.") ¶ 92 (claiming only that KCS made capital investments in Springfield Line a decade ago and that it maintains the Line today).

[20] CP/KCS Application, Vol. 1 of 4, at 32.

[21] *Id.* at Appendix B.

service to manufacturers and farmers in his northern Indiana district.[22] Three Illinois State Senators expressed support for the active partnership, investment, and service improvements that CN ownership of the Springfield Line will bring to the communities along it.[23] The Mayor of East St. Louis, where CN plans to make multi-million-dollar investments in new intermodal and automotive facilities, expressed enthusiastic support.[24] Mayors, city officials, and economic development councils in seven additional communities noted the pro-competitive, pro-growth benefits of new Kansas City-to-Chicago services for their communities.[25]

In addition, major intermodal shippers, receivers, and ports expressed support for the new single-line services CN will provide on the Springfield Line. Supporters include Atlantic Container Line (ACL), Mediterranean Shipping Company (MSC), Orient Overseas Container Line (OOCL), ZIM Integrated Shipping, and the Prince Rupert Port Authority.[26]

Shippers located on the Springfield Line also offer their support. ADM, with three processing and grain handling facilities on or near the Springfield Line (at Mexico, MO, Cockrell, IL, and Decatur, IL), remarked, "[g]iven the current

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[22] Application and Exhibits, *Canadian Pacific Railway Limited, et al.—Control—Kansas City Southern, et al.,* STB Docket No. FD 36500, at 491 (filed Feb. 28, 2022) ("CN Application").

[23] *Id.* at 492–97.

[24] *Id.* at 498.

[25] *Id.* at 499–511.

[26] *Id.* at 520–21, 571–72, 580–81, 589, and 607.

challenges in the rail freight industry, it makes sense to support change that increases velocity and creates competitive alternatives."[27] Additional grain, agricultural, and food products shippers, including Coca-Cola Canada and Planters Canada, wrote to express concern that, absent a divestiture condition, a merged CPKC would disinvest from the Springfield Line, removing a competitive option.[28]

Chicago area communities similarly support CN's Responsive Application as a solution to reduce projected post-merger rail congestion in their neighborhoods.[29] As CN witness Derek Taylor explained in his Verified Statement submitted on July 12, and as reflected in Figure 1 below, intermodal and automotive freight between

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[27] CN's Response to Comments on Application, *Canadian Pacific Railway Limited, et al.—Control—Kansas City Southern, et al.,* STB Docket No. FD 36500 (filed July 12, 2022) ("CN Reply Comments"), Ex. 3, ADM Support Letter, at 1.

[28] *See, e.g.,* CN Comments at 536, 562.

[29] CN prepared a detailed operating plan addressing all impacts of its proposal, which made clear that CN's route for North-South traffic would bypass Chicago. In contrast, the CP and KCS plan does not include potential impacts at several key locations in the Chicago area. For example, at Schiller Park, CP and KCS have never been entirely clear about how traffic will move—even while proposing significant increases in yard activity. *See, e.g.*, CN Amended Responsive Application, Ex. 13, Operating Plan, ¶ 164, Table 6 (2440% increase in traffic at the Schiller Park automotive terminal); *id.*, Appendix I, page 1 (Applicants' "Growth Plan Train Changes" include trains originating and terminating at Schiller Park Yard, as well as blocks of traffic being transferred from Bensenville Yard). Yet Applicants also now rely on a notion that, essentially, Schiller Park Yard will be closed; Motion to Strike, *Canadian Pacific Railway Limited, et al.—Control—Kansas City Southern, et al.,* STB Finance Docket No. 36500, at 7, n.4 (filed July 20, 2022). But that (supposed) proposal of significant increases in yard activity went totally unexplained in CP's and KCS's Operating Plan or Amended Operating Plan, as well as their submissions to the Board's Office of Environmental Analysis, which instead identified their railcar activity and truck activity as exceeding the Board's thresholds at Schiller Park Yard.

Kansas City and points in Michigan, such as Detroit, and beyond in eastern Canada would move over the Springfield Line to CN's existing line at Springfield, Illinois, and then to yards near Matteson, Illinois, which is well south of Chicago.[30] Traffic would then move to or from the east via Matteson onto CN's line through Indiana and into Michigan, bypassing the City of Chicago.[31]

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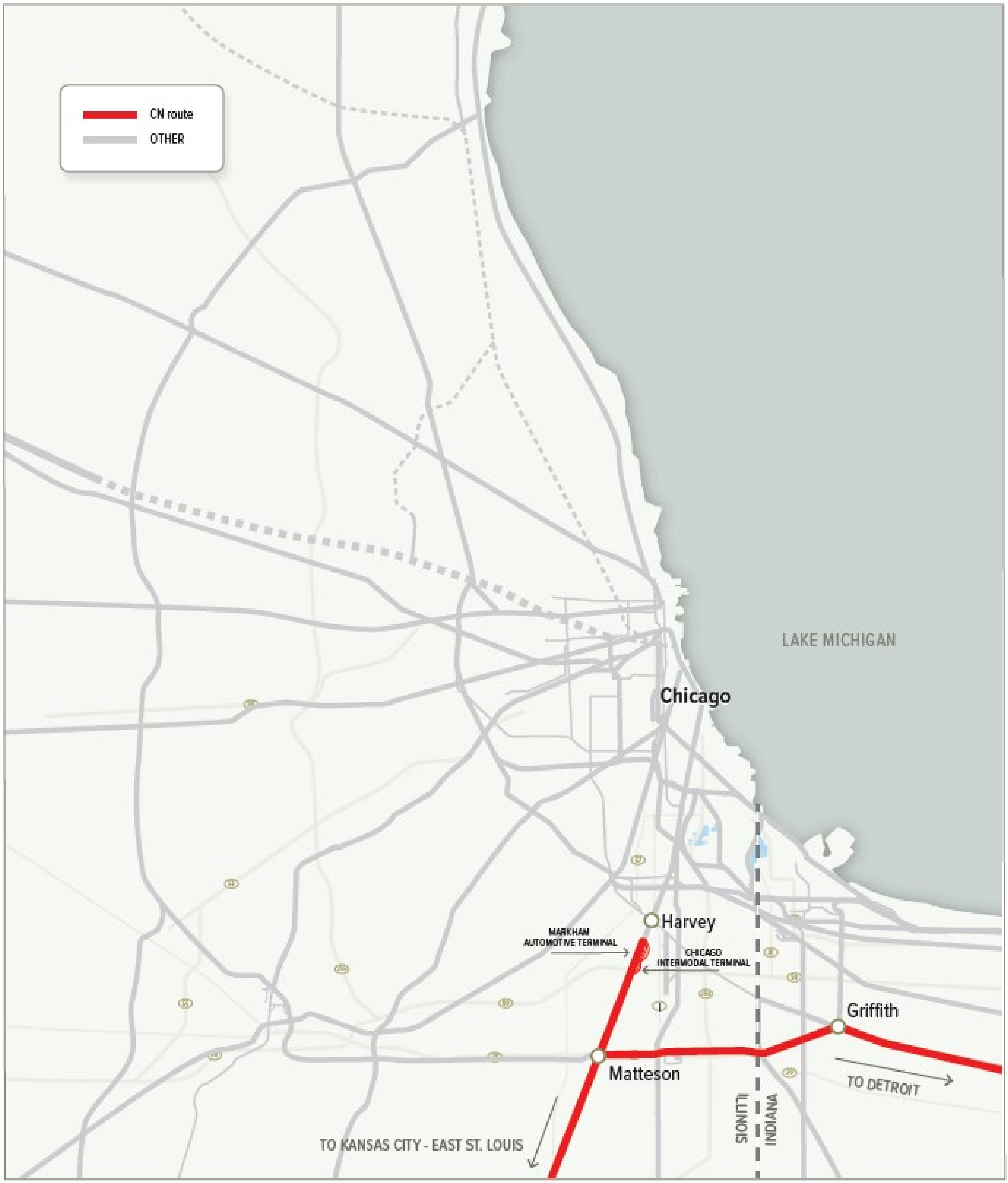
[30] CN has made significant investment at Matteson, Illinois. Subsequent to CN's merger with the Elgin, Joliet & Eastern Railway, CN has made all rail-to-rail crossings grade separated, reducing local disruption and providing additional operating flexibility.

[31] CN Reply Comments, Verified Statement of Derek Taylor ("Taylor V.S.") at 2.

Figure 1:
CN Route in the Chicago Vicinity for Moves Between Kansas City and Detroit



In its July 12, 2022, filing, the Coalition to Stop CPKC[32] asked the Board to approve CN's application:

> Granting CN's Responsive Application, subject to appropriate oversight during implementation, would be in the public interest. It would establish a competitive alternative to the merged CPKC with the potential for commodities to be shipped by railroad to and from Kansas City and Chicago while alleviating the delays, congestion and other harm to the Coalition communities that will result on the Elgin Subdivision if this alternative routing is foreclosed by CP and KCS post-merger.[33]

In contrast, CP and KCS present just three letters from stakeholders who express specific concerns about CN's proposed divestiture condition. All appear to have been told (incorrectly) by CP and KCS that divestiture would mean the end of single-line access to KCS, would create new inefficiencies, or would cause other grievous harms to service. As discussed in Section III.A, none of this is true and these customers will receive better service than they do today after CN's capital investment, with the added benefit of a second railroad option and an improved physical plant.

[32] The Coalition is composed of these Illinois communities in suburban Chicago: Village of Itasca, Village of Bensenville, City of Wood Dale, Village of Roselle, Village of Schaumburg, Village of Hanover Park, Village of Bartlett, City of Elgin, and DuPage County.

[33] Response of the Coalition to Stop CPKC to the Responsive Application of the Canadian National Railway Company and Illinois Central Railroad Company, *Illinois Central Railroad Co.—Acquisition of a Line of Railroad Between Kansas City, MO, & Springfield & East St. Louis, IL—Kansas City Southern Railway Co.*, STB Docket No. FD 36500 (Sub-No. 1), et al., at 6 (filed July 12, 2022).

II. CP'S AND KCS'S RESPONSE CONFIRMS THE COMPETITIVE HARM FROM THEIR MERGER THAT CN'S RESPONSIVE APPLICATION IS DESIGNED TO REMEDY.

President Biden's Executive Order on Promoting Competition in the American Economy exhorted the Board to "further competition in the rail industry and to provide accessible remedies for shippers."[34] Rather than promoting the public interest and protecting competition, CP and KCS ask this Board to protect them from the competition, increased investment, and resultant benefits to shippers that would occur if KCS's Springfield Line were divested to CN so that the Line could remain an independent competitor to CP's existing Kansas City Line. Any doubt that CN's Responsive Application would preserve a viable competitive alternative has been removed by the admission of CP and KCS that it views the Springfield Line as potential competition to CP's Kansas City Line and that a merged CPKC will suffer significant customer losses unless the Board grants "unconditioned approval" of the proposed merger.[35] *See infra* § II.A.

In 1995, Congress "explicitly authorize[d] imposition of conditions requiring divestiture of parallel tracks" by the Board when "approv[ing] … a merger or other regulated transaction."[36] *See infra* § II.B. In the circumstances presented here, divestiture is warranted both under straight-forward application of the Board's

[34] *See* Executive Order on Competition.

[35] *See* CP/KCS Rebuttal, Vol. 1 of 3, at 264, 314.

[36] ICC Termination Act of 1995, H.R. Conf. Rep. 104-422, 1995 WL 767862, at *191 (Dec. 18, 1995).

competition policies as well as the broader public interest standard that applies to this merger. As discussed below, CP's and KCS's contrary arguments are based on an inappropriate and cramped reading of the antitrust laws—and one that is certainly out of step with the Biden Administration's policies. CP's and KCS's operational arguments are makeweights and without substance. *See infra* § II.C.

A. KCS, CN, and CP All Recognize the Competitive Significance of the Springfield Line.

A CP/KCS merger presents significant competition and public interest concerns with regard to the Springfield Line. No speculation about the Line's ability to support traffic between Kansas City and Chicago is required: Though buried in their filing, CP and KCS ultimately concede that the Springfield Line carries traffic between Kansas City and Chicago today.[37]

Nonetheless, CP and KCS suggest the Springfield Line is competitively irrelevant because, in their view, the level of traffic it currently carries is not significant. Even if somehow this existing competition could be wished away, KCS repeatedly recognized the competitive potential of the Springfield Line prior to this merger. CP has likewise admitted that it wants to prevent CN from investing in the Line to compete with "density" on the CP Kansas City Line. Given these statements, it is unsurprising that CP's and KCS's claims that CN believes the Springfield Line has no competitive potential are without any foundation.

[37] CP/KCS Rebuttal, Vol. 2 of 3, Reply Verified Statement of W. Robert Majure ("Majure Reply V.S."), ¶ 175 ("My initial screen identified {{ }}} involving the Springfield/St. Louis Line that even warranted some detailed review: the {{{ }}} corridor.").

1. KCS publicly acknowledged the competitive significance of the Springfield Line.

Last year, CN and KCS spent months publicly explaining the competitive potential of the Springfield Line. KCS made multiple presentations to investors about the opportunities to use the Springfield Line to convert truck traffic to rail transportation. A July 2021 KCS presentation argued that the "Kansas City Speedway" would be a "new competitive route between KC, Detroit & Chicago."[38] In an August 2021 presentation, KCS again explained that the "Kansas City Speedway" was one of the key "revenue opportunities" of a proposed CN-KCS merger, because it would "connect[] CN's Midwest foothold and the KC region" and allow KCS to target a "6 B[illion] truck addressable market."[39] KCS issued press releases arguing that investments in "the newly designated Kansas City Speedway—the line between Kansas City, MO and Gilman, IL" would help it "provid[e] a better, more competitive connection between Kansas City and Chicago."[40] Senior KCS officers gave podcast interviews and presentations with CN

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[38] *See* Exhibit 5, Kansas City Southern Presentation, "Combination of CN & Kansas City Southern: Creating the Premier Railway for the 21st Century" (July 2021), at 9.

[39] *See* Exhibit 6, Kansas City Southern Presentation, "Combination of CN & Kansas City Southern: Creating the Premier Railway for the 21st Century" (Aug. 2021), at 6.

[40] *See* Exhibit 7, CN Press Release, "CN and KCS Emphasize Compelling Case for Pro-Competitive Combination in STB Filing, Now Awaiting Final Ruling on Voting Trust," at 3 (July 7, 2021), https://www.globenewswire.com/news-release/2021/07/07/2258940/0/en/CN-and-KCS-Emphasize-Compelling-Case-for-Pro-Competitive-Combination-in-STB-Filing-Now-Awaiting-Final-Ruling-on-Voting-Trust.html.

about the "huge truck market" that they hoped to penetrate and plans to "invest in the rail line of Kansas City to Springfield" in order to "create direct single-line service from Detroit to Kansas City."[41] Such direct single-line service would remove long-haul trucks from congested highways and benefit automotive customers in Michigan.

These public statements by KCS dovetail with its internal assessments.

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KCS executives now declare that they think that using the Springfield Line to compete for intermodal and automotive traffic is "dubious" and "unrealistic" and that CN does not see the Line "as part of a realistic alternative route between

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[41] Exhibit 8, Transcript of "Rail Group On-Air" Podcast with Jean-Jacques Ruest and Patrick Ottensmeyer, at 9–10 (June 11, 2021); *see also* CN Comments, Ex. 14, June 3, 2021 CN-KCS Presentation Slides, Bernstein's 37th Annual Strategic Decisions Conference.

[42] *See* Exhibit 9, May 13, 2021, KCS Board of Directors Presentation, at 26 (KCSR-HC-00015131).

[43] *See* CN Comments at 21–23 {{(

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Kansas City and Chicago."[44] In light of KCS' repeated statements to the contrary, these claims cannot be given any weight and serve only to illustrate the competitive harm that would be caused by allowing the Springfield Line to be acquired by an owner that is not motivated to develop its potential because it would compete with CP's legacy network.[45]

2. CP's actions show that it recognizes and wants to eliminate the competitive presence of the Springfield Line through its merger with KCS.

As noted, CP's confession that it wants to preclude use of the Springfield Line to "poach" traffic in the Chicago-Kansas City corridor confirms that CN's concerns are well-justified.[46] And CP's statement that it would rather spin the Springfield Line off as a shortline than sell it to CN belies all its claimed concern about single-line access to customers on the Line and is further evidence that CP's primary concern is to prevent the Springfield Line from competing effectively with the CP Kansas City Line.[47] CP and KCS claim to be concerned about service to customers

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[44] *See* CP/KCS Rebuttal, Vol. 2 of 3, Reply Verified Statement of Patrick J. Ottensmeyer ("Ottensmeyer Reply V.S.") ¶ 9; Naatz Reply V.S. ¶ 102.

[45] Suggestions that KCS does not view the Springfield Line as a usable connection with CN similarly do not match the facts. {{

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[46] Creel Reply V.S. ¶ 22.

[47] CP's notion that the Board should prefer a buyer-to-be-named-later is contrary to the established practice of the antitrust agencies, which typically require the identification of the buyer of to-be-divested assets before agreeing that it will not challenge a deal. *See infra* nn. 48, 49. Here, CN is the only entity to file a

on the Line, but their position suggests the contrary. They would rather see the Line in the hands of an unnamed short line than sell it to a buyer who has already agreed to give them haulage access to *every current and future customer* on the Line, with a plan to improve service and to invest hundreds of millions of dollars in improving the Line. That CP touts an option that would degrade the quality of service to Springfield Line customers merely serves to underscore that CP's primary concern is keeping the Line out of the hands of a railroad that is most likely to use it to compete effectively with CP's Kansas City Line.

Further, there would be a real risk that CP could manipulate this sale to ensure that the Springfield Line is not used to compete with the CP Kansas City Line. CP could spin off the Springfield Line to a shortline with interchange commitments favorable to a merged CPKC in order to ensure the Line could not be used to compete with CP. The Line needs significant investment and an owner committed to unlocking its potential as a through route while serving on-line shippers, and CN is prepared to do both. These concerns underscore why the antitrust agencies have long had a practice of requiring and approving up-front buyers before blessing a divestiture remedy to address competitive concerns. As the Department of Justice's Antitrust Division reiterated in its most recent Merger Remedies Manual, generally parties seeking a divestiture remedy "must identify an acceptable 'upfront' buyer," which is "particularly important in cases where the

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Responsive Application for the Springfield Line, is offering pro-competitive haulage arrangements, and is committed to making the investments that will ensure the Line will be utilized to its full potential.

Division determines that there are likely to be few acceptable and interested buyers who will effectively preserve competition in the relevant market post-divestiture."[48] The same is true with the FTC, whose policy states that it "will typically require an up-front buyer if the parties seek to divest assets comprising less than autonomous, on-going business or if the to-be-divested assets are susceptible to deterioration pending divestiture" so as to "minimize[] the possibility that the assets and competition will diminish pending divestiture, which causes immediate competitive harm."[49]

Here, the only appropriate option is divestiture to CN. CN is the only entity to file a Responsive Application for the Springfield Line, is offering pro-competitive haulage arrangements, and is committed to making the investments that will ensure the Line will be utilized to its full potential.

3. CN has demonstrated its belief in the competitive potential of the Springfield Line.

Remarkably, CP and KCS claim that CN does not really believe in the competitive potential of the Springfield Line. But CN has proposed to invest $250 million to develop traffic over the Line, in addition to paying CP and KCS the Line's

[48] U.S. Dep't of Justice, Antitrust Division, Merger Remedies Manual, at 42 (2020), https://www.justice.gov/atr/page/file/1312416/download.

[49] Fed. Trade Comm'n, Negotiating Merger Remedies, Statement of the Bureau of Competition of the Federal Trade Commission, at 7 (Jan. 2012), https://www.ftc.gov/system/files/attachments/negotiating-merger-remedies/merger-remediesstmt.pdf.

fair market value. In these circumstances, it is ludicrous to argue that CN does not view the Line as "a viable competitive alternative."[50]

If further evidence were needed, CP's and KCS's own exhibits prove that CN was considering options for a joint venture or joint marketing agreement to develop the Springfield Line well before CP's and KCS's transaction was announced.

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[50] CP/KCS Rebuttal, Vol. 1 of 3, at 222.

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CP's and KCS's supposed evidence that CN secretly does not want to develop traffic over the Springfield Line is scant and unpersuasive. They first argue that ICRR's decision to sell the Springfield Line in 1997—before it became part of the CN network—somehow means that CN itself must not value the Line. That decision, *made 25 years ago by ICRR (not CN) management under very different circumstances*, has no relevance to competitive issues today. CP's and KCS's argument based on the failure of the 1998 CN-KCS Alliance Agreement[54] to develop substantial traffic over the Springfield Line fails for similar reasons. Indeed, CP and KCS have argued in this proceeding that the failure of a more recent CP/KCS initiative to grow traffic has no bearing on their future potential to attract new CPKC traffic.[55]

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[52] *Id.* at 26.

[53] *See* Exhibit 1, Verified Statement of Doug MacDonald ("MacDonald V.S.") at 7.

[54] *See* Exhibit 11.

[55] CP/KCS Application, Verified Statement of John Brooks ("Brooks V.S.") ¶¶ 30–32.

And KCS's and CP's claims that "CN's internal documents" show "CN's own lack of interest" in the Springfield Line are misleading. {{

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[57] CP and KCS describe Mr. Ruest as "CN's former CEO," but in 2013, he was actually a Senior Vice President and Chief Marketing Officer. *See* Mischa Wanek-Libman, "Ruest Named CEO of Canadian National," RT&S (July 24, 2018), https://www.rtands.com/freight/class-1/ruest-named-ceo-of-canadian-national/ (covering Mr. Ruest's ascension to CEO in 2018).

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And CP's claim that CN must be acting {

}} is made up. CP does not cite a single CN document that says or implies that. Its primary source is {

[58] CP/KCS Rebuttal, Vol. 3 of 3, Hynes V.S., Ex. 66 at 1.

[59] *Id.* CP and KCS oddly spend several pages of their Rebuttal asserting that various CN statements that investments in the Springfield Line would create a "new" competitive option are meaningful. *Id.*, Vol. 1 of 3, at 225–29. This misunderstands STB precedent, which has long recognized that losses of potential competition are competitively significant. *See infra* § II.B. The Springfield Line is an existing and underutilized asset—which both exerts real competitive pressure today as an alternative route to the CP Kansas City Line and has enormous competitive potential that KCS itself has recognized. CP does not have the right to crush that competitive potential in a merger between two Class I railroads simply because it has not yet been fully realized.

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CP's only other evidence to support its theory are emails between CN marketing employees shortly following the announcement of the proposed CP/KCS transaction, which CP baselessly characterizes as "internal marketing documents" and a "scramble" to respond. (And even those emails simply reflect normal reactions from employees whose job is to win business from intermodal and intramodal competitors.)

Indeed, KCS has acknowledged that CN expressed interest in exploring a combination with KCS well before KCS's proposed merger with CP was public. There is no support for CP's self-interested assertion that CN's consistent vision about the competitive potential of the Springfield Line is motivated by a desire to "hurt CP." In fact, CN's Responsive Application reflects its long-term belief in the potential of the Springfield Line to become a high-quality route for intermodal and automotive traffic that would compete more effectively with truck transportation and other rail options.

B. The Board Has Ample Authority Under the Old Merger Rules to Address the Competitive Concerns Raised by a CP/KCS Merger with Regard to the Springfield Line.

Congress provided the STB with both the power to condition rail mergers and the statutory obligation to use that broad power to ensure a merger is in the public interest. Under subsection 49 U.S.C. § 11324(c)'s "'public interest' standard," the agency has long "possessed 'extraordinarily broad' discretion to decide … what kind of conditions, if any, to impose" in approving a transaction.[60] It has "issued numerous decisions over many years imposing conditions under 49 U.S.C. § 11324(c) to mitigate various concerns and protect the public interest broadly."[61] Indeed, Congress modified section 11324 to "explicitly authorize[] imposition of conditions requiring divestiture of parallel tracks" by the Board when "approv[ing] … a merger or other regulated transaction."[62] And the Board's decision to apply its "old rules" does not mitigate its obligation to assess the public interest under current law and current facts. It should take account of the agency's current view of the "public interest," as well as modern antitrust thinking, which recognizes that divestiture is an appropriate remedy where, as here, the merging companies have

[60] *Vill. of Barrington v. Surf. Transp. Bd.*, 636 F.3d 650, 657 (D.C. Cir. 2011) (quoting *S. Pac. Transp. Co. v. ICC*, 736 F.2d 708, 721 (D.C. Cir. 1984)).

[61] *See, e.g.*, *Union Pac. Corp., et al.—Control—Missouri Pac. Corp., et al.*, 366 I.C.C. 462, 565 (1982) (describing "effects harmful to the public interest (*such as* [*i.e.*, *not limited to*] an anticompetitive reduction of competition in an affected market) …").

[62] ICC Termination Act of 1995, H.R. Conf. Rep. 104-422, 1995 WL 767862, at *191 (Dec. 18, 1995).

an incentive to deploy some assets less efficiently to avoid harming their more profitable business.

Divestiture here is fully consistent with the Board's express statutory authority to order divestiture of rail lines, public interest mandate, and competition policies. As CN has previously explained, "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."[63] The Board has recognized this fact.[64] Indeed, last year, CP's economist, Dr. Robert Majure, submitted testimony for CP arguing that parallel lines hundreds of miles apart (and even on the other side of rivers) compete.[65] CP and KCS do not attempt to reconcile their past arguments with their current position, and instead assert that "[m]ere parallelism is not sufficient [a] predicate for divestiture (or any other) relief" and that CN has not otherwise made any showing of competitive harm.[66] CP and KCS concede that the lines are parallel (as shown in Figure 2 below), despite their repeated prior assertions that their

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[63] CN Comments at 39.

[64] See Decision No. 37, *Canadian National Railway Co., et al.—Control—Illinois Central Corp., et al.*, 4 S.T.B. 122, 175 (1999) ("*CN/IC*").

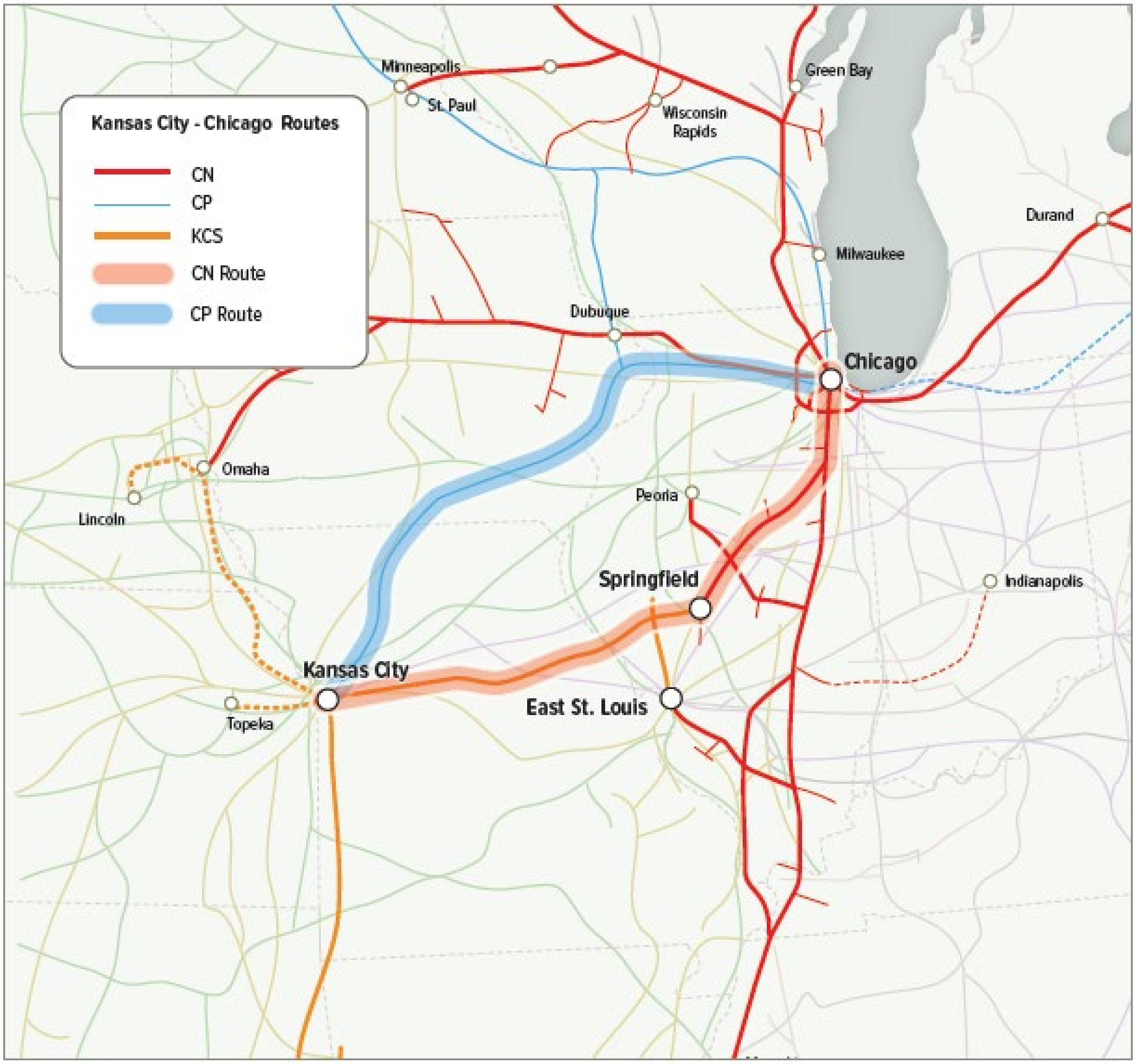
[65] *See* CP/KCS Application, Vol. 2 of 4, Verified Statement of W. Robert Majure at 14; *see also* Canadian Pacific's Reply to CN and KCS Joint Motion for Approval of Voting Trust, *Canadian National Railway Company, et al.—Control—Kansas City Southern, et al.*, STB Docket No. FD 36514 (filed June 28, 2021); Applicants' Reply to Comments on Proposed Voting Trust Agreement, *Canadian National Railway Company, et al.—Control—Kansas City Southern, et al.*, STB Docket No. 36514 (filed July 6, 2021), Reply Verified Statement of William J. Rennicke, at 22–23, 40–41 (discussing Dr. Majure's analysis).

[66] CP/KCS Rebuttal, Vol. 1 of 3, at 214.

merger "is truly end-to-end with no overlap."[67] And they argue that the Board should grant their "unconditioned merger" under the guise of the Board's old rules, permitting them to extinguish the competitive alternative of the Springfield Line.

[67] CP/KCS Application, Vol. 1 of 4, Verified Statement of Keith Creel, ¶ 28.

Figure 2:
Parallel CP and KCS Lines



The Board need look no further than CP's and KCS's Rebuttal for evidence of competitive harm from their merger. CP and KCS *admit* that "[w]ere 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."[68] Or, in the words of CP's CEO, CN might "poach some of the traffic opportunities that a merged CPKC would otherwise pursue in the Kansas City-Chicago lane."[69] What CP calls "poaching" is not a harm to competition, but the essence of competition.

Confronted with the competitive parallel overlap between CP's Kansas City line and KCS's Springfield Line, CP and KCS are left to assert that the Springfield Line is not used to transport significant volumes of north-south traffic today.[70] CP and KCS appear to believe that, in these circumstances, the Board should give them free rein to foreclose future competition over the route.[71]

Even if—counterfactually—the Springfield Line carried no traffic between Kansas City and Chicago today, the merger would still raise competitive concern. The doctrine of potential competition has long been a feature of antitrust law,[72]

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[68] CP/KCS Rebuttal, Vol. 1 of 3, at 240.

[69] Creel Reply V.S. ¶ 22.

[70] CP/KCS Rebuttal, Vol. 1 of 3, at 212–18.

[71] CP/KCS Rebuttal, Vol. 2 of 3, Reply Verified Statement of Richard W. Brown and Nathan S. Zebrowski, at 232.

[72] *See, e.g.*, *American Needle, Inc. v. Nat'l Football League*, 560 U.S. 183, 197 (2010) (noting that agreements which "deprive[] the marketplace of . . . actual *or potential* competition" are unlawful) (emphasis added); *Am. Tobacco Co. v. United States*, 328 U.S. 781, 797 (1946) (explaining that "[p]revention of all potential competition . . . . [can be] cheaper and more effective than any amount of 'cure'"); *United States v. Microsoft Corp.*, 253 F.3d 34, 79 (D.C. Cir. 2001) (en banc) (per curiam) ("[I]t would be inimical to the purpose of the Sherman Act to allow monopolists free reign to squash nascent, albeit unproven, competitors at will"); *see also*; *United States v. Falstaff,* 410 U.S. 526, 532 (1973) (holding that mergers with potential entrants "may nevertheless violate § 7 because the entry eliminates a potential competitor exercising present influence on the market")*; FTC v. Procter & Gamble*, 386 U.S.

with the antitrust agencies repeatedly recognizing that significant competitive concerns arise where, as here, an acquiring company will have reduced incentive to deploy the acquired assets efficiently because of the concern that doing so will cannibalize the acquiring company's existing sales.[73] Indeed, contrary to the suggestions of CP and KCS, the antitrust authorities have been increasingly concerned about mergers that may eliminate potential competition and bring enforcement actions to prevent the loss of potential competition.[74]

The Board's precedents are in accord. Even in the days of deregulation, the Interstate Commerce Commission ("ICC") went out of its way in its Railroad

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568, 575 (1967) (affirming the FTC's view that "the merger would seriously diminish potential competition by eliminating Procter as a potential entrant into the industry"); *United States v. Penn-Olin,* 378 U.S. 158, 173 (1964) (identifying how "[t]he existence of an aggressive, well equipped and well financed corporation engaged in the same or related lines of commerce waiting anxiously to enter an oligopolistic market would be a substantial incentive to competition which cannot be underestimated").

[73] *See* U.S. Dep't of Justice & Fed. Trade Comm'n, Horizontal Merger Guidelines, § 5.3 (Aug. 19, 2010), *available at* https://www.justice.gov/atr/horizontal-merger-guidelines-08192010 (noting that "[a] merger between an incumbent and a potential entrant can raise significant competitive concerns"); *see also* U.S. Dep't of Justice & Fed. Trade Comm'n, Antitrust Guidelines for Collaborations Among Competitors, § 3.31(a) (Apr. 2000), *available at* https://www.ftc.gov/sites/default/files/documents/public_events/joint-venture-hearings-antitrust-guidelines-collaboration-among-competitors/ftcdojguidelines-2.pdf (noting how concerted action between competitors can result in a loss of potential competition as "new R&D efforts might cannibalize their supra competitive earnings").

[74] *See, e.g., FTC v. Facebook, Inc.,* No. 1:20-cv-03590-JEB, Dkt. 82 (D.D.C. filed Sept. 8, 2021); *United States v. Visa Inc.*, No. 3:20-cv-07810, Dkt. 1 (N.D. Cal. filed Nov. 5, 2020)*; United States v. Sabre Corp.*, No. 20-1767, 2020 WL 4915824 (3d Cir. July 20, 2020); Complaint, *In the Matter of Illumina, Inc. and GRAIL, Inc.*, FTC Dkt. 9401 (filed Mar. 30, 2021).

Consolidation Procedures "to note that a consolidation can in certain circumstances lead to a reduction in potential competition."[75] For example, in *CN/IC*, the Board imposed haulage conditions for certain shippers after finding that "[a] loss of a build-in/build-out option may constitute a significant loss of potential competition," and that the circumstances of the CN/IC transaction made it less likely that KCS would pursue such a project.[76] In *UP/SP*, the Board granted conditions to "preserve the existing potential competition" by ensuring that shippers had the opportunity for at least two options over the Smoot-Giddings segment;[77] and in *CN/DM&IR* the Board ensured that "build-in/build-out" options representing "potential competition" were protected.[78] KCS itself has argued that even a routing that moved no traffic at all, which is not the case here, created important competitive leverage.[79]

In the end, Congress granted the STB broad public interest authority to assess how this merger will impact the rail industry generally and to address harms to competition and shippers. The Board's public interest analysis clearly

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[75] *Railroad Consolidation Procedures, General Policy Statement*, 363 I.C.C. 784, 787 (1981).

[76] *CN/IC* at 154.

[77] Decision No. 44, *Union Pacific Corp., et al.—Control and Merger—Southern Pacific Rail Corp., et al.*, 1 S.T.B. 233, 466 (1996) ("*UP/SP*").

[78] Decision No. 7, *Canadian National Railway Company and Grand Trunk Corporation—Control—Duluth, Missabe and Iron Range Railway Company, et al.*, STB Docket No. FD 34424, at 43 (STB served Apr. 9, 2004).

[79] Brief of the Kansas City Southern Railway Company, *Canadian Pacific Railway Company, et al.—Control—Dakota, Minnesota, & Eastern Railroad Corp., et al.*, STB Docket No. FD 35081, at 17 (filed July 2, 2008).

encompasses consideration of how the merger might alter CP's incentives to deploy the Springfield Line efficiently and the benefits of divestiture, such as creation of a new single-line service for key markets, environmental benefits, and avoiding the congestion that a CP/KCS merger will otherwise cause in Chicago.

C. CP's and KCS's Other Arguments Do Not Undermine CN's Showing of Competitive Harm from Consolidated Control of the CP Kansas City Line and KCS Springfield Line.

CP and KCS make a hodgepodge of other arguments as to why a divestiture remedy is unnecessary or might harm customers. All are without merit.

First, CP and KCS attempt to defend KCS's level of investment in the Springfield Line to suggest that the combined company will maximize the Line's potential.[80] But they do not dispute that they have proposed no merger-related investment or non-merger-related capital spending projects for the Line.[81] Instead, CP and KCS point to some capital investments KCS made in the Line 10 years ago and state that KCS spends money to maintain the Line today.[82] Yet, as witness Hugh Randall testifies, portions of the eastern end of the Line are limited to FRA Class 1 (10 MPH) track speeds.[83] In any event, KCS's historical investments in the Line are not relevant. What matters is the future vision for the Line under CP

[80] CP/KCS Rebuttal, Vol. 1 of 3, at 236–38.

[81] *See* CP/KCS Application, Vol. 1 of 4, at 41 (showing no planned capital investment on Springfield Line).

[82] Naatz Reply V.S. ¶ 92.

[83] Exhibit 4, Third Verified Statement of Hugh Randall ("Randall Third V.S.") at 25.

control and any future plans for investment. There are none. Moreover, to the extent that KCS made investments in the Line in the past, it will benefit from those investments in haulage and will be compensated for those prior investments in the fair purchase price that CN would offer.

KCS's reliance on customer investment in facilities on the Line is completely irrelevant. Customers will continue to benefit from their investments regardless of whether they choose to ship via haulage with a merged CPKC, CN, or a combination of both. As CN has shown exhaustively, its investment in the Line will enable better service than customers receive today. All stakeholders will benefit. Those stakeholders include customers on the Springfield Line, customers whose shipments would travel over the Line, communities with fewer trucks on the highway each year, rail carriers whose shipments traverse the Line and interchange at gateways including Springfield, East St. Louis, and Kansas City, and a merged CPKC who can compete for customers on the Springfield Line via haulage.

Second, CP and KCS claim that CN sought to "shut down interchange at Springfield entirely."[84] But as KCS well knows, the reason that CN and KCS decided in 2019 to relocate (not "shut down") the CN-KCS interchanges point for some Springfield Line traffic from Cockrell to East St. Louis was to minimize interference with ADM's Cockrell operations, given the absence of interchange

[84] CP/KCS Rebuttal, Vol. 1 of 3, at 221 (emphasis omitted).

facilities to enable the exchange of manifest traffic at Cockrell.[85] In any event, traffic that CN and KCS physically interchange at East St. Louis also traverses the Springfield Line. CN's and KCS's mutual decision to relocate interchange operations to a different point on the Springfield Line sheds no light on the Line's potential or on the ability to interchange traffic at Springfield if sufficient investments are made. CN's plan to construct a new siding at Cockrell will facilitate the movement of traffic over the Springfield gateway between Kansas City and Chicago (and beyond to Michigan and eastern Canada). And CN's plan to construct a new yard track and extend a siding at Roodhouse will facilitate the movement of traffic to Springfield and to East St. Louis.

Third, CP and KCS contend that divestiture of the Springfield Line to CN would create a competitive problem in St. Louis.[86] This is unfounded conjecture. In the first place, divestiture to CN would cause no reduction of competitive routing options, because a merged CPKC would have complete unrestricted haulage access to East St. Louis and all customers and interchange partners there. Moreover, the notion that CN possesses a parallel route between Springfield and East St. Louis is dubious. For CN to take traffic from Springfield to St. Louis on its existing lines, that hypothetical traffic would have to move north from Springfield to Mt. Pulaski, then southeast to Mattoon, then south through Effingham to Du Quoin, then

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[85] *See* Exhibit 2, Rebuttal Verified Statement of Derek Taylor ("Taylor Rebuttal V.S.") at 10.

[86] *See* CP/KCS Rebuttal, Vol. 1 of 3, at 245–46.

northwest to East St. Louis. This roundabout and inefficient route is hardly "parallel" to the direct KCS line between Springfield and East St. Louis. But even if it were, CN's proposed conditions on divestiture completely preserve KCS's existing rail routing options between Springfield and East St. Louis.[87]

Figure 3:
Roundabout "Parallel" Route

Finally, CP and KCS argue that there are other competitive routes between Chicago and Kansas City.[88] It is certainly true that the Springfield Line and the CP

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[87] Moreover, the claims by KCS witnesses that CN's proposal would impair competition in St. Louis are completely at odds with KCS's prior statements acknowledging the wide range of competitive rail options in St. Louis, where most KCS customers have access to multiple Class I carriers through the Terminal Railroad Association of St. Louis or Alton & Southern Railway. *See* Ex. 6, KCS Presentation, "Combination of CN & Kansas City Southern: Creating the Premier Railway for the 21st Century" (Aug. 2021), at 11.

[88] *See* CP/KCS Rebuttal, Vol. 1 of 3, at 216–17.

Kansas City Line compete in a marketplace with other routing options. But the CP/KCS response demonstrates that the Springfield Line is a particular competitive threat that CP wishes to forestall. The presence of other routing options does not change the fact that CP's consolidation of both routes would permanently reduce competitive options and prevent a reinvigorated Springfield Line supported by an infusion of capital from also supporting rail movements between Kansas City and Michigan and eastern Canada.

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If the Board is to "further competition in the rail industry,"[89] as the Biden Administration has encouraged it to do, and "strive to remedy every competitive harm that would stem from any proposal that [it] decide[s] to approve,"[90] the Board must impose a remedy for this competitive harm. CN's Responsive Application is narrowly tailored to do so and thus in the public interest without damaging any of the claimed synergies of a merged CPKC.

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[89] *See* Executive Order on Competition ("encourag[ing]" the Chair of the Surface Transportation Board to "further competition in the rail industry").

[90] Final Rules, *Major Rail Consolidation Procedures*, STB Docket No. EP 582 (Sub-No. 1), slip op. at 20 (STB served June 11, 2001). The Board expressed a commitment to remedy "every competitive harm" in "any future consolidation cases"—not just mergers under the current rules. *Id.*

III. THE SPRINGFIELD LINE PLAYS NO ROLE IN THE CLAIMED BENEFITS OR SYNERGIES OF A CP/KCS MERGER, AND A MERGED CPKC WILL RETAIN THE FULL ABILITY TO COMPETE FOR THE TRAFFIC ON THE LINE VIA HAULAGE.

The Board has rejected divestiture requests where the benefits of the divestiture are outweighed by its harms. For example, in *UP/SP*, the Board found many problems with the requested divestiture, including that it "would introduce a distinctly weaker competitor,"[91] destroy single-line service,[92] harm the quality of service,[93] and undermine the benefits of the merger.[94] And in *Pan Am*, the Board denied divestiture because it could have forced a restructuring of the transaction that would have precluded the pro-competitive grant of trackage rights to Norfolk Southern and risked a general restructuring of the rail industry with unpredictable results.[95]

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[91] *UP/SP* at 434.

[92] *Id.* at 435, 439.

[93] *Id.* at 435, 436, 439.

[94] *Id.* at 436, 439. Moreover, despite the lack of divesture, there were multiple voluntary agreements the primary applicants entered into and additional conditions imposed by the Board, which granted BNSF extensive trackage rights so that it could not only "be an effective replacement for SP at … 2-to-1 points and affected 1-to-1 points," but also offer additional public benefits -- such as more "efficient and much improved route[s]" in certain key regions and "preserving [the UP/SP merger's] benefits." *UP/SP*, at 374-75, 393, 411-13, 419, 433-34.

[95] Decision No. 9, *CSX Corp., et al.—Control and Merger—Pan Am Systems, Inc., et al.*, STB Docket No. FD 36472, slip op. at 20–21 (STB served Apr. 14, 2022) ("*Pan Am*").

Here, however, CN's Responsive Application proposes a condition targeted to remedy a significant and discrete competitive problem if the Board approves the CP/KCS merger. If the divestiture condition is granted, CP and KCS will retain complete access to every current and future shipper on the Springfield Line, and unfettered ability to use the Line to reach Class I and shortline interchange partners, including at East St. Louis and Springfield. Merged CPKC haulage carload traffic would receive better service than KCS provides today, with more frequent carload operations, and substantial capital investments in the Line's physical plant. And unit train haulage traffic would be powered by KCS locomotives with a step-on-step-off crew exchange in Kansas City. Finally, CP and KCS will receive fair market value for the Line.

Nonetheless, CP and KCS insist that the divestiture would drive "a dagger [] into the vital organs of [their] transaction."[96] But far from being a vital organ, the data shows the Springfield Line is merely an appendage to the proposed merger. CP and KCS plan no merger-related investment in the Line and project virtually no merger-related traffic growth (other than a generic estimate of the "organic growth" that would naturally occur across their networks regardless of whether the merger occurs). A divestiture condition that preserves a merged CPKC's access to every customer and interchange point on the Line will not harm a merged CPKC's bottom line.

[96] CP/KCS Rebuttal, Vol. 2 of 3, Reply Verified Statement of John Brooks ("Brooks Reply V.S.") ¶ 48.

CP and KCS nevertheless claim that CN's Responsive Application would cause four harms. As shown below, all lack merit.

A. CP's and KCS's Arguments that Haulage Would Be Bad for Shippers Contradicts Industry Norms and Their Own Experience.

The Responsive Application included a draft Haulage Services Agreement that will allow a merged CPKC to continue to access any existing or new customer on the Springfield Line. As CN explained, this provision of haulage rights would "create an additional competitive option for most shippers located on the Line."[97] The draft haulage agreement includes Service Standards that require CN to provide a merged CPKC "the same level of service as other traffic of the same type moving" on CN's own trains.[98] And CN's Operating Plan proposes equal or better service to Springfield Line shippers, with many receiving more frequent train service and benefiting from CN's investments—investments CP has clearly stated it will not make.[99]

CP and KCS, however, treat the relatively commonplace concept of a haulage agreement as though CN were proposing to cut off Springfield Line customers' access to a merged CPKC rail network.[100] They assert that Springfield Line

[97] CN Amended Responsive Application at 105.

[98] *Id.*, Exhibit 2C, § 4.

[99] Section 2.5 of the proposed Haulage Services Agreement contemplates the possibility of additional capital improvements if required to accommodate an increase in CPKC haulage traffic. *See id.* § 2.5.

[100] *See* CP/KCS Rebuttal, Vol. 1 of 3, at 248.

customers would be better off captive to a merged CPKC than having access to both CN and CPKC networks—allegedly because CN's haulage service on behalf of a merged CPKC to those customers would no longer be "single-line."[101]

CP's and KCS's arguments are contrary to their own advocacy in this proceeding and other proceedings, as well as established industry practice.

1. Haulage offers a convenient, competitive, and seamless option for shippers.

Contrary to CP's and KCS's claims now, the CP/KCS Application is replete with instances claiming that CP/KCS movements that include a haulage segment constitute "single-line service." For example, CP's Application touts its Central Maine & Quebec transaction as a success story, emphasizing CP services to the Port of St. John. That service—for which CP relies on haulage provided by two shortlines (the New Brunswick Southern Railway and Eastern Maine Railway) between Brownville Jct., Maine and St. John, Canada (a distance of more than 200 miles)—was described by CP's witnesses Mr. Brooks and Mr. Creel, respectively, as a "single-line route" and as "single-line-like service."[102] CP and KCS include support

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[101] *Id.* at 231–32 ("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 …").

[102] CP/KCS Application, Vol. 1 of 4, Brooks V.S. ¶ 23 (asserting that CP had been "sending double-stack intermodal trains [from the Port of St. John] into the heart of North America via CP's single-line route"); CP/KCS Application, Vol. 1 of 4, Verified Statement of Keith Creel ¶ 18 ("As just one small example, in the year since CP completed our acquisition of Central Maine & Quebec Railway US Inc. (the "CMQ") to provide new single-line service to Maine and *single-line-like service* to the Port of Saint John, traffic to/from the CMQ has grown beyond our forecasts, as John

statements from the Port of St. John and shippers using it praising the "seamless, single-line service" that they receive from CP and hope to use to access the KCS network—service that all depends on haulage.[103] CP cannot simultaneously describe its service to the Port of St. John as a successful single-line route while claiming that haulage service on the Springfield Line would not be single-line.

In addition to the Port of St. John, CP uses haulage on CSXT lines to move traffic between Chicago and Buffalo, a route that allows double-stacked containers and autorack cars that cannot be transported on CP's own route between Chicago and Detroit—and then over trackage rights from NS—because trains of that height cannot go through CP's Detroit River Tunnel.[104] CP also operates via haulage rights

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Brooks, CP's Chief Marketing Officer explains in his verified statement.") (emphasis added).

[103] CP/KCS Application, Vol. 3 of 4, at 84 (Support Statement of Port of St. John stating, "KCS and CP have had a cooperative relationship in the past, and CP-KCS joint routes are among our transportation options, but as separate companies they have not been able to offer the kind of seamless, single-line service we have come to expect from our transportation providers. This transaction will improve our transportation options. The seamless connection from Port Saint John, through the midwestern United States down to Mexico offers a tremendous opportunity for the entire transportation network."); *see also id.* at 561 (Support Statement of Irving Oil).

[104] *See* [Applicants'] Amended Operating Plan (Exhibit 13), *Canadian Pacific Railway Limited, et al.—Control—Kansas City Southern, et al.*, STB Docket No. FD 36500, ¶ 37 (filed May 13, 2022) ("A haulage agreement with the CSX provides a route for CP double-stack intermodal service between Chicago and the CP's network in Eastern Canada. These trains are crewed by CSX and operate over 540 miles over CSX's high speed double-stack cleared Chicago Line connecting Bensenville Yard with Buffalo via Cleveland, OH. Together, the NS and CSX agreements provide direct reliable service between the Midwest and CP's Eastern network.").

provided by CSXT to handle intermodal traffic originating or terminating at its ramp in the Detroit area to Chicago.[105]

KCS is also a significant user of haulage, whether it is to Gulf Coast locations such as Gulfport, Pascagoula, and Mobile that KCS access via haulage; or Midwestern destinations like Council Bluffs, Omaha, Lincoln, and Topeka.

The CP/KCS filings contain numerous statements regarding the benefits of single-line service and *nowhere do they suggest that any CP or KCS single-line service using haulage rights is somehow inferior*. For example, Wahba and Naatz describe one of the "exciting new opportunities created by the CP/KCS combination" as "the ability to expand the market reach of grain and other bulk shippers that are, or could be, served by CP in the Upper Midwest and Canada" with "new single-line routes made possible by the Transaction" that "will give these shippers more efficient options to reach more markets, and at the same time will provide receivers served by KCS with more efficient access to more sources for the commodities they

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[105] CP has also chosen, at various times, to replace its own rail operations with haulage services provided by other railroads, including the replacement of trackage rights on the so-called "Southern Tier Line" in New York with haulage performed by the owner, Norfolk Southern (*see CSX Transportation, Inc. and Delaware and Hudson Railway Company, Inc. – Joint Use Agreement*, STB Docket No. FD 35348, at 2 n.6 (STB served Aug. 16, 2010) (CP subsidiary "discontinued its trackage rights in favor of a haulage arrangement,")) and a 2015 sale of rail line in New York and Pennsylvania to Norfolk Southern, with retention of competitive access to connecting shortlines via haulage. *See Norfolk Southern Railway Company – Acquisition and Operation – Certain Rail Lines of Delaware and Hudson Railway Company, Inc.*, STB Docket No. FD 35873, at 18-19 (STB served May 15, 2015).

receive."[106] KCS's access to grain origins in the Upper Midwest is via haulage rights on UP's lines.[107] Moreover, as described in the Third Verified Statement of Hugh Randall, CP and KCS include in their traffic study the value of traffic moved via CSXT-provided haulage and expect it to grow.[108]

CP's and KCS's claims also are contrary to real world industry practice. Haulage is used in the rail industry practically every day and offers a convenient and competitive option that is virtually indistinguishable from actual single-carrier service. The commercial relationship between a merged CPKC and customers on the Springfield Line will be entirely within their control: a merged CPKC will continue to set the rates and other terms for traffic moving in their account and will have the ability to enter into transportation contracts with on-line customers. A merged CPKC will deal directly with customers in billing for linehaul service and be responsible for car supply, car tracing and customer service in connection with haulage shipments. Haulage cars will be transported by CN using the same railcars

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[106] *See* Wahba & Naatz V.S. at 8.

[107] *See* CP/KCS Application, Vol. 1 of 4, at 34. Moreover, other shippers have filed in the docket and claimed that both CN and KCS "reach the port of Mobile, Alabama." *See, e.g.,* Boss Lubricants Letter*, Canadian Pacific Railway Limited, et al.—Control—Kansas City Southern, et al.,* STB Docket No. FD 36500 (filed April 23, 2021); National Cold Chain, Inc. Letter*, Canadian Pacific Railway Limited, et al.—Control—Kansas City Southern, et al.,* STB Docket No. FD 36500 (filed April 23, 2021); Horizon Grains, Ltd. Letter*, Canadian Pacific Railway Limited, et al.—Control—Kansas City Southern, et al.,* STB Docket No. FD 36500 (filed April 26, 2021). These shippers do not differentiate the fact that KCS only reaches the Port of Mobile via haulage on CN.

[108] Exhibit 4, Randall Third V.S. at 18.

that KCS uses today (as a merged CPKC will be responsible for providing rolling stock for shipments in their account). While trains containing haulage traffic of a merged CPKC will be operated by CN crews, those crews will likely be the same crews that serve KCS customers today, as CN has offered to give preference to current KCS/Gateway Eastern employees in filling positions on the Springfield Line.[109] The only other difference between KCS's current operations and CN's post-divestiture haulage service is that the Springfield Line will be dispatched by CN rather than KCS.[110]

2. The Board has long approved the use of haulage agreements.

Because haulage agreements are outside the jurisdiction of the Board (and its predecessor),[111] there are no reported data documenting the numerous uses of haulage across the rail network. But haulage rights are exceedingly common. The Board does, however, sometimes have the opportunity to consider haulage agreements in the context of broader transactions and has actually relied on

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[109] *See* CN Amended Responsive Application, Exhibit 13, Operating Plan, at 109–10 (citing the draft Asset Purchase Agreement, Exhibit 2A, § 7.13).

[110] *See* Exhibit 4, Randall Third V.S. at 10.

[111] *See, e.g.,* Decision No. 19, *Burlington N. Inc. and Burlington N. R.R. Co.—Control and Merger—Santa Fe Pac. Corp., et al.*, ICC Docket No. FD 32549, 1995 WL 232766, at *2 (ICC served April 20, 1995) ("The haulage rights do not, in and of themselves, constitute a transaction subject to our jurisdiction under 49 U.S.C. 11343, and the primary applicants and KCS can therefore swap haulage rights without our approval.").

haulage agreements to maintain competition without expressing any concern that haulage might harm customers.

For example, when CN acquired ICRR, the Board imposed a condition involving haulage to protect potential buildout competition.[112] Specifically, CN and KCS entered into an Access Agreement pursuant to which CN provided KCS haulage access to three shippers at Geismar, LA (among other haulage and trackage rights). The Board, as a condition of the merger, ordered that the haulage agreement be expanded to include three additional shippers.[113]

A second example is found in the Board's approval of the acquisition of Conrail by NS and CSXT, where the Board ordered CSXT "to negotiate an agreement with CP to permit either haulage rights, not restricted as to commodity or geographic scope, or similarly unrestricted trackage rights, over the east-of-the-Hudson line from Fresh Pond to Selkirk (near Albany), under terms agreeable to the parties, taking into account the investment that continues to be required for the line."[114]

Likewise, in the *BN/ATSF* merger, various settlement agreements were entered into that included haulage, including Southern Pacific being granted

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[112] *See CN/IC* at 153–55.

[113] *Id.*

[114] Decision No. 89, *CSX Corp. et al.—Control and Operating Leases/Agreements—Conrail Inc. et al.*, STB Docket No. FD 33388, 3 S.T.B. 196, 283 (decided July 20, 1998) ("*Conrail*").

haulage on BNSF's lines between Amarillo, TX and Lubbock, TX.[115] KCS was granted haulage in a settlement agreement between Neosho, MO and East St. Louis; Neosho, MO and Tupelo, MS; and Tupelo, MS and East St. Louis.[116] Indeed, the ICC rejected an argument by a shortline opponent of the merger that haulage rights were insufficient and trackage rights should be granted, finding that "haulage rights provide sufficient protection against merger-related competitive harm and could lead to improved service for [the shortline] and its shippers."[117]

3. CP's and KCS's alleged concerns about haulage service quality are meritless.

KCS and CP witnesses suggest that haulage is inadequate because CN would somehow discriminate against the traffic of a merged CPKC and "undermin[e] CPKC's competitiveness" on the Line.[118] But CN's proposed Haulage Services Agreement contains service equivalency standards[119] that ensure equal treatment of a merged CPKC's traffic. Moreover, the Haulage Agreement includes an arbitration remedy in case service is in dispute.[120]

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[115] Decision No. 38, *Burlington N. Inc. and Burlington N. R.R. Co.—Control and Merger—Santa Fe Pac. Corp., et al.*, 10 I.C.C.2d 661, 686 n.25 (1995) ("*BN/ATSF*").

[116] *Id.* at 667. Neither of these settlement agreements were formally entered as conditions but were discussed by the ICC in the context of its approval of the transaction.

[117] *Id.* at 779.

[118] *See* CP/KCS Rebuttal, Vol. 1 of 3, at 234.

[119] CN Amended Responsive Application, Exhibit 2C, § 4.

[120] *See* CN Amended Responsive Application, Exhibit 2C, § 12.

CP and KCS allege that KCS receives poor service from CN under a haulage agreement between Jackson, MS, and Hattiesburg, MS.[121] As explained in the Rebuttal Verified Statement of Derek Taylor, upon receiving KCS cars at Jackson, CN must move them north to Memphis for classification and blocking before transporting them south to Hattiesburg.[122] CP and KCS claim this is inefficient; but in fact, KCS has other options and has chosen this method of operation.

CN cannot block KCS (or CN) cars at Jackson because CN has no classification yard there. KCS could avoid the movement to Memphis by complying with the terms of a Supplemental Agreement ICRR and KCS entered into in 2007 that requires KCS to pre-block cars delivered to CN at Jackson by destination.[123] The agreement provides that, if KCS does not deliver pre-blocked cars, it must pay a per car Block Fee (currently $68.83 per car).[124] KCS has apparently decided it would rather pay the Block Fee than block the cars itself as contemplated by the Supplemental Agreement. In light of these facts, the claim by Applicant witnesses Elphick and Orr that there is "no incentive for CN to switch KCS interchange traffic in Jackson" is disingenuous.[125] In reality, KCS could make the northbound

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[121] CP/KCS Rebuttal, Vol. 1 of 3, at 234.

[122] *See* Exhibit 2, Taylor Rebuttal V.S. at 6–7.

[123] *See* Exhibit 12, Supplemental Agreement Between IC and KCS (Feb. 9, 2007).

[124] *See* Exhibit 2, Taylor Rebuttal V.S. at 6; Exhibit 12, Supplemental Agreement Between IC and KCS (Feb. 9, 2007).

[125] CP/KCS Rebuttal, Vol. 2 of 3, Reply Verified Statement of Raymond A. Elphick and John F. Orr ("Elphick/Orr Reply V.S.") ¶ 103.

movement to Memphis unnecessary by fulfilling its own obligations under the Supplemental Agreement.

4. Springfield Line customers will not be harmed by haulage and will benefit from two-carrier competition.

CP and KCS wrongly assert that no customer supports divestiture of the Springfield Line.[126] ADM, for example, explicitly supports divestiture, recognizing the benefits that two-carrier service and an owner committed to investing in the Line would have for its business.[127] CP and KCS cite three shippers on the Line who have expressed concerns—namely, fear that divestiture might hurt their service or somehow preclude them from using single-line CPKC service. As shown above, those purported concerns are unwarranted.

For example, Bartlett Grain expressed concern that its investments in Mexico could be stranded by divestiture or that it would lose single-line service.[128] But Bartlett would have continued direct access to the merged CPKC network, as well as a new option in CN that it could use as competitive leverage. Bartlett further expresses concern about being "hostage to CN's operations,"[129] but as explained

[126] Naatz Reply V.S. ¶ 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.").

[127] *See* CN Reply Comments, Ex. 3, ADM Support Letter, at 1.

[128] Verified Statement of Mr. Bob Knief, *Canadian Pacific Railway Limited, et al.—Control—Kansas City Southern, et al.*, STB Docket No. FD 36500, ¶ 10 (filed June 22, 2022) ("Bartlett V.S.").

[129] *Id.*

above, CN would be contractually obligated to provide the same level of service on traffic moving under a CPKC waybill as it does for its own traffic. Finally, Bartlett cites "the need for a new interchange at Kansas City."[130] But there would be no formal interchange between CN and a merged CPKC at Kansas City. The transfer of Bartlett grain trains at Kansas City would require only a "step-on, step-off" crew change with no swapping of locomotives or switching of cars. That crew change is, in fact, the status quo today as KCS currently does such a "step-on, step-off" change in Kansas City between KCS crews and Gateway Western crews.[131]

B. CN Access to IFG Would Not Harm a Merged CPKC.

The competitive intermodal service that CN would introduce over the Springfield Line requires dedicated intermodal terminal facilities at Kansas City. In the Responsive Application, CN proposed that it would construct those facilities at KCS's existing International Freight Gateway terminal, at an estimated cost to CN of tens of millions of dollars.[132] Specifically, CN proposes to build sufficient infrastructure at IFG to accommodate an estimated 95,300 containers and 10,000 multilevel cars annually.[133] The facilities to be built by CN will include 20,000 track feet (with pad) and storage plus accompanying pavement. The automotive facilities

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[130] *Id.*

[131] Taylor V.S. at 12–13.

[132] CN Amended Responsive Application, Ex. 13, Operating Plan, Appendix A at 73–74.

[133] *Id.* at 124–25.

will include 6,600 track feet, as well as roadways and railhead parking and truck areas.[134] In order to ensure that future development is accomplished in an equitable and orderly manner, CN proposes that the IFG Terminal would become jointly owned, with CN and a merged CPKC each holding a 50/50 ownership interest. CN anticipates that it and a merged CPKC would maintain and operate essentially separate terminals (tracks and facilities) within IFG, while sharing the access tracks connecting the terminal to the main line of a merged CPKC.

CP and KCS repeatedly claim that CN's plan for the IFG Terminal would be unworkable.[135] But CP and KCS fail to explain why. As elaborated upon in Derek Taylor's verified statement, CP and CN currently share Schiller Park—another facility where CP and KCS anticipate increased traffic as a result of the transaction—as well as multiple jointly owned facilities in Canada.[136] Similarly, CN and CSXT share 50/50 ownership of the intermodal yard in Memphis, Tennessee, where both carriers separately operate their own intermodal terminals.[137]

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[134] *Id.* at 125.

[135] *See, e.g.,* CP/KCS Rebuttal, Vol. 1 of 3, at 240 ("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."); *Id.* at 239–40 ("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 be introducing in North-South lanes via Kansas City.").

[136] Taylor V.S. at 6, 9–11; Taylor Rebuttal V.S. at 9.

[137] *Id.*

The IFG is an ideal location because it has ample space to accommodate the growth projected by CP and KCS, as well as CN. At present, only 112 acres of the (approximately) 369 acres are developed.[138] Moreover, using the Ruler tool in Google Earth, it can be readily seen that less than one third of the land already owned by KCS is developed.

While CP and KCS vaguely assert that CN's presence would interfere with certain "new competitive initiatives" by the merged system, they have presented no actual evidence or analysis of any capacity constraints or physical limitations.[139] The image in Figure 4 shows that there is ample space at IFG to support both CN's and a merged CPKC's planned operations.

[138] Certain documents produced by KCS state that IFG is 356 acres, but GIS maps for Cass and Jackson Counties in Missouri peg the figure at a similar 369.4 acres. Exhibit 4, Randall Third V.S. at 4.

[139] CP/KCS Rebuttal, Vol. 1 of 3, at 312.

Figure 4:
IFG Terminal[140]

CP and KCS also complain that 50% ownership would result in CN appropriating 50% of the IFG's existing capacity for its own use.[141] As explained above, however, CN does not plan to use KCS's existing capacity, but rather would construct additional tracks and facilities to enable it to handle its own intermodal and automotive traffic independently. Equal ownership is a common arrangement and shared ownership does not require that the partners route equal amounts of traffic over the facility or evenly divide space at a facility.

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140 Source is Google Maps. On street view, the images were taken in 2019.

141 CP/KCS Rebuttal, Vol. 1 of 3, at 239–40.

C. CN Traffic on the Springfield Line Would Compete with Merged CPKC Traffic, Providing a Competitive Benefit.

CP's and KCS's third claim of harm is that CN traffic would use the Springfield Line to compete with CPKC for traffic moving in the Chicago—Kansas City corridor. As they put it, "Were CN to acquire the Springfield/St. Louis Line, it would be targeting traffic opportunities between Kansas City and Chicago that [CP/KCS] will also be seeking to serve via CP's routes north of Kansas City."[142] As explained above, that is a public benefit—not a harm—of CN's proposal: divestiture of the Springfield Line to CN is intended to avoid the competitive harm that would otherwise result from CP's consolidated control of the Springfield Line and its Kansas City Line. CP's and KCS's frank admission that the reason they oppose the sale of the Springfield Line to CN is their desire to concentrate all north-south traffic on CP's main line illustrates the competitive harm that the Responsive Application is designed to remedy.

D. Divestiture of the Springfield Line Would Not Harm the CP/KCS "Growth Plan."

CP and KCS make the unsupported assertion that the Springfield Line is part of their "growth plan" for a merged CPKC.[143] In fact, their projected growth on the Line consists almost exclusively of "organic growth"—*i.e.*, a generic estimate of growth that CP and KCS assume will happen automatically across their entire

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[142] CP/KCS Rebuttal, Vol. 1 of 3, at 240.

[143] Elphick/Orr Reply V.S. ¶ 72.

network regardless of whether they merge.[144] CP's and KCS's volume projections for Springfield Line traffic are also blatantly inconsistent and unreliable. Carl Van Dyke's June 9, 2022, Third Verified Statement examined their Springfield Line projections in detail and found multiple inconsistencies and errors.[145] In any event, divestiture would not impact CP's and KCS's growth plans at all—they would have complete haulage service to all points on the Line, and any growth traffic they could realize will be fully accessible to them. Indeed, as Hugh Randall's Third Verified Statement explains, CP and KCS project traffic growth at several other locations that would be served by the merged system via haulage—at the same growth rate as directly served traffic—demonstrating that CP and KCS do not truly perceive haulage as a detriment to traffic growth.[146]

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CP's and KCS's rhetoric about Springfield divestiture being a "Transaction-killer" cannot withstand scrutiny. CN's Responsive Application is narrowly tailored to remedy a specific competitive harm without affecting other alleged benefits of the transaction.

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[144] Brooks Reply V.S. ¶ 53; CP/KCS Rebuttal, Vol. 1 of 3, at 237, Table 4.

[145] *See* CN's Comments on Applicants' Amended Operating Plan, *Canadian Pacific Railway Limited, et al.—Control—Kansas City Southern, et al.*, STB Docket No. FD 36500 (filed June 9, 2022), Third Verified Statement of Carl Van Dyke.

[146] Exhibit 4, Randall Third V.S. at 20.

IV. AMTRAK'S CONCERNS ARE MERITLESS AND PROVIDE NO BASIS TO DENY CN'S PROPOSED DIVESTITURE CONDITION.

A. Amtrak's Concern About the On-Time Performance of Passenger Trains Provides No Basis to Deny CN's Proposed Divestiture Condition.

Amtrak has entered a settlement agreement with CP and KCS pledging not to support any other conditions on the CP/KCS transaction.[147] Thus, unsurprisingly, it takes the position that even assuming that divestiture is necessary to remedy a competitive harm, it should not be granted because CN might successfully convert truck traffic to intermodal trains that would run over lines where Amtrak operates.

Amtrak's opposition provides no legitimate basis to deny the Responsive Application. As the Board has made clear in past mergers, Amtrak is not entitled to relief that would limit merger-related freight train growth on freight lines over which Amtrak operates, because Amtrak has enforceable contractual rights regarding host railroad services, as well as adequate statutory remedies, if a host railroad fails to accord the required statutory priority to Amtrak trains. That precedent is particularly apt here, where Amtrak has presented no reliable evidence that rebuts CN's showing that the line segments in questions can easily accommodate the additional freight trains that CN plans to run if the Responsive Application is granted.

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[147] Amtrak-Canadian Pacific Agreement, *Canadian Pacific Railway Limited, et al.—Control—Kansas City Southern, et al.*, STB Docket No. FD 36500, at 6 (filed Feb. 2, 2022) ("Amtrak agree[d] it will not seek additional conditions in connection with CP's application. Amtrak reserve[d] the right to oppose any condition sought . . . that conflicts with the provisions of this Agreement or that would otherwise impair Amtrak service[.]").

B. Amtrak Will Maintain Its Contractual Rights Under Its Operating Agreements and Can Enforce Preference Without Any Merger-Related Conditions.

Amtrak has previously sought to impose conditions, or to block remedial conditions on the grounds that they might increase freight traffic on lines where Amtrak operates. In *BN/ATSF*, Amtrak argued that its service would be harmed because the freight lines over which Amtrak operated were "projected to experience freight traffic increases of 10% or more as a result of common control."[148] As a remedy, Amtrak requested that common control be "conditioned upon the achievement of at least 80% on-time performance for Amtrak's trains over all BN/Santa Fe routes."[149] Amtrak also argued that common control would result in a route alteration and associated expense and thus sought to condition common control on a requirement that BN and Santa Fe "bear the cost of any necessary improvements in track capacity" to ensure its Southwest Chief Service could operate with "a minimum standard of 80% on-time performance."[150] Finally, Amtrak maintained that a particular settlement agreement "might congest that line" over which the Southwest Chief passenger service operated and therefore, "the SP trackage rights [sought as a competitive condition to that merger] would not be in the public interest."[151]

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[148] *BN/ATSF* at 686–87.

[149] *Id.* at 687.

[150] *Id.* at 688.

[151] *Id.* at 679.

The ICC denied all of Amtrak's requests, reasoning that "Amtrak already has ample remedies for any harms it may experience in its ongoing relationships with BN and Santa Fe."[152] The agency observed that Amtrak "has remedies under its court-enforceable contracts and under the Rail Passenger Service Act ("RPSA") concerning on-time performance and other service issues,"[153] concluding that "[t]hese avenues of relief provide adequate alternatives to Amtrak's requested conditions."[154] For "essentially the same reasons," the agency rejected Amtrak's broad claim that SP's proposed trackage rights would not be in the public interest, explaining that the alleged additional congestion "provide[d] no basis for barring or otherwise conditioning the SP trackage rights" set forth in the settlement agreement.[155] The ICC's reasoning applies with full force here. Amtrak has existing, enforceable contractual rights that incentivize strong CN host performance and statutory remedies that protect Amtrak from preference violations, including any alleged violations following the Springfield divestiture.

Amtrak has identified no reason why its existing contractual rights and statutory remedies are insufficient to address any hypothetical operational concerns.

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[152] *Id.* at 780.

[153] *Id.*

[154] *Id.*

[155] *Id.*

C. The Homewood-Gilman Line Segment and the East St. Louis-Godfrey Line Segment Both Have Capacity to Handle the Minimal Additional Train Volumes CN Projects.

Amtrak insists that neither the Homewood-Gilman nor the East St. Louis-Godfrey line segments can accommodate an additional 2 or 2.6 trains, respectively, without impairing passenger operations.[156] Unlike some other parties participating in the docket, Amtrak presents no capacity analysis or other study supporting its claims.[157]

CN witness Derek Taylor explained that sufficient capacity exists to accommodate the projected additional CN trains. Mr. Taylor has spent most of his twenty-plus years of railroading experience with CN "on the ICRR main line between Chicago and New Orleans, which branches to Springfield, IL [a]nd East St. Louis, IL, where it connects with the KCS Springfield Line."[158] Based on this experience, he is well-positioned to opine on the capacity of the Homewood-Gilman

[156] National Railroad Passenger Corporation's Opposition to CN's Amended Responsive Application, *Canadian Pacific Railway Limited, et al.—Control—Kansas City Southern, et al.*, STB Docket No. FD 36500, at 12 (filed July 12, 2022) ("Amtrak Opp'n").

[157] The Homewood-Gilman Line Segment runs through Kankakee, IL, where one of the Amtrak stations is. Both the Mayor of Kankakee and the Economic Alliance of Kankakee County have written in support of the divestiture. CN Comments at 499, 510. Similarly, the nearby Village of Manteno has written a letter in support of divesture. Village of Manteno Letter, *Canadian Pacific Railway Limited, et al.—Control—Kansas City Southern, et al.*, STB Docket No. FD 36500 (filed Feb. 7, 2022). The Mayor of East St. Louis, who certainly has an interest in the East St. Louis to Godfrey, IL, line, has also expressed support. CN Comments at 498.

[158] CN Amended Responsive Application, Ex. 13, Operating Plan, at 13; *see also* Exhibit 2, Taylor Rebuttal V.S. at 11.

and East St. Louis-Godfrey line segments. As further confirmation, an internal capacity analysis prepared by CN in the ordinary course of business demonstrate that the Homewood-Gilman Line Segment has the necessary capacity.[159]

Amtrak cites no contemporary evidence to contradict Mr. Taylor's conclusions. Instead, Amtrak cites out-of-context snippets from seven-year-old evidence in other proceedings to claim that CN has previously represented that the Homewood-Gilman Line Segment has insufficient capacity.[160] That simply is not accurate.

First, Amtrak points to statements CN made in 2015 as part of a Section 24308(f) proceeding (dismissed in 2018) that the Chicago-Carbondale route—including the Homewood-Gilman Line Segment—was congested and lacked sufficient infrastructure to support the Illini/Saluki Service.[161] Yet it was congestion at particular locations, *together with the Illini/Saluki Service schedules*, that was causing the on-time performance issues about which Amtrak complained in that

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[159] *See* Exhibit 2, Taylor Rebuttal V.S. at 12 & Ex. A (describing the maximum capacity on the Chicago Subdivision containing the Homewood-Gilman Line Segment and CN's internal capacity predictions over the next three years). Amtrak does not address this internal capacity analysis in its Opposition despite having received it during discovery.

[160] Of course, should the Board choose to consider evidence from the past, it is notable that Amtrak once described one additional freight train per day between Chicago and Carbondale as a "modest" projected increase in the context of a merger and did not oppose the transaction in that instance despite concerns about on-time performance. *Canadian Nat'l Ry., et al.—Control—Wisconsin Cent. Transp. Corp., et al.*, 5 S.T.B. 890, 946 (2001).

[161] Amtrak Opp'n at 5.

proceeding. CN explicitly stated in its answer to Amtrak's amended complaint that under the then-passenger schedules, "both sets of the Illini/Saluki train pairs [were] presently scheduled to meet at or near Champaign, IL, *a location* with known congestion and limited capacity."[162] CN explained that schedule adjustments would mitigate this avoidable point of congestion and reduce delays to both passenger and freight trains. And CN pointed to other ways in which the Illini/Saluki Service schedule caused unnecessary conflicts such as those with Metra at the 16th Street interlocking in Chicago.[163] CN never alleged that there is insufficient capacity for then-existing or additional freight trains on the Chicago-Carbondale route generally or the Homewood-Gilman Line Segment specifically.[164]

Second, Amtrak cites 2015 statements by two CN witnesses in the pending Section 24308(a) terms and compensation case as evidence that the Responsive Application is not operationally feasible because of congestion on the ICRR mainline south of Chicago.[165] But neither CN witness ever suggested that this main line

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[162] CN's Answer to Amtrak's Amended Complaint, *National Railroad Passenger Corporation— Section 213 Investigation of Substandard Performance on Rail Lines of Canadian National Railway Company*, STB Docket No. NOR 42134, at 9 (filed Jan. 8, 2015) (emphasis added) ("CN's Answer to Amtrak's Amended Complaint").

[163] *Id.* Amtrak's Ilini/Saluki trains also frequently arrived late to CN's lines and suffered mechanical breakdowns to equipment age and condition all of which created substantial delays and applied pressure on CN's dispatchers. *Id.* at 9–10.

[164] *See generally* CN's Answer to Amtrak's Amended Complaint.

[165] Amtrak Opp'n at 1, 5–6.

track cannot accommodate existing Amtrak trains or additional freight traffic.[166] To the contrary, both Ms. Morehouse and Ms. Murray described examples of how CN modifies its own operations to give priority to Amtrak, to the detriment of freight service quality. Ms. Morehouse's reference to the "congested single track IC[RR] main line south of Chicago" was made in explaining how CN provides preference to Amtrak in part by avoiding freight-passenger conflicts, which has an adverse impact on CN's local or last-mile service to customers.[167] In short, none of Ms. Morehouse and Ms. Murray's testimony support Amtrak's current argument that the *quantity* of freight trains affects passenger train performance; rather, it focused on the fact that Amtrak's operations cause freight train delays due to the preference owed to Amtrak by law.

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[166] Ms. Morehouse was the then-Superintendent of the Regional Operations Center for CN's Southern Region; she no longer works at CN. Ms. Murray was the then-Vice President of Corporate Marketing, but now holds the position of Vice-President of Public and Government Affairs.

[167] Opening Evidence of Illinois Central Railroad Company and Grand Trunk Western Railroad, *Application of the National Railroad Passenger Corporation Under 49 U.S.C. § 24308(a)—Canadian National Railway Company*, STB Docket No. FD 35743 (filed Sept. 4, 2015) ("IC's Opening Evidence"), Verified Statement of Anne Morehouse, at 13–14. One example Ms. Morehouse provided was that CN must operate local trains at night "to avoid conflicts with Amtrak, and with higher priority freight trains," which in turn affects local service to CN's customers. *Id.* at 14. Specifically, nighttime operations are required because local trains often "must *cross* the main line between switching yards and customer sidings," but cannot due to passenger traffic, a point Ms. Murray echoed. *Id.*; *see also* IC's Opening Evidence, Verified Statement of Fiona Murray, at 9.

Amtrak also complains that ICRR should not have single-tracked its Chicago-to-New Orleans route in 1988.[168] This fact is irrelevant. At the time, ICRR (before it was owned by CN) removed the double track in conjunction with the installation of centralized traffic control, which together with "abundant long sidings" enabled ICRR to run more efficiently while preserving "45% extra capacity" so that ICRR would have no trouble handling additional traffic in the future.[169] And ICRR was "already operating [the Chicago-New Orleans route] as though it were entirely single track" at the time the route was largely single tracked.[170]

Amtrak is not entitled to dictate the infrastructure choices of a host railroad. Federal law permits a host carrier to abandon excess capacity by downgrading or removing track if Amtrak will not pay the avoidable cost of retaining it.[171] As CN witnesses noted in 2015, although the number of Amtrak trains operating on ICRR's lines had doubled since 1971, Amtrak never offered to pay to restore the Chicago-to-New Orleans route to double track.[172] As ICRR observed at the time, "[d]espite this dramatic increase in Amtrak's traffic, no infrastructure on CN's lines has ever been added at Amtrak's expense or through public funding sponsored by

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[168] Amtrak Opp'n at 4.

[169] Exhibit 13, Frank Malone, *Why IC Is Single-Tracking*, 191 RAILWAY AGE 2, 32–34 (Feb. 1990).

[170] *Id.* at 34.

[171] 49 U.S.C. § 24309(d).

[172] Amtrak Opp'n at 4.

Amtrak."[173] And Amtrak has not agreed to fund any significant projects expanding capacity along this route. Amtrak should not be permitted to block CN's Responsive Application because of its own unwillingness to invest.

D. Amtrak's Recycled Assertions About On-Time Performance on CN's Homewood-Gilman Line Segment Are Incorrect.

Stripped of its unsupported concerns regarding two additional freight trains, Amtrak's objection to CN's Responsive Application consists of recycled complaints about the on-time performance ("OTP") of passenger trains moving over the Homewood-Gilman Line Segment.[174] This is a quintessential preexisting situation that cannot form the basis for rejecting a merger condition. The Board's longstanding policy has been to "deny relief" with respect to "a preexisting situation with little nexus to the merger."[175] In "ameliorating competitive harm that might result from [a] proposed transaction," the Board is careful to distinguish that harm "from pre-existing disadvantages that other railroads, shippers, or communities may have been experiencing" that "will neither be caused nor exacerbated" by the

[173] IC's Opening Evidence, Joint Verified Statement of Paul E. Ladue and Scott Kuxmann ("Ladue & Kuxmann Joint V.S."), at 6.

[174] Tellingly, Amtrak provides no OTP metrics for its Lincoln and Texas Eagle Services operating over the East St. Louis-Godfrey Line Segment. *See* Amtrak Opp'n at 8–10 (referencing only the number of average minutes of delay per 10,000 train miles due to supposed freight train interference on that line segment).

[175] *CN/IC* at 156.

transaction.[176] Amtrak fails to show that its concerns about OTP on this line segment bear any relationship to the proposed divestiture.

Amtrak presents selective OTP statistics that obscure the actual causes of passenger train delay on the Homewood-Gilman line segment. To begin with, Amtrak cites all-station OTP statistics for 2011 to 2014 and customer OTP for 2018 to May 2022 for all passenger trains operating on the Chicago-Carbondale route.[177] But these OTP metrics are intended to measures Amtrak performance at the train level, not a whole route with selected stations and distinct passenger services. Moreover, OTP is a measure of Amtrak train performance, not host performance, and by itself provides no insight into why a particular level of OTP is being achieved.

The customer OTP of 26% for fiscal year 2019 that Amtrak highlights is a perfect example.[178] Setting aside the fact that this is a combined OTP metric for the Illini/Saluki and City of New Orleans Services, CN freight trains accounted for only 19% of the total 517 hours of delay to the Illini/Saluki Service during 2019.[179] Significantly, Amtrak itself was responsible for 60% of the 517 total delay hours:

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[176] Decision No. 6, *Norfolk Southern Railway Company—Acquisition & Operation—Certain Rail Lines of the Delaware & Hudson Railway Company, Inc.*, STB Docket No. FD 35873, slip op. at 22 (served May 15, 2015).

[177] Amtrak Opp'n at 7.

[178] *Id.*

[179] Comments of CN, *Metrics and Minimum Standards for Intercity Passenger Rail Service*, Docket No. FRA-2019-0069, at 38 (filed June 1, 2020).

14% were attributable to other Amtrak trains and 46% were attributable to "loss of shunt operating restrictions,"[180] which was a speed restriction imposed by CN to avoid a substantial safety risk arising from used by Amtrak for some of its Illini/Saluki trains.[181] Amtrak's complaints are an example of how Amtrak attempts to use OTP metrics as if they represent the contribution to passenger train performance of freight train interference versus schedule issues and Amtrak, third-party and other causes outside CN's control as the host railroad.

In fact, there is a fundamental problem with measuring OTP at all stations for the trains in the City of New Orleans and Illini/Saluki services because the recovery time for those schedules is concentrated at their endpoints (including one midpoint for the City of New Orleans service) and must be redistributed efficiently to other stations for purposes of meaningfully applying OTP measures of performance to all stations. Amtrak has acknowledged as much,[182] and the parties have been negotiating over revised schedules that would significantly improve Customer OTP for these trains, but they have not yet reached agreement.

In addition, CN has urged Amtrak to reconsider the length of the Illini/Saluki Service schedules because the pure run time is insufficient by at least 5% (or 15 minutes) and the "ratio of the route miles of the service to the schedule time allotted

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[180] *Id.*

[181] This issue is often referred to as a "short shunt." A "short shunt" occurs when a train fails to properly close an electric circuit, which in turn causes the train not to activate the crossing signals in a timely manner.

[182] *See* Exhibit 14, Letter from J. Blair to M. Matteucci (May 3, 2022).

to cover that distance is very high . . . when compared other corridor services."[183] But Amtrak has repeatedly declined to consider such modifications. Despite Amtrak's intransigence, CN's performance as measured under the Amtrak/CN operating agreement ("Contract OTP") remains strong. The average monthly Contract OTP for the City of New Orleans Service was 90% from 2012 to 2014.[184] The Illini/Saluki Service performed nearly as well with an 84.2% contract OTP during the same time period.[185] More recently, from September 2019 to January 2021, the City of New Orleans operated at an average 96.2% contract OTP and the Illini/Saluki at a 96.1% contract OTP.[186] And whether or not the City of New Orleans Service experienced a 15% decrease in OTP following the single-tracking of the Chicago-to-New Orleans line over 30 years ago,[187] today that service is the most successful long-distance passenger route operated by Amtrak with the highest 12-

[183] Ladue & Kuxmann Joint V.S. at 35–41; *see also* Exhibit 14, Letter from J.J. Ruest to W. Flynn (Oct. 16, 2020) (asking Amtrak to reconsider "a modest lengthening in total run time" for the Illini/Saluki Service that "should dramatically increase on-time performance under FRA's metric at the stations used by the great majority of Amtrak's passengers"). CN has taken a similar position with respect to the City of New Orleans schedule.

[184] Ladue & Kuxmann Joint V.S. at 23.

[185] *Id.*

[186] *See* Exhibit 16, 2019–2021 Amtrak Monthly Contract OTP, by Train.

[187] Amtrak Opp'n at 7.

month customer OTP. In the fourth quarter of 2021, the City of New Orleans Service was consistently hitting customer OTP of greater than 80%.[188]

V. THE ALLIED RAIL UNIONS' REQUESTS FOR CLARIFICATION ARE EASILY ADDRESSED.

The coalition of Allied Rail Unions ("ARU")[189] is neutral on the proposed Springfield divestiture. ARU requests certain clarifications on the labor protective conditions that would apply to a Springfield Line divestiture as a condition of a major merger between two Class Is.[190]

First, ARU asks the Board to clarify that full *New York Dock* protections would apply to CN's Responsive Application. While *New York Dock* is typically not applicable to line sales, as ARU concedes, CN recognizes that this is a unique situation, where a line sale divestiture is being sought as a condition to be imposed

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[188] *See*, *e.g.*, *Host Railroad Report – Amtrak Train Performance on Host Railroads*, Amtrak, at 11 (October 2021), https://tinyurl.com/AmtrakOctober2021ReportCard (In October 2021, the City of New Orleans Service had an 84.6% customer OTP over the most recent 12 months.). Even during today's challenging railroad environment, the City of New Orleans Service continues to outperform all other long-distance routes. *See*, *e.g.*, *Host Railroad Report – Amtrak Train Performance on Host Railroads*, Amtrak, at 11 (June 2022), https://tinyurl.com/AmtrakJune2022ReportCard (In June 2022, the City of New Orleans Service had a 69.7% customer OTP over the most recent 12 months.).

[189] The Allied Rail Unions include the following: Brotherhood of Maintenance of Way Employes Division/IBT; Brotherhood of Railroad Signalmen; International Association of Sheet Metal, Air, Rail and Transportation Workers Mechanical Division; and National Conference of Firemen and Oilers, 32BJ/SEIU.

[190] Allied Rail Unions, Comments on Responsive Applications and Requests for Conditions, *Canadian Pacific Railway Limited, et al.—Control—Kansas City Southern, et al.*, STB Finance Docket No. FD 36500 (Sub-No. 1), et al. (filed July 11, 2022).

on the underlying merger between two Class Is. Thus, for purposes of this application, and only under these specific circumstances, CN has no objection to the application of *New York Dock* and an umbrella implementing agreement pursuant to which KCS, CN, and the affected Organizations would establish a process for the selection and assignment of employees to staff the Springfield Line.

Second, ARU asks that the Board require CN to abide by the so-called "Cramdown Agreement" to which CN is not a party. The Board does not typically involve itself in establishing the terms of an implementing agreement in the first instance; the Board requires that the parties establish the terms of an implementing agreement through negotiations or, if necessary, through arbitration.[191] However, for purposes of this application and these specific circumstances, this subject is purely academic, as CN can confirm that it intends to

[191] *See, e.g.,* Decision, *Duluth, Winnipeg and Pacific Railway Company—Amended Trackage Rights Exemption—Duluth, Missabe and Iron Range Railway Company*, STB Finance Docket No. 35045, et al., at 6 (served Oct. 19, 2009) ("In any event, the Board does not consider implementing agreement disputes in the first instance. Barring an agreement resolving this dispute, the parties may seek arbitration under the auspices of a neutral arbitrator with experience in labor matters."); *Norfolk Southern Railway Company—Acquisition and Operation—Certain Rail Lines of the Delaware and Hudson Railway Company*, STB Finance Docket No. 35873, at 4 (served Sept. 18, 2015) (denying petition for a declaratory order to resolve dispute over whether implementing agreements were required in connection with planned changes in dispatching responsibilities because "this matter must be resolved in the first instance by arbitration" subject to review by the Board); *Conrail* at 329 ("In approving a rail merger or consolidation such as this, we have never made specific findings in the first instance regarding any CBA changes that might be necessary to carry out a transaction, and we will not do so here. Those details are best left to the process of negotiation and, if necessary, arbitration under the *New York Dock* procedures.").

apply the existing Class I ICRR Labor Contract and highly competitive wage rates to the acquired territory. As part of an implementing agreement, CN would propose to modify the ICRR Agreement only as necessary to allow incorporation of the new geographic territory into the ICRR system. There would be no change to rates of pay or other basic rules in the ICRR Agreement.

VI. CONCLUSION.

CN's Responsive Application seeks approval of a condition on the proposed CP/KCS merger that would advance the public interest and address serious public interest harms posed by the primary transaction. It offers the Board an important opportunity to preserve and promote competitive options for shippers.[192]

Divestiture of the Springfield Line to CN would ameliorate "effects harmful to the public interest" that an unconditioned CP/KCS merger otherwise would cause.[193] Namely, it would remedy the harmful effects of CP's control of both the Springfield Line and its parallel CP Kansas City line and would prevent CP from foreclosing the Springfield Line's potential to compete with its Kansas City Line. Divesting the Springfield Line to CN will preserve both its existing competitive presence and its future competitive potential.

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[192] Decision No. 13, *Canadian Pacific Railway Limited, et al.—Control—Kansas City Southern, et al.*, STB Docket No. FD 36500, slip op. at 4 (STB served Feb. 18, 2022).

[193] *Id.*

The proposed divestiture is "narrowly tailored" to address that harm.[194] CN is not proposing to deprive a merged CPKC of access to any existing KCS traffic. A merged CPKC would retain full access to every current and future customer on the Line, as well as the ability to use the Line to interchange traffic with other carriers. The only meaningful impact on the merger is that a merged CPKC would no longer be able to foreclose the competitive potential of the Springfield Line—exactly the harm that the condition is intended to alleviate. For the same reason, divestiture does not "alter the competitive balance otherwise to be realized from the merger."[195]

And Springfield Line divestiture is "operationally feasible."[196] CN has submitted a full operating plan demonstrating that it will provide equal or better service than KCS provides today as a result of CN's planned $250 million investment in the Springfield Line and its Gilman Subdivision.[197]

Finally, and critically, divesting the Springfield Line to CN would "produce net public benefits." It would mean more investment in the Springfield Line and better options for traffic flows between Kansas City and Chicago, Detroit, and eastern Canada. It would result in better, more frequent service to customers on the Springfield Line, and more competitive choices for those shippers on the Line, with no loss of existing options. It would take 80,000 long-haul trucks off the road

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194 *Id.*

195 *Id.*

196 *Id.*

197 *See CN/IC* at 154 (finding haulage condition to be "operationally feasible").

annually, reducing highway congestion, GHG emissions, and the resources required by state and local governments to maintain and upgrade the highway network, and would contribute to improved supply chain flexibility. Most importantly, it would preserve an important link in the national rail network in the hands of an owner that is incentivized to maintain and improve it. CN's Responsive Application is overwhelmingly in the public interest.

Applicants respectfully request that the Board grant the Responsive Application in its entirety and impose the conditions in that Application on any approval of the proposed CP/KCS merger in Docket No. FD 36500.

Respectfully submitted,

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Dated: August 11, 2022

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of August 2022, a copy of the foregoing Rebuttal in Support of Responsive Application was served by first-class mail on all persons designated in § 1180.4(c)(5) and by first-class mail or more expeditious means on all parties of record in Docket No. FD 36500 and sub-dockets 1–4.

/s/ Morgan B. Lindsay
Morgan B. Lindsay
SIDLEY AUSTIN LLP

EXHIBIT 1

Verified Statement of Doug MacDonald

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

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

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

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

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

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

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

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

REBUTTAL IN SUPPORT OF RESPONSIVE APPLICATION

VERIFIED STATEMENT OF DOUG MACDONALD

My name is Doug MacDonald. I am the Chief Marketing Officer of CN, a position I have held since April of 2022. Prior to that time, I served as Senior Vice President – Special Projects and Senior Vice President Information Technology for approximately two and a half years. Previously, I was Vice President of Operations for the Eastern Region; Senior Vice President Sales and Marketing, Bulk Products; Vice President – Industrial Products; and Vice President Corporate Marketing, since joining CN in 2013. I hold a Bachelor of Science in Mathematics and Statistics from Concordia University.

I submit this statement to respond to the Coalition to Block CPKC that supports the divestiture of the KCS Springfield Line to CN because it would enable rail traffic between Kansas City and Michigan/eastern Canada to avoid Chicago congestion. I also respond to CP's assertions that CN is not genuinely interested in the Springfield Line and does not view it as a competitively viable through route.[1] Based on both my personal experience and role at CN, CP's assertions are completely at odds with CN's actions and strategic judgment and disregard the extraordinary market opportunities to benefit customers that can be unlocked with substantial capital investments in the Springfield Line. CN's proposed divestiture of the Springfield Line is necessary to preserve this competitive route between Kansas City and Chicago following the proposed CP-KCS merger.

[1] Reply Volume I, Page 237.

I. The Coalition to Stop CPKC is Correct that the Springfield Divestiture Will Enable Traffic Between Kansas City and Michigan/Eastern Canada to Avoid Chicago Congestion.

In the Coalition to Stop CPKC's comments filed on July 12, the Coalition expressed its support for the Springfield Divestiture as in the public interest "because it would reinforce and enhance an existing parallel alternative to the merged CPKC for transporting trains."[2] Furthermore, "this alternative routing could potentially result in fewer freight trains running through the Coalition communities, thereby alleviating some of the harm that will be caused by the merger as proposed."[3] As the Coalition further states, "permitting CP and KCS to consolidate both routes into and out of Chicago from Kansas City would ensure that no diversions took place."[4]

Divestiture of the Springfield Line to CN will enable traffic between Kansas City and Michigan/eastern Canada to avoid congestion in Chicago. My colleague, Derek Taylor, explained in his Verified Statement submitted on July 12 the route traffic would take over CN's system; traffic between Kansas City and Michigan and eastern Canada would move over the Springfield Line to CN's existing line near Springfield, Illinois and then to yards near Matteson, Illinois, well south of Chicago, and then move to or

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[2] STB Finance Docket No. 36500, Response of the Coalition to Stop CPKC to the Responsive Application of the Canadian National Railway Company and Illinois Central Railroad Company, at 3 (filed July 12, 2022).

[3] *Id.*

[4] *Id.* at 6.

from the east. By bypassing rail congestion in Chicago, CN's routing would have a faster transit time for rail customers.

As described further below, CN has long seen the competitive potential of the Springfield Line and this routing avoids congestion in Chicago.

II. CN Has Had a Longstanding, Consistent Vision To Develop and Realize the Full Competitive Potential of the Springfield Line.

CN has attempted to realize its objective of maximizing the full competitive potential of the Springfield Line for the benefit of rail customers by various means over the last twenty-five years. That has included a prior wide-ranging marketing alliance with KCS, Springfield Line partnership discussions with a private equity group, and bidding on its own to acquire KCS.

As the Board is well aware, CN's proposal to acquire the Illinois Central Railroad Company in 1998 was accompanied by a contemporaneous Marketing Alliance between CN/IC and KCS. CN's control application specifically included a terminal trackage rights application to the Board that would have facilitated the interchange of traffic in both directions between CN and KCS at Springfield, Illinois, by overcoming certain complex contractual restrictions on KCS's ability to operate into Springfield from nearby Cockrell, Illinois, where KCS ownership of the Springfield Line ends. The Board concluded that such terminal trackage rights were unnecessary as interchange facilities could be constructed at Cockrell and CN had unrestricted trackage rights to reach Cockrell. In our assessment, KCS's failure to invest in such interchange facilities at Cockrell has impeded the growth of traffic via Cockrell over the Springfield Line. But the interest of both CN and KCS in the Springfield Line as a viable competitive routing could not have been clearer. Contrary to CP's assertions, in the period since then CN has never "closed" or attempted to close the Springfield gateway with KCS, and CN-KCS interchange traffic continues to be billed via that gateway (although at the moment I understand it is physically exchanged between CN and KCS at East St. Louis for operating convenience, given the absence of adequate facilities at Cockrell, and then the traffic moves over the Springfield Line).

The competitive market opportunities presented by the Springfield Line remain significant. As the Board knows, CN competed vigorously with CP for the right to acquire the entirety of KCS. Leading up to that decision, CN undertook an exhaustive study of the market opportunities that a combined CN/KCS could achieve, and the capital investment necessary to take advantage of those opportunities. One of the most exciting opportunities again involved transforming the Springfield Line into an improved rail speedway that could compete aggressively for the multi-billion dollar trucking market between Kansas City and Detroit and beyond. CN's experts have described those opportunities in detail, so I will not repeat the evidence here. But there is plainly a tremendous market opportunity for a rail option that can service new and existing customers, provide a superior service product, compete aggressively with the dominant trucking industry, and offer a vastly improved rail route that circumvents the congested Chicago gateway.

Further, CN has long been aware that no marketing opportunity of this size can be seized without significant effort. In particular, the opportunity to fully realize the competitive potential of the Springfield Line hinges upon and warrants a significant capital infusion to improve the track speed and reliability. That is why CN is prepared to invest $250 million on the Springfield Line. The commitment is a concrete reflection of CN's belief that this underutilized rail line can be transformed into a major rail corridor that will leverage its full potential and compete more fully with CP's existing parallel northern route and, more importantly, with the trucking industry. But CN would not and could not make such a significant investment if the owner of the Line has every interest in limiting competition because of its ownership of a parallel line.

CN's most recent efforts to increase the market opportunities presented by the Springfield Line significantly predated the news that KCS was contemplating a sale of its franchise. In addition to CN's efforts decades ago to grow the Springfield Line through an alliance with KCS, CN has in recent years considered options to invest in the Springfield Line to develop its full potential, ranging from partnership discussions with a private equity group to CN's proposal last year to acquire KCS itself. Indeed, the only outcome that that would permanently extinguish the Springfield Line as a competitive alternative between Kansas City and Chicago is approval of the CP-KCS merger without a divestiture condition. While CP suggests it would be prepared to work with CN, this is a blatant effort to conceal the main message that transpires from its reply, which is that CP is not willing to entertain competition from the Springfield Line. If the

CP-KCS merger was not approved, CN would seek to work with an independent KCS to develop the potential of the Springfield Line.

In particular, CN as far back as {{ }} was examining competitive options for the Springfield Line. CN {

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CP's claim that this is all an elaborate ruse is thus demonstrably incorrect. No rational publicly-traded company – accountable to its shareholders – would propose to acquire a rail line without a concrete plan to earn an adequate return on that investment. Similarly, CN's public commitment, made in a proceeding before the Board, to make a $250 million capital infusion to transform the Springfield Line belies any notion that CN has undertaken this venture lightly or for ulterior motives. Our offer to provide a merged CPKC with continued single-line commercial access to all current and future customers on the Springfield Line – an offering designed to "do no harm" to CP and KCS and expand the options of customers on the Line – is further evidence that CN's Responsive Application is not a ruse, and is instead designed and intended specifically to preserve and upgrade the competitive alternative represented by the Springfield Line.

I note that many customers have come forward in support of our request, customers who share CN's vision for the improved service and new opportunities that a Springfield Line can provide after the infusion of $250 million in private capital. My team and I have spoken with dozens of customers who are excited about the opportunity for single-line CN service between Kansas City and Chicago and beyond to Michigan and eastern Canada. Intermodal, grain and automotive customers have recognized the loss in competitive options that would occur if a merged CPKC was permitted to control two parallel lines between Kansas City and Chicago, and are overwhelmingly positive about CN's proposal and planned improvements for the

Springfield Line. They also appreciate the alternative it provides to reduce congestion in the Chicago gateway and provide an alternate gateway between CN and other carriers in Kansas City for shipments to the west and south. This is real support for a demonstrably beneficial and warranted proposal to prevent competitive harm from the CP-KCS merger – hardly the "ruse" that CP would claim.

III. CN's Proposed Haulage for the Merged CPKC Over the Springfield Line Ensures No Customers Lose Access to CPKC While Gaining the Benefits of Improved Service and Single-Line Access to CN.

As CN's Chief Marketing Officer, I can reaffirm CN's intention to develop the Springfield Line in a way that preserves and unlocks the full competitive potential of the Line, with dual commercial access for customers to two railroads. One rail competitor will, of course, be CN. The other rail competitor will be the merged CPKC, via haulage agreements that will allow current and future customers on the Springfield Line to access the same network routing options as they have today on KCS (and if the merger is approved, on CP). Derek Taylor describes how haulage will work operationally in his verified statement. As Mr. Taylor also explains, this haulage will be available on a Line with better service than today as a result of CN's significant planned investment.

I will briefly explain how the haulage will work commercially. Under the haulage arrangement, a merged CPKC could quote a rate to a customer on the Springfield Line in an effort to win the business. If the customer chose the merged CPKC, the station on the Springfield Line would be identified as a CPKC station (in addition to being a station on CN), and the bill of lading routing would reflect CPKC as the serving rail carrier. The bill of lading would not include the haulage carrier (here CN). Thus, customers on the Springfield Line could negotiate rates directly with CPKC for movements between the Springfield Line and the merged CPKC system, with CN providing local movement of traffic on the Springfield Line on behalf of the merged CPKC. The proposed haulage also will preserve for CPKC the existing interchange KCS gateway at East St. Louis with other railroads (including CSX) and the existing KCS gateway at Springfield with other railroads (including CN and Illinois & Midland Railroad, Inc. (a Genesee & Wyoming subsidiary)). This gives customers two competitive choices when negotiating rates and routing traffic on or via the Springfield Line: CN or the merged CPKC.

CP's acquisition of the Springfield Line, on the other hand, means that none of these public benefits will be realized, and much will be lost. It is clear that CP's vision for a combined CP/KCS is to focus on the existing parallel northern CP route into Chicago and not KCS's Springfield Line. Transforming the Springfield Line is an expensive proposition, one that CP has no interest in pursuing after the merger. CP's application projects <u>no</u> investments or improvements in the Springfield Line, and projects <u>zero</u> merger-related traffic growth on the Springfield Line. The merged CPKC is instead planning to invest in CP's existing alternative corridor between Kansas City and Chicago. It is only over that alternative corridor – that runs right into and through the heart of Chicago – that CP is projecting merger-related traffic growth. What genuine long-term future the Springfield Line has in a merged CPKC system would appear to be uncertain.

In contrast to CP's likely neglect of the Springfield Line, I believe—and the evidence in the record of this proceeding further supports—that CN is uniquely situated to transform the Springfield Line into a force to be reckoned with over this corridor. No other railroad has the incentive to invest in the Springfield Line. CN's acquisition of the Springfield Line will allow it to compete aggressively with CP's parallel northern rail route, and with other rail and truck alternatives, to obtain additional traffic, including a large share of truck traffic that can be diverted from roadways and on to the rails. The market and customer opportunities that can be realized with an appropriate capital investment are what has long motivated CN's interest in the Springfield Line. CP's claim that this entire endeavor is nothing more than an effort to interfere with its plans for a combined CP/KCS network are simply wrong.

VERIFICATION

I, Doug MacDonald, 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 August 2022.

Doug MacDonald

EXHIBIT 2

Rebuttal Verified Statement of Derek Taylor

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

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

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

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

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

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

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

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

REBUTTAL IN SUPPORT OF RESPONSIVE APPLICATION

REBUTTAL VERIFIED STATEMENT OF DEREK TAYLOR

My name is Derek Taylor. I am Vice-President, Transportation, Southern Region, for CN and the co-sponsor of the Operating Plan included with CN's Responsive

Application in this proceeding seeking divestiture of KCS's Springfield Line.[1] I am submitting this statement in response to reply comments filed by CP and KCS related to CN's proposed haulage arrangement on the Springfield Line, CN's existing haulage arrangements with KCS near the Port of Mobile, CN's proposal for joint ownership of the International Freight Gateway ("IFG"), and claims by CP and KCS related to the existing CN interchange near Springfield, Illinois. I also respond to Amtrak's reply comments concerning the available capacity for freight trains on CN's line between Homewood and Gilman, Illinois and the line jointly owned by Union Pacific and KCS between East St. Louis and Godfrey, Illinois.

With more than 20 years of experience at CN and in the rail industry, I am very familiar with the use of haulage agreements across the railroad network. Haulage rights offer a flexible method for railroads to serve customers that their networks otherwise could not reach, creating commercial opportunities for the railroad and transportation options for customers. I am also familiar with the operations of the IFG and similar rail facilities. And I am very familiar with operations on the Illinois Central Railroad Company's ("ICRR's") mainline between Chicago and New Orleans, which includes Homewood-Gilman Line Segment in Illinois. By extension, I also have knowledge of infrastructure and operations on adjacent lines that branch off of the ICRR mainline, specifically KCS's Springfield Line, which includes the East St. Louis-Godfrey Line Segment in Illinois that KCS jointly owns with Union Pacific.

[1] At the time the Operating Plan was submitted, I was CN's Vice-President, Operational Excellence.

I. CN Haulage for Merged CPKC Customers on the Springfield Line Will Improve KCS's Existing Service and Benefit Those Customers.

CP-KCS make multiple conclusory statements that haulage rights will somehow harm existing KCS shippers on the Springfield Line.[2] CP-KCS seek to confuse customers regarding CN's plans for haulage, as reflected in a few letters attached by CP-KCS. CP-KCS's statements are plainly incorrect and inconsistent with long-standing industry experience (including that of CP and KCS, both of which utilize haulage performed by other railroads on their behalf to reach important markets). Haulage service is used by every Class I railroad and numerous shortline railroads and is typically viewed as a benefit—not a detriment—for customers. I am aware that KCS successfully uses haulage to access Bartlett Grain in Council Bluffs, Nebraska, with KCS's power. In this case, it will result in specific benefits for customers on the Springfield Line as well as customers with through traffic moving over the Springfield Line.

CN proposed a haulage arrangement so that local customers on the Springfield Line will continue to have direct commercial and pricing access to the merged CPKC network, with CN performing the local service on behalf of merged CPKC. CN's proposed haulage would also enable the merged CPKC to interchange traffic with other

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[2] *See, e.g.,* Applicants' Response, page 231 of 314 ("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*,") (emphasis in original); *id.* at 234 of 314 ("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"); Reply Verified Statement of John Brooks ¶ 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.").

railroads in East St. Louis, including CSX, and interchange with CN and the shortline Illinois & Midland Railroad (I&M) at the Springfield gateway. My colleague Doug MacDonald explains how, from a commercial perspective, haulage is equivalent to single-line transportation. I explain below how, from an operational perspective, CN's haulage on behalf of merged CPKC for unit train service, with an exchange of those trains between CN crews and KCS crews in Kansas City, will be virtually identical to the handoff that occurs today between KCS crews in Kansas City. And in fact, after CN's significant capital improvements to the Springfield Line, customers on that line will have faster, more frequent, and more reliable service from CN compared to what KCS provides today.

First, CP-KCS offer no concrete examples of how the hand off in Kansas City would be worse between CN and a merged CPKC than the handoff between KCS crews is today. I am not surprised by this given our plan for the Springfield Line. For unit train traffic, the hand off between CN and a merged CPKC would be functionally identical as it is today KCS. The shipper and KCS would negotiate car supply for unit trains moving to KCS destinations, and KCS locomotives would be used. There would be a step on/step off crew exchange between CN and the merger CPKC at Kansas City that is virtually identical to the KCS-Gateway Western crew changes that occur today where a KCS (formerly Gateway Western) crew operates west to Kansas City over the Springfield Line and a separate KCS crew operates south from Kansas City. The difference will be which railroad pays the salaries and employs the crews of the former Gateway Western.

In addition, under CN's proposed Haulage Services Agreement, CN will be contractually required to provide merged CPKC cars the same level of service as CN's own traffic, eliminating any concern that CN will somehow provide a subpar service to haulage traffic.

Second, CP-KCS ignores the improved service that will result from CN's planned investment. Every shipper—whether a local customer on the Springfield Line or an off-line customer whose traffic is moving over that Line—will benefit from the upgraded service that will result from the more than $250 million in targeted capital projects CN will invest. CN explained its plan for increased service after its investment in the Line, which includes new sidings, new yard track, and lengthened sidings. All customers would benefit from faster transit times as a result of CN's investment in the track to increase the track speed between Cockrell and Roodhouse, Illinois. As described in the Operating Plan, CN plans to operate manifest trains six days per week in each direction between Kansas City and East St. Louis to support local train and yard assignments. This is an upgrade in frequency from KCS's current 4 days per week. CN also plans to improve local service along key corridors between Roodhouse, Illinois and Mexico, Missouri by extending service to Laddonia, Missouri with increased frequency multiple times per week. By contrast, CP-KCS do not plan to make any investments to improve service, upgrade the Springfield Line, yard facilities, or capacity for customers.

In short, customers on the Springfield Line will only gain from the presence of CN as a new competitive option and its planned capital investment.

II. CP-KCS Mischaracterize the Haulage Arrangement Under Which CN Moves KCS Traffic To/From the Port of Mobile on KCS's Behalf.

CP-KCS attempt to cite KCS's haulage rights on CN lines to reach the Port of Mobile and Hattiesburg, MS to support their claims regarding the purported operational shortcomings of haulage over the Springfield Line. This has no relevance to CN's proposed haulage for the Springfield Line.

Nonetheless, in the interest of correcting the record, CP-KCS are mischaracterizing the facts about the haulage to/from the Port of Mobile. As background, CN granted KCS haulage rights between Jackson, Mississippi and Hattiesburg, MS / the Port of Mobile in Alabama as part of an agreement entered into in connection with their settlement in the CN/IC merger proceeding. The agreements have been amended since that time, including via a Supplemental Agreement entered into in 2007 that requires KCS to block haulage cars or pay a per car Block Fee.[3]

For the Hattiesburg/Mobile haulage arrangement, KCS has not been blocking the traffic as it is required to do and instead is relying on CN to block the traffic on KCS's behalf. This results in delays to the KCS traffic that KCS could avoid if it would uphold its part of the bargain and block the traffic itself. CN has been moving cars received from KCS at Jackson, MS north to Memphis, TN for blocking prior to transporting the cars south either to Hattiesburg (where they are interchanged to KCS for KCS to take to Gulfport) or to the Port of Mobile on KCS's behalf.[4] But in citing the alleged inefficiency

[3] *See* Ex. 12, Supplemental Agreement Between IC and KCS (Feb. 9, 2007). [4] *See* Applicants' Response, page 234 of 314.

of this movement, CP-KCS fail to explain why the northbound operational movement to Memphis is necessary. CN does not currently conduct railcar classification in Jackson and therefore moves the KCS railcars to Memphis for blocking, which is what CN does with its own traffic.

KCS can eliminate that northbound movement anytime and indeed CN would prefer that KCS do so. KCS simply has to block the haulage cars prior to handing them to CN at Jackson. Any harm experienced by KCS's customers is due entirely to KCS's failure to block its own cars as contemplated by the haulage agreement. Instead, CN is treating KCS traffic the same as its own—for all traffic that needs to be blocked (whether CN or KCS), the traffic currently goes to Memphis for classifying.

III. CN's Proposal for IFG Is Plainly Workable.

CN proposes to acquire a 50% ownership in KCS's IFG Terminal in Grandview, Missouri just south of Kansas City. That purchase is designed to protect CN's operational interests as it invests millions of dollars to construct new intermodal and automotive facilities to support CN's new service offerings over the Springfield Line for automotive and intermodal customers. As outlined in the Responsive Application, CN plans to construct facilities at IFG to accommodate 180 loaded outbound intermodal units, 105 loaded inbound intermodal units, and 53 empty intermodal units per day. The project will include 20,000 track feet (with pad) and storage, and the accompanying pavement. For automotive traffic, CN will construct sufficient capacity to accommodate 19 loaded inbound multilevels and four empty inbound multilevels, as well as 10 loaded outbound multilevels and 14 outbound empty multilevels, each daily. That element of CN's plan will require construction of 6,600 track feet including for loading/unloading and for storage. CN anticipates that the tracks and facilities within IFG will be separate for each railroad (CN and the merged CPKC).

CP and KCS claim that allowing CN to acquire an ownership interest in IFG will "extinguish CPKC's ability to rely on this facility to support new competitive initiatives."[5] Similarly, CP-KCS warns that joint ownership "would complicate terminal operations and result in hard-to-predict consequences."[6] But CP and KCS do not even attempt to provide any evidence—such as capacity analyses, future traffic projections or an explanation of additional services CP-KCS says it will offer – that would identify any such complications or consequences.

Based on my experience in the rail industry, CP-KCS's predictions are unfounded. Even if CP-KCS may have a legitimate need to expand some of their facilities at IFG in the future after 2027 (the Application identifies no plan to do so before then) publicly available information shows that sufficient space is available on site at IFG, which is a former military base, to accommodate the needs of both a merged CPKC and CN for the benefit of rail customers. CP and KCS offer no evidence to the contrary. Moreover, CN's proposal to acquire 50% ownership at IFG does *not* mean that CN is also seeking to reserve 50% of the available land for its own use. Rather, as with other jointly owned rail facilities, CN's proposal contemplates that the parties will allocate and develop the available land based upon their respective needs. Whatever facilities CN constructs at

[5] Brooks R.V.S. at 24.

[6] Elphick/Orr R.V.S. at 75.

IFG would be exclusive to CN; CN does not propose to use the merged CPKC's capacity at IFG.

Jointly owned facilities are common in the rail industry. Most notably in this context, CN and CP share Schiller Park Yard in Chicago, Illinois, with each carrier conducting segregated yard operations in distinct areas of the yard – just as is proposed at IFG. Those shared operations have co-existed for well over thirty years, since Wisconsin Central Ltd. (now a CNR subsidiary) was created from rail lines spun off from CP's Soo Line Railroad Company subsidiary. CN has a comparable 50/50 arrangement with CSXT for the intermodal yard in Memphis, Tennessee, where both carriers separately operate their own respective intermodal terminals. CN owns the lead tracks into the facility in Memphis and CSXT and CN own the property underlying the facility on a 50/50 basis. CP and KCS themselves have jointly owned and operated Knoche Yard in Kansas City (the so-called "Joint Agency") for decades. These relationships are perfectly manageable and common in the rail industry.

IV. CP And KCS Misstate the History of the Springfield Interchange.

The CP and KCS reply claimed that three years ago, CN "sought to shut down interchange at Springfield entirely." CP-KCS Reply at 221 of 314. I am familiar with CN's strategic decision-making at the time. CN has never sought to eliminate interchange of traffic with KCS via the Springfield gateway, but simply relocated that interchange solely on an operational basis via East St. Louis as an interim accommodation of current physical constraints for interchange facilities at Cockrell, Illinois, just southwest of Springfield. The Springfield interchange gateway with KCS remains open, and remains both viable and important for CN.

Union Pacific Railroad Company retains ownership of a short, isolated segment of track (the "Airline Block") east of Cockrell on the Springfield interchange route between CN and KCS. Because of contractual restrictions between KCS and Union Pacific, KCS cannot operate over the Airline Block to exchange certain interchange traffic with CN at Springfield, but CN can operate without restriction over the Airline Block to exchange interchange traffic with KCS at Cockrell, where KCS's Springfield Line begins. A major Archer Daniels Midland facility is also located at Cockrell, and the mutual decision by CN and KCS in 2019 to move the physical interchange location for some Springfield Line traffic from Cockrell to East St. Louis was intended in part to minimize interference with ADM's Cockrell operations given the currently insufficient track facilities for interchange traffic of other customers at Cockrell. The interchange at Cockrell remains open, but there was inadequate space in that location for the moves CN and KCS needed to make given the inadequate facilities on the KCS line. CN (and KCS) were not discounting the overall ability of interchange at Springfield to provide competitive value. For traffic to and from the northern part of CN's network that is heading west over the Springfield Line, moving the physical interchange to KCS in East St. Louis adds over 175 extra miles each way to the transit because the traffic must go out of route to the south on CN to Du Quoin, Illinois before reversing back north to the KCS connection at East St. Louis. For time sensitive traffic, adding such extra mileage round trip is not good for customers and reflected an interim operational compromise, not any intention or effort to shut down interchange at Springfield entirely.

V. Amtrak's Claim that the Homewood-Gilman Line Segment Has Insufficient Capacity for Two Additional Freight Trains Per Day Is Meritless.

Amtrak claims that the CN Homewood-Gilman line segment and the UP-KCS East St. Louis-Godfrey line segment lack sufficient capacity to host an additional 2 and 2.6 daily freight trains, respectively. In CN's Operating Plan, I explained that the Chicago to Gilman segment has the capacity to accommodate 2 additional freight trains per day and that the "anticipated increase in traffic and trains resulting from the proposed divestiture transaction is minimal, and is not likely to cause any disruption" to Amtrak's Illini/Saluki Service or the City of New Orleans Service.[7] I based this conclusion on my professional experience as Vice President, Southern Region, which encompasses the CN's Homewood-Gilman segment on the Chicago Subdivision, as well as my railroading experience along ICRR's mainline between Chicago and New Orleans and CN's network planning analyses.

As background, there are only two Amtrak stations located on CN's Homewood-Gilman segment: Homewood and Kankakee. At Homewood, Amtrak's station stop is on main 1 while freight trains use mains 2 and 3 to go into and out of the yard at Hazel Crest. The only other Amtrak station on this segment is at Kankakee where [Amtrak trains stop?]on CN's mainline, and there is a long siding. CN's proposed two new trains

[7] CN Amended Responsive Application, Ex. 13, Operating Plan, at 111.

are through trains carrying intermodal and automotive traffic and will not be making local stops between the Springfield Line and the automotive and intermodal yards in Hazel Crest/Harvey. There are no planned crew changes between the Springfield Line and CN's yards.[8]

CN's internal capacity forecasts indicate that CN's Chicago Subdivision had a total practical freight capacity of {{

}} CN's Network Planning team estimated in April of 2021 {

}} These projections demonstrate that there is ample capacity for additional freight trains on the Homewood-Gilman Line Segment to accommodate both

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[8] And there are no Amtrak passenger stations on the UP-KCS track between East St. Louis and Godfrey. The passenger stations are north of this segment on track that is solely owned by Union Pacific, and those passenger stations are not involved in the proposed Springfield Divestiture. Union Pacific hosts Amtrak passenger trains over the East St. Louis-Godfrey segment and dispatches this segment and would continue to do so after the Springfield divestiture to CN.

[9] *See* Ex. A.

[10] *Id.*

[11] *Id.*

the additional two freight trains per day expected to result from the Springfield divestiture and Amtrak's pre-pandemic daily train services.

Amtrak's complaint that CN's Responsive Application does not propose to make any infrastructure investments to increase capacity over these line segments rests on the mistaken assumption that there is insufficient capacity at present. As my testimony demonstrates, there is ample freight capacity to accommodate both CN and Amtrak trains. Amtrak has to date identified no specific operating challenges experienced by its passenger services on CN's Homewood-Gilman line segment or UP-KCS's East St-Louis-Godfrey segment that it believes warrant some level of capital investment to address. CN stands ready to engage in constructive dialogue with Amtrak regarding any specific concerns it may have regarding the proposed Springfield divestiture and to develop appropriate solutions.

VERIFICATION

I, Derek Taylor, 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 and authorized to file this statement.

Executed on this 11th day of August 2022.

Derek Taylor

EXHIBIT A

Withheld from Public Version

EXHIBIT 3

Third Verified Statement of David T. Hunt

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 36500

CANADIAN PACIFIC RAILWAY LIMITED; CANADIAN PACIFIC RAILWAY COMPANY; SOO LINE RAILROAD COMPANY; CENTRAL MAINE & QUEBEC RAILWAY US INC.; DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION; AND DELAWARE & HUDSON RAILWAY COMPANY, INC. – CONTROL – KANSAS CITY SOUTHERN, THE KANSAS CITY SOUTHERN RAILWAY COMPANY, GATEWAY EASTERN RAILWAY COMPANY, AND THE TEXAS MEXICAN RAILWAY COMPANY

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

Third Verified Statement of David T. Hunt

August 11, 2022

PUBLIC REDACTED VERSION

Contents

1. Qualifications

My name is David T. Hunt. I am a Vice President with Oliver Wyman, a global general management consulting firm with more than 60 offices in 31 countries. My office address is 1 University Square, Suite 100, Princeton, NJ 08540. I previously sponsored a Verified Statement filed with the Canadian National ("CN") February 28, 2022 Responsive Application, which provides further details of my qualifications and resume.

2. Assignment and Summary of Findings

I have reviewed Canadian Pacific/Kansas City Southern's ("CP/KCS") response to the CN Responsive Application for divestiture of the Springfield Line and, in particular, CP/KCS's claims regarding supposed errors in the traffic diversion studies presented in my prior testimony. Specifically, I reviewed the comments of Mr. Brown, Mr. Zebrowski, and Mr. Mutén, and found them to have no impact on the number of railcars and intermodal containers that I previously estimated CN would divert to the Springfield Line if the Board approves the CP/KCS merger and requires divestiture of the line to CN.

2.1 Detailed review of CP/KCS witness statements identified no impact on CN Springfield Line diversions

Exhibit 2-1 summarizes CP/KCS's criticisms of the Oliver Wyman ("OW") traffic diversion models and diversion estimates, along with a brief explanation of why each criticism is unfounded. The remainder of this statement provides more detail on why the criticisms are not valid.

Exhibit 2-1: Summary of CP/KCS's critiques of the OW traffic diversion models and diversion estimates

CP/KCS Response Reference	CP/KCS Argument	[Section] OW Response
B&Z ¶ 67, fn 94	CP/KCS claim diversions compared to actuals in prior mergers, not to the base case	[3.1] Mr. Brown and Mr. Zebrowski quote two ALK studies as examples. Based on my actual participation in the cited studies, CP/KCS's interpretation of the ALK methodology is incorrect
B&Z ¶ 78-82	CP/KCS claim geographic filters are inconsistent and not explained	[3.2] Filters were applied consistently; some results were then dismissed by service type after OW review and discussions with the CN commercial team. Explanations were provided in the model description and work papers
B&Z ¶ 68	CP/KCS claim coefficients in logit model are statistically insignificant	[3.3] The CP/KCS's claim is based on p-values, which are known to be flawed and used incorrectly
B&Z ¶ 67, Figure 8	CP/KCS claim logit model does not accurately predict traffic	[3.4] CP/KCS presented a highly misleading chart that incorrectly shows a logit model as a linear line when it should be an "s-curve"
B&Z ¶ 70	CP/KCS claim the rail-to-rail model produces diversion percentages that contradict real-world expectations	[3.5] Model provides logical results as expected. Fully reasonable results are demonstrated using the example raised by Mr. Brown and Mr. Zebrowski
B&Z ¶ 71-72	CP/KCS claim that Norfolk Southern Triple Crown traffic, which moves in RoadRailer equipment, will not divert to intermodal	[4.1] Norfolk Southern has converted most Triple Crown to double-stack intermodal containers because of better economics and aging equipment. Intermodal is fully competitive with RoadRailer equipment
B&Z ¶ 73-76, also Mutén ¶ 17	CP/KCS claim that projected diversions to/from St. Louis are not valid	[4.2] The projected traffic gains from CN's acquisition of the Springfield Line provide additional incentive for investment at St. Louis. These diversions are similar to the CP diversions of intermodal traffic to Kansas City, which CP serves but currently lacks an intermodal terminal
B&Z ¶ 77	CP/KCS claim that projected diversions at the Port of Montreal are not valid and not explained	[4.3] See explanation in Hunt Feb. 28, 2022 VS (pp. 19-20), which demonstrates that this is a faster route to the Midwest from Europe than the US East Coast
B&Z ¶ 83	CP/KCS claim the rail-to-rail diversion revenue estimates are unsound and overstated	[5.1] The OW model applied system average CN revenue by commodity as the first step. These revenues were then adjusted by lane to prevent CN revenue from exceeding the revenue on the incumbent railroad, where the existing revenue was available as a comparison point. Finally, the model applied a 5% discount to attract the traffic to CN
B&Z ¶ 86	CP/KCS claim there is an error in the conversion of RoadRailer tons to intermodal container tons	[5.2] This is not an error. An intermodal container on average hauls more tons than a RoadRailer unit. The rates were adjusted to account for this, and the OW model applied a 5% discount so that the CN rate per ton would be lower
Mutén ¶ 13	CP/KCS claim that the truck-to-rail diversion model does not take shipment time or the variability of shipment time into account	[6] The OW diversion analysis used a cost-based elasticity model, which uses distances as a key component to estimate costs. Mr. Mutén's claim is disingenuous, since his truck-to-rail diversion model does not consider

CP/KCS Response Reference	CP/KCS Argument	[Section] OW Response
		shipment time or variability, the same variables he says are a serious omission in OW's truck-to-rail model
Mutén ¶ 14-15	CP/KCS claim that the truck-to-rail diversion model should have considered the other railroad's market share	[7] OW's truck-to-rail traffic diversion model appropriately isolates diversions of trucks by CN, without trying to anticipate actions by other railroads. A competitive intermodal service can divert additional trucks from the roadways. Mr. Mutén improperly applied an arbitrary (and unsupported) 5% rule, which assumes that, where one railroad has 5% of the traffic in a lane, then another rail carrier cannot divert any additional traffic from trucks
Mutén ¶ 16	CP/KCS claim some of the projected diversions would require significant drays away from the destination to the origin ramp, back toward the origin from the destination ramp, or both	[8] The situations identified by Mr. Mutén were filtered out of the model. See Appendix B, Hunt Feb. 28, 2022 VS at pp 26-27

In summary, none of CP/KCS's criticisms of the OW analysis of CN traffic diversions undermine my traffic estimates or the related public benefits that could be obtained by divestiture of the Springfield Line to CN. As previously stated in CN's Responsive Application:[1]

- More than 80,000 trucks will be removed from the highways each year, generating substantial public benefits, including reduced carbon emissions, reduced highway congestion, and reduced public expenditures for highway maintenance. The more than 80,000 trucks that will be diverted to CN include approximately 77,800 dry vans and containers that will shift from highway to rail intermodal service, approximately 1,480 car transporters carrying assembled automobiles that will divert to multilevel railcars ("multilevels"), and approximately 900 trucks with cargoes that can move via transload service (*i.e.*, bulk commodities such as plastic pellets and cement that use rail for linehaul and transfer to/from truck for first/last-mile pickups and deliveries) and that will divert to covered hoppers and other types of railcars.
- A total of approximately 49,500 railcars will be diverted from other railroads because of the creation of CN's new competitive single-line rail routes to Kansas City and improved routes to East St. Louis via the Springfield Line. The traffic diverted from

[1] David T. Hunt Verified Statement, CN Responsive Application, February 28, 2022.

other railroads includes approximately 31,000 intermodal containers, approximately 17,900 multilevel cars carrying assembled automobiles, and approximately 600 carloads of grain. Of those 49,500 carload shipments, only 1,716 (3.5 percent) would be diverted from CP/KCS.[2]

- Approximately 12,500 containers that currently arrive at East Coast ports and move to Kansas City and East St. Louis by rail or truck will be diverted to the Port of Montreal, leveraging CN's new single-line service via the Springfield Line and CN's proposed new intermodal terminal in East St. Louis.
- In total, the acquisition of the Springfield Line is estimated to generate $106.9 million (2019 USD) in annual revenue for CN.

Exhibit 2-2: Diversion results summary for CN's acquisition of the Springfield Line[3]

Traffic	Rail-to-rail units	Truck-to-rail units	Port of Montreal units	Total units	Total revenue
Intermodal	31,006	77,771	12,500	121,277	$51.0M
Automobiles	17,903	1,479	-	19,382	$50.3M
Grain	604	-	-	604	$2.2M
Other	-	890	-	890	$3.3M
Totals	49,513	80,140	12,500	142,153	$106.9M

2.2 Eighty thousand diverted trucks represent only three percent of the potential market

Applying the OW truck-to-rail traffic diversion model to the IHS Markit Transearch freight data identified more than 80,000 trucks that will be removed from the highways each year with the divestiture of the Springfield Line to CN.[4] Diverting these shipments to rail will generate substantial public benefits, including reduced carbon emissions, reduced highway congestion, and reduced public expenditures for highway maintenance. Although 80,000 annual trucks, approximately 220 per day, is a substantial number, this diversion represents only 3 percent of

[2] David T. Hunt Verified Statement, CN Responsive Application, February 28, 2022, Exhibit 5-4.
[3] David T. Hunt Verified Statement, CN Responsive Application, February 28, 2022, Exhibit 2-2.
[4] David T. Hunt Verified Statement, CN Responsive Application, February 28, 2022, Section 4.

the total truck tonnage that currently moves in the traffic lanes considered by the OW diversion model.[5]

Some origin-destination pairs offer greater opportunities for CN, and therefore higher diversion percentages, than other origin-destination pairs. The Transearch data contained 23,500 trucks per year moving between the Detroit, MI BEA region and the Kansas City, MO BEA region.[6] Since CN has an intermodal yard in Detroit and will have one in Kansas City, the OW diversion model considered the relatively short drayage distances and diverted 16.8 percent of the trucks (approximately 4,000), of which 94 percent are commodities that can move in intermodal service.[7] Expanding the drayage distance adds more diversion opportunities, although at a lower diversion rate, due to higher drayage costs. For example, traffic between the Toledo, OH BEA region and the Kansas City BEA region can be drayed between Toledo and the CN yard in Detroit. The OW model considered the Toledo movements, along with the higher drayage costs, and diverted only 8.3 percent of the truck traffic between Toledo and Kansas City.

The Detroit-Kansas City lane presents a strong opportunity for CN diversions, in part because there is no conventional intermodal service in that lane today. Norfolk Southern ("NS") operates Triple Crown service, using RoadRailer equipment, to move auto parts in the lane between Detroit and Kansas City, but NS does not operate conventional double-stack service in

[5] Oliver Wyman work paper: 20220121_Springfield_T2R_v19, Summary tab, submitted February 28, 2022. Lanes considered defined in David T. Hunt Verified Statement, CN Responsive Application, February 28, 2022, Appendix B.1.
[6] A BEA region is an economic region defined by the US Bureau of Economic Analysis. IHS Markit Transearch, 2019.
[7] Rebuttal Oliver Wyman work paper: HC - STB CWS & Transearch - Detroit-KC.xlsx.

that lane, nor does any other railroad.[8] Exhibit 2-3 shows all intermodal traffic between the Detroit and Kansas City BEAs contained in the 2019 Carload Waybill Sample.[9]

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Exhibit 2-3: Intermodal traffic between Detroit, MI and Kansas City, MO

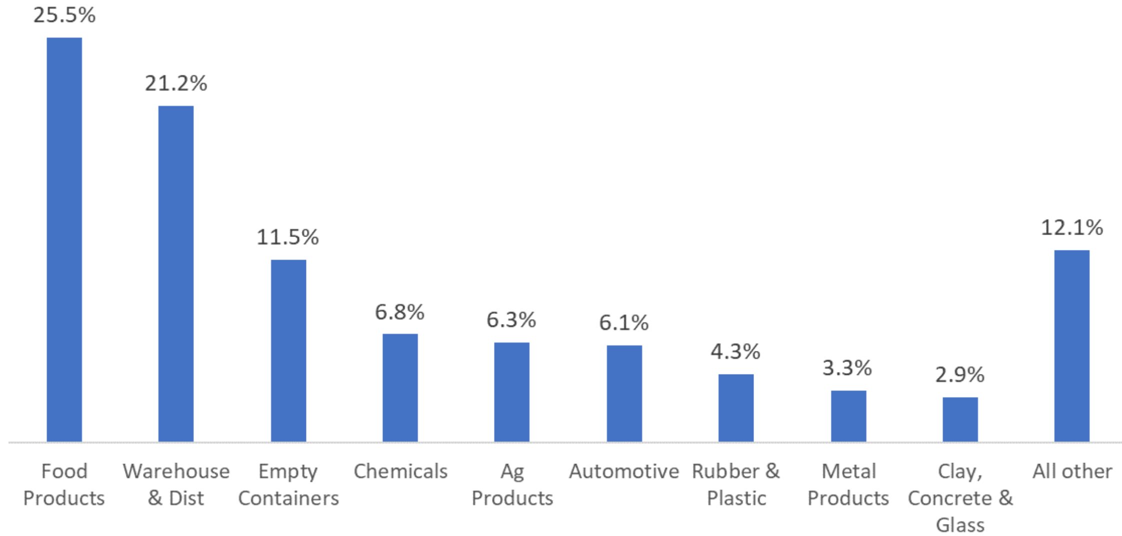
Detroit to Kansas City		
Railroad	**Commodity**	**IM Units**
NS	Auto parts	
NS	Empty equipment repositioning	
NS	Other (misc. mixed shipments and hazardous materials)	
Kansas City to Detroit		
Railroad	**Commodity**	**IM Units**
NS	Auto parts	
NS	Empty equipment repositioning	
NS	Other (misc. mixed shipments and hazardous materials)	

}}

The NS focus on auto parts provides no rail competition for truck shipments of food products; packages to warehouses and distribution centers; chemicals, rubber, and plastics; and other commodities for which conventional intermodal service would be a viable competitor (see Exhibit 2-4). With the Springfield Line, CN would provide this truck-competitive intermodal service. It is also noteworthy that the distance between Detroit and Kansas City is over 750 miles, which requires a two-day truck trip in each direction.[10]

[8] As I discuss in Section 4.1, NS has converted RoadRailer service to conventional intermodal, with the exception of the Detroit-Kansas City lane, which continues to operate RoadRailer equipment.
[9] STB Confidential Carload Waybill Sample, 2019. Rebuttal Oliver Wyman work paper: HC - STB CWS & Transearch - Detroit-KC.xlsx.
[10] Distance from Google Maps.

Exhibit 2-4: Truck shipments between Detroit, MI and Kansas City, MO BEAs by commodity percentages[11]



The Detroit-Kansas City lane has been highlighted here as an opportunity for CN to take trucks off the highways, but it is not the only opportunity. The OW diversion model estimates that approximately 4,600 trucks would be diverted to rail between Eastern Canada and the US Midwest, thus removing trucks from congested roadways, including the heavily congested Ambassador Bridge between Windsor, ON and Detroit, MI.[12] As detailed in my prior statement, there are many additional lanes where CN could provide new truck-competitive service, such as Kansas City-Chicago, Topeka-Chicago, Kansas City-Cleveland, Kansas City-Cincinnati, and St. Louis-Detroit.[13]

[11] Rebuttal Oliver Wyman work paper: HC - STB CWS & Transearch - Detroit-KC.xlsx.
[12] Rebuttal Oliver Wyman work paper: HC - STB CWS & Transearch - Detroit-KC.xlsx.
[13] David T. Hunt Verified Statement, CN Responsive Application, February 28, 2022,, Section 4.2.

3. CP/KCS's Criticisms of the Methodologies Underlying OW's Diversion Studies Are Incorrect

Mr. Brown and Mr. Zebrowski claim in Section III.A of their July 12, 2022 Verified Statement that the OW logit-based traffic diversion model produces percentages that are "deeply flawed."[14] They identify five issues, my responses to which are detailed in the subsections below.

- Mr. Brown and Mr. Zebrowski incorrectly claim that the OW rail-to-rail model deviates from previous traffic diversion studies submitted to the STB. The two-prior merger-related traffic diversion studies upon which they rely to support this claim were conducted by ALK Associates while I was an employee at ALK, and I am familiar with their contents. As described in Section 3.1, Mr. Brown's and Mr. Zebrowski's characterization of the ALK model used in those prior studies is incorrect.
- They incorrectly claim that the geographic filters used in CN's studies to include or exclude regions for potentially divertible traffic are inconsistent and do not conform with verified statements submitted by the CN commercial team. As noted in Section 3.2, the filters are consistent and were reviewed by commercial staff at CN.
- Mr. Brown and Mr. Zebrowski incorrectly claim that, by their calculations, the impedance term used in the OW model is not statistically significant. However, as described in Section 3.3 below, reliance on a single statistic to determine the validity of a model is not good modeling practice.
- Mr. Brown and Mr. Zebrowski incorrectly claim that the logit model does not accurately predict market shares. They attempt to support this conclusion by erroneously fitting a linear line to the data rather than using the "s-curve" associated with a logit model. Section 3.4 below corrects this error.

[14] STB Finance Docket No. 36500, Canadian Pacific Railway Ltd., 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, Vol. 2, July 12, 2022, ⁋ 66 of Brown & Zebrowski Verified Statement.

- Mr. Brown and Mr. Zebrowski incorrectly claim that the OW model contradicts expectations. Section 3.5 below uses the example they provided to demonstrate that the OW diversion model behaves logically and as expected.

3.1 CP/KCS's claim that OW's rail-to-rail diversion model differs from those used in connection with prior merger cases is wrong

Mr. Brown and Mr. Zebrowski claim that "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 modeled pre-transaction traffic shares not related to actual traffic shares."[15] In a footnote, they continue by saying:

> "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 modeled) and predicted post-transaction market shares, rather than based on differences in two purely hypothetical predicted market shares as done by Mr. Hunt."[16]

The flaws in Mr. Brown's and Mr. Zebrowski's claims with respect to statistical significance are addressed in Section 3.3. This section focuses on their incorrect assertion that prior merger-related traffic diversion studies were based on the difference between actual (rather than modeled) pre-transaction market shares and modeled post-transaction market shares.

Mr. Brown and Mr. Zebrowski appear to suggest that the Springfield Line traffic study suffers from the same fatal flaws that CP/KCS made in developing their operating plan. In their operating plan, rather than using actual Base Year (2019) traffic data for tons and trains per day on each line segment on the CP network and KCS network, CP/KCS contrived modeled data from October 2020 and two different three-month periods in 2021. The same flaws in the base

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[15] STB Finance Docket No. 36500, Canadian Pacific Railway Ltd., et al, - Control – Kansas City Southern et al, Applicants' Response to Comments and Requests for Conditions, op. cit., Vol. 2, July 12, 2022, ⁋ 69 of Brown & Zebrowski Verified Statement.

[16] STB Finance Docket No. 36500, Canadian Pacific Railway Ltd., et al, - Control – Kansas City Southern et al, Applicants' Response to Comments and Requests for Conditions, op. cit., Vol. 2, July 12, 2022, footnote 94 of Brown & Zebrowski Verified Statement.

year data in the operating plan also flow through into the base year data in the environmental review.

As described by CN witness Carl Van Dyke, the use of modeled data from different time periods for every line segment on the CP and KCS networks to represent 2019 (instead of actual 2019 data, which was readily available) created numerous errors and inconsistencies in the CP/KCS base operating plan.[17] CP/KCS then developed their Year 3 diversion projections with some witnesses using actual 2019 traffic data and other witnesses providing estimates detached from historical data.[18] Adding such incremental Year 3 traffic to a flawed Base Year traffic file (reflecting October 2020 and two different three-month periods in 2021, rather than 2019) produced a CP/KCS operating plan that does not accurately reflect the volume of traffic on each rail line segment, if the merger were to be approved.

Any attempt, however, to link CP/KCS's flawed process for contriving their base operating plan and my approach to calculating projected diversions is unavailing. The OW traffic diversion model, in contrast to the CP/KCS operating plan, began with the full-year historic 2019 STB Carload Waybill Sample ("CWS") combined with CN and CP/KCS 100 percent 2019 waybill data. The 2019 combined waybill data was used to construct the 2019 base case, which was in turn compared to the 2019 post-Springfield Line divestiture case. This systematic process of going from the actual 2019 waybill data, to a base case, to the diversion scenario, provides a more accurate estimate of traffic diversions, by canceling out any differences between the actual 2019 waybill data and the base case.

[17] Carl Van Dyke, CN's Reply to Applicants' Response to Decision No. 17, June 9, 2022.
[18] CP/KCS witnesses Brown, Zebrowski and Mutén used 2019 as the base year for diversion projections. Witnesses Wahba and Naatz do not base the majority of their diversion projections on a specific year or on a traffic database. Brown and Zebrowski, Verified Statement, October 2021. Mutén, Verified Statement, October 2021.Wahba and Naatz, Verified Statement, October 2021.

If, like CP/KCS in their operating plan, I had started with a few months in 2020 and 2021 to contrive a 2019 base case, then the diversion results could not be isolated, since errors introduced while constructing the base case could not be determined.

Regarding the claim that the OW model is inconsistent with prior traffic studies, Mr. Brown and Mr. Zebrowski rely on verified statements by Mr. George Woodward and Mr. Michael Rogers in the *CN/IC* case and by Mr. Mark Hornung in the *BN/ATSF* case. Both of those prior studies employed the ALK Advanced Traffic Diversion Model ("ATDM").[19] Mr. Woodward, Mr. Rogers, and Mr. Hornung were all colleagues of mine at ALK Associates at the time those traffic diversion studies were conducted, and I was involved in the processing of some of the data that those studies relied upon.

Mr. Brown's and Mr. Zebrowski's assertion that, in traffic studies presented in those prior merger proceedings, the post-transaction market shares were subtracted from actual (rather than modeled) pre-transaction market shares is simply not true. In reality, the ALK ATDM used in conducting those studies compared post-transaction modeled shares to modeled pre-transaction shares. This was done to eliminate model errors. In other words, errors made by the model when predicting shares under current conditions are canceled out by comparing merger scenarios against a modeled base case. The same approach was used by OW here to model the Springfield Line acquisition scenario.

One of my responsibilities while at ALK was to develop base case data each year upon receipt of the new CWS, so that we would be prepared to conduct diversion analyses quickly if the need arose. While I did not work directly on the traffic diversion study sponsored by

[19] STB Finance Docket No. 36500, Canadian Pacific Railway Ltd., et al, - Control – Kansas City Southern et al, Applicants' Response to Comments and Requests for Conditions, op. cit., Vol. 2, July 12, 2022, footnote 94 of Brown & Zebrowski Verified Statement.

Woodward and Rogers in the *CN/IC* proceeding, I oversaw the development of the modeled base case that Mr. Woodward and Mr. Rogers used to compare with their *CN/IC* post-merger diversion projections. In the *BN/ATSF* merger proceeding, I did work directly with Mr. Hornung on the traffic diversion studies. In that case, we compared post-merger diversions from the model against a modeled base case, as was ALK's standard procedure. The ALK modeled base case was constructed from full-year historical waybill data, with the full year being the year established by the applicants for merger-related analysis. I followed the same procedure for the Springfield Line divestiture analysis, by constructing the base case and diversion projections using CN and CP/KCS 100 percent 2019 waybill data combined with the 2019 STB CWS. The OW truck-to-rail model was based on the 2019 IHS Markit Transearch data.

Based on my firsthand knowledge of the ALK model used in the prior merger cases cited by Mr. Brown and Mr. Zebrowski, I can state unequivocally that their claim that "diversion percentages under the Woodward approach are based on the difference between actual pre-transaction market shares (as opposed to modeled) and predicted post-transaction market shares,"[20] is wrong.

3.2 CP/KCS incorrectly claim that the geographic criteria applied by OW to include or exclude potentially divertible traffic are inconsistent

Mr. Brown and Mr. Zebrowski claim that the geographic criteria applied by OW to identify potentially divertible traffic are inconsistent. They state:

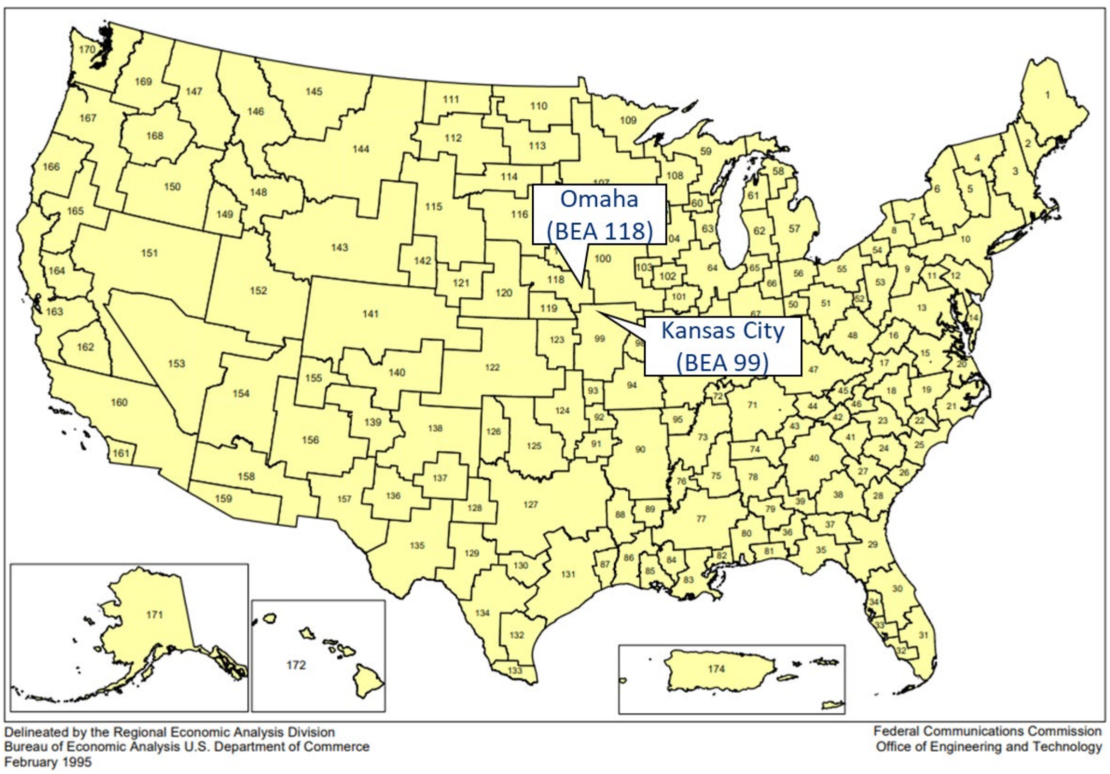
> "For instance, he [Mr. Hunt] describes the geographic selection criteria for 'in-scope' intermodal traffic as the 'areas served by' the newly planned terminals at East St. Louis and Kansas City [fn omitted], which he defines for intermodal movements as 'traffic within the same BEA or neighboring BEA at both the origin and destination.' However,

[20] STB Finance Docket No. 36500, Canadian Pacific Railway Ltd., et al, - Control – Kansas City Southern et al, Applicants' Response to Comments and Requests for Conditions, op. cit., Vol. 2, July 12, 2022, footnote 94 of Brown & Zebrowski Verified Statement.

> 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."[21]

As Exhibit 3-1 shows, Omaha is, in fact, a neighboring BEA of Kansas City. Accordingly, the inclusion of Omaha within the geographic scope of OW's diversion analysis is fully consistent with the model's stated methodology for geographical filtering.

Exhibit 3-1: Kansas City and Omaha BEAs share a border, contrary to claims by Mr. Brown and Mr. Zebrowski[22]



The OW truck-to-rail model criteria for in-scope markets were clearly defined as: (1) a catchment drayage area of 200 miles or less, (2) a CN length of haul exceeding 400 miles, (3) an existing truck length-of-haul averaging more than 400 miles, and (4) a screen for excessive rail

[21] STB Finance Docket No. 36500, Canadian Pacific Railway Ltd., et al, - Control – Kansas City Southern et al, Applicants' Response to Comments and Requests for Conditions, op. cit., Vol. 2, July 12, 2022, ⁋ 79 of Brown & Zebrowski Verified Statement.

[22] Economic Areas map, US Bureau of Economic Analysis, dated February 1995.

circuity versus the truck route.[23] These criteria were consistently applied in developing the truck-to-rail diversions.

For rail-to-rail diversions, the rules also took into account the specific commodity:[24]

- Intermodal: traffic within the same BEA or neighboring BEA at both the origin and destination was considered to be competitive.
- Automotive: Because finished automobiles tend to have more concentrated origins and disbursement destinations (*e.g.*, auto assembly plant shipping to a regional facility for distribution to dealers), potential auto diversions were restricted to a SPLC at the origin and a BEA at the destination.
- Grain: has greater flexibility with respect to rail loading and unloading locations. Accordingly, BEAs were used at the origin and destination for grain diversions.

These rules were applied consistently in the rail-to-rail diversion model, with no traffic that failed to satisfy the specified criteria included in the scope of the study. Some traffic that otherwise did satisfy these criteria was excluded based on discussions with the CN commercial team and/or Oliver Wyman industry knowledge. The additional exclusions were identified in CN's work papers.[25]

3.3 CP/KCS improperly rely on a single statistical measure to claim that a model historically used in rail merger analysis is not valid

Mr. Brown and Mr. Zebrowski continue to insist that the use of "diversion percentages that do not vary based on relative mileages" in their rail-to-rail traffic diversion model is appropriate.[26] They attempt to support this claim by "calibrating" the OW logit model and

[23] David T. Hunt Verified Statement, CN Responsive Application, February 28, 2022, Section B.1.
[24] David T. Hunt Verified Statement, CN Responsive Application, February 28, 2022, Section C.1.
[25] Oliver Wyman work papers: HC-2022January_R2R_Auto_v4.xlsx, HC-2022January_R2R_Intermodal_v4.xlsx, and HC-2022January_R2R_Grain_v4.xlsx, submitted February 28, 2022.
[26] STB Finance Docket No. 36500, Canadian Pacific Railway Ltd., et al, - Control – Kansas City Southern et al, Applicants' Response to Comments and Requests for Conditions, op. cit., Vol. 2, July 12, 2022, ⁋ 24 of Brown & Zebrowski Verified Statement.

dismissing the mileage-based impedance variable in the model based on a single statistic known as a "p-value."[27] The position asserted by Mr. Brown and Mr. Zebrowski flies in the face of decades of research and practice that consistently cite the importance of route distance in estimating market shares, whether that distance is used directly, or as a component of transit time, cost, rates, or distance-based impedance.[28]

Mr. Brown's and Mr. Zebrowski's claim violates accepted principles of statistical modeling. Indeed, judging the validity of a model based on a single statistic – specifically a p-value – is precisely what prompted the Board of Directors of the American Statistical Association (ASA) to publish an editorial in 2016 regarding the misuse of p-values. The ASA was founded in 1839 and "is the world's largest community of statisticians."[29] During its 180-year history, "The ASA has not previously taken positions on specific matters of statistical practice."[30] However, the ASA felt compelled to speak out about the misuse of the p-value, stating:

> "A conclusion does not immediately become 'true' on one side of the [p-value] divide and 'false' on the other. Researchers should bring many contextual factors into play to derive scientific inferences, including the design of a study, the quality of the measurements, the external evidence for the phenomenon under study, and the validity of assumptions that underlie the data analysis.

[27] A p-value is used in statistical hypothesis testing to estimate the probability of obtaining the test results from the given data. A p-value of less than 0.05 is generally regarded as statistically significant, while a value of greater than 0.05 is generally regarded as not statistically significant. *See* Ronald L. Wasserstein & Nicole A. Lazar, "The ASA Statement on p-Values: Context, Process, and Purpose," The American Statistician, 2016, 70:2, 129-133, p. 131.

[28] Examples of research on route choice models include; Kanafani, Adib, "Route Choice," in Transportation Demand Analysis," McGraw-Hill Book Company, New York, NY, 1983; Ben-Akiva, Moshe, Denis Bolduc, and Jay Q. Park, "Discrete Choice Analysis of Shippers' Preferences," Freight Transport Modelling, Emerald Group Publishing Limited, 2013; and, McGinnis, Michael A., "A Comparative Evaluation of Freight Transportation Choice Models," Transportation Journal, Winter 1980, Vol. 29, No.2, Penn State University Press, pp. 36-46.

[29] American Statistical Association, "About" web page.

[30] Ronald L. Wasserstein & Nicole A. Lazar, "The ASA Statement on p-Values: Context, Process, and Purpose," The American Statistician, 2016, 70:2, 129-133, p. 129.

> The widespread use of 'statistical significance' (generally interpreted as 'p _ 0.05') as a license for making a claim of a scientific finding (or implied truth) leads to considerable distortion of the scientific process."[31]

The ASA is not saying that the use of p-values is, in and of itself, wrong. However, the ASA clearly states that judging the validity of a model solely on a single statistic and ignoring other evidence can lead to erroneous conclusions. A model is not necessarily valid just because a p-value is below 0.05 and a model is not necessarily invalid just because a p-value is above 0.05. The OW statistical analysis is fully compliant with the statement made by the ASA.

Mr. Brown and Mr. Zebrowski acknowledge elsewhere in their testimony that the relative distance of competing rail routes is an important factor in traffic diversion analysis, stating that "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."[32] Yet, their criticism of OW's traffic diversion model effectively contradicts what they know to be true; *i.e.*, that distance is an important consideration in route selection.[33] Rejecting a variable based on a single statistical test, when that variable is known to be an important predictor, is precisely the type of misuse that prompted the ASA to publish its editorial.

The inclusion of distance-based impedance in the OW rail-to-rail traffic diversion model was not based on a single p-value but was instead based on academic literature, extensive internal analysis, and my personal experience with the ALK ATDM during my time at ALK

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[31] Ronald L. Wasserstein & Nicole A. Lazar, "The ASA Statement on p-Values: Context, Process, and Purpose," The American Statistician, 2016, 70:2, 129-133, p. 131.

[32] STB Finance Docket No. 36500, Canadian Pacific Railway Ltd., et al, - Control – Kansas City Southern et al, Applicants' Response to Comments and Requests for Conditions, op. cit., Vol. 2, July 12, 2022, footnote 33 of Brown & Zebrowski Verified Statement.

[33] STB Finance Docket No. 36500, Canadian Pacific Railway Ltd., et al, - Control – Kansas City Southern et al, Applicants' Response to Comments and Requests for Conditions, op. cit., Vol. 2, July 12, 2022, Brown & Zebrowski Verified Statement; excluded distance based on a linear regression in Figure 1 and excluded from the OW model based on a p-value in Table 1.

Associates. Consideration of the relative distance (or circuity) of competing rail routes, whether directly or as a component of transit time or cost, is a well-established principle reported in textbooks on transportation demand analysis[34] and in academic papers.[35] Collaboration among ALK Associates, academics, and industry experts during the 1980s and 1990s led to the evaluation of numerous factors that might potentially impact route choice, including the harmonic mean of the density of the traffic in a lane[36] and the competitive critical mass gained by a railroad serving multiple shipper sites.[37] In every case, the distance-based impedance used in ALK's ATDM proved to be the best predictor. The OW traffic diversion model is based on the ATDM, and therefore appropriately includes a distance-based impedance.

Finally, the relevance of distance is both simple and intuitively obvious: All other things being equal, the route with the shortest distance between origin and destination is likely to capture the greatest share of traffic, since distance impacts both cost and transit time.[38]

It should be noted that Mr. Brown and Mr. Zebrowski did not contest the coefficient values used in the OW traffic diversion model, and in fact confirmed OW's analysis, since their

[34] Route choice models use cost or travel time, both of which are a function of distance. *See, e.g.,* Chapter 7.2 "Route Choice," in Transportation Demand Analysis, Adib Kanafani, McGraw-Hill Book Company, New York, NY, 1983. For the average linehaul length between origin and destination and the average transit time as independent variables used in modeling freight choice, *see* Ben-Akiva, Moshe, Denis Bolduc, and Jay Q. Park, "Discrete Choice Analysis of Shippers' Preferences," Freight Transport Modelling, Emerald Group Publishing Limited, 2013, Chapter 6. Table 6.1.

[35] McGinnis, Michael A., "A Comparative Evaluation of Freight Transportation Choice Models," Transportation Journal, Winter 1980, Vol. 29, No.2, Penn State University Press, pp. 36-46, Table 1. This paper surveys 11 papers to determine variables affecting freight transportation choice. In every paper surveyed, freight rates (cost, charges, rates) and transit time (time-in-transit, speed, delivery time) were recognized as being important to freight transportation choice. Both freight rates and transit time are a function of distance.

[36] Suggestion of Dr. Robert (Bobby) Willig, professor of economics at Princeton University. This was internal work done at ALK in the 1990s.

[37] Suggestion of George Woodward, former Vice President Marketing at Conrail, Senior Vice President Marketing and Sales at Southern Pacific, and Senior Vice President at ALK Associates. This was internal work done at ALK in the 1990s.

[38] The Board's Uniform Rail Costing System (URCS) lists distance as one of the mandatory parameters used in the railroad costing process. "Railroad Cost Program," Surface Transportation Board, User's Manual, December 2011, p. 1.

recalibration of the model "generated similar coefficients."[39] Rather, their criticism is premised on a single statistic, a p-value. By contrast, the OW approach is fully consistent with the guidelines of the American Statistical Association, as it considered many contextual factors.

3.4 CP/KCS incorrectly apply a linear line to a logit model to claim that the OW model does not accurately predict traffic

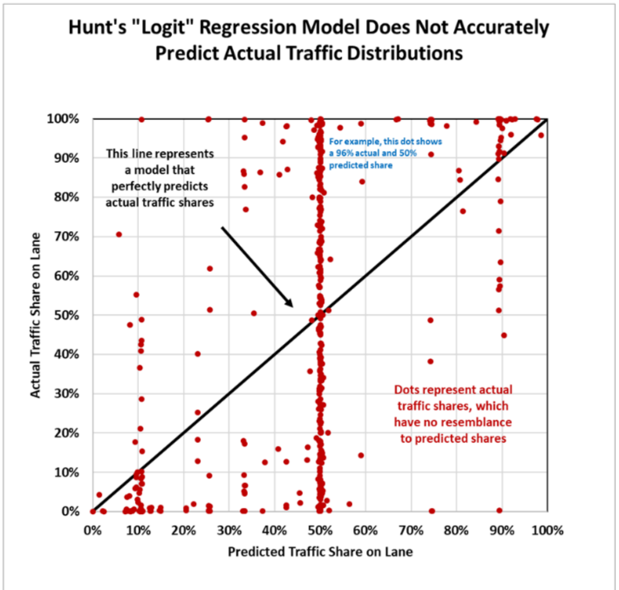
Mr. Brown and Mr. Zebrowski attempt to demonstrate that the OW traffic diversion model is flawed by presenting a chart plotting historical traffic shares against predicted traffic shares. Based on this chart, recreated on the left-hand side of Exhibit 3-2, they contend that, were the OW model "a sound 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."[40] The red dots in Exhibit 3-2 represent historical traffic market shares, while the black line represents their interpretation of the OW logit model.

[39] STB Finance Docket No. 36500, Canadian Pacific Railway Ltd., et al, - Control – Kansas City Southern et al, Applicants' Response to Comments and Requests for Conditions, op. cit., Vol. 2, July 12, 2022, ⁋ 28 of Brown & Zebrowski Verified Statement.

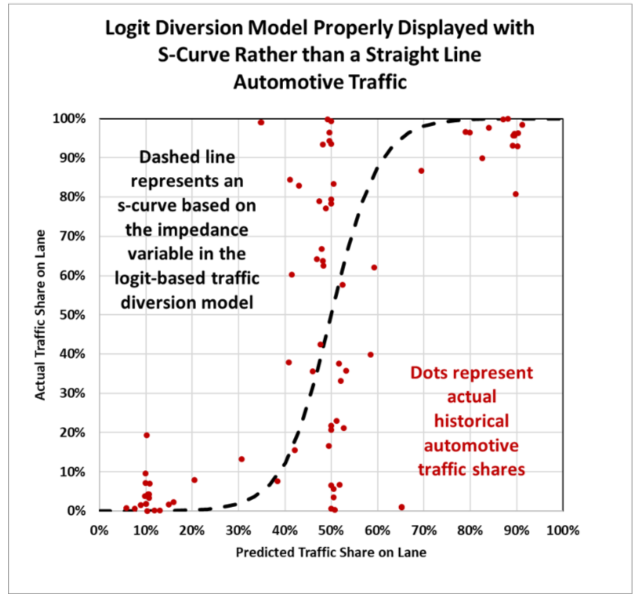
[40] STB Finance Docket No. 36500, Canadian Pacific Railway Ltd., et al, - Control – Kansas City Southern et al, Applicants' Response to Comments and Requests for Conditions, op. cit., Vol. 2, July 12, 2022, ⁋ 68 and Figure 8 of Brown & Zebrowski Verified Statement.

Exhibit 3-2: CP/KCS's misleading chart on left and corrected chart on right

Applicants incorrectly used a linear line rather than a logit model, and they include all traffic types in one chart



An s-curve generated by a logit model, using the coefficient calibrated for automotive traffic impedances



This claim suffers from two critical errors. First, Mr. Brown and Mr. Zebrowski applied a linear line to the data, whereas a logit model generates an "s-curve."[41] The application of an incorrect plotting line results in a gross distortion of the visual "fit" of the model to the data. Second, Mr. Brown and Mr. Zebrowski plotted the data for all service types (intermodal, automotive, and grain) on a single chart. However, the OW model was calibrated using data for each individual service type.

The right-hand side chart in Exhibit 3-2 corrects for the two errors made by Mr. Brown and Mr. Zebrowski by appropriately plotting data for only one service type (automotive) and by

[41] Logit models are based on logarithms rather than the straight-line relationships of linear regressions. The "s-curve" seen when mapping a logit model provides a better fit between extreme choices than does a linear model. In transportation, if one route has a large advantage over another route (*e.g.*, distance or single-line service) then the logit model predictions will be at the edges of the "s-curve" and predict a high probability for the better route. If the route characteristics are similar, the logit model will be along the center of the "s-curve" and predict a more even distribution of market share. The form used in the OW model is a nested logit, which allows for more than two routes in a market. *See* Train, Kenneth E., "Discrete Choice Methods with Simulation," Second Edition, Cambridge University Press, Sections 3.1 and 4.2.

overlaying a correct logit "s-curve."[42] The proper use of the logit model "s-curve" results in a much better fit to the data than the erroneous and misleading chart produced by CP/KCS on the left-hand side of Exhibit 3-2.

To be sure, there are still differences between the logit "s-curve" and the historical data. But that is to be expected with any model. To mitigate this modeling issue, a base case is generated that uses the calibrated logit model to assign traffic shares in each individual market under current conditions, *i.e.,* a pre-divestiture scenario. The same calibrated logit model is then used to model the post-divestiture scenario, with the difference between the pre-divestiture scenario and the post-divestiture scenario being the reported diversion volume. This procedure helps to minimize errors that may have been introduced by the model. Mr. Brown and Mr. Zebrowski acknowledge the use of the base case, but claim it is a departure from previous diversion studies (as further discussed in Section 3.1).

3.5 CP/KCS fail to support their claim that the OW model contradicts expectations

Mr. Brown and Mr. Zebrowski claim that the OW traffic diversion model contradicts expectations. To demonstrate this claim, they provide the following specific example:

> "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."[43]

This example is, at best, highly misleading. The example presented by Mr. Brown and Mr. Zebrowski compares an *actual* diversion from the OW model where two competing routes have

[42] The "s-curve" in Exhibit 3-2 is based on the parameter for the distance-based impedance variable, calibrated for automotive traffic; see Rebuttal Oliver Wyman work paper: HC-24.2.19.3.10-Diversion Percentage Analysis s-curve.xlsx.
[43] STB Finance Docket No. 36500, Canadian Pacific Railway Ltd., et al, - Control – Kansas City Southern et al, Applicants' Response to Comments and Requests for Conditions, op. cit., Vol. 2, July 12, 2022, ⁋ 70 of Brown & Zebrowski Verified Statement.

different distances with a *hypothetical* case where three competing railroads have routes of equal distance. When the details of these scenarios are fully examined, it is clear that the OW traffic diversion model performs logically and as expected.

As shown in Exhibit 3-3, Mr. Brown and Mr. Zebrowski selected an example from the OW diversion model where CP moved {{ }} carloads of {{ }} from {{ }} to {{ }}. CN currently has zero share of this market. Post-acquisition of the Springfield Line, CN would be able to compete with CP for this traffic by offering a new single-line service; however, the CN route via Springfield would be 179 miles longer than the CP route. The OW diversion model appropriately recognized two competing single-line routes and assigned 60.8 percent of the traffic to the shorter CP route and 39.2 percent of the traffic to the more circuitous CN route in the post-acquisition case. The model should, and does, assign a greater share to the shorter distance route, since both routes post-acquisition are single line.

Exhibit 3-3: Diversion results summary for CN's acquisition of the Springfield Line[44]

Origin	Dest.	Railroad	Miles	Historic cars	Pre-acquisition	Model base cars	Post-acquisition	Model diverted cars	Pct diversion
Diversion from Model									
{{									
									}}
Brown & Zebrowski Hypothetical Diversion									
A	A	RR1	1,000	50	Interline w/1 jct	33.3	Interline w/1 jct	26.4	
B	B	RR2	1,000	50	Interline w/1 jct	33.3	Interline w/1 jct	26.4	
C	C	RR3	1,000	0	Interline w/1 jct	33.3	Single-Line Route	47.2	47.2%

[44] Brown and Zebrowski work paper: 24.2.19.3.10-HC-Diversion Percentage Analysis.xlsx, tab CN Diversion Percents – Grain.

Mr. Brown and Mr. Zebrowski then present a *hypothetical* movement involving a new single-line route in a market with two existing interline routes. Mr. Brown and Mr. Zebrowski assume that all three interline routes have the same 1,000-mile distance. Mr. Brown and Mr. Zebrowski assign a "historic" value of 50 carloads to RR1, 50 carloads to RR2, and zero carloads to RR3. The OW diversion model, seeing three identical interline routes with identical distances in the pre-acquisition case, assigns a base value of 33.3 cars to each route. In the post-acquisition case, RR3 becomes a single-line route, so the model prefers this route and assigns 47.2 percent of the traffic, while RR1 and RR2 each receive 26.4 percent. Once again, the model should, and does, assign a greater share to the single-line route, where the other two routes are interline and all three routes are of equal distance.

As this example demonstrates, the OW traffic diversion model performs logically and as expected. The results of the model do not contradict commercial routing and market share expectations, as claimed by Mr. Brown and Mr. Zebrowski.[45]

4. CP/KCS's Claim That the Majority of CN's Projected Diversion Volumes Are Based on Unfounded Premises Is Incorrect

Mr. Brown and Mr. Zebrowski claim in Section III.B of their July 12, 2022 statement that the majority of predicted CN traffic diversions are based on unfounded premises.[46] They identify three issues, the responses to which are detailed in the subsections below.

[45] STB Finance Docket No. 36500, Canadian Pacific Railway Ltd., et al, - Control – Kansas City Southern et al, Applicants' Response to Comments and Requests for Conditions, op. cit., Vol. 2, July 12, 2022, ⁋ 70 of Brown & Zebrowski Verified Statement.

[46] STB Finance Docket No. 36500, Canadian Pacific Railway Ltd., et al, - Control – Kansas City Southern et al, Applicants' Response to Comments and Requests for Conditions, op. cit., Vol. 2, July 12, 2022, Section III.B of Brown & Zebrowski Verified Statement.

- Mr. Brown and Mr. Zebrowski incorrectly claim that NS Triple Crown traffic between Detroit and Kansas City will not divert to intermodal service. As described in Section 4.1, NS has, in fact, already converted most of its Triple Crown traffic to double-stack intermodal service and has publicly stated that double-stack intermodal offers better economics, which means that intermodal service would be a viable competitor to RoadRailer service in the one remaining corridor (Detroit-Kansas City) where NS still offers service in RoadRailer equipment.
- They incorrectly claim that diversions to and from St. Louis are not valid because CN already serves St. Louis. As described in Section 4.2, this ignores the fact that additional post-merger traffic generated by the Springfield Line will justify significant investments in East St. Louis in new intermodal and automotive terminal facilities, which will enable CN to attract even more traffic.[47]
- They incorrectly claim that diversions through the Port of Montreal are not valid. As described in Section 4.3, sailing times from Europe to the Port of Montreal are shorter than to US Northeast ports, while the rail distances to the Midwest are similar. This criticism of OW's traffic diversion study is especially puzzling, given the circuity of both the water and rail segments of the route via Lazaro Cardenas to which CP/KCS claim they will be able to divert intermodal shipments that currently move through West Coast ports.

4.1 CP/KCS's claim that NS Triple Crown traffic cannot be diverted to intermodal service is incorrect

Mr. Brown and Mr. Zebrowski assert that "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."[48] This statement is incorrect.

[47] Van Dyke and Taylor Verified Statement, February 28, 2022, pp. 119 and 120.
[48] STB Finance Docket No. 36500, Canadian Pacific Railway Ltd., et al, - Control – Kansas City Southern et al, Applicants' Response to Comments and Requests for Conditions, op. cit., Vol. 2, July 12, 2022, ⁋ 71 of Brown & Zebrowski Verified Statement.

First, NS does not operate Triple Crown service between Detroit and St. Louis, so none of the shipments to/from St. Louis diverted in CN's study are NS RoadRailer traffic.

Second, Mr. Brown's and Mr. Zebrowski's claim that "nearly one-third" of the total rail-to-rail traffic diverted by CN consists of RoadRailer traffic is plainly false. In reality, the {{ }} of rail-to-rail intermodal traffic between Detroit and Kansas City diverted by CN represent only {{ }} of the 142,153 total units diverted in OW's rail-to-rail traffic study. [49] Even if Detroit-St. Louis rail-to-rail intermodal units are added to the Kansas City total, the percentage of total diverted units is only {{ }}.

The primary criticism by Mr. Brown and Mr. Zebrowski is that most of the traffic moving between Detroit and Kansas City currently moves in NS Triple Crown service using specialized RoadRailer equipment. They claim that CN would not be able to divert this traffic to conventional intermodal service.[50] But the premise underlying this claim – that conventional intermodal service is not competitive with RoadRailer service – runs counter to the current reality of this service.

NS significantly cut back its Triple Crown operations in 2015 because of the more favorable economics of double-stack intermodal service: "Norfolk Southern Corp. announced it would restructure its truck/rail business known as Triple Crown Services, or TCS, and cut costs by moving to convert most of that unit's intermodal freight to container equipment."[51] At the time of this Triple Crown restructuring, Alan Shaw, who was then NS Executive Vice President

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[49] The {{ }} estimated intermodal diversions between Detroit and Kansas City is in work paper HC-2022January_R2R_Intermodal_v4, submitted February 28, 2022. The 142,153 total diverted units are in Exhibit 2-2 of this statement.
[50] STB Finance Docket No. 36500, Canadian Pacific Railway Ltd., et al, - Control – Kansas City Southern et al, Applicants' Response to Comments and Requests for Conditions, op. cit., Vol. 2, July 12, 2022, ¶¶ 71-72 of Brown & Zebrowski Verified Statement.
[51] "Norfolk Southern to Cut Back Triple Crown Unit, Reduce Costs," Transport Topics, September 18, 2015.

and Chief Marketing Officer, characterized the change as "a natural evolution in the business."[52] Exhibit 4-1 depicts the Triple Crown operations of NS as of 2005, with routes serving Atlanta, Bethlehem, Chicago, Dallas, Detroit, Ft. Wayne, Harrisburg, Indianapolis, Jacksonville, Kansas City, Minneapolis, Sandusky, St. Louis, and Toronto. Today, conventional intermodal service has replaced Triple Crown service in almost all of those lanes, leaving Detroit-Kansas City as the last surviving Triple Crown service corridor.

Exhibit 4-1: NS Triple Crown service network was reduced by shifting traffic to intermodal[53]

[52] Hutchins, Reynolds, "NS shifting Triple Crown Service shippers to other intermodal lanes," Journal of Commerce, September 18, 2015.
[53] Triple Crown Services 2005 map, retrieved July 27, 2022; Oliver Wyman analysis.

Another consideration is that the RoadRailer equipment is aging. A search of UMLER indicates that the average age of the NS RoadRailer fleet is 14.7 years, and the most recent acquisition of RoadRailer equipment by NS occurred 10 years ago, in 2012.[54] As the remaining RoadRailer fleet continues to age, NS will need to determine if it makes economic sense to reinvest in a declining service or whether this traffic should be converted to intermodal containers.

Therefore, Mr. Brown's and Mr. Zebrowski's claim that "This group of traffic should not be viewed as realistically moving to CN," simply because CN does not own or propose an investment in RoadRailer equipment, ignores history.[55]

4.2 CP/KCS's claim that predicted diversions by CN to and from St. Louis are overstated is incorrect

CP/KCS claim that the estimated CN diversions to and from the St. Louis area are not justified and are overstated.[56] In support of this position, Mr. Mutén observes that "St. Louis is already served by CN" and that a portion of the "diversions involve shipments that would not need to use KCS's Kansas City-Springfield Line."[57]

What CP/KCS's experts fail to recognize is the impact of the significant capital investments that CN plans to make at East St. Louis. Those investments will be supported by the

[54] UMLER, See Rebuttal - Oliver Wyman workpaper- 20220722_TCS_Trailers.xlsx.
[55] STB Finance Docket No. 36500, Canadian Pacific Railway Ltd., et al, - Control – Kansas City Southern et al, Applicants' Response to Comments and Requests for Conditions, op. cit., Vol. 2, July 12, 2022, ⁋ 72 of Brown & Zebrowski Verified Statement.
[56] STB Finance Docket No. 36500, Canadian Pacific Railway Ltd., et al, - Control – Kansas City Southern et al, Applicants' Response to Comments and Requests for Conditions, op. cit., Vol. 2, July 12, 2022, ⁋⁋ 73-76 of Brown & Zebrowski Verified Statement, and ⁋ 17 of Bengt Mutén Verified Statement.
[57] STB Finance Docket No. 36500, Canadian Pacific Railway Ltd., et al, - Control – Kansas City Southern et al, Applicants' Response to Comments and Requests for Conditions, op. cit., Vol. 2, July 12, 2022, ⁋ 17 of Bengt Mutén Verified Statement.

additional intermodal and automotive traffic that CN can attract through acquisition of the Springfield Line:

> "In East St. Louis, investments will be made to accommodate 44 outbound loaded intermodal units per day, 43 inbound loaded units per day, and 13 outbound empty units per day. That represents the expected level of new intermodal traffic in Year 3 of CN's Operating Plan. To accommodate that growth, CN will construct 6,000 track feet with intermodal pads and accompanying pavement. CN will also invest to accommodate 16 loaded outbound automobile multilevels, four empty outbound multilevels, 13 inbound loaded multilevels, and seven empty multilevels daily at East St. Louis consistent with CN's Operating Plan. It will require the construction of 5,000 track feet for loading/unloading and car storage. In addition, approximately 25 acres will be developed with necessary roadways, parking, and truck areas."[58]

The CP/KCS witnesses also fail to account for the improved routing to and from St. Louis made possible by CN's acquisition of the Springfield Line. The importance of these routing improvements was described by David Przednowek, CN Assistant Vice President – Grain:

> "To reach East St. Louis today from points in northern Illinois, Iowa, and Wisconsin, CN must route all the way to southern Illinois, past East St. Louis to Du Quoin, Illinois, and then route back up again to East St. Louis. This routing adds an extra 50 miles in each direction for a total of 100 miles to the route (compared to using the Springfield Line), which means extra costs."[59]

Mr. Brown and Mr. Zebrowski criticize the application of the OW diversion models to St. Louis traffic, claiming that "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."[60] There is no disconnect. The OW diversion models were applied consistently to all markets, including St. Louis, by considering the distance-based impedance, number of required interchanges, and costs. The St.

[58] Van Dyke and Taylor Verified Statement, February 28, 2022, pp. 119-120.

[59] David Przednowek, Verified Statement, February 28, 2022, pp. 4-5.

[60] STB Finance Docket No. 36500, Canadian Pacific Railway Ltd., et al, - Control – Kansas City Southern et al, Applicants' Response to Comments and Requests for Conditions, op. cit., Vol. 2, July 12, 2022, ⁋ 73 of Brown & Zebrowski Verified Statement.

Louis rail-to-rail and truck-to-rail diversion estimates were assessed using the same methodology as other CN diversions to yield uniform and objective results.

Mr. Mutén's challenge to CN diversion estimates on the grounds that "St. Louis is already served by CN" is utterly inconsistent with CP/KCS's own diversion analyses.[61] The traffic studies submitted as part of the CP/KCS Application projected diversions to Kansas City, despite the fact that both CP and KCS have access to Kansas City today. For example, Mr. Wahba and Mr. Naatz identified opportunities for intermodal diversions from the Port of Vancouver to Kansas City.[62] Those Vancouver diversions seem plausible because CP currently does not have intermodal facilities in Kansas City. It should be noted, however, that CP is only gaining access to KCS's IFG facility and not a more direct route from Vancouver to Kansas City. The CN diversions into St. Louis include both routing improvements and investment in new and expanded facilities.

4.3 CP/KCS incorrectly claim that projected diversions for CN through the Port of Montreal are not valid

Mr. Brown and Mr. Zebrowski state "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."[63]

As an initial matter, the projected diversion of East Coast intermodal traffic to the Port of Montreal following acquisition of the Springfield Line was estimated as 12,500 annual

[61] STB Finance Docket No. 36500, Canadian Pacific Railway Ltd., et al, - Control – Kansas City Southern et al, Applicants' Response to Comments and Requests for Conditions, op. cit., Vol. 2, July 12, 2022, ⁋ 17 of Bengt Mutén Verified Statement.
[62] Wahba and Naatz, Verified Statement, October 2021, ⁋ 66.
[63] STB Finance Docket No. 36500, Canadian Pacific Railway Ltd., et al, - Control – Kansas City Southern et al, Applicants' Response to Comments and Requests for Conditions, op. cit., Vol. 2, July 12, 2022, ⁋ 77 of Brown & Zebrowski Verified Statement.

containers. This represents just 8.8 percent of the estimated 142,153 total diverted railcars and containers (Exhibit 2-2), not the inflated 20 percent claimed by Mr. Brown and Mr. Zebrowski.

Mr. Brown's and Mr. Zebrowski's assertion that I provided "no explanation" for how diversion volumes were quantified is likewise false.[64] The 12,500 annual units diverted to the Port of Montreal in OW's traffic study represent 15 percent of the volume in the IHS Markit Transearch data for international traffic using Northeastern ports that travels to/from markets in Kansas City and St. Louis.[65] The 12,500 units represent an average of 34 containers per day, or approximately 240 containers per week. Shipments moving from Europe to the Midwest would save two days sailing time via Montreal compared with the current route via Newark/New York. The rail distances from Montreal and Newark, respectively, to Kansas City and St. Louis are essentially equivalent.[66]

Given the overall transit time advantage of the route via Montreal, Mr. Brown's and Mr. Zebrowski's claim that CN would not be able to divert a mere 15 percent of East Coast port traffic involving the Kansas City and St. Louis regions to a new single-line rail route via Montreal lacks credibility. Indeed, it is ironic in light of CP/KCS's claim, in its own diversion study, that the merged CPKC will be able to divert nearly 130,000 annual containers from the Ports of Los Angeles and Long Beach to the Mexican Port of Lazaro Cardenas for movement to/from Midwest markets.[67]

The projected CP/KCS diversion from the Ports of Los Angeles and Long Beach to the Port of Lazaro Cardenas would represent an average of 356 containers per day – more than 10 times

[64] David T. Hunt Verified Statement, CN Responsive Application, February 28, 2022, Section 6; Oliver Wyman work paper: POM analysis.xlsx, submitted February 28, 2022.
[65] IHS Markit Transearch 2019, Oliver Wyman work paper: POM analysis.xlsx.
[66] David T. Hunt Verified Statement, CN Responsive Application, February 28, 2022, p. 19.
[67] Jonathan Wahba and Michael J. Naatz Verified Statement, ¶ 64.

the number of estimated units that CN would divert to Montreal – and involves a route of 1,300 *more* nautical miles and 455 *more* rail miles (for traffic to Chicago, IL) than existing routes via the West Coast ports.[68] Furthermore, the claimed CP/KCS diversions between the Port of Lazaro Cardenas and the Kansas City region represent *41 percent of the total imported traffic* and *62 percent of the total exported traffic* moved by rail and truck between the Ports of Los Angeles/Long Beach and Kansas City, far exceeding the 15 percent projection for CN diversions through the Port of Montreal.[69]

5. CP/KCS's Claim That Revenue Estimates for CN Are Methodologically Unsound and Overstated Is Incorrect

Mr. Brown and Mr. Zebrowski claim in Section III.C of their July 12, 2022 statement that the revenue estimates for CN from traffic diversion are unsound and overstated.[70] They incorrectly identify two issues, the responses to which are detailed in the subsections below.

- Mr. Brown and Mr. Zebrowski incorrectly claim that the use of CN system average revenue per car-mile by service type is simplistic. As described in Section 5.1, the system average revenue was a first approximation, to which OW applied (1) a cap to prevent revenue in individual lanes from exceeding real-world existing revenue and (2) a 5 percent discount to attract the traffic.
- They incorrectly claim that there is an error in the calculation of revenue for diverted NS Triple Crown traffic. As explained in Section 5.2, the calculation was done correctly, and properly accounts for the additional tonnage an average container transports above the average tonnage for RoadRailer equipment.

[68] David T. Hunt Verified Statement, CN Responsive Application, February 28, 2022, p. 29.

[69] IHS Markit Transearch 2019. Import/export traffic between the Los Angeles BEA and the Kansas City BEA for rail intermodal, truck truckload and truck private. Rebuttal Oliver Wyman work paper: HC-20220808_LA-LB-KC-Dal.xlsx.

[70] STB Finance Docket No. 36500, Canadian Pacific Railway Ltd., et al, - Control – Kansas City Southern et al, Applicants' Response to Comments and Requests for Conditions, op. cit., Vol. 2, July 12, 2022, Section III.C of Brown & Zebrowski Verified Statement.

5.1 CP/KCS's claim that diversion revenue estimates for CN are unsound and overstated is incorrect

Mr. Brown and Mr. Zebrowski falsely claim that diversion revenue estimates for CN are based on unsound methodology and are overstated.[71] The methodology was clearly explained as:[72]

- Average revenue per car-mile is based on revenue splits for CN originated and terminated traffic in the 2019 STB Carload Waybill Sample.
- Estimates include all mileage for new moves and only additional miles for extended haul diversions, thus not double-counting existing CN revenue.
- If the estimated revenue CN would receive for moving a rail-to-rail diverted shipment exceeded the real-world historical revenue received by the incumbent carrier, the estimated revenue was adjusted, since a higher rate would be less likely to attract traffic (where historic revenue is available).
- A 5 percent discount was applied to the rate for rail-to-rail new volumes and non-CN originating extended hauls, based on the assumption that a discount may be necessary to incentivize shippers to switch carriers.

Just because Mr. Brown and Mr. Zebrowski believe that this methodology for estimating revenues is characterized by "extreme simplicity" does not mean that this approach is unsound or results in an overstatement of likely diversion revenues.[73] When system averages are used as the basis for estimating revenues, some traffic lanes will likely be able to support rates higher than the system average, while other traffic lanes may require rates lower than the system average to

[71] STB Finance Docket No. 36500, Canadian Pacific Railway Ltd., et al, - Control – Kansas City Southern et al, Applicants' Response to Comments and Requests for Conditions, op. cit., Vol. 2, July 12, 2022, Section III.C of Brown & Zebrowski Verified Statement.
[72] David T. Hunt Verified Statement, CN Responsive Application, February 28, 2022, Section 7.
[73] STB Finance Docket No. 36500, Canadian Pacific Railway Ltd., et al, - Control – Kansas City Southern et al, Applicants' Response to Comments and Requests for Conditions, op. cit., Vol. 2, July 12, 2022, ⁋ 83 of Brown & Zebrowski Verified Statement.

attract traffic. Overall, however, the resulting estimate of potential revenue based on system average will be reasonable.

Indeed, the methodology used to estimate revenue gains from CN diversions likely produces a slight understatement of potential revenue, since the methodology adjusted revenue downward in markets where a lower rate would be necessary (based on knowledge of the incumbent railroads' revenue), but did not apply a corresponding upward rate adjustment where the incumbent railroad revenue is higher than CN projected revenue. Overall, the total estimated revenue for CN diversions was reduced by $8.9 million (8.3 percent of the total) for markets where it was known that the CN system average was above the current market rate.[74]

Mr. Brown's and Mr. Zebrowski's claim that a car-mile-based system average rate results in an overstatement where CN has a longer distance than the incumbent railroad is also incorrect. That issue was addressed in the OW rail-to-rail diversion model by (1) not allowing the CN rate to exceed the current rate in any instance, and (2) applying the 5 percent discount described above to all diverted movements.[75] The rate per car-mile was used rather than rate per car or rate per ton to avoid double counting revenue already received by CN for extended haul diversions.

Mr. Brown and Mr. Zebrowski cite a specific example, an automotive lane between Ontario and Kansas City, to support their claim that the CN revenue estimate is overstated in the model.[76] They assert that "We were able to precisely match the moves in the 2015-2019 CWS"

[74] David T. Hunt Verified Statement, CN Responsive Application, February 28, 2022, Exhibit 7-1.
[75] STB Finance Docket No. 36500, Canadian Pacific Railway Ltd., et al, - Control – Kansas City Southern et al, Applicants' Response to Comments and Requests for Conditions, op. cit., Vol. 2, July 12, 2022, ⁋ 85 of Brown & Zebrowski Verified Statement.
[76] STB Finance Docket No. 36500, Canadian Pacific Railway Ltd., et al, - Control – Kansas City Southern et al, Applicants' Response to Comments and Requests for Conditions, op. cit., Vol. 2, July 12, 2022, ⁋ 84 of Brown & Zebrowski Verified Statement.

based on SPLC, first digit of the AAR car type, and 4-digit STCC.[77] However, the traffic diverted in this lane by the OW model came from the 2019 CP 100 percent waybill data, not the STB Carload Waybill Sample. Moreover, Mr. Brown and Mr. Zebrowski averaged nearly 100 different waybill records across a span of 5 years to develop their comparison rate.[78] Using rates from different data sources and different years to claim that the model estimated a rate per car that is overstated hardly constitutes a precise match.

5.2 CP/KCS incorrectly claim that there is a technical error in the revenue estimates for the diversion of RoadRailer traffic to intermodal service

Mr. Brown and Mr. Zebrowski claim there is a “technical error that significantly overstates revenues” for diverted RoadRailer shipments.[79] They are incorrect, as there was no error.

Based on the 2019 STB Carload Waybill Sample, the average net tonnage for a loaded intermodal container is 12.86 tons, while the average net tonnage for loaded RoadRailer equipment is 9.5 tons. Mr. Brown and Mr. Zebrowski state that “[Hunt] 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’.”[80]

Since an intermodal container averages *more* net weight than a RoadRailer, *fewer* containers will be needed to haul the same tonnage. Accordingly, the original calculation correctly adjusted the revenue on a net ton basis, by multiplying by 12.86 divided by 9.5 to pro

[77] STB Finance Docket No. 36500, Canadian Pacific Railway Ltd., et al, - Control – Kansas City Southern et al, Applicants’ Response to Comments and Requests for Conditions, op. cit., Vol. 2, July 12, 2022, ⁋ 84 of Brown & Zebrowski Verified Statement.
[78] Brown & Zebrowski work paper: 24.2.19.4.3-HC CWS-CN Revenue Analysis.
[79] STB Finance Docket No. 36500, Canadian Pacific Railway Ltd., et al, - Control – Kansas City Southern et al, Applicants’ Response to Comments and Requests for Conditions, op. cit., Vol. 2, July 12, 2022, ⁋ 86 of Brown & Zebrowski Verified Statement.
[80] STB Finance Docket No. 36500, Canadian Pacific Railway Ltd., et al, - Control – Kansas City Southern et al, Applicants’ Response to Comments and Requests for Conditions, op. cit., Vol. 2, July 12, 2022, ⁋ 86 of Brown & Zebrowski Verified Statement.

rate the revenue by tons. The model applied a 5 percent discount to diverted traffic, so that the rate the shippers would pay on a net ton-mile basis would be lower for diverted traffic than the current rate using RoadRailer.

Furthermore, even if Mr. Brown and Mr. Zebrowski had correctly identified a technical error in these calculations, which they did not, their assertion that this error "significantly" overstates revenues[81] would not be true. "Correcting" this (nonexistent) error would have reduced revenue by only \$2.66 million, or 2.5 percent of CN's estimated diversion revenue of \$106.9 million.

6. CP/KCS's Claim That OW's Truck-to-Rail Model Ignores Important Factors Is Incorrect

CP witness Mr. Mutén claims that "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."[82] I concur with Mr. Mutén that shipment time and the variability of shipment time are relevant considerations for shippers. However, I disagree that the absence of those factors as separate diversion criteria in OW's truck-to-rail diversion model means that the model is flawed.

As an initial matter, Mr. Mutén's criticism is disingenuous, since his own truck-to-rail diversion model for the CP/KCS Application does not include shipment time or shipment time

[81] STB Finance Docket No. 36500, Canadian Pacific Railway Ltd., et al, - Control – Kansas City Southern et al, Applicants' Response to Comments and Requests for Conditions, op. cit., Vol. 2, July 12, 2022, ⁋ 86 of Brown & Zebrowski Verified Statement.

[82] STB Finance Docket No. 36500, Canadian Pacific Railway Ltd., et al, - Control – Kansas City Southern et al, Applicants' Response to Comments and Requests for Conditions, op. cit., Vol. 2, July 12, 2022, ⁋ 13 of Bengt Mutén Verified Statement.

variability. Rather, his model is based on truck-miles, intermodal plus truck tons, single or interline shipment, and the difference in truck-miles and rail-miles (Exhibit 6-1).

Exhibit 6-1: Mr. Mutén's truck-to-rail diversion model does not include shipment time or shipment time variability, the two factors he claims are serious omissions in the OW model[83]

Intermodal Share = 0.00013954 * Truck-Miles + 0.0000011495 * (Intermodal Tons + Truck Tons) + 0.31800 * (1 is single line, 0 is interline) + 0.0000028182 * (Truck-Miles-Rail-Miles)

Moreover, the OW truck-to-rail diversion model is a cost-based model. The truck costs and rail plus drayage costs used in the model take distance into account as a key input.[84] Estimates of truck and rail shipment times would also use distance as an input and would therefore be correlated with costs, thus creating a dependency between what should be independent variables. While shipment variability would be a useful input to the model, there exists no readily available source for this information for truck and rail at a shipment level. In any event, since the OW truck-to-rail model was calibrated against full year 2019 IHS Markit Transearch freight data for the Springfield Line diversion analysis, the calibrated coefficients reflect any system-wide considerations for shipment variability and other unavailable variables.

[83] STB Finance Docket No. 36500, Canadian Pacific Railway Ltd., et al, - Control – Kansas City Southern et al, Applicants' Response to Comments and Requests for Conditions, op. cit., Vol. 2, July 12, 2022, ⁋ 46 of Bengt Mutén Verified Statement.

[84] The rail costs are based on the Board's Uniform Rail Costing System (URCS), which lists distance as one of the mandatory parameters used in the railroad costing process. "Railroad Cost Program," Surface Transportation Board, User's Manual, December 2011, p. 1.

7. CP/KCS's Assertion That OW Truck-to-Rail Diversion Estimates Include Several Lanes With Well-Developed Intermodal Service Is Irrelevant

Mr. Mutén claims the amount of traffic currently moved by other railroads should have been considered in the OW truck-to-rail diversion model.[85] In conducting CP/KCS's truck-to-rail diversion study, Mr. Mutén did not explicitly incorporate other railroads into his model, but instead "excluded from consideration any diversions in O-D pairs where existing single-line rail intermodal service had already attracted at least five percent of total susceptible movements, meaning where a new CP/KCS offering would not be creating the first single-line rail intermodal offering."[86] This 5 percent criteria used by Mr. Mutén is arbitrary and is not reflective of the real world. If CN can offer a competitive intermodal service between two locations, there is no reason why it should not be able to compete with *trucks* in that market, regardless of whether or not another *railroad* already moves 5 percent of the traffic. Indeed, under Mr. Mutén's rule, if an existing rail route has 5 percent of the traffic, a new rail route would not be considered as a viable option even if it was shorter and offered better service at a lower price.

In the *BN/ATSF* merger case, Mr. Peter Stone of Reebie Associates described the consideration of existing rail competitors through use of a 20 percent circuity factor in the Reebie truck-to-rail diversion model:

> "Any corridor where a competitive railroad (or effective system of two railroads) showed a route mileage more than 20 percent shorter was identified for closer review of operating schedules. If the shorter, competitive route offered an elapsed service time

[85] STB Finance Docket No. 36500, Canadian Pacific Railway Ltd., et al, - Control – Kansas City Southern et al, Applicants' Response to Comments and Requests for Conditions, op. cit., Vol. 2, July 12, 2022, ⁋ 15 of Bengt Mutén Verified Statement.
[86] STB Finance Docket No. 36500, Canadian Pacific Railway Ltd., et al, - Control – Kansas City Southern et al, Applicants' Response to Comments and Requests for Conditions, op. cit., Vol. 2, July 12, 2022, ⁋ 48 of Bengt Mutén Verified Statement.

> that was faster by a full day or more as compared to the BN/Santa Fe elapsed time, then the lane was eliminated for truck diversion purposes."[87]

Mr. Stone referred to situations where lanes were eliminated for truck diversions as having "clearly superior" existing rail service.[88] The distance from Detroit, MI to Kansas City, MO on the prospective CN route via the Springfield Line would be only 7.6 percent longer than the existing NS route, well within Mr. Stone's 20 percent threshold.[89] Under Mr. Stone's definition, NS does not have a route that is "clearly superior" to the prospective CN route via the Springfield. Line. For traffic moving to/from Eastern Canada, the distance between Toronto, ON and Kansas City, MO via the Springfield Line is 5.7 percent *shorter* than the CP route, which again does not reflect "clearly superior" existing service based on Mr. Stone's definition.[90]

A rail-to-rail diversion model was used to isolate the potential diversion opportunities from other railroads, and a truck-to-rail diversion model to isolate the potential diversion opportunities from trucks. This is consistent with prior railroad merger analysis. Mr. Mutén's criticism is therefore without merit.

8. CP/KCS's Claim That CN Would Not Achieve the Projected Truck-to-Rail Diversions Due to Long Drayage Moves Is Incorrect

Mr. Mutén's criticism that OW's model diverted traffic to CN in lanes where "the service would require significant drays *away from the destination* to the origin ramp, *back towards the origin* from the destination ramp, *or both*" is simply not true.[91] Mr. Mutén apparently failed to

[87] Peter Stone Verified Statement, BN/ATSF, p. 12.
[88] Peter Stone Verified Statement, BN/ATSF, p. 12.
[89] PC*Miler|Rail ver 28. Detroit, MI-Kansas City, MO CN distance is 765.7 miles and NS distance is 711.4 miles.
[90] PC*Miler|Rail ver 28. Toronto ON-Kansas City, MO CN distance is 953.7 miles and CP distance is 1,011.4 miles.
[91] STB Finance Docket No. 36500, Canadian Pacific Railway Ltd., et al, - Control – Kansas City Southern et al, Applicants' Response to Comments and Requests for Conditions, op. cit., Vol. 2, July 12, 2022, ⁋ 16 of Bengt Mutén Verified Statement.

consider Appendix B of my February 28, 2022 statement, which provided rules for determining which origin-destination pairs to retain and which to exclude. Rule number 4 stated:[92]

Rule 4: Retain origin-destination pairs where the average circuity is less than 1.57, based on:[93]

$$Circuity = \frac{Orig\ Dray + Rail\ LOH + Dest\ Dray}{Truck\ LOH}$$

That is to say, where a route was excessively circuitous, it was screened out of the OW model. To demonstrate this rule, consider a movement from Detroit, MI to Des Moines, IA.[94] This movement, which would move west by rail on CN from Detroit to Kansas City and then east by truck to Des Moines, is an example of what Mr. Mutén claims is a flaw in OW's truck-to-rail model. However, based on the circuity equation in Rule 4, this Detroit to Des Moines movement (and similar moves) would not even be considered by the model, because of its excessive circuity. It is difficult to understand why Mr. Mutén identifies circuitous drayage as a flaw in OW's model, when such circuity was specifically considered and screened out of the model, as documented in Appendix B of my February 28, 2022 statement.[95]

Furthermore, the OW truck-to-rail model penalizes long drayage movements for intermodal service by adding to the rail costs a drayage cost at each end, which consists of both a fixed component and a component that increases with distance. The movement criticized by Mr. Mutén – between Evansville, IN and Detroit, MI – was included in the model because it was not considered excessively circuitous under Rule 4. However, the movement was appropriately penalized by the model by applying higher drayage costs. As I describe in Appendix B of my February 28,2022 statement: "In addition to the rail costs described above, I applied a drayage

[92] David T. Hunt Verified Statement, CN Responsive Application, February 28, 2022, Appendix B.
[93] 1.57 represents a 25 percent allowance on an average rail/truck circuity of 1.26, calculated from the 2019 IHS Markit Transearch database for truck (excluding LTL) and rail traffic.
[94] David T. Hunt Verified Statement, CN Responsive Application, February 28, 2022, Appendix B, Exhibit B-3.
[95] David T. Hunt Verified Statement, CN Responsive Application, February 28, 2022, p. 27.

cost assumption for rail moves with a minimum of 100 miles at each end, to represent a minimum cost and then an additional charge for each mile above 100."[96]

The Transearch data identified over 17,000 annual trucks moving from Evansville, IN to Detroit, MI, of which the OW model diverted only 18 trucks (0.1 percent) to the proposed new CN East St. Louis intermodal facility for movement to Detroit.[97] An additional 13 trucks were diverted in the Detroit to Evansville direction. Thus, Mr. Mutén's example accounts for a total of 31 trucks, out of the more than 80,000 trucks CN would divert from the roadways.

Finally, Mr. Mutén uses misleading language regarding the drayage distance in the Evansville, IN to Detroit, MI example, when he describes, "the need for the origin dray to drive approximately 535 miles away from Detroit to reach CN's planned St. Louis ramp."[98] The drayage distance is not 535 miles. Evansville, IN to East St. Louis, IL is approximately 160 miles, and the western portion of the Evansville BEA includes Illinois locations, such as Fairfield, IL, which is about 110 miles from East St. Louis.[99] It is not unreasonable to assume at least 31 trucks could be diverted to the proposed new CN East St. Louis facility from the western edge of the Evansville, IN BEA.

9. Conclusion

After evaluating CP/KCS's claims regarding supposed errors in the traffic diversion estimates and re-analyzing my work, I confirm my original estimates that divestiture of the

[96] David T. Hunt Verified Statement, CN Responsive Application, February 28, 2022, p. 30.
[97] Oliver Wyman work paper: 20220121_Springfield_T2R_v19, submitted February 28, 2022.
[98] STB Finance Docket No. 36500, Canadian Pacific Railway Ltd., et al, - Control – Kansas City Southern et al, Applicants' Response to Comments and Requests for Conditions, op. cit., Vol. 2, July 12, 2022, ⁋ 16 of Bengt Mutén Verified Statement.
[99] Distances from Google Maps.

Springfield Line to CN would lead to more than 80,000 trucks and 49,500 railcars and containers being diverted annually, generating revenue of $106.9 million per year for CN.

VERIFICATION

I, David Hunt, declare under penalty of perjury that the foregoing information is true and correct. Further, I certify that I am qualified and authorized to file this statement.

Executed on this 11th day of August 2022.

David Hunt

EXHIBIT 4

Third Verified Statement of Hugh Randall

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 36500

CANADIAN PACIFIC RAILWAY LIMITED; CANADIAN PACIFIC RAILWAY COMPANY; SOO LINE RAILROAD COMPANY; CENTRAL MAINE & QUEBEC RAILWAY US INC.; DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION; AND DELAWARE & HUDSON RAILWAY COMPANY, INC. – CONTROL – KANSAS CITY SOUTHERN, THE KANSAS CITY SOUTHERN RAILWAY COMPANY, GATEWAY EASTERN RAILWAY COMPANY, AND THE TEXAS MEXICAN RAILWAY COMPANY

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

Third Verified Statement of Hugh Randall

August 11, 2022

PUBLIC REDACTED VERSION

Contents

1. Qualifications

My name is Hugh Randall. I am a Senior Advisor to and a Partner Emeritus of Oliver Wyman, a global general management consulting firm with more than 60 offices in 31 countries. My office address is 1717 Main Street, Suite 4400, Dallas, TX 75201. My full qualifications and resume are provided in my Verified Statement filed with CN's February 28, 2022 Comments.[1]

2. Assignment and Summary of Findings

I have been asked to review and comment on the Canadian Pacific/Kansas City Southern ("CP/KCS") response to the Responsive Application filed by Canadian National ("CN") that seeks an order requiring divestiture of KCS's lines between Kansas City, MO, on the one hand, and Springfield, IL and East St. Louis, IL, on the other hand (hereinafter "the Springfield Line").[2] Having reviewed the CP/KCS response and data relevant to the arguments these parties raise, my primary findings are as follows:

- CP/KCS characterized the Springfield Line as, in their words, part of the "vital organs"[3] of their merger proposal *only after CN expressed interest in acquiring the line.* Indeed, the CP/KCS merger Application described the line as little more than an agricultural gathering line. CP/KCS's operating plan and traffic diversion studies reflect *de minimis* growth on the line (other than assumed network-wide generic organic growth from existing customers), and their capital plan allocated no capital funds whatsoever to the line.
- CP/KCS's claim that divestiture of the Springfield Line would somehow prevent them from realizing the benefits of the proposed merger is meritless.

[1] STB Finance Docket No. 36500, CN's Comments on Application and Request for Conditions, February 22, 2022 (CN-13), Exhibit 3, Verified Statement of Hugh Randall – hereinafter "Randall First Verified Statement."
[2] STB Finance Docket No. 36500, Canadian Pacific Railway Ltd., 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, Vol. 1, July 12, 2022, Section VIII.
[3] STB Finance Docket No. 36500, Canadian Pacific Railway Ltd., et al, - Control – Kansas City Southern et al*,* Applicants' Response to Comments and Requests for Conditions, op. cit., Vol. 1, July 12, 2022, p. 231.

- The major benefit touted in the CP/KCS Application is the creation of a new single-line route involving CP's line between Sabula Jct. and Kansas City and KCS's lines south of Kansas City. Approval of CN's Responsive Application would not interfere with the development of that route; however, it would offer customers a competitive CN alternative to the proposed CP/KCS single-line service via the Springfield Line.
- CP/KCS's argument that divestiture of the Springfield Line would hamper their ability to access online customers is meritless. Under the haulage rights CN proposes to grant back, CP/KCS will be able to access every current and future customer on the Springfield Line. Commercial arrangements with those customers will be unchanged and entirely within the control of CP/KCS. From an operational standpoint, CN haulage service will be virtually indistinguishable from KCS's current service. CN's line haul and switching operations along the Springfield Line will mirror those currently performed by KCS. Unit trains to points on the KCS network will continue to be transported using the same locomotives and railcars that KCS uses today, and KCS will control the car supply for the non-unit haulage business. It is likely that service will be provided by the same crews that serve KCS customers today, as CN has offered to give hiring priority to current KCS employees in filling positions on the Springfield Line.
- CP/KCS's claim that divestiture would degrade service for unit train shipments of grain between elevators on the Springfield Line and KCS-served destinations in Mexico is especially nonsensical. For unit train movements to Mexico, the only operational difference would be replacement of the current KCS crew change at Kansas City with a "step-on, step-off" handoff of trains between CN and KCS crews.
- CP/KCS's argument that haulage rights are ineffective and would impede the flow of traffic from the Springfield Line flies in the face of their own extensive experience (and success) with haulage rights. For example:
    - In the ICC proceeding involving UP's acquisition of the Missouri-Kansas-Texas Railroad ("MKT"), KCS sought and was granted haulage rights over UP's line between Kansas City, on the one hand, and Council Bluffs, IA; Omaha and Lincoln, NE; Atchison and Topeka, KS; and several other locations, on the other hand, for the purpose of providing a competitive option for grain traffic originating at those

points.[4] KCS has successfully exercised those haulage rights. In 2019, KCS originated approximately {{ }} carloads of grain on those UP lines – 75.5 percent of the approximately {{ }} carloads of grain KCS originated on the Springfield Line.[5] As with traffic originating on the Springfield Line, most of the traffic moving via the haulage rights KCS obtained in the *UP/MKT* case consists of unit grain trains destined for points in Mexico.

- CP moves high-value intermodal and automotive traffic between Chicago and Detroit/Toronto via haulage rights over CSX's Chicago-Detroit lines (via New Baltimore) and Chicago-Buffalo lines. These haulage rights are critical to CP's operations because: (1) CP does not have its own line between Detroit and Chicago, (2) some double-stack intermodal and automobile railcars do not fit through CP's height-restricted Detroit River Tunnel, and (3) CP's trackage rights over Norfolk Southern's ("NS") Chicago-Detroit lines are subject to restrictions on the number of trains (and train lengths) that CP is permitted to operate. CP's haulage rights over CSX have enabled it to compete successfully with CN for traffic in the Chicago/Detroit/Toronto corridor.
- In November 2019, CP committed to a $223 million investment to reacquire the Central Maine and Quebec Railway ("CMQ") linking Montreal with the State of Maine and Province of New Brunswick, which included a $133 million purchase price and a commitment to invest $90 million to upgrade the line.[6] CP is using haulage service provided by a third-party shortline carrier to move CP cars between Brownville Jct., Maine and customers in New Brunswick.
- In their traffic forecast, CP/KCS expect to grow haulage traffic at St. John, NB; Council Bluffs, IA; Mobile, AL; and on the CSX line from Buffalo to Chicago at exactly the same rate as traffic directly served. Evidently, CP/KCS believes that from the customer's viewpoint, direct service and haulage are equivalent, and that haulage traffic will grow at the same rate as directly served traffic.

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[4] KCS 2003 Form 10-K, p. 8.
[5] See Oliver Wyman work paper: Rebuttal – HC – Oliver Wyman Analysis – Grain_Traffic_Haulage.pdf.
[6] "Central Maine & Quebec acquisition adds to Canadian Pacific's pandemic recovery, long-term growth strategies," Progressive Railroading, July 2020; Fortress Transportation & Infrastructure Investors LLC, Form 8-K, November 20, 2019.

- CP/KCS's argument that CN would not provide responsive service under a haulage rights agreement is similarly unfounded. The one example CP/KCS offers in support of this claim involves haulage of KCS traffic by CN between Jackson and Hattiesburg, MS. As CN witness Derek Taylor explains, the haulage agreement between CN and KCS requires KCS to pre-block the cars it delivers to CN at Jackson or pay a per car block fee. KCS has elected to pay the block fee.[7] As a result, CN moves the KCS haulage cars north to Memphis to be classified prior to transporting them to Hattiesburg, which is what CN does with its own traffic. In describing this situation, CP/KCS does not disclose that KCS's decision not to block the cars it delivers to CN at Jackson is the reason that CN moves the cars to Memphis for classification, nor do they provide any evidence that this practice results in overall poor service. As Mr. Taylor points out, KCS could eliminate the movement of haulage cars to Memphis by pre-blocking them prior to delivery to CN at Jackson.

- CP/KCS's claim that requiring divestiture of a 50 percent ownership interest in the International Freight Gateway ("IFG") terminal would compromise their operations[8] is likewise incorrect. The 50-50 ownership structure proposed by CN is designed to give CN and CP/KCS an equal voice with respect to future development of the facility. It does *not* require that CP/KCS cede 50 percent of the facility's footprint to CN. It simply guarantees that the parties must cooperate to develop the facility. The IFG site comprises 369 acres, of which just 112 are developed for intermodal and automotive facilities today, leaving 257 acres for development.[9] This should provide ample room for the improvements proposed by CN, without interfering with the ability of CP/KCS to develop additional facilities.

- CP/KCS's claim that divestiture of the Springfield Line would prevent them from realizing the benefits of their north-south mainline is without merit. While it is true that acquiring the Springfield Line might allow CN to divert some traffic from the CP/KCS north-south mainline, such diversions (if they occur) merely represent the effects of healthy rail-to-rail competition and would not (as CP/KCS suggest) threaten the viability of their north-south

[7] STB Finance Docket No. 36500, (Sub-Nos. 1,2,3,4), Verified Statement of Derek Taylor, p. 6-7.
[8] STB Finance Docket No. 36500, Canadian Pacific Railway Ltd., et al, - Control – Kansas City Southern et al, Applicants' Response to Comments and Requests for Conditions, op. cit., Vol. 1, July 12, 2022, p. 239.
[9] See Rebuttal – HC – Oliver Wyman IFG Expansion Analysis.

mainline. The volumes that Oliver Wyman's rail-to-rail traffic study indicate would be diverted from CP/KCS are too small to have a material impact on the CP/KCS north-south mainline. In support of their argument, CP/KCS refer to CN witness David Hunt's conclusion that more than a third of the traffic CN will attract will be diverted from other railroads. However, CP/KCS disingenuously fail to mention that projected diversions from CP/KCS represent only 3.5 percent of the 49,500 rail carloads that witness Hunt found divertible, or that the number of cars diverted from CP/KCS in the Chicago to Kansas City corridor is smaller still, amounting to approximately *five cars per day*.[10] Overall, the diversions from CP/KCS represent about 2 percent of the projected 250 daily railcars[11] and containers that CN will gain on the corridor between Chicago and Kansas City. In short, CP/KCS's suggestion that divestiture of the Springfield Line would unleash "unpredictable consequences for the future of the rail network"[12] is a flight of hyperbole nearly on the level with their assertion that divestiture of the Springfield Line is "a dagger aimed into the vital organs of the CP/KCS transaction."[13]

- CP/KCS's argument that divestiture of the Springfield Line would prevent them from moving traffic from "the Upper Plains" to East St. Louis more efficiently is absurd.[14] CP/KCS do not identify the envisioned "more efficient" route, aside from saying that it would involve interchange of traffic to the Iowa Interstate Railroad at Davenport for transportation to Peoria where "other shortlines" would forward it to CP/KCS at Springfield. This purportedly more efficient route apparently would involve a reverse movement at Davenport and no less than four interchanges, each of which would introduce delay.[15] (CP/KCS's assertion that this multi-carrier route would result in "more efficient" service is,

[10] See David Hunt Verified Statement, Responsive Application, February 28, 2022, Exhibit 5-4. Carloads diverted from CP/KCS = 1,716/49,500 = 3.5% or 1,716/365 = 4.7 cars per day.
[11] Oliver Wyman analysis, 5 daily cars/248 daily cars = ~ 2%.
[12] STB Finance Docket No. 36500, Canadian Pacific Railway Ltd., et al, - Control – Kansas City Southern et al, Applicants' Response to Comments and Requests for Conditions, op. cit., Vol. 1, July 12, 2022, p. 240.
[13] STB Finance Docket No. 36500, Canadian Pacific Railway Ltd., et al, - Control – Kansas City Southern et al, Applicants' Response to Comments and Requests for Conditions, op. cit., Vol. 1, July 12, 2022, p. 231.
[14] STB Finance Docket No. 36500, Canadian Pacific Railway Ltd., et al, - Control – Kansas City Southern et al, Applicants' Response to Comments and Requests for Conditions, op. cit., Vol. 1, July 12, 2022, p. 238.
[15] Although Brooks' description of the "more efficient" route lacks any detail, the route that CP/KCS appear to be proposing would involve transfer of railcars (whether via interchange, haulage, or trackage rights) from CP/KCS to the IAIS at Davenport; from the IAIS to the Tazewell & Peoria Railroad at Creve Coeur, IL; from the Tazewell and Peoria to the Illinois & Midland Railroad at Creve Coeur; and from the Illinois & Midland to CP/KCS at Springfield.

of course, utterly inconsistent with their claim that a simple "step-on, step-off" handoff of trains between CN and KCS crews at Kansas City would unacceptably degrade service for Springfield Line unit train grain shipments to Mexico.) In any event, while it is difficult to imagine that the route described by CP/KCS would be efficient, the sale of the Springfield Line to CN would not affect this routing, because the haulage rights proposed by CN include haulage of CP/KCS cars between Springfield and St. Louis. Also, it should be noted that an all-CP/KCS route from "the Upper Plains" to East St. Louis would be more than 300 miles longer than any competing route,[16] which is likely why such an option was not included in the CP/KCS traffic study.

- Far from being detrimental to the interests of railroad customers, divestiture of the Springfield Line would create significant public benefits:
  - Divestiture would create an additional rail service option for all customers located on the Springfield Line. Every present and future on-line customer would have the choice of CP/KCS or CN. CP/KCS will continue to have control over their marketing, rate offerings, cars, and in the case of unit trains, locomotive supply. CN's operating plan contemplates more frequent train service than KCS offers today. The only operational difference between KCS's current service and CN's proposed haulage service is that train crews moving CP/KCS haulage traffic would be employees of CN (although they may very well be the same crews who currently operate those trains, since CN has committed to offer priority hiring consideration to crews on the Springfield Line). Customers interested in a competitive rail service to Mexico via CN and UP will gain that option, as will on-line customers that are interested in shipping corn and other products into the Southeast.

    While CP/KCS seeks to portray such options as a threat to the national railway network, agricultural shipping is not a zero-sum game. Elevators with additional potential customers may well increase their throughput.
  - Under CN's operating plan, train service frequency on the Springfield Line will increase from the current 4-5 days per week to 6-7 days per week as a result of CN's investment in

[16] Oliver Wyman analysis (ALK's "A Tremble Company" PC*Miler rail routing tool).

the line. By contrast, the CP/KCS operating plan makes no provision for increased local or through train service for Springfield Line shippers. Most significantly, the key CSX intermodal traffic cited by CP/KCS going between IFG and Rose Lake will see service improvements from what is now effectively 4 days per week service to 6 days per week service, with the potential to grow to 7 days per week if warranted by future volumes.[17]

- Unlike CP/KCS, which made no provision for capital expenditures on the Springfield Line in their Application, CN has committed to make capital investments totaling $250 million to improve the Springfield Line and the adjacent CN Gilman subdivision. (CN's planned investments in these lines are set forth in Appendix A). CN's capital expenditures will improve track conditions, upgrade signals, extend sidings, and improve yards, all of which will benefit on-line customers shipping via Kansas City and to CSX at Rose Lake Yard. Off-line customers will also benefit, including intermodal and automotive customers from CN's plan to add new intermodal and automotive terminals in East St. Louis and expand capacity for intermodal and automotive traffic at IFG.
- CP/KCS's characterization of new CN traffic over the Springfield Line as primarily between Chicago and East St. Louis is wrong. As Oliver Wyman's traffic studies show, most of the anticipated traffic gains involve shipments in the lane between Eastern Canada/Detroit and Kansas City/East St. Louis. To accommodate that traffic, CN's operating plan adds a daily train in each direction between CN's intermodal and automotive yards in Hazel Crest/Harvey, Illinois (south of Chicago) and Kansas City (primarily carrying traffic connecting from trains operating between Michigan/Ontario/Quebec and CN's yards south of Chicago), with an additional daily connecting train between Roodhouse, IL and East St. Louis. This new service will yield significant public benefits, including diversion of east-west traffic from truck to rail (thereby reducing carbon emissions, highway congestion, and the need for public expenditures for highway construction and maintenance) as well as single-line competition with railroads in that corridor. This will be a particularly significant benefit for shippers, given the limitation on CP/KCS's ability to serve the St. Louis/Kansas City-

[17] CN 14, STB Finance Docket No. 36500, (Sub-Nos. 1,2,3,4) Application and Exhibits, February 28, 2022, Exhibit 13, Verified by Carl Van Dyke and Derek Taylor – Operating Plan for Springfield Divestiture.

Detroit market due to capacity constraints and marketing restrictions in their trackage rights and haulage arrangements with NS and CSX, respectively.

In sum, divestiture of the Springfield Line to CN will secure the line's future and provide improved competitive rail service to customers located along the line. Unlike CP/KCS's operating plan, which relegates the Springfield Line to an uncertain gathering-line status, CN will develop and operate the line as an integral part of a competitive rail route linking customers in Eastern Canada and Detroit with destinations in Kansas City, East St. Louis, and beyond. CN plans to invest $250 million to upgrade the line,[18] while the best CP/KCS can offer is that they will not downgrade the line. Furthermore, until CN expressed interest in the line, CP/KCS had characterized it as a grain feeder line and still have provided no capital expenditures to upgrade it.

3. CP/KCS's Claim That Divestiture of the Springfield Line Would Prevent Them from Realizing the Benefits of the Merger Is Not Credible

3.1 CN's Responsive Application will improve, not degrade, service to Springfield Line shippers

CN's Responsive Application provides that CN will grant back to CP/KCS haulage rights that will enable CP/KCS to access every current and future customer on the Springfield Line. As shown in Exhibit 3-1, from an operational standpoint, CN haulage service will be virtually indistinguishable from KCS's current service.

[18] See Appendix A.

Exhibit 3-1: Services provided by KCS on the Springfield Line under direct ownership and proposed CN haulage agreement[19]

Representative service attribute	Service provided by KCS under direct ownership	Service provided by a merged CP/KCS under a haulage agreement
Rate setting	✓	✓
Contract with customer	✓	✓
Loss and damage claims	✓	✓
Car supply	✓	✓
Car tracing	✓	✓
Locomotives (unit train)	✓	✓
Crews	✓	
Dispatching/infrastructure	✓	
Service standards	✓	✓
Billing	✓	✓
Customer service	✓	✓

The commercial relationship between CP/KCS and customers on the Springfield Line will be unchanged and entirely within the control of CP/KCS. CP/KCS will continue to set the rates for traffic moving on their account under haulage and will have the ability to enter into transportation contracts with on-line customers. CP/KCS will deal directly with customers in billing for linehaul service and will continue to be responsible for car supply, car tracing, and customer service in connection with haulage shipments. Haulage cars will be transported by CN using the same railcars that KCS uses today (as CP/KCS will be responsible for providing rolling stock for shipments on their account) and, for unit trains, the same locomotives. While trains containing CP/KCS haulage traffic will be operated over the Springfield Line by CN crews, it is quite possible that those crews will be the same crews that serve KCS customers today, as CN has offered to give priority hiring consideration to current KCS/Gateway Western employees in filling positions on the Springfield Line. Carload haulage traffic will move in general CN local

[19] Oliver Wyman research and analysis.

services on the line, or in the general trains CN will operate between East St. Louis and both IFG and Knoche Yard, providing service at least equivalent to the carload service being offered by KCS on the Springfield Line today. The only other difference between KCS's current operations and CN's post-divestiture haulage service is that the Springfield Line will be dispatched by CN rather than KCS.

Nevertheless, CP/KCS claim that reliance on haulage would degrade service for unit train shipments of grain between elevators on the Springfield Line and KCS-served destinations in Mexico. However, as Exhibit 3-1 clearly shows, CN unit train operations along the Springfield Line will mirror those currently performed by KCS (albeit with more frequent manifest train service than KCS offers today). For unit train movements to Mexico, the only operational difference would be replacement of the current KCS/former Gateway Western crew change at Kansas City with a "step-on, step-off" handoff of trains between CN and KCS crews at the same location.

CP/KCS also contend that CN's Responsive Application will harm shippers on the Springfield Line because CN will not provide adequate service for KCS haulage traffic. In support of this argument, they cite a single example involving haulage currently provided by CN for KCS between Jackson and Hattiesburg, MS. They complain that CN moves KCS haulage cars received at Jackson north to Memphis for classification prior to transporting them south to Hattiesburg. As CN witness Derek Taylor explains, the northbound movement to Memphis for classification is necessary solely because KCS chooses not to pre-classify the haulage cars before delivering them to CN at Jackson (electing instead to pay CN a per car blocking fee under the carriers' haulage agreement). CN does not currently classify traffic at Jackson, so takes the KCS haulage cars (and its own traffic) to Memphis for blocking. CP/KCS do not claim that the linehaul movement of this haulage traffic is inadequate. As Mr. Taylor points out, under the terms of the haulage agreement, KCS can remove the need to route its haulage cars via Memphis at any time by blocking them before delivering them to CN at Jackson.[20]

Section 4.1 of the proposed Haulage Services Agreement accompanying CN's Responsive Application provides explicitly that "ICRR (the US-based subsidiary of CN that would acquire and operate the Springfield Line) shall accord Haulage Cars the same level of service as other traffic of the same type moving in ICRR trains." Section 4.2 gives CP/KCS the right to request additional train service (over and above the increase in train frequency contemplated by CN's operating plan as a result of CN's investment) and requires the parties to cooperate in establishing mutually beneficial train schedules. If disputes arise regarding an alleged failure by CN to comply with these service-related provisions, Section 12 of the Haulage Agreement provides CP/KCS with remedies to address such disputes, including a requirement that senior officers of the railroads meet to resolve the issues; failing which, either party may invoke arbitration.

Finally, CP/KCS contend that divestiture of the Springfield Line to CN would be an impediment to future investment in the Springfield Line. Specifically, CP witness Brooks states, "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."[21] This statement is nonsensical. CN's capital investment plan includes the extension of at least six sidings on the Springfield Line to well over 8,500 feet, meaning that running longer grain trains will not be problematic under CN ownership. Second, Section 2.5 of the proposed Haulage Services

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[20] STB Finance Docket No. 36500, (Sub-Nos. 1,2,3,4), Verified Statement of Derek Taylor, p. 6-7.
[21] STB Finance Docket No. 36500, Canadian Pacific Railway Ltd., 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, Vol. 2, July 12, 2022, Brooks Verified Statement, p. 23.

Agreement contemplates the possibility of additional capital improvements if required to accommodate an increase in CPKC haulage traffic. It is expected that the parties would discuss the capital needs of the Springfield Line on a "go forward" basis and come to a mutually acceptable investment plan if a merged CPKC requests additional capital improvements. This scenario is no different than the need for KCS to discuss its capacity needs where it exercises haulage and trackage rights on the Union Pacific ("UP")

3.2 Haulage rights on the Springfield Line would enable CP and KCS to compete effectively

3.2.1 CP/KCS's own experience with haulage rights demonstrates their value

Haulage agreements are operationally effective, understood, and well liked among shippers in the railroad industry because they enable customers to deal with a single railroad in making their transportation arrangements. "Shippers like haulage because it centers responsibility for the whole movement, from origin to destination, on just one railroad. There's no complicated haggling with a chain of carriers when the customer wants to change rates or service."[22] CP and KCS both currently exercise haulage rights to access important markets efficiently and economically.

CP/KCS claim that divestiture of the Springfield Line, even with the haulage rights that CN is proposing, "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."[23] This assertion is contradicted by the positive experience of both KCS and CP in serving customers under haulage agreements.

[22] "Trackage and haulage rights," Trains Magazine, May 1, 2006.
[23] STB Finance Docket No. 36500, Canadian Pacific Railway Ltd., et al, - Control – Kansas City Southern et al, Applicants' Response to Comments and Requests for Conditions, op. cit., Vol. 1, July 12, 2022, p. 231.

3.2.2 KCS's current haulage arrangements

KCS currently utilizes haulage to access markets served directly by other railroads and KCS views it as functionally the same as single-line service. KCS's current access to locations such as Council Bluffs, IA; Atchison and Topeka, KS; and Lincoln, NE all function as equivalent to single-line service points through a haulage agreement with UP. KCS utilizes its UP haulage rights to reach agricultural customers in the same manner that CN proposes for the Springfield Line.

KCS customer Bartlett Grain Company believes that KCS service via haulage works for many Bartlett unit train locations that send traffic to Mexico, but claims that a similar haulage arrangement would not provide the necessary service for shipments originating on the Springfield Line. As shown in Exhibit 3-2, Bartlett Grain benefits from haulage for grain shipments that originate in Iowa and Kansas. Bartlett shipments move on KCS waybills from Atchison and Council Bluffs via UP-provided haulage to the same Mexican facilities as Bartlett ships to from Jacksonville, IL on the Springfield Line.

Exhibit 3-2: Bartlett Grain Company shipping to Mexico under haulage agreements[24]
Not exhaustive, 2019 100 percent waybill data

Origin	Destination	Unit Trains/Year
Atchison, KS	Mexico	{ }}
Council Bluffs, IA	Mexico	{ }}
Great Bend, KS	Mexico	{{ }}
St. Joseph, MO	Mexico	}}
Wichita, KS	Mexico	}}
Jacksonville, IL[25]	Mexico	{ }

[24] Oliver Wyman analysis, CP/KCS 2019 100% waybill data file.
[25] Bartlett Grain Company shipments from Jacksonville IL to Mexico via KCS would become haulage after divestiture of the Springfield Line.

In his 2022 Verified Statement, Bartlett's president, Mr. Bob Knief, describes KCS service from Council Bluffs and Atchison as "single-line routes" to Mexico, despite KCS's reliance on UP haulage to access the origin points:

> "For many of Bartlett's facilities, such as Council Bluffs, IA, we could choose service to Mexico via UP, BNSF or KCS. Since 2005 we have directed most of our traffic to Mexico from those facilities to Mexico via KCS-KCSM routes. I can state categorically that we were never forced to choose those options. UP and BNSF options were always available to us, but *we chose KCS single-line routes on the merits because they best met our transportation needs by serving our end-markets best*."[26]

Mr. Knief in his Verified Statement confirms that Bartlett currently ships agricultural products under haulage agreements and regards such transportation as "single-line service." From an operational standpoint, service under CN's proposed haulage agreement with CP/KCS on the Springfield Line would function in the same manner as KCS's current haulage rights over UP lines.

It is not clear why Bartlett apparently has reservations regarding haulage on the Springfield Line, given that it already moves grain from other origins to many of the same end markets in Mexico via KCS routes that include UP-provided haulage service. CN's haulage proposal, along with its capital investment plan and increased train service frequency, should improve (not degrade) Bartlett's shipping experience on the Springfield Line. Moreover, CN's Responsive Application will increase Bartlett's competitive shipping options: Bartlett will (for the first time) be able to ship grain from Springfield Line origins directly to Mexico via CP/KCS (with CN performing haulage to Kansas City) or use the newly created CN routing (with interchange to UP at Kansas City) for such shipments.

[26] STB Finance Docket No. 36500, Verified Statement of Mr. Bob Knief, June 22, 2022, ¶14 (emphasis added).

Another current KCS grain shipper with facilities on and near the Springfield Line, Archer Daniels Midland ("ADM"), has testified that it sees the benefit of having multicarrier options and supports divestiture of the Springfield Line to CN. In ADM's July 11, 2022 letter, Chris Boerm, President of ADM Transportation, stated:

> "In the event of a CP/KCS merger, CN's alternative would create a new competitive option: a single-line service to and from Kansas City – directly competing with the service that would be provided by CP/KCS. While the new service will be available, no options will be lost, as KCS will retain access to the divested lines via haulage agreement with CN. This new competitive option will be particularly beneficial to agricultural customers and producers across the Midwest."[27]

In addition to its haulage agreements with UP to serve grain shippers in Iowa, KCS has two haulage agreements with CN to access customers:

- From Jackson, MS to Hattiesburg, MS and Mobile, AL. The Hattiesburg agreement enables KCS to reach an otherwise stranded line between Hattiesburg, MS and Gulfport, MS. The Mobile agreement provides KCS access to three carriers in Mobile, including one that serves the Port of Mobile.
- Between Baton Rouge and Geismar, LA, KCS has a haulage agreement to access six rail-served customers.

3.2.3 KCS's current unit grain train service on the Springfield Line is inconsistent

CP/KCS claim that Springfield Line train operations under CN ownership will be slow and fraught with delay, particularly where CP/KCS haulage rights trains are concerned. However, based on an analysis of KCS 2021 operations, KCS's current service on the Springfield Line can best be described as slow and inconsistent.

In particular, I examined KCS's unit grain train service to the Jacksonville, IL facility of Bartlett Grain. As one of KCS's most important customers on the Springfield Line, one would

[27] STB Finance Docket No. 36500, Sub-No. 1, ADM letter, July 11, 2022.

expect that Bartlett would be the beneficiary of prompt rail service. The reality, though, is that KCS's service has been slow and inconsistent.

Utilizing data on historic train movements on the Springfield Line provided by KCS for the seven-month period from June through December 2021, I sampled trains operated on Bartlett Grain's behalf. As one might expect for a feeder line providing first-mile/last-mile service, this is a low-velocity operation with significant variability in transit times. A summary of these findings is presented in Exhibit 3-3.

Exhibit 3-3: Statistical analysis of observed unit grain train moves between Jacksonville, IL and International Freight Gateway[28]

	Eastbound (IFG to Jacksonville)	Westbound (Jacksonville to IFG)[29]
Segment distance (miles)	289.9	289.9
Segment transit time (hours)		
Mean	{{ }}	{{ }}
Standard deviation	{ }}	{ }}
Minimum	{{ }}	{{ }}
25th percentile	{{ }}	{{ }}
50th percentile (Median)	{{ }	{{ }}
75th percentile	{{ }}	}}
Maximum	{{ }	{{ }}
Average segment train speed (mph)	{{ }	{{ }}
Train count	{{ }}	{ }}

According to KCS's own train performance data, unit grain trains for Bartlett Grain, particularly loaded unit grain trains (westbound trains in Exhibit 3-3) operate at an average speed

[28] See Oliver Wyman work paper: Rebuttal – HC – Oliver Wyman Analysis Bartlett_Unit_Train_Transit_Times.xlsx., The segment distance of 289.9 miles was calculated by examining file: 4-KCT Map.pdf and KCSR System Timetable No 15.pdf.

[29] Oliver Wyman removed an outlying train with a transit time of almost 127 hours. If the outlier had been included, the mean for all westbound trains would have increased to {{ }}, and the average train speed would have declined to {{ }}.

[30] Oliver Wyman only considered full westbound unit train movements from Jacksonville to IFG and empty eastbound unit train movements from IFG to Jacksonville. The number of empty eastbound unit trains is less than loaded unit trains, as not all empty grain hoppers are sent to Jacksonville in empty unit trains from IFG, resulting in the train imbalance seen in Exhibit 3-3.

of only {{ }}. Eastbound empty trains are slightly faster but still achieve an average speed of only {{ }}. In contrast, on other parts of the KCS system during the June to December 2021 timeframe, unit grain trains posted an average speed of 24.1 mph, over half again as fast as the average speed of {{ }} for the Springfield Line.[31] I was not provided with information to determine why the average train speed for unit grain trains on the line is so low. I asked for and did not receive any information about track condition or slow orders. All I had to work with was KCS's current timetable, which showed an FRA Class 3 speed maximum of 40 mph for most of the line. The slow average train speed seems unlikely to be due to train congestion, since there is so little traffic on the line. It might be caused by slow orders due to track condition issues west of Springfield, where the timetable speed is generally 40 mph.

In addition to achieving only low average train speeds, KCS's unit grain train operation for Bartlett Grain is also highly variable. For empties, the standard deviation in train speed for all such unit grain trains on this line segment is 36 percent of the associated average, while for loads, the standard deviation is 30 percent of the associated average. Empty transit times ranged from {{ }} and loaded transit times from a minimum of {{ }}. These statistics are indicative of a highly variable operation, which is due to existing poor KCS transit time reliability.

With such lackluster train performance, especially for such an important anchor customer, CP/KCS's suggestion that CN would provide subpar train service is truly ironic. Based on KCS's performance, CN will improve service, as a result of the capital investments that CN plans to make to upgrade the line.

[31] Surface Transportation Board, Rail Service Data, EP724 Consolidated Data through 2022-07-20.xlsx; Oliver Wyman research and analysis.

3.2.4 CP's current haulage arrangements

CP has for decades utilized haulage rights to provide customers with the equivalent of "single-line" service. In particular, since the 1980s, CP has relied on haulage arrangements to bridge the gap in its lines between Chicago, on the one hand, and Michigan and Eastern Canada, on the other hand. CP moves its high-priority Eastern Canada to Chicago intermodal traffic between Buffalo, NY and Chicago, IL via haulage on CSX. While CP has its own route via Windsor, ON and can reach Chicago via trackage rights over NS from Detroit to Chicago, domestic double-stacked containers and AutoMax autorack cars cannot fit through CP's height-restricted Detroit River Tunnel, which connects Detroit and Windsor. While the haulage route over CSX is more than 120 miles longer, the service provided by CSX under this haulage agreement apparently is prompt and without delay, as CP uses this route for its high-priority, highly competitive intermodal and automotive traffic.

CP also uses a haulage agreement with CSX to handle intermodal traffic between its ramp in the Detroit area and Chicago. Again, this is high-priority, truck-competitive intermodal traffic and the service quality is apparently sufficient to allow CP to be competitive.

The value of these haulage arrangements is reflected in CP/KCS's traffic study, which projects that the capacity of CSX-provided haulage to/from Detroit will be maxed out at the agreed-to limit of 2,500 feet each way,[32] and that the volumes on the CSX routing between Chicago and New Baltimore will grow by 165 percent, primarily due to merger synergies.[33]

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[32] STB Finance Docket No. 36500, Verified Statement of Richard W. Brown and Nathaniel S. Zebrowski, October 2021, Vol 2., p. 32, ⁋ 57: "As a result of the service design analysis, certain capacity restraints were identified for intermodal shipments into and out of CP's Detroit intermodal terminal accessed via CSX trackage rights that include daily haul-length limits, and as a result we adjusted downwards our Detroit intermodal diversions by 55 percent. See Operating Plan (Exhibit 13) at ¶ 36." and FD: 36500 Railroad Control Application Volume 2, October 29th, 2021, Appendix I, page 438

[33] Based on an examination of work paper 24.1.1.9 – Trains Per Day and Gross Ton Miles.xlsx, detailing line segment volumes and showing an increase from 20 intermodal cars per day to 53 intermodal cars per day.

A key reason CP cited for purchasing the Central Maine & Quebec Railway ("CMQ") in November 2019 (for an estimated $133 million)[34] was to gain direct access to the Port of St. John, NB. The CMQ lines acquired by CP extend from the Montreal area to Brownville, Jct., Maine. CP has a haulage agreement with the New Brunswick Southern and Eastern Maine Railways to provide haulage service between Brownville Jct. and the Port of St. John, a distance of more than 200 miles. CP is "completely dependent" on the New Brunswick Southern Railway to reach the Port of St. John.[35] Access via haulage service was apparently sufficient for CP to spend millions of dollars to acquire and upgrade the CMQ, and to support the development of high-priority intermodal and automotive service offerings between St. John and metro areas in Quebec/Ontario and points further west, such as Detroit and Chicago. CP's belief in the value of this approach to access a new market is demonstrated by the following statement by CP witness Wahba from a CP press release regarding the CMQ acquisition:

> "The Port of Saint John connection gives us the rare opportunity to offer shippers a truly new and extremely compelling service to reach North American markets," said Jonathan Wahba, CP Vice-President Sales and Marketing Intermodal and Automotive. "With a world-class terminal operator in DP World and CP's investment in the CMQ, our customers will enjoy an unmatched value proposition that will benefit beneficial cargo owners for years to come."[36]

3.2.5 CP and KCS have competed successfully in markets accessed via haulage

It seems clear from these examples that CP and KCS have both found haulage agreements to be a satisfactory method of accessing markets for carload traffic, unit grain trains, and even service-sensitive intermodal and automotive business. Both CP and KCS have been successful in

[34] Canadian Pacific Annual Report 2020.
[35] STB Finance Docket No. 36368, Soo Line Corporation – Control – Central Maine & Quebec Railway US Inc. filing, May 4, 2020.
[36] "Canadian Pacific launches first train of international containers from Port of St. John," CP press release, August 11, 2020.

attracting traffic to their train services that rely, in part, on haulage provided by a third-party carrier.

KCS originated approximately {{ }} carloads of grain in 2019 from origins in Iowa, Nebraska, and Kansas that KCS accesses via its UP haulage rights. That total is approximately 75 percent of the approximately {{ }} carloads of grain that KCS originated on its own Springfield Line during 2019.[37] Based on these figures, it seems disingenuous for CP/KCS to argue that a haulage agreement to access grain origins on the Springfield Line would hamper their ability to compete effectively for that business. As I noted earlier, the traffic projections provided by CP/KCS grow directly served and haulage traffic at the same rate, indicating that CP/KCS believe that customers view direct service and haulage as equivalent services.

In this case, with its planned investment in the line CN's acquisition of the Springfield Line will build critical density on an otherwise light-density route, which will make operations on the line more efficient and resilient to fluctuations in traffic volumes and support capital upgrades that KCS cannot justify today.

3.3 CP/KCS's concerns regarding shared ownership of the IFG terminal are unfounded

In Volume 1 of their Reply, CP/KCS cite several concerns regarding CN's proposed purchase of a 50 percent ownership interest in, and joint operation of, KCS's IFG Terminal south of Kansas City. CP/KCS assert that CN's proposal would interfere with "the procompetitive potential of the CP/KC Transaction,"[38] and with "CP/KC's ability to manage and handle the new intermodal traffic that they will introduce on their North/South lanes in Kansas City."[39]

[37] See Oliver Wyman work paper: Rebuttal – HC – Oliver Wyman Analysis – Grain_Traffic_Haulage.pdf.
[38] STB Finance Docket No. 36500, Canadian Pacific Railway Ltd., et al, - Control – Kansas City Southern et al, Applicants' Response to Comments and Requests for Conditions, op. cit., Vol. 1, July 12, 2022, p. 239.
[39] STB Finance Docket No. 36500, Canadian Pacific Railway Ltd., et al, - Control – Kansas City Southern et al, Applicants' Response to Comments and Requests for Conditions, op. cit., Vol. 1, July 12, 2022, pp. 239-240.

These concerns are unfounded. CN's plans for IFG are based on the intermodal and automotive traffic volumes it projects will need to be handled within 3 years of acquiring the Springfield Line and reflect CN's planned investment to add intermodal and automotive capacity at IFG for CN's exclusive use. CN expects that IFG has ample acreage to support CN and CP/KCS operational needs. CN's planned investment at the IFG facility will be more than adequate to support its projected traffic volumes

While CN proposes to acquire a 50 percent ownership interest in IFG for the purpose of securing an equal voice in the future development of the site, CN is *not* seeking to reserve 50 percent of the existing infrastructure capacity for its own use. Rather, CN plans to invest tens of millions of dollars to add sufficient track and related facilities at IFG to handle its projected volumes of intermodal and automotive traffic. Traffic studies prepared for CN indicate that, by Year 3, it will originate and terminate approximately 113,000 containers and 12,500 multilevel cars annually at IFG.[40] CN's plans assume that CN and CP/KCS will operate separate intermodal and automotive facilities. The 257 acres available for development within the IFG footprint will provide ample space to accommodate both railroads' facilities.

In addition to its plan for new daily intermodal and automotive train service between IFG and yards outside of Chicago, CN plans to increase manifest service to/from the Springfield Line to six days per week likewise as a result of CN's planned investments. However, as the Operating Plan describes, these manifest trains will originate and terminate at Knoche Yard and will not operate further south to the IFG.

[40] CN 14, STB Finance Docket No. 36500 (Sub-Nos. 1,2,3,4) application and Exhibits, February 28, 2022, Exhibit 13, Verified by Carl Van Dyke and Derek Taylor – Operating Plan for Springfield Divestiture, pp. 531-532, Figures 35 and 37.

3.3.1 50-50 joint ownership of IFG is necessary for effective governance of the facility

CN understands that IFG will be an important facility for both CN and CP/KCS. CN projects a steady increase in intermodal and automotive volumes at IFG, while CP/KCS will have more north-south trains changing crews and potentially swapping blocks at IFG. To ensure that the IFG is operated in the best interest of both carriers, CN advocates a 50-50 ownership structure. As described in Robert Hauswald's work on ownership and control in joint ventures:

> "The potential for value extraction by a dominant partner would hurt the minority firm's contribution incentives to a point where equal equity stakes maximize joint value creation. Only 50-50 ownership offers protection against rent seeking activities because each parent can resort to legal action and force a stalemate in case the other firm attempts to extract residual benefits."[41]

CP/KCS's arguments against joint ownership of the IFG are meritless. CN's proposed 50-50 ownership structure is designed to ensure that the parties develop the facility cooperatively to meet their needs. Further, holding a 50 percent ownership stake does not necessarily mean that CN would demand use of 50 percent of the available land and facilities at IFG. It simply guarantees that the parties must cooperate in making decisions regarding the future development of the facility.

If CN's proposed condition regarding IFG ownership is approved, CN will participate in cooperative discussions with CP/KCS to determine a mutually beneficial plan for the buildout and use of IFG's facilities. With a 50-50 ownership arrangement, both parties will have incentives to devise a reasonable and equitable plan for the facility that will meet each party's needs.

[41] Ownership and Control in Joint Ventures: Theory and Evidence, Robert Hauswald, R.H. Smith School of Business, University of Maryland, March 2002, p. 4.

3.4 CP/KCS's argument that divestiture of the Springfield Line will erode their north-south line revenues is contradicted by evidence on record

CP/KCS argue that CN will use the Springfield Line to divert traffic between Chicago and Kansas City that otherwise would move on the CP/KCS north-south mainline, thereby "threaten[ing] CP/KCS's planned investments in its core North-South corridor."[42] This assertion is a flight of fantasy based on a mischaracterization of Oliver Wyman's diversion study.

In support of their argument, CP/KCS cite a statement by CN witness Hunt that more than one-third of the traffic diverted by CN following its acquisition of the Springfield Line would be diverted from other railroads. That statement is correct as it applies collectively to *all other railroads*. CP/KCS also cite the (unremarkable) statements by CN marketing personnel that "express exuberance about going after whatever traffic might be available."[43] Based on my experience as an officer of railroad and trucking companies, I would fully expect CN's marketing personnel to pursue any available source of traffic.

However, the empirical evidence on the record demonstrates that CP/KCS's supposed concerns are overblown. CN witness Hunt estimated that CN would be able to divert a total of 49,500 carloads of traffic from other railroads. However, CP/KCS fail to mention that just 1,716 cars – or 3.5 percent[44] of the diverted carloads would come from CP or KCS, even though that fact is clearly presented by witness Hunt.[45] Moreover, those 1,716 carloads (or fewer than five carloads per day)[46] would not necessarily move on CP/KCS's north-south mainline between

[42] STB Finance Docket No. 36500, Canadian Pacific Railway Ltd., et al, - Control – Kansas City Southern et al, Applicants' Response to Comments and Requests for Conditions, op. cit., Vol. 1, July 12, 2022, p. 240.
[43] STB Finance Docket No. 36500, Canadian Pacific Railway Ltd., et al, - Control – Kansas City Southern et al, Applicants' Response to Comments and Requests for Conditions, op. cit., Vol. 1, July 12, 2022, p. 240.
[44] See Hunt Verified Statement, Responsive Application, February 28, 2022, Exhibit 5-4. Carloads diverted from CP/KCS = 1,716/365 = 4.7 cars per day and 1,716/49,500 = 3.5%.
[45] See Hunt Verified Statement, Responsive Application, February 28, 2022, Exhibit 5-4.
[46] See Hunt Verified Statement, Responsive Application, February 28, 2022, Exhibit 5-4. Carloads diverted from CP/KCS =1,716/365 = 4.7 cars per day.

Chicago and Kansas City. But even if that were the case, *CP/KCS would have the Board believe that the diversion of less than five carloads per day would threaten their investment in the CPKCS north-south mainline.*

3.5 CP/KCS claims that divestiture of the Springfield Line will interfere with a proposed shortline route between the Upper Plains and Illinois and Missouri is not credible

CP/KCS claim that the Springfield Line "will also provide CP/KCS with access to the important East St. Louis gateways, where CP/KCS will be looking to grow traffic with CSX and other connections."[47] Likewise, "Applicants see significant potential to attract new traffic to the CP/KCS network by linking the CP network to St. Louis."[48] In that regard, CP witness Brooks testified that CP/KCS is "exploring" creation of a new route linking CP lines in Iowa with KCS lines in Illinois and Missouri but that "without ownership of the Springfield/St. Louis Line, CP/KCS could not even consider exploring opportunities like this."[49]

While Mr. Brooks does not identify the specific route that CP/KCS is exploring, he states that it would involve linking CP's Iowa lines with KCS' lines in Illinois and Missouri via an interchange with IAIS at Davenport, movement over IAIS from Davenport to Peoria, and further interchange with unspecified shortlines (most likely Tazewell & Peoria and Illinois & Midland) for movement from Peoria to interchange with KCS at Springfield. KCS would then handle the traffic from Springfield to East St. Louis for interchange with an eastern carrier.

[47] STB Finance Docket No. 36500, Canadian Pacific Railway Ltd., et al, - Control – Kansas City Southern et al, Applicants' Response to Comments and Requests for Conditions, op. cit., Vol. 1, July 12, 2022, p. 236.
[48] STB Finance Docket No. 36500, Canadian Pacific Railway Ltd., et al, - Control – Kansas City Southern et al, Applicants' Response to Comments and Requests for Conditions, op. cit., Vol. 1, July 12, 2022, p. 237.
[49] STB Finance Docket No. 36500, Canadian Pacific Railway Ltd., et al, - Control – Kansas City Southern et al, Applicants' Response to Comments and Requests for Conditions, op. cit., Vol. 2, July 12, 2022, Brooks Verified Statement at p. 23, ⁋ 57.

It is hard to imagine that a new route involving four railroads, four interchanges, and a reverse movement (to get from CP to IAIS) would be efficient. Nevertheless, acquisition of the Springfield Line by CN would not threaten CP/KCS's ability to develop the proposed route, as Section 2.1(iv) of the proposed Haulage Services Agreement explicitly makes traffic interchanged by KCS with third-party railroads eligible for haulage service. Accordingly, Mr. Brooks is simply wrong that continued ownership of the Springfield Line by CP/KCS is necessary to create the route he describes. Moreover, CN's plans to increase train service frequency and make capital improvements at the eastern end of the Springfield Line (which is currently limited to FRA Class 1 speed) will actually increase the chances of CP/KCS creating this additional route. Certainly, for CSX intermodal traffic, increasing service frequency from 4 days per week to 6 days per week will benefit shippers.

3.6 New CN single-line service between Detroit/Eastern Canada and Kansas City/E. St. Louis will generate substantial environmental and competitive benefits

The proposed divestiture will create new single-line, competitive CN service between Detroit/Eastern Canada and Kansas City/East St. Louis. As shown in Exhibit 3-4 below, CN projects that this service will enable it to divert approximately 80,000 trucks per year from the highways. This will generate substantial environmental and safety benefits, including reduced carbon emissions, highway congestion, and potential truck/automobile traffic accidents, as well as the need for public expenditures to expand and maintain highways in the corridor. CN's single-line service capability in the corridor will also enable it to compete with railroads now in the market and to divert approximately 49,500 carloads, primarily intermodal and automotive traffic (but only 3.5 percent of these diverted carloads will come from CP and KCS).[50]

Exhibit 3-4: Rail and truck diversions in the Detroit/Eastern Canada – Kansas City/East St. Louis corridor[51]

Traffic type	Rail-to-rail units	Truck-to-rail units	Port of Montreal units	Total units
Intermodal	31,006	77,771	12,500	121,277
Automobiles	17,903	1,479	-	19,382
Grain	604	-	-	604
Other	-	890	-	890
Total	49,513	80,140	12,500	142,153

4. CP/KCS Saw Little Value in the Springfield Line Prior to CN's Responsive Application

In their July 12, 2022 filing, CP/KCS claim that the Springfield Line is an integral part of their merger plan, and that requiring divestiture of the line would threaten realization of the benefits of a CP/KCS merger.[52] Yet, aside from including the Springfield Line in various tables and charts, the CP/KCS merger Application made no specific mention of that line. Moreover, the CP/KCS capital plan allocated zero dollars for investment in the line. In particular, the CP/KCS Application referenced no plans to upgrade the eastern end of the line, which currently is in FRA Class 1 (10 mph) condition.

The Verified Statement of Jonathan Wahba and Michael Naatz described, among other traffic opportunities, a plan to upgrade service to grain shippers, but made no mention of the Springfield Line or its on-line grain customers. In fact, Figure 1 of their Verified Statement (reproduced in Exhibit 4-1 below) depicted the Springfield Line as a small feeder line.

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[50] See Hunt Verified Statement, Responsive Application, February 28, 2022, Exhibit 5-4 (1,716 carloads / 49,500 – 3.5%).

[51] See Hunt Verified Statement, Responsive Application, February 28, 2022, Exhibit 2-2.

[52] STB Finance Docket No. 36500, Canadian Pacific Railway Ltd., et al, - Control – Kansas City Southern et al, Applicants' Response to Comments and Requests for Conditions, op. cit., Vol. 1, July 12, 2022, pp. 236 and 243.

Exhibit 4-1: Figure 1 of the Verified Statement of Wahba and Naatz[53]

The dramatic escalation in importance that CP/KCS now attribute to the Springfield Line – once CN expressed an interest in acquiring the line – illustrates the adage that the quickest way to convert an old steer into a prize bull is to hit it with a locomotive. CP/KCS's attempt to recast the Springfield Line as a critical element of the post-transaction CPKC network, in response to CN's Responsive Application, is simply not credible.

CP/KCS's newfound concern regarding the fate of the Springfield Line is not based on the interests of on-line customers. If the line is divested to CN, shippers will continue to enjoy the

[53] STB Finance Docket No. 36500, Verified Statement of Jonathan Wahba and Michael J. Naatz, CP/KCS Application Vol. 1, October 29,2021, p. 252.

same access they have now to the CP/KCS system, with even greater service frequency after CN's upgrades and investments. Shippers electing to ship via the merged CP/KCS system will receive service under commercial terms negotiated with CP/KCS, and their freight will be transported using the same cars and (in all likelihood) the same crews that are used today.[54] At the same time, on-line customers will gain access to a competitive option via CN. Due to CN's investment in the line and the additional traffic CN would move in the Detroit/Eastern Canada to Kansas City/East St. Louis lane, on-line shippers will enjoy a much-improved physical plant with greater capacity, while an expanded traffic base from off-line customers would justify ongoing investment in the line.

4.1 CP/KCS's claim that the projected growth of Springfield Line traffic demonstrates their commitment to the line is, at best, disingenuous

CP/KCS claim that the traffic growth they show for the Springfield Line in the Application demonstrates their commitment to the line and its importance to them. CP/KCS reiterate this claim in Table 4 of Volume 1 of their Reply, and the associated supporting text.[55] Yet, their growth projections for the Springfield Line continue to decline with each revised submission of their evidence.

As demonstrated by CN witness Carl Van Dyke,[56] CP/KCS's growth projections for the Springfield Line are based on a combination of modeling errors and the application of a generic "organic growth" projection for the entire CP/KCS network. Upon closer inspection of

[54] The proposed Asset Purchase Agreement provides that, in the event that ICRR hires any employees for the continued operation of the Springfield Line, it will offer priority hiring consideration to KCS employees (both craft and non-craft) currently working on the Springfield Line whose employment is impacted by the proposed divestiture transaction. *See* Exhibit 2A, Section 7.13 of the Responsive Application. Moreover, on page 109 of the amended operating plan, CN states: "Assuming they are qualified, existing employees working on the Springfield Line will be given priority consideration in the hiring process."
[55] STB Finance Docket No. 36500, Canadian Pacific Railway Ltd., et al, - Control – Kansas City Southern et al, Applicants' Response to Comments and Requests for Conditions, op. cit., Vol. 1, July 12, 2022, pp. 236-237.
[56] STB Finance Docket No. 36500, CN Responsive Application, June 9, 2022, p. 599.

CP/KCS's own numbers, the true projected "merger-related" growth for the Springfield Line amounts to about six cars per day, of which half are likely empties. These six daily cars represent growth of less than 200,000 tons per year, not the 520,000 to 1.18 million tons claimed by CP/KCS.[57]

4.1.1 Background: CP/KCS growth projections for the Springfield Line

In their letter to the Board dated, January 28, 2022, CP/KCS originally claimed growth rates on the order of 30 percent for the Springfield Line and cited that growth as proof of their commitment to the line.[58] But the CP/KCS Amended Operating Plan filed on May 13, 2022 reduced these growth rates to 13-17 percent, as demonstrated in Exhibit 4-2.

Exhibit 4-2: CP/KCS original vs. amended tonnage growth rates for selected line segments[59]

Line segment	Original October work paper base tonnage	Original Application Year 3 tonnage	Work paper percent change between 2019 and Year 3	Revised (Appendix T) Base Year tonnage	Appendix T Year 3 tonnage	Amended Application Base to Year 3 change
Kansas City – Slater	5.83	7.56	29.7%	6.17	6.96	12.8%
Slater – Mexico	3.71	4.85	30.7%	4.28	4.84	13.2%
Mexico – Roodhouse	3.39	4.43	30.7%	4.02	4.54	13.0%
Roodhouse – Godfrey	1.11	1.45	30.6%	1.05	1.23	17.1%
Godfrey – East St. Louis	7.76	10.15	30.8%	6.84	8.02	17.2%
Roodhouse – Murrayville	0.03	0.03	0.0%	1.00	1.00	-0.2%
Murrayville – Springfield	0.03	0.03	0.0%	0.17	0.17	-0.6%
Jacksonville – Murrayville	0.43	0.55	27%	1.33	1.33	0.0%

The vast majority of the growth shown in Exhibit 4-2 is based on system average projected growth rates that are non-specific to the Springfield Line. However, the CP/KCS revised Application is still showing significant amounts of merger related "synergy" growth in tonnage (but less so based on carloads) on several line segments, as shown in Exhibit 4-3.

[57] STB Finance Docket No. 36500, CN Responsive Application, June 9, 2022, p. 600.
[58] STB Finance Docket No. 36500, CP/KCS Reply to Canadian National's Description of Anticipated Responsive Application, January 28, 2022. p. 9.
[59] STB Finance Docket No. 36500, CN Responsive Application, June 9, 2022, p. A-8.

Exhibit 4-3: CP/KCS merger-related growth for selected line segments[60]

Segment	Merger-related MGT growth	Merger-related car growth	Average tons per car[61]
Godfrey, IL - East St Louis, IL	1.18	1,866	632
Kansas City, MO - Slater, MO	0.80	2,228	359
Slater, MO - Mexico, MO	0.56	2,228	251
Mexico, MO - Roodhouse, IL	0.52	2,387	218

In Exhibit 4-3, the average tons per car is computed by dividing the annual increase in gross tons by the annual increase in cars handled. The exceptionally high average weights shown above reflect a fundamental set of errors in CP's tonnage growth estimates.[62]

CP/KCS also present growth data expressed in carloads per year, as set forth in Exhibit 4-3 above. The projected increases range from 1,866 to 2,387 cars per year for the four listed line segments.[63] To put the numbers in Exhibit 4-3 in context, 2,190 cars per year is equal to six cars per day. Assuming a mix of loaded and empty cars, an average car might be about 80 gross tons, for which 2,190 cars per year translates to 0.18 million tons per year. Clearly, there is a huge disconnect between an increase of six cars per day and a gain of 1.2 million tons per year, as shown for the Godfrey-East St. Louis line segment.[64] If we take these CP/KCS reported changes in gross tons and cars at face value, we can compute the average tons per car by dividing the annual increase in gross tons by the annual increase in cars handled. The result is shown in the last column of Exhibit 4-3, where the exceptionally high average weights reflect a fundamental set of errors in CP's tonnage growth estimates.[65]

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[60] STB Finance Docket No. 36500, CN Responsive Application, June 9, 2022, p. A-8.
[61] The average tons per car data, which is based on data presented by CP, is clearly incorrect, as explained in Van Dyke's Third Verified Statement, June 9, 2022.
[62] See STB Finance Docket No. 36500, CN Responsive Application, June 9, 2022, pp. A-7 to A-9.
[63] See CP/KCS Amended Operating Plan, Appendix T.
[64] STB Finance Docket No. 36500, CN Responsive Application, June 9, 2022, p. A-9.
[65] STB Finance Docket No. 36500, CN Responsive Application, June 9, 2022, pp. A-7 to A-9.

The apparent cause of these extraordinary increases in merger-related tons is a series of errors introduced by the methodology employed by CP/KCS to estimate post-transaction tonnage by line segment. The details of this flawed process are provided in Appendix A of Van Dyke's Third Verified Statement of June 9, 2022, which includes sample calculations for the four line segments listed above.[66]

4.1.2 Corrected analysis of CP/KCS growth on the Springfield Line

A corrected version of CP/KCS's Table 4 is shown in Exhibit 4-4.

Exhibit 4-4: Corrected version of CP/KCS Table 4[67]

Seg. No.	Segment	Base gross tons (M)	Generic organic growth, increase in gross tons (M)	Corrected transaction-related increase in gross tons (M)	Transaction-related percentage increase in gross tons	Generic organic growth, percentage increase in gross tons
Kansas City-St. Louis Segments						
119	Kansas City- Slater, MO	6.17	1.26	0.18	2.9%	20.4%
120	Slater, MO-Mexico, MO	4.28	0.85	0.18	4.2%	19.9%
121	Mexico, MO- Roodhouse, MO	4.02	0.79	0.18	4.5%	19.7%
126	Roodhouse, MO-Godfrey, IL	1.05	0.21	0.18	17.1%	20.0%
127	Godfrey, IL-East St. Louis, IL	6.84	1.37	0.18	2.6%	20.0%
Roodhouse-Springfield Segments						
122	Roodhouse, MO-Murrayville, IL	1.00	0.20	0.00	0%	20.0%
123	Murrayville, IL- Springfield, IL	0.17	0.04	0.00	0%	23.5%
125	Murrayville, IL-Jacksonville, IL	1.33	0.25	0.00	0%	18.8%

Setting aside the generic organic growth figures and the statistical anomaly of the Roodhouse-Godfrey segment,[68] zero to 4.5 percent merger-related growth during the first 3 years following the merger (as shown in green above) hardly indicates a substantial commitment to the future of the Springfield Line.

[66] See Van Dyke Third Verified Statement, op. cit., Appendix A.
[67] Adapted from: STB Finance Docket No. 36500, CN Responsive Application, June 9, 2022, pp. A-7 to A-9.
[68] There is reason to believe that the base tonage on the Roodhouse to Godfrey line segment is too low.

To further understand the expected CP/KCS growth on the line of six cars per day, I examined the CP/KCS traffic diversion study, in an effort to identify the specific moves that were assigned to the Springfield Line. This was not easy to do, and in the end I had to make an educated guess as to which traffic CP/KCS has in mind. I was able to identify {{ }} loaded movements from the FTI traffic study, which if doubled for empties comes to {{ }} cars per year –reasonably close to CP/KCS's range of {{ }} to {{ }} cars per year. The majority of these cars, {{ }} (obtained by applying a 100 percent empty return ratio), appear to be multilevels that would be diverted from UP at Eagle Pass and would be destined to NS or CSX at St. Louis.[69] CP/KCS project that, post-merger, these cars will use a KCS routing via Laredo. Given that this new traffic movement between Laredo and St. Louis would be entirely within the KCS network and is not dependent on any CP/KCS investment being made as a consequence of the merger, this projected new movement is clearly not merger-related. What is clear is that *CP/KCS's traffic studies identified essentially no traffic that would shift to CP/KCS service via the Springfield Line as a direct result of the merger.*

4.1.3 CP/KCS organic growth on the Springfield Line

The majority of the growth projected by CP/KCS for the Springfield Line is not based on growth arising from the merger, but rather from assumed "organic" growth. CP/KCS applied a generic organic growth assumption uniformly across the entire CP/KCS network. The assumed rate of organic growth is not specific to the Springfield Line – nor does it reflect any specific commitment to this line.

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[69] See Oliver Wyman work paper: Rebuttal – HC - Oliver Wyman Analysis – Diversions_FTI_Springfield_Line.pdf.

Finally, CP/KCS's system-wide organic growth projections of approximately 20 percent for the three years following the merger (as shown in Exhibit 4-4 above) greatly exceed anything CP or KCS has achieved in the recent past (as shown in Exhibit 4-5 below).

Exhibit 4-5: CP/KCS historic growth rates in gross ton-miles[70]
Millions, excluding locomotives

	2014	2015	2016	2017	2018	2019	Compound annual growth rate (2014-19)	Three-year average growth rate
CP All	273,276	263,333	242,694	252,195	275,362	280,724	0.5%	1.6%
– CP Soo Line	75,626	73,357	59,427	65,076	72,648	71,171	-1.2%	-3.5%
– CP Canada	197,650	189,976	183,267	187,119	202,714	209,553	1.2%	3.6%
KCS All	98,250	96,458	95,601	104,142	100,457	101,819	0.7%	2.2%
– KCS (US)	60,057	57,090	55,390	62,095	59,061	61,770	0.6%	1.7%
– KCS de Mexico	38,193	39,368	40,211	42,047	41,396	40,049	1.0%	2.9%
Total	371,526	359,791	338,295	356,337	375,819	382,543	0.6%	1.8%

5. Divestiture to CN Will Secure the Future of the Springfield Line

It is clear that prior to CN's expression of interest in the Springfield Line, CP viewed the line as little more than a secondary grain feeder line. Consistent with that view, CP/KCS's Application provided for no capital expenditures on the line – indeed, CP/KCS did not even propose to upgrade the portion of the east end of the line that is limited to FRA Class 1 (10 mph) train speeds. Nor did the Application anticipate appreciable traffic growth on the Springfield Line (other than a generic "organic" growth factor applied to the CP/KCS system as a whole). In short, CP/KCS's only commitment was that they would not (further) downgrade the line.

As described in Appendix B, CP has a decades-long history of acquiring rail lines that have characteristics similar to the Springfield Line, then spinning them off to a shortline or regional

[70] See Oliver Wyman work paper: Rebuttal – Oliver Wyman Analysis 2014-2019 KCS CP GTM.xlsx.

railroad. A clear illustration of this phenomenon is the history of CP's ownership of the DM&E and the key Sabula to Airline Junction line (see Exhibits 5-1 to 5-3).

In September 2007, Canadian Pacific's US subsidiary, Soo Line Railroad Company ("SOO"), purchased the Dakota, Minnesota & Eastern Railroad Corporation ("DM&E") for $1.48 billion, including assumed debt.[71] DM&E was a 1,103-mile grain, ethanol, and bentonite clay-hauling regional railroad created in 1986 from cast-off Chicago & North Western ("C&NW") secondary lines located primarily in southern Minnesota and South Dakota.[72] The company also owned two railroad subsidiaries: The first, the Iowa, Chicago & Eastern ("IC&E"), was a 1,322-mile rail carrier operating former Milwaukee Road ("MILW") lines in Illinois, Iowa, Minnesota, Missouri, and Wisconsin.[73] The other, Wyoming Dakota Railroad Properties, was, at the time, a non-operating carrier in the planning stages to construct a 260-mile rail line running from DM&E's mainline near Wasta, SD to Wyoming's Powder River Coal Basin ("PRB").[74]

Called "the icing on the cake" by CP's then-President and CEO, Fred Green, the railroad was obviously attracted by the prospect for entry into the coal-rich PRB.[75] On top of the $1.48 billion purchase price, CP agreed to pay DM&E's former owners an additional $350 million if it built into the Basin.[76] Further, if coal traffic out of the PRB reached certain levels by 2025, CP would pay another $700 million.[77] Altogether, the "crown jewel" of the DM&E acquisition

[71] "CP Rail agrees to buy DM&E for at least $1.5 billion," Reuters, September 5, 2007; "DM&E Rides Off into the Sunset," Trains Magazine, December 2007.
[72] STB Finance Docket No. 35081, Application by Canadian Pacific Railway Company, et al for Approval of Control of Dakota, Minnesota & Eastern Railroad Corporation, et al, October 5, 2007; "DM&E: the Hard-working Regional," Trains Magazine, December 1991.
[73] STB Finance Docket No. 35081, Application by Canadian Pacific Railway Company, et al for Approval of Control of Dakota, Minnesota & Eastern Railroad Corporation, et al, October 5, 2007.
[74] "CP Rail takes $180M hit as it shelves Wyoming Powder River expansion," Financial Post, December 3, 2012; STB Finance Docket No. 35081, Application by Canadian Pacific Railway Company, et al for Approval of Control of Dakota, Minnesota & Eastern Railroad Corporation, et al, October 5, 2007.
[75] "CP Rail agrees to buy DM&E for at least $1.5 billion," Reuters, September 5, 2007.
[76] "DM&E Rides Off into the Sunset," Trains Magazine, December 2007.
[77] "CP Rail takes $180M hit as it shelves Wyoming Powder River expansion," Financial Post, December 3, 2012; "DM&E Rides Off into the Sunset," Trains Magazine, December 2007.

could have potentially cost CP an additional $1.05 billion, were its optimistic PRB ambitions realized.[78]

In a dramatic reversal a little over five years later, CP announced that it was shelving the PRB project indefinitely, citing the sustained deterioration in the thermal coal market. This decision resulted in a CAD$107 million after-tax write down on the PRB expansion option.[79] A second write down, for USD$240 million after tax, quickly followed, with the sale of DM&E's main and branch lines west of Tracy, Minnesota, to Genesee & Wyoming subsidiary, Rapid City, Pierre & Eastern in 2014.[80] Within approximately five years, CP had dismantled one of the key reasons it purchased the DM&E in the first place, costing its balance sheet more than $US 300 million in the process.

Aside from the PRB misstep, the DM&E purchase did bring back formerly CP-owned rail lines into the CP network. DM&E's subsidiary, IC&E, was primarily a collection of former Milwaukee Road lines that were acquired by CP in connection with its 1985 acquisition of the Milwaukee Road's core network. The Milwaukee Road was a bankrupt 3,100-mile, Class I railroad system, purchased by CP subsidiary SOO for $570 million in 1985.[81] Just four years later, in 1989, CP proposed to sell the Chicago-Kansas City line to Southern Pacific, but the deal was never consummated, due to the refusal of C&NW to consent to assignment of SOO's interest in the joint facility between Polo and Kansas City, MO.[82] Faced with mounting financial

[78] "CP Rail takes $180M hit as it shelves Wyoming Powder River expansion," Financial Post, December 3, 2012.
[79] "CP Rail takes $180M hit as it shelves Wyoming Powder River expansion," Financial Post, December 3, 2012; Canadian Pacific Annual Report 2012.
[80] "Canadian Pacific to sell west end of its Dakota, Minnesota & Eastern line to Genesee & Wyoming," Canadian Pacific, January 2, 2014.
[81] Purchase price included $187 million in cash and assumption of Milwaukee Road's $383 million in debt. Source: "Soo Closes $570 Million Purchase of Milwaukee," Chicago Tribune, February 21, 1985.
[82] The ICC later imposed a condition on UP's acquisition of C&NW requiring C&NW to permit CP to assign the Polo-Kansas City joint facility agreement. See Union Pacific Corp., et al—Control—Chicago & North Western Transp. Co., et al, 1995 ICC LEXIS 37, Feb. 21, 1995, , pp. 244-248.

pressure to cast off marginal rail lines, CP ultimately sold the former Milwaukee Road's Chicago to Kansas City mainline (which in this proposed merger would form the core of the CP/KCS north-south mainline) and certain branch lines in Iowa and southern Minnesota to the I&M Rail Link ("IMRL") for $250 million.[83] DM&E, in turn, purchased IMRL through subsidiary IC&E in 2002 for an estimated $150 million.[84]

In 2007, CP, in a flip flop, purchased back the lines that it had previously discarded: CP's DM&E purchase marked the fifth time the former Milwaukee Road lines in northwest Illinois, southern Minnesota, Iowa, and Missouri changed hands in 25 years, and the second time the lines were owned by CP. In particular, the Sabula, IA to Airline Jct., MO mainline, which is a critical segment of the proposed CP/KCS network, was sold by CP to IMRL in 1997. IMRL, facing financial difficulties, was bought out by DM&E subsidiary IC&E in 2002. Finally, with CP's 2007 purchase, the Sabula to Airline Jct. mainline passed into the hands of its fifth, and current owner, CP, for the second time.

[83] "I&M Rail Link Startup," CTC Board, June 1997; Steve Glischinski, "Regional Railroads of the Midwest," 2007.
[84] Steve Glischinski, "Regional Railroads of the Midwest," 2007.

Exhibit 5-1: All DM&E and Milwaukee lines once owned by CP and current CP ownership[85]

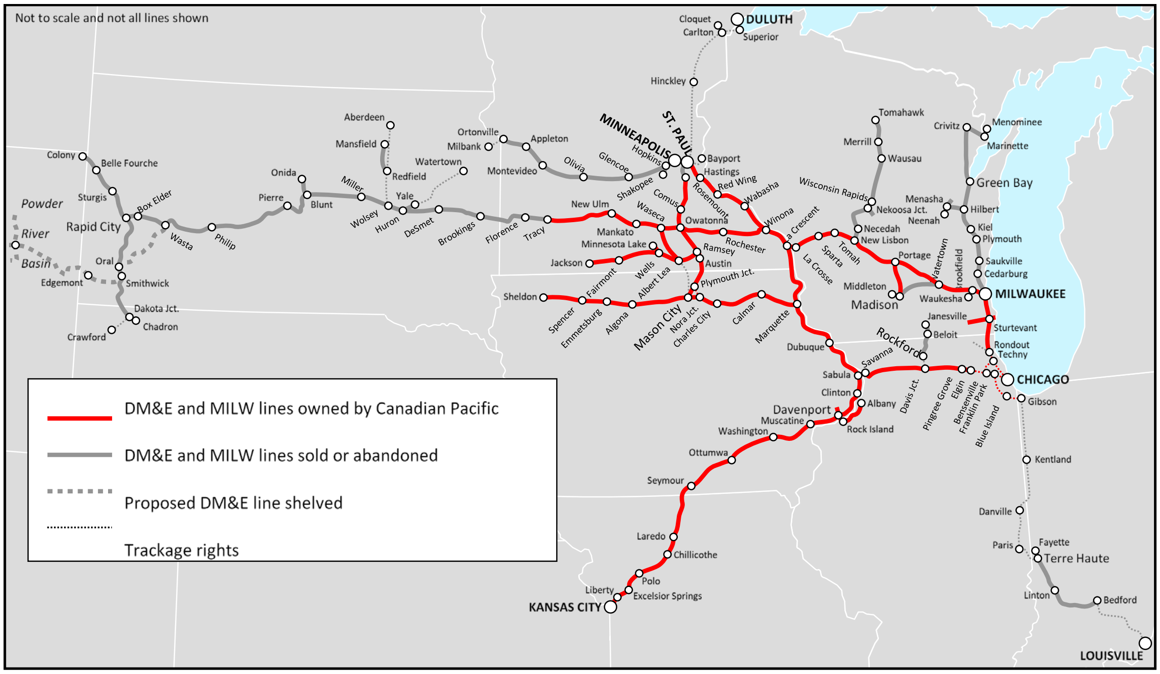
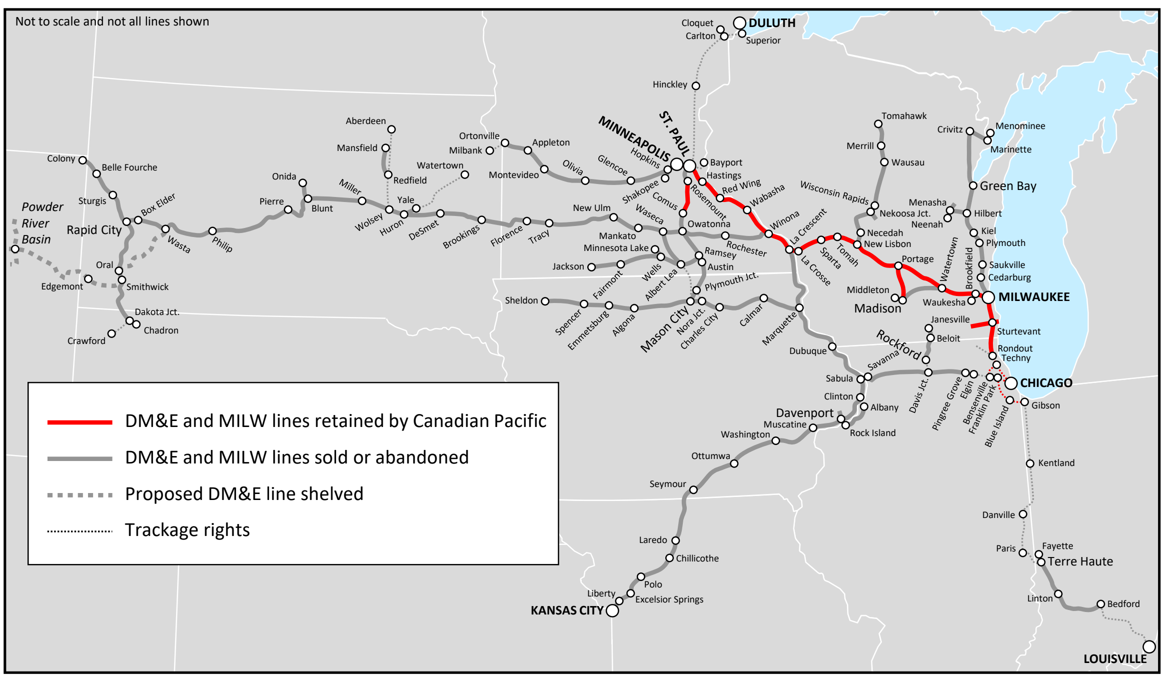
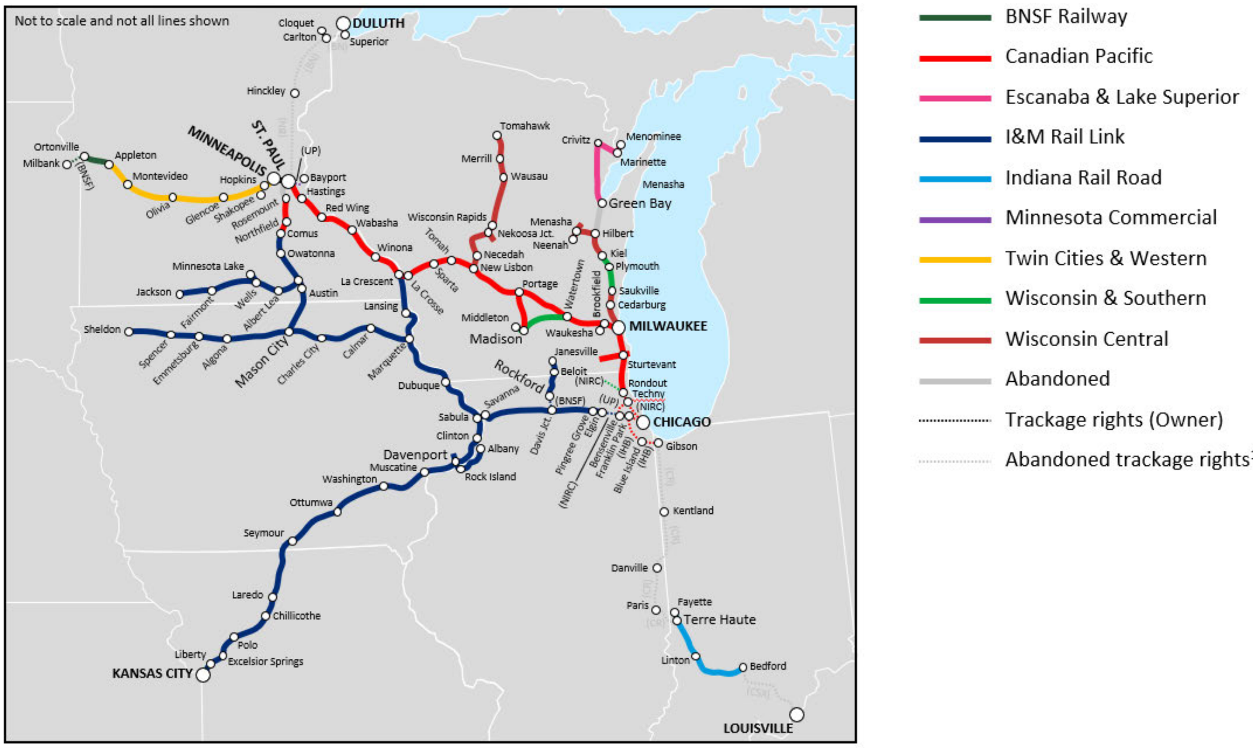


Exhibit 5-2: All DM&E and Milwaukee lines once owned by CP, excluding lines later repurchased by CP[86]



[85] Oliver Wyman research and analysis.
[86] Oliver Wyman research and analysis.

Exhibit 5-3: The break-up of the Milwaukee Road after acquisition by CP's Soo Line[87]



1. Though the trackage rights are abandoned, the subject rail line may still be operated by its owner

As documented in Appendix B, CP has followed a similar pattern with other lightly used lines that it has acquired and subsequently sold off or abandoned.[88]

Given CP/KCS's (at best) lukewarm commitment to the Springfield Line, the line is likely to be, at best, a grain feeder line under CP/KCS post-merger ownership. By contrast, CN has committed to customers on the Springfield Line and to the Board that it will invest $250 million to significantly upgrade the line (and the adjacent CN Gilman Subdivision) to support time-sensitive intermodal and automotive traffic in the lane between Eastern Canada/Detroit and Kansas City/East St. Louis (see Appendix A). As the Operating Plan describes, customers on the Springfield Line will benefit in several ways from CN's planned investment:

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[87] Oliver Wyman research and analysis.

[88] CP's argument that CNR's subsidiary ICRR once sold the Springfield Line is irrelevant. At the time of that sale, the merger of CNR with Illinois Central had not yet occurred and was well over a decade in the future. It was that merger event which created the potential for a lane between Detroit/Ontario and Kansas City/East St. Louis that is the focus of CN's strategic interest in the Springfield Line.

- Their traffic will move over significantly upgraded infrastructure.
- Train frequencies will be increased for local carload customers and the CSX interchange at Rose Lake.
- On-line customers will be located on a strategic Class I (CN) through route rather than a grain-gathering CP/KCS branch line. The combined CN and CP/KCS traffic volumes will support continued investment in the line.
- Customers on the line will have the option of shipping to the southwestern United States and Mexico either via CP/KCS or via joint line CN-UP. They also will have the option of reaching points in the southeastern United States via single-line CN routes or joint line service offered by CP/KCS and CSX or NS.
- Finally, on-line customers will benefit from the transfer of ownership to CN, which has a strategic interest in developing the line as a link between markets in Detroit/Eastern Canada and markets in the western and southwestern United States and Mexico.

By contrast, given its ownership history for the Sabula Jct.-Kansas City line, CP has no strategic interest in the Springfield Line.

Appendix A. CN Capital Expenditure Commitments to the Springfield Line[89]

Investment	Estimate	Details
Upgrade track speed to 40 mph on KCS Springfield Line between Cockrell and Roodhouse	{ }}	Assumes approx. 40 miles between Cockrell and Roodhouse along KCS Springfield Sub. TSOs would be as per the May 2014 KCS timetable. At that time, 40 mph freight for the entire line except for MP 237.2 to 234.5 thru town. No bridge upgrades required. Current operating track speed on segment between Cockrell and Roodhouse needs to be confirmed
Six siding extensions on KCS lines (one in IL and five in MO)	{ }}	Includes siding extensions at the following locations: Illinois (Roodhouse and Pleasant Hill) and Missouri (Bowling Green, Mexico West, Harmony, and Grain Valley), as well as Blackburn Relocation. Assumes no stabilization concerns or poor soil conditions included for grading and bridges. Construction would take place April thru October. Working in rain, snow and frozen ground conditions excluded. All required property owned currently by KCS. No crossing closures included. Three bridges were included that range in length from 130 feet to 200 feet
Cockrell, IL: new 10,000-foot siding	{ }}	No bridges required. No stabilization or excessive poor ground conditions included. Construction would take place April thru October. Working in rain, snow, frozen ground conditions excluded. All required property owned currently by KCS
Improve KCS East St. Louis Yard to add automotive/ intermodal facility to existing yard	{{ }}	Estimate is based on experience from New Richmond, WI automotive and intermodal facility. Includes { }} for upgrades to existing yard tracks. All required property owned currently by KCS. Estimate will need to be updated for site visit, site conditions, and further analysis
5,000-foot clear yard track at Roodhouse	{ }}	Assumes use of existing roadbed, no permitting, and minimal grading required
Track department trucks and equipment	{ }}	Includes tamper, regulator, grapple truck, backhoes, section trucks
Signal department trucks and equipment	{ }}	Includes 12 trucks
Automotive/Intermodal Facility (IFG)	{{ }}	Estimate is based on experience from New Richmond, WI automotive and intermodal facility. All required property owned currently by KCS. Estimate will need to be updated for site visit, site conditions, and further analysis
MT. Pulaski siding reconfiguration on Gilman Subdivision	{ }}	ICRR plans to reconfigure the Mt. Pulaski siding on the Gilman Subdivision to shift the track and swing the main to the east. Loss of around 700' on existing west pass. Assessing need for NPDES permit for ground disturbance

[89] FD 36500, Exhibit 13, Operating Plan for Springfield Divestiture February 28th, 2022

Investment	Estimate	Details
Gilman – replace diamond with crossover on Gilman Subdivision	{ }}	ICRR plans to redesign how ICRR crosses the TP&W shortline. The plan is a #15 crossover move for 25 MPH. Coordination would be required with TP&W. Will be relocating/upgrading 2 TP&W turnouts. Estimate includes approximately { }} for track work; {{ }} for signals
Gilman subdivision – upgrade track to 40 miles per hour	{ }}	Upgrade track on Gilman Subdivision to 40 miles per hour where needed. Includes { }} to install ties; {{ }} to upgrade MP 81.5 curve; {{ }} to remove rail defects; {{ }} million upgrade rail on main and Thawville Siding; {{ }} to install full flange bearing diamond
PTC subdivision file for PTC-equipped track on the Springfield Line to add the subdivisions to CN's Precision Dispatch System (PDS)	{{ }}	KCS PTC method of operation is track warrant control (TWC). Estimate assumes that KCS provides its existing PTC Track Database/ .OPK File for the PTC-equipped subdivisions of the Springfield Line. If we need to create a new subdivision file, including a field survey, estimate would be { }}
Miscellaneous and contingency	{ }}	ICRR reserves }} available for updated placeholder estimates based on site visit, site conditions, and further analysis. Updated placeholder estimates could include for new intermodal and automotive facilities in East St. Louis yard and IFG (see above), estimates for track upgrades to 40 mph between Roodhouse and Cockrell (see above); estimates for bridge repair and rehabilitation (see above), and estimate for signalization
Total cost for KCS upgrades	**{{ }}**	

Appendix B. Canadian Pacific History of Line Ownership Instability

Original Acquisition or Divestiture	Initial Actions	Final Disposition
Chicago, Milwaukee, St. Paul & Pacific (MILW)	• 1985: CP subsidiary, Soo Line (SOO), buys 3,100-mile MILW for $570 million[90] • 1986: Several redundant MILW branch lines in WI are incorporated into SOO's Lake States Transportation Division (LSTD)[91] • 1987: LSTD sold to Wisconsin Central Limited[92] • 1997: CP sells 1,143 miles (37 percent) of MILW trackage in IL, IA, MN, MO, and WI to I&M Rail Link (IMRL) for $250 million and a 33 percent stake in new company[93]	• 2007: CP repurchases the MILW lines sold to IMRL when it buys Dakota, Minnesota & Eastern (DM&E) and subsidiary Iowa, Chicago & Eastern (former IMRL) for $1.48 billion[94]
Delaware & Hudson (D&H)	• 1990: CP buys D&H out of bankruptcy for $25 million[95] • 1995: CP creates an eastern operating unit, the St. Lawrence & Hudson (STL&H), which includes D&H, to improve efficiency and reduce costs in the region[96] • 2001: After STL&H increases revenue and cuts costs, the unit is dissolved, and its assets are transferred back to CP[97]	• 2004: CP downgrades service on D&H's Buffalo to Binghamton, NY line[98] • 2012: CP abandons D&H service to Oak Island, NJ[99] • 2013: CP abandons D&H service to Philadelphia, PA[100] • 2015: CP abandons use of 670 miles of D&H trackage rights[101] • 2015: CP abandons service and sells 283 miles of D&H from Sunbury, PA to Schenectady, NY to NS for $214.5 million[102]

[90] "Soo Closes $570 Million Purchase of Milwaukee," Chicago Tribune, February 21, 1985.
[91] Soo Line Railroad Company, Lake States Transportation Division, Timetable No. 1, 5 April 1987; Comprehensive Railroad Atlas of North America, Including Interurbans: Great Lakes West, Steam Powered Video, 2005; Oliver Wyman analysis.
[92] "Regional Railroads of the Midwest," Steve Glischinski, 2007.
[93] "I&M Rail Link Startup," CTC Board, June 1997; Oliver Wyman analysis.
[94] "DM&E Rides Off into the Sunset," Trains Magazine, December 2007.
[95] "Casey Lauds Court Approval of Sale of D&H Railway," The Morning Call, June 9, 1990.
[96] "CP Has a Friend in Norfolk Southern," Trains Magazine, August 1997.
[97] STB Finance Docket No. 34004, Decision, Canadian Pacific Railway Company and Napierville Junction Railway Company-Corporate Family Transaction Exemption-St. Lawrence & Hudson Railway Company Limited, Federal Register, Vol. 66, No. 33, February 16, 2001.
[98] By converting trackage rights into haulage rights over NS, CP downgrades from direct service to indirect service. Source: "Norfolk Southern, Canadian Pacific to share tracks," NS Virginian-Pilot, October 2, 2004.
[99] STB Docket No. AB-156 (Sub-No. 27X), Verified Statement of James D. Clements, May 8, 2015.
[100] STB Docket No. AB-156 (Sub-No. 27X), Verified Statement of James D. Clements, May 8, 2015.
[101] CP had overhead and terminal trackage rights on this segment. Source: STB Docket No. AB 156 (Sub-No. 27X), Decision, April 17, 2015.
[102] "Canadian Pacific Completes Sale of the Southern Portion of Its D&H Line," Canadian Pacific, September 18, 2015; STB Finance Docket No. 35873, Application for a Minor Transaction: Norfolk Southern Railway Company Acquisition and Operation Certain Lines of the Delaware and Hudson Railway Company Inc., November 17, 2014.

Original Acquisition or Divestiture	Initial Actions	Final Disposition
		• 2015: CP abandons remaining indirect service on DH between Buffalo and Binghamton, NY[103]
CP Mainline between Montreal, QC and Saint John, NB	• 1995-1996: CP progressively abandons service and sells its Montreal to Saint John mainline – 1995: From Brownville Jct., ME east to Saint John, NB sold to J.D. Irving Ltd.[104] – 1995: From Brookport, QC east to Brownville Jct., ME sold to Iron Road Railways subsidiary Canadian American Railroad (CDAC)[105] – 1996: From Brookport, QC west to St-Jean sur Richelieu, QC, in the Montreal area, also sold to Iron Road Railways[106]	• 2020: CP reacquires 481-mile Central Maine & Quebec (CMQ) for $130 million[107] – CMQ was the successor to bankrupt Montreal, Maine & Atlantic, which itself was successor to Iron Road Railways' Bangor & Aroostook, CDAC, and other associated rail operations[108]
New York City trackage rights	• 2000: CP gains rights from CSX to directly serve New York City from Albany, NY[109]	• 2010: CP downgrades service from direct to indirect for Albany, NY to New York City[110]
Dakota, Minnesota & Eastern (DM&E)	• 2007: CP buys DM&E for $1.48 billion[111] – Purchase includes an option to build a 260-mile extension into Wyoming's Powder River Coal Basin (PRB)[112]	• 2012: CP indefinitely shelves expansion into the PRB[113] – Results in a C$107 million after-tax write-down on the option for CP[114] • 2014: CP abandons service and sells the western 670 miles of DM&E to Genesee & Wyoming subsidiary, Rapid City, Pierre & Eastern (RCPE), for $210 million[115]

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103 CP terminates its remaining haulage agreement with NS on the line. Source: STB Finance Docket No. 35873, Application for a Minor Transaction, op. cit., November 17, 2014.

104 "CP Rail Deals on Maine, New Brunswick," Trains Magazine, April 1995.

105 STB Finance Docket No. 36368, Soo Line Corporation Control of Central Maine & Quebec Railway US Inc., Application for a Minor Transaction, December 17, 2019.

106 "Iron Road Nears Deal to Acquire CP Track," Journal of Commerce, August 6, 1995; STB Finance Docket No. 36368, Soo Line Corporation Control, op. cit., December 17, 2019.

107 "Central Maine & Quebec acquisition adds to Canadian Pacific's pandemic recovery, long-term growth strategies," Progressive Railroading, July 2020; Fortress Transportation & Infrastructure Investors LLC, Form 8-K, November 20, 2019.

108 History, Central Maine & Quebec website; Montreal, Maine & Atlantic Railway, Internet Archive website.

109 Trackage rights on CSX. Source: "Canadian Pacific in NYC," Trains Magazine, April 2002.

110 CP converts trackage rights to haulage rights. Source: STB Finance Docket No. 35348, Decision, October 22, 2010.

111 "DM&E Rides Off into the Sunset," Trains Magazine, December 2007.

112 "CP Rail takes $180M hit as it shelves Wyoming Powder River expansion," Financial Post, December 3, 2012.

113 "CP Rail takes $180M hit as it shelves Wyoming Powder River expansion," Financial Post, December 3, 2012.

114 "CP Rail takes $180M hit as it shelves Wyoming Powder River expansion," Financial Post, December 3, 2012; Canadian Pacific Annual Report 2012.

115 "Rapid City, Pierre & Eastern Railroad Completes Acquisition of Dakota, Minnesota & Eastern West End," Genesee & Wyoming press release, May 30, 2014.

Original Acquisition or Divestiture	Initial Actions	Final Disposition
		– Sale results in C$257 million net after-tax write-down for CP[116]

[116] "Canadian Pacific to sell west end of its Dakota, Minnesota & Eastern line to Genesee & Wyoming," Canadian Pacific press release, January 2, 2014; Canadian Pacific Annual Report 2014.

VERIFICATION

I, Hugh Randall, declare under penalty of perjury that the foregoing information is true and correct. Further, I certify that I am qualified and authorized to file this statement.

Executed on this 11th day of August 2022.

Hugh Randall

Hugh Randall

EXHIBIT 5

Kansas City Southern Presentation, "Combination of CN & Kansas City Southern: Creating the Premier Railway for the 21st Century" (July 2021)

WITHHELD FROM PUBLIC VERSION

EXHIBIT 6

Kansas City Southern Presentation, "Combination of CN & Kansas City Southern: Creating the Premier Railway for the 21st Century" (Aug. 2021)

Filed by Kansas City Southern
Pursuant to Rule 425 under the Securities Act of 1933
and deemed filed pursuant to Rule 14a-6
under the Securities Exchange Act of 1934
Subject Company: Kansas City Southern
Commission File No.: 333-257298
Date: August 2, 2021


KANSAS CITY SOUTHERN
Combination of CN & Kansas City Southern
Creating the Premier Railway
for the 21st Century
August 2021

Forward Looking Statements

Certain statements included in this presentation constitute "forward-looking statements" within the meaning of the United States Private Securities Litigation Reform Act of 1995 and under Canadian securities laws, including statements based on management's assessment and assumptions and publicly available information with respect to Kansas City Southern (KCS), regarding the proposed transaction between Canadian National Railway Company (CN) and KCS, the expected benefits of the proposed transaction and future opportunities for the combined company. By their nature, forward-looking statements involve risks, uncertainties and assumptions. CN and KCS caution that their assumptions may not materialize and that current economic conditions render such assumptions, although reasonable at the time they were made, subject to greater uncertainty. Forward-looking statements may be identified by the use of terminology such as "believes," "expects," "anticipates," "assumes," "outlook," "plans," "targets," or other similar words.

Forward-looking statements are not guarantees of future performance and involve risks, uncertainties and other factors which may cause actual results, performance or achievements of CN, or the combined company, to be materially different from the outlook or any future results, performance or achievements implied by such statements. Accordingly, readers are advised not to place undue reliance on forward-looking statements. Important risk factors that could affect the forward-looking statements in this presentation include, but are not limited to: the outcome of the proposed transaction between CN and KCS; the parties' ability to consummate the proposed transaction; the conditions to the completion of the proposed transaction; that the regulatory approvals required for the proposed transaction may not be obtained on the terms expected or on the anticipated schedule or at all; CN's indebtedness, including the substantial indebtedness CN expects to incur and assume in connection with the proposed transaction and the need to generate sufficient cash flows to service and repay such debt; CN's ability to meet expectations regarding the timing, completion and accounting and tax treatments of the proposed transaction; the possibility that CN may be unable to achieve expected synergies and operating efficiencies within the expected time-frames or at all and to successfully integrate KCS' operations with those of CN; that such integration may be more difficult, time-consuming or costly than expected; that operating costs, customer loss and business disruption (including, without limitation, difficulties in maintaining relationships with employees, customers or suppliers) may be greater than expected following the proposed transaction or the public announcement of the proposed transaction; the retention of certain key employees of KCS may be difficult; the duration and effects of the COVID-19 pandemic, general economic and business conditions, particularly in the context of the COVID-19 pandemic; industry competition; inflation, currency and interest rate fluctuations; changes in fuel prices; legislative and/or regulatory developments; compliance with environmental laws and regulations; actions by regulators; the adverse impact of any termination or revocation by the Mexican government of KCS de México, S.A. de C.V.'s Concession; increases in maintenance and operating costs; security threats; reliance on technology and related cybersecurity risk; trade restrictions or other changes to international trade arrangements; transportation of hazardous materials; various events which could disrupt operations, including illegal blockades of rail networks, and natural events such as severe weather, droughts, fires, floods and earthquakes; climate change; labor negotiations and disruptions; environmental claims; uncertainties of investigations, proceedings or other types of claims and litigation; risks and liabilities arising from derailments; timing and completion of capital programs; and other risks detailed from time to time in reports filed by CN with securities regulators in Canada and the United States. Reference should also be made to Management's Discussion and Analysis in CN's annual and interim reports, Annual Information Form and Form 40-F, filed with Canadian and U.S. securities regulators and available on CN's website and on www.sedar.com, for a description of major risk factors relating to CN. Additional risks that may affect KCS' results of operations appear in Part I, Item 1A "Risks Related to KCS' Operations and Business" of KCS' Annual Report on Form 10-K for the year ended December 31, 2020, and in KCS' other filings with the U.S. Securities and Exchange Commission ("SEC").

Forward-looking statements reflect information as of the date on which they are made. CN and KCS assume no obligation to update or revise forward-looking statements to reflect future events, changes in circumstances, or changes in beliefs, unless required by applicable securities laws. In the event CN or KCS does update any forward-looking statement, no inference should be made that CN or KCS will make additional updates with respect to that statement, related matters, or any other forward-looking statement.

No Offer or Solicitation

This presentation does not constitute an offer to sell or the solicitation of an offer to buy any securities or a solicitation of any vote or approval, nor shall there be any sale of securities in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such jurisdiction. No offer of securities shall be made except by means of a prospectus meeting the requirements of Section 10 of the Securities Act of 1933, as amended.

Additional Information and Where to Find It

In connection with the proposed transaction, CN has filed with the SEC a registration statement on Form F-4 to register the shares to be issued in connection with the proposed transaction, and the registration statement has been declared effective. CN has filed with the SEC its prospectus and KCS has filed with the SEC its definitive proxy statement in connection with the proposed transaction, and the KCS proxy statement is being sent to the stockholders of KCS seeking their approval of the merger-related proposals. This presentation is not a substitute for the registration statement, the prospectus, the proxy statement or other documents CN and/or KCS may file with the SEC or applicable securities regulators in Canada in connection with the proposed transaction.

INVESTORS AND SECURITY HOLDERS ARE URGED TO READ THE REGISTRATION STATEMENT, THE PROSPECTUS, THE PROXY STATEMENT AND ANY OTHER RELEVANT DOCUMENTS FILED WITH THE SEC OR APPLICABLE SECURITIES REGULATORS IN CANADA CAREFULLY IN THEIR ENTIRETY IF AND WHEN THEY BECOME AVAILABLE (INCLUDING ALL AMENDMENTS AND SUPPLEMENTS THERETO) BECAUSE THEY CONTAIN AND WILL CONTAIN IMPORTANT INFORMATION ABOUT CN, KCS AND THE PROPOSED TRANSACTION. Investors and security holders may obtain copies of these documents (if and when available) and other documents filed with the SEC and applicable securities regulators in Canada by CN free of charge at www.sec.gov and www.sedar.com. Copies of the documents filed by CN (if and when available) will also be made available free of charge by accessing CN's website at www.CN.ca. Copies of the documents filed by KCS (if and when available) will also be made available free of charge at www.investors.kcsouthern.com, upon written request delivered to KCS at 427 West 12th Street, Kansas City, Missouri 64105, Attention: Corporate Secretary, or by calling KCS' Corporate Secretary's Office by telephone at 1-888-800-3690 or by email at corpsec@kcsouthern.com.

Participants

This presentation is neither a solicitation of a proxy nor a substitute for the registration statement, the prospectus, the proxy statement or other filings that may be made with the SEC and applicable securities regulators in Canada. Nonetheless, CN, KCS, and certain of their directors and executive officers and other members of management and employees may be deemed to be participants in the solicitation of proxies in respect of the proposed transaction. Information about CN's executive officers and directors is available in its 2021 Management Information Circular, dated March 9, 2021, as well as its 2020 Annual Report on Form 40-F filed with the SEC on February 1, 2021, in each case available on its website at www.CN.ca/investors/ and at www.sec.gov and www.sedar.com. Information about KCS' directors and executive officers may be found on its website at www.kcsouthern.com and in its 2020 Annual Report on Form 10-K filed with the SEC on January 29, 2021, available at www.investors.kcsouthern.com and www.sec.gov. Additional information regarding the interests of such potential participants is or may be included in the registration statement, the prospectus, the proxy statement or other documents filed with the SEC and applicable securities regulators in Canada if and when they become available. These documents (if and when available) may be obtained free of charge from the SEC's website at www.sec.gov and from www.sedar.com, as applicable.

CN-KCS: Safer. Faster. Cleaner. Stronger.

A fully end-to-end merger

- ✓ Preserve all existing gateways & create new single-line routes
- ✓ Specific supply chain benefits
- ✓ Significant environmental benefits
- ✓ Support across broad stakeholder network
- ✓ We are committed to work with the STB to address any demonstrated concerns

Executive Summary

- KCS Board of Directors continues to **strongly recommend a vote "FOR"** CN's proposal
- CN's **$325 offer is clearly superior** to CP's inferior $275 proposal
- KCS Board terminated CP's merger agreement in May and CP has chosen its own path of not revising its offer and collected a $700m break fee from KCS
- We **expect CN's voting trust to be approved by the STB** as it is identical to CP's voting trust, which was previously approved by the STB
- Voting trust approval will be evaluated under New Merger Rules which require evaluation of unlawful control while in the trust and financial health of both parties
  - The STB already ruled on most of these issues when approving CP's voting trust application
- CN's financial health would be similar to CP's financial health when considering credit ratings and leverage ratios
- **Pro-competitive nature of the CN/KCS merger** will be evaluated by the STB during the merits of the transaction phase, **but not during voting trust evaluation**

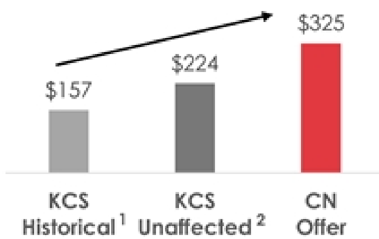
CN PROPOSAL

Compelling Value Proposition for KCS Shareholders

Significant Value to KCS Shareholders

- Implied premium of 45% to KCS shareholders
- Participation in the significant upside of the combined company
- Ability to receive the merger consideration immediately upon the closing of CN's voting trust

Significant Premium

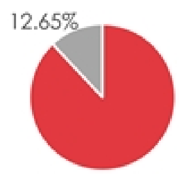


45% premium to the unaffected as well as a 21% premium to the implied value of the CP proposal[3]

Highest railroad transaction multiple ever at 20.6x[4]

Participation in the Upside

KCS Pro Forma Ownership



12.65% ownership in the combined company with $1B of anticipated EBITDA synergies as well as significant TAM[5] expansion opportunity of $8B

(1) Based on KCS closing NYSE share price on July 30, 2020, one day prior to financial media speculation on a potential private equity bid
(2) Based on KCS closing NYSE share price on March 19, 2021, last market date prior to CP deal announcement
(3) Based on CN and CP closing NYSE share prices of US$118.13 and US$365.37, as of April 19, 2021
(4) Based on transaction value $33.6B and Q1 2021 LTM COVID adjusted EBITDA of $1.6B
(5) Total Addressable Market

Delivering EBITDA Synergies Approaching $1B

Expected to achieve ~$1B annualized EBITDA synergies within three years of integration[1]

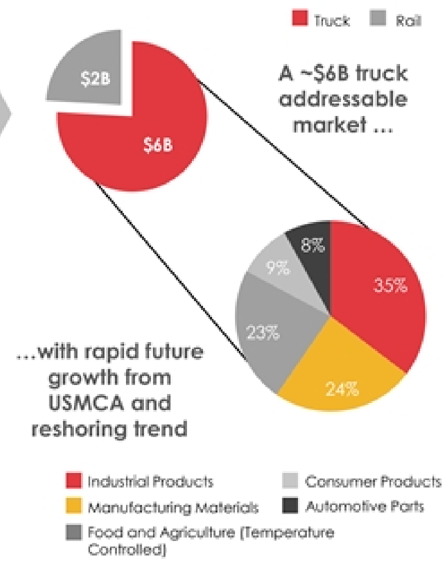
New Revenue Opportunity

- The revenue opportunities are based on two major routes:
  - **Kansas City Speedway** connecting CN's Midwest foothold and the KC region
  - **CN Greenway** connecting Mexico, East Texas and the Gulf with CN's US Midwest and Eastern Canada foothold
- Combined business could target an incremental $6B of truck intermodal and $2B of rail TAM[2]

Cost Efficiencies

- Improved fuel efficiency and lower costs
- Technology deployment on a larger network
- More effective purchasing of operating and capital expenditures
- Core of cost savings will not be people-driven

Intermodal Opportunity Breakdown[1]



(1) Estimate based on CN's original assessment of new revenue opportunities
(2) Total Addressable Market

We Believe CP is Engaging in a Self-interested Attempt to Undermine CN's Superior Proposal to the Detriment of KCS Shareholders

- CP chose not to exercise its right to match CN's superior proposal when it had the chance under the terms of its initial merger contract
- Rather than improving its original offer, CP is attempting to undermine the CN-KCS deal and petition the STB to block the CN-KCS combination in hopes of denying KCS shareholders the benefits of CN's superior proposal
- Despite CP's claims to the contrary, CN and KCS have clearly demonstrated that our combination meets the STB's requirements under the current merger rules
  - **Pro-competitive deal** will deliver more choices to customers through the creation of new, single line service options, including direct and efficient rail options for truck freight between the U.S., Canada and Mexico
  - Keeping **gateways open on commercially reasonable terms** is a major commitment that will ensure continued competition
  - End-to-end merger seeks to create **greater price transparency**
  - **Proactive partnerships** with passenger rail service in both Canada and the U.S.
- KCS shareholders will receive the consideration under CN's superior proposal upon closing into the Voting Trust anticipated in the second half of 2021
  - We are confident that **voting trust meets STB insulation from control and public interest requirements**

Enhancing Competition and Maximizing Customer Choice

A fully end-to-end merger that will produce significant public interest benefits

Customer Choice

- Wide variety of transportation options in the center of the U.S. including rails, highways and barges on the Mississippi River system
- The CN-KCS combination will create and add new direct rail routes that will **enhance multimodal competition** and **maximize customer choice**
- Committed to preserve connectivity by **keeping current gateways open on commercially reasonable terms**

New Opportunities

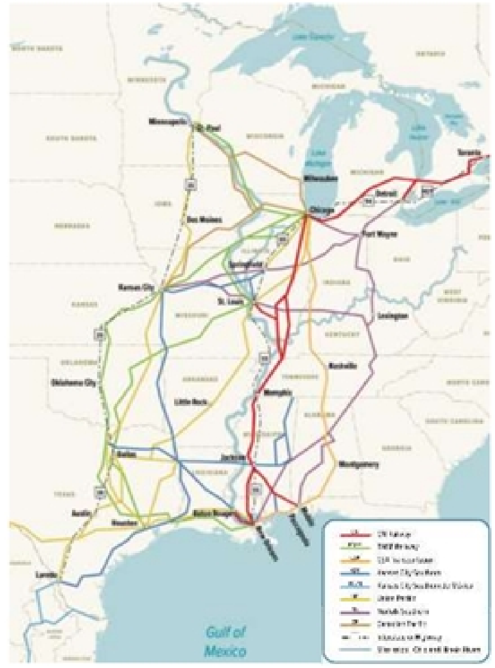
- Create service where no direct choices exist today, **enhancing competition** between motor carriers and railroads and among railroads
- Provide grain shippers in Illinois with **new access** to East St. Louis and new direct single-line service to Mexico and ports in Mobile / New Orleans

No Overlap

- CN has committed to a divestiture of a 70-mile section of track that would result in **zero overlap**
- **End-to-end** merger ensures that shippers enjoy the **same number of options** that they do today

Continued Investment

- **$250 million in infrastructure investments** across CN and KCS lines
- Results in **more efficiency, more capacity and more opportunities for employees and communities**



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CP's Claim That Over 300 Shippers Will See A Reduction In Competition Is Vastly Overstated

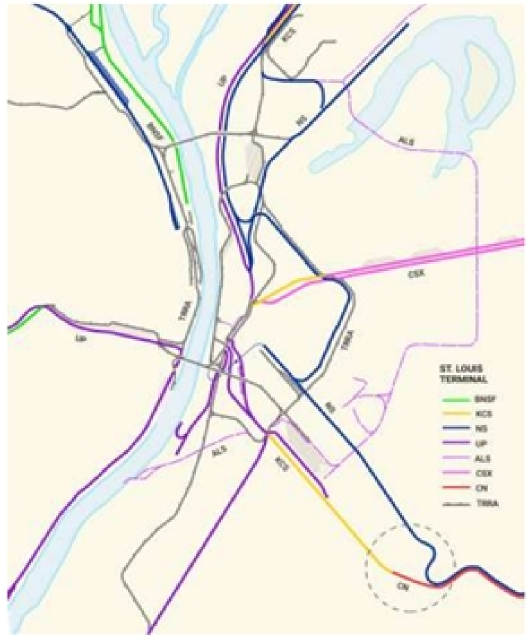
- The current merger rules specifically rejected a proposed rule that would have required merger applicants to ensure that no customer would lose any of its existing rail options.
- Instead, STB precedent and the current merger rules express concern about a loss of competition when a customer would see its rail options reduced from 3-to-2 or from 2-to-1.
- Only 39 customers across the CN/KCS U.S. network would see a reduction in serving railroads from 3-to-2 or 2-to-1.
  - All 39 customers are on or near the line segment that CN has committed to divest, which will ensure that no customer sees a reduction in its current level of competition.
- The vast majority of the customers listed in the geographic areas cited by CP will continue to have access to 4+ railroads

2-to-1	3-to-2	4-to-3	5-to4	6-to-5
9	30	25	79	302

- A reduction in the number of physically serving railroads at a specific terminal or location does not mean a reduction in competition.
  - A combined CN-KCS would be a stronger single-line competitor to the other serving Class I railroads.
  - The current merger rules recognize that, "…there are other benefits that can be achieved through mergers in terms of creating single-line service and other efficiencies that can improve rail service and lower rail costs and thus make merging railroads more competitive and more responsive to their customers." STB Ex Parte No. 582 (Sub-No. 1)(STB served 6/11/01)(Pg. 18).
- Major terminals will still served by at least 3 or more Class I railroads – e.g., Chicago, Detroit, Memphis, Kansas City, St. Louis, New Orleans, Mobile, Springfield, Council Bluffs/Omaha.

St. Louis Gains New Single Line Service

- Customers in the St. Louis and East St. Louis area can choose UP, BNSF, NS, and CSX—in addition to the combined CN-KCS line, as well as highway and water options. The Terminal Railroad Association of St. Louis (TRRA) and the Alton & Southern Railway (ALS) on the Illinois side are neutral switching carriers with connections to 6 Class I railroads, giving customers multiple routing options.
- Of the 156 customers open to KCS and CN reciprocal switching:
  - 88 are physically served by TRRA
  - 17 customers on the Illinois side are served ALS
  - Remaining customers are physically served by UP, BNSF, KCS or NS, all of which offer connections to the same railroads with connections to the TRRA.
- The combined CN-KCS will be a stronger competitor offering St. Louis customers single-line choices that previously didn't exist



PUBLIC VERSION

Compelling Voting Trust Case

- Voting Trust Rule -- 49 CFR 1180.4(b)(4)(iv)

"... In each proceeding involving a major transaction, applicants contemplating the use of a voting trust must explain how the trust would insulate them from an unlawful control violation and why their proposed use of the trust, in the context of their impending control application, would be consistent with the public interest."

- Public Interest = (1) no premature unlawful control; (2) financial and operational fitness of applicants; (3) any risks with divestiture if consolidation not approved.
- May 16 Decision on CP Voting Trust Provides Guidance On How The STB Will Review The CN/KCS Voting Trust
  1. Decision found no unlawful, premature control of KCS under trust structure and CN is proposing to use the same trust and the same trustee.
  2. Although the public interest test did not technically apply to the CP/KCS transaction due to application of the old rules, the STB decision nonetheless noted that the CP/KCS voting trust was also consistent with the public interest – a test only applicable under the new merger rules.
     - In discussing the public interest test, the STB found "there is no significant risk that the financial strength or operational capabilities of Kansas City Southern . . . would be compromised" and that "the financial strength or operational capabilities of Kansas City Southern . . . would be compromised or that issues associated with such a process would be problematic . . ."
- July 6 CN-KCS filing discussed CN's and KCS's financial health and also explained how the pro-competitive benefits of the transaction are fully consistent with the public interest and that no harm would flow from use of a voting trust

STB Voting Trust Standard

Voting Trust Review Governed By 49 U.S.C. §11324(b) and 49 CFR 1180.4(b)(iv). A voting trust will be approved if:

i. The trust will insulate the seller from control of the buyer during the trust period; and

ii. The trust is consistent with the public interest.

This public interest review is focused on whether the ***voting trust*** is in the public interest, not whether the ***ultimate merger*** is in the public interest.

STB Public Interest for Voting Trust

- The focus is on the divestiture process and the financial capabilities of the carriers.
- STB decision in CP-KCS, which had an identical trust, found that, "…in the event divestiture were necessary, there is no significant risk that the financial strength or operational capabilities of Kansas City Southern would be compromised."
- CN's CFO, Ghislain Houle, demonstrated that the proposed combination poses no risk of financial harm to CN.
- William Clyburn, Jr. former STB Commissioner and Vice-Chairman said, "Based upon my first-hand knowledge of the internal conversations within the Board from when I voted on the 2001 new merger rules, it is my opinion that the CN voting trust more than clears the two tests we established for such trusts in 2001 and . . . should be approved so that the Board and the public may move forward to consider the merits of the transaction."
- Independent credit rating agencies confirm that even after taking on more debt, CN is projected to have an investment grade Baa2/BBB rating, right in the mainstream of other publicly traded companies and comparable to CP's rating without the transaction.

CN-KCS is Aligned with Executive Order

Promoting Competition in the American Economy

- The CN/KCS merger enhances competition and is fully consistent with President Biden's Executive Order, which is focused on promoting a "fair, open and competitive marketplace."
- STB's current major merger rules requiring proof of "enhanced competition" are consistent with the Executive Order's focus
- KCS and CN will demonstrate that a CN-KCS combination will create more choices for freight customers and enhance competition both with larger railroads and with trucking providers
- KCS and CN look forward to working closely with the Biden Administration, the STB and the other relevant regulatory bodies to deliver this pro-competitive transaction

CN-KCS Better Offer, Better Partner, Better Railway, Best Solution

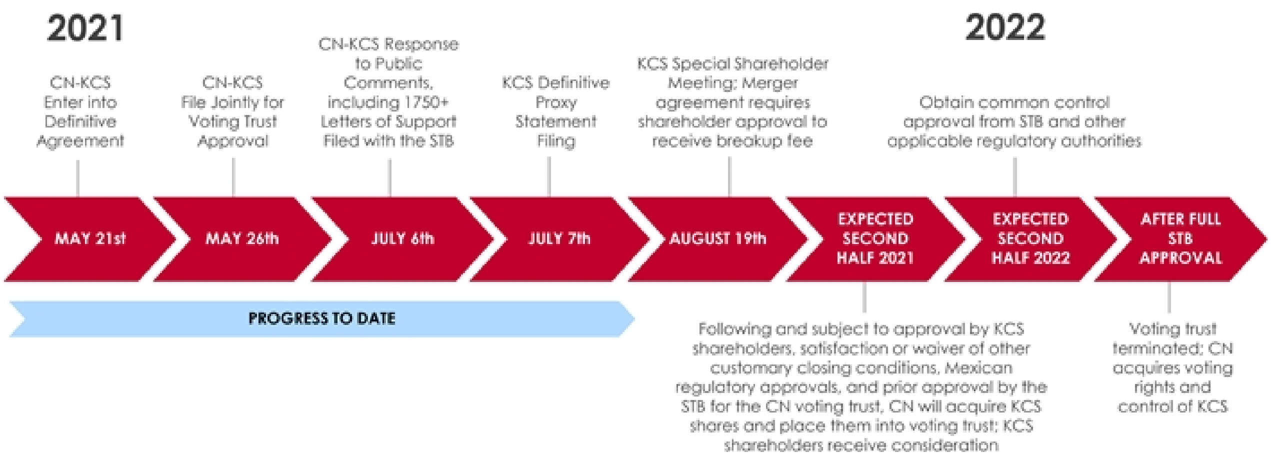
- Compelling Value Proposition for KCS Shareholders of $325 per share
- Safer, Faster, Cleaner, Stronger Railway
- End to End Merger Creates USMCA Railway
- Enhanced Competition, Increased Customer Choice – Will work with the Biden Administration, STB and Other Regulators to Deliver Pro-Competitive Transaction e.g. zero overlap, open gateways, pricing transparency
- Job Creation, Best in Class ESG Practices, Implementation of Advanced Technology Best Practices
- Plain Vanilla Voting Trust Pending STB Merger Approval – Clear Path Forward
- CN and KCS Committed to Maintaining Strong Balance Sheets, Financial Position

CN-KCS is The Best Solution

CN-KCS	CP
Compelling and Superior $325 Offer	Prior Offer $275
Plain Vanilla Voting Trust	Same Voting Trust as CN
Conditions to Offer: KCS Shareholder Approval, Voting Trust Approval and Mexican Regulatory Approval	Would also require CP Shareholder Approval
End to End Merger with Pro-Competitive Enhancements	No Commitments on Pro Competitive Enhancements
Next Steps: Close in Voting Trust, Begin Merger Review	??

PUBLIC VERSION

Path to Completion: Expected Second-Half 2022



With 1750+ statements of support received, customers across all industries will benefit from the end-to-end CN-KCS combination that will expand North American trade and power economic prosperity. Unprecedented pro-competitive commitments will deliver more choices and provide all market participants, railroads and shippers a fair chance to compete. For more information on the transaction and the benefits it is expected to bring to the full range of stakeholders, visit ConnectedContinent.com

connectedcontinent.com

EXHIBIT 7

CN Press Release, “CN and KCS Emphasize Compelling Case for Pro-Competitive Combination in STB Filing, Now Awaiting Final Ruling on Voting Trust" (July 7, 2021)

Source: *Canadian National Railway*

July 07, 2021 08:00 ET

CN and KCS Emphasize Compelling Case for Pro-Competitive Combination in STB Filing, Now Awaiting Final Ruling on Voting Trust

CN-KCS STB filing meets the unlawful control and public interest tests of the STB

CN and KCS note overwhelming support for voting trust and pro-competitive combination from more than 30 elected officials, including Congressmen Sam Graves and Bennie Thompson

At end of comment period, 1,752 letters of support were filed with the STB, including more than 1,000 letters of support for the voting trust

MONTREAL and KANSAS CITY, Mo., July 07, 2021 (GLOBE NEWSWIRE) -- CN (TSX: CNR, NYSE: CNI) and Kansas City Southern (NYSE: KSU) ("KCS") yesterday made a joint submission to the Surface Transportation Board ("STB") that explains why the STB should approve CN's voting trust structure, which is a critical step toward full STB review on the merits of the proposed CN-KCS combination. This submission closes the record on the voting trust for the CN-KCS combination, and we await the STB's decision.

Over 1,750 letters of support have been filed with the STB, including more than 1,000 specifically requesting approval of the proposed voting trust, which is an important component of the CN-KCS combination. The voting trust prevents unlawful and premature control of KCS, allows KCS to maintain independence and protects KCS' financial health during the STB's review of the ultimate combination of CN and KCS – all while CN remains financially strong.

The confidence CN and KCS have in the strength of their case is supported by the views of industry experts. Former STB Commissioner and Vice-Chairman William Clyburn, Jr. wrote in a Railway Age op-ed dated June 10 that he believes the CN voting trust addresses "unlawful control" and the "public interest" standard under the new rules, and that as such, the voting trust should be approved.

The proposed combination will establish seamless, single-line service from Canada, through the United States and into Mexico. The end-to-end CN-KCS combination will expand North American trade and power economic prosperity, provide numerous new connections and service options for customers, and deliver many compelling and innovative benefits for ports, employees and communities.

"We are excited about this combination because of its potential to promote competition, growth and more choice for rail customers, port operators, employees, stakeholders and communities. It will also provide significant environmental benefits for North American communities. We are confident that our voting trust meets all the standards set forth by the STB and believe that, after a fair and thorough review by the STB, it should be approved."

- JJ Ruest, president and chief executive officer of CN

"CN is the ideal partner for KCS to power the resurgence of North America's industrial and agricultural corridors and enhance competition. It is important that the STB approve CN's voting trust so that the STB can receive the formal merger application and proceed with a full substantive review of the many compelling and innovative pro-competitive benefits this combination will provide for the public."

- Patrick J. Ottensmeyer, president and chief executive officer of KCS

CN and KCS Address Claims Raised During Comment Period

Proposed Voting Trust Agreement Protects KCS

KCS maintains full independence and ability to execute its planned capital program while in trust

While KCS is in the voting trust, KCS will be managed day-to-day by KCS' existing management team and board, overseen by an independent trustee with extensive knowledge of KCS. It will retain both full independence and the ability to increase capital investments beyond its planned capital program.

Under the voting trust, the STB has oversight over any divestiture of KCS, if necessary, and CN has committed to the STB that if it is required to divest KCS out of trust, it would instruct the trustee to divest KCS in a way that maintains KCS as an intact entity.

CN and KCS Will Enhance Competition

Commitments provide new options to customers

CN and KCS chose to have their merger reviewed by the STB under the current merger rules knowing that it means the proposal will have to meet a higher standard of "enhanced competition." The decision was made because customers should have a say and the commitments CN has made can and will enhance competition in many different ways.

CN has committed to divesting the sole area of overlap between the CN and KCS networks – KCS' 70-mile line between New Orleans and Baton Rouge – thereby making the combination a true end-to-end transaction.

CN and KCS are also committed to preserving access to all major gateways on commercially reasonable terms. This commitment enhances route choice and provides all market participants, railroads and shippers a fair chance to compete.

How this works is that customers enjoying competitive joint line routings with CN or KCS to gateways, in cities such as New Orleans, St. Louis and Kansas City, will continue to have those routings available upon completion of the merger. These customers keep the interline service options they have today and add to those choices new, enhanced single-line service. The gateway commitment is about providing greater choices to customers and it will extend to all major U.S. gateways served by CN and KCS today.

As outlined in the joint filing, CN and KCS have committed to further enhance competition by providing customers with increased pricing transparency. Customers benefit from this transparency because it offers negotiating leverage.

The unparalleled pro-competitive benefits are clear upon a review of the North-South trade routes through the industrial and agricultural corridors in the United States. A map of major routes in the U.S. illustrates the balance of the industry and how a merger would improve competition by allowing CN-KCS to more vigorously compete with larger Class Is and against long-haul trucks for North-South flows of traffic. The map shows that CN-KCS would not alter the competitive balance of the industry and will in fact create new opportunities and increase choice for customers. Importantly, this North-South merger involving two of the three smallest U.S. Class I railroads would, if approved, be only the fifth-largest U.S. Class I.

CN's Strong Financial Profile Will Drive Growth Through Investments

$250 million already committed for key investments, including in Kansas City area across CN and KCS lines

CN has one of the strongest financial profiles of all the Class I carriers, and it plans to maintain a strong balance sheet and retain an investment grade credit rating throughout the transaction and beyond. It has set forth a plan, including suspending stock repurchases, to pay down rapidly the debt that it will secure to fund a portion of the KCS purchase. The dividend policy during the transaction will not change.

CN has been a sector leader in growth over the past two decades, with targeted investments in its network to add capacity, deploy technology to improve safety and productivity and invest in railcars and locomotives. CN has already committed to investing $250 million in infrastructure across CN and KCS lines. This investment will result in more efficiency, more capacity and more opportunities for employees and communities. The majority of this investment will be utilized to upgrade the newly designated Kansas City Speedway – the line between Kansas City, MO, and Gilman, IL, providing a better, more competitive connection between Kansas City and Chicago – with additional investments in Illinois, Missouri, Michigan, Louisiana and Texas.

Kansas City remains a key location as the site of the combined company's U.S. headquarters, a major gateway and an additional line to Detroit. KCS' Shreveport-Kansas City line will be critically important to providing additional CN service to key markets and will not be downgraded or divested. Investments in the route will be made at a similar level or higher in the years after the CN-KCS combination is consummated.

As a larger truly North American continental enterprise with complementary routes and an enhanced platform for revenue growth, capital investment and job creation, CN and KCS are well-positioned to create new growth opportunities for key stakeholders.

Additional information about CN's pro-competitive combination with KCS is available at www.ConnectedContinent.com. CN's and KCS' July 6, 2021 STB filing is also available on this site.

About CN

CN is a world-class transportation leader and trade-enabler. Essential to the economy, to the customers, and to the communities it serves, CN safely transports more than 300 million tons of natural resources, manufactured products, and finished goods throughout North America every year. As the only railroad connecting Canada's Eastern and Western coasts with the U.S. South through a 19,500-mile rail network, 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.

About Kansas City Southern

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.

Forward Looking Statements

Certain statements included in this news release constitute "forward-looking statements" within the meaning of the United States Private Securities Litigation Reform Act of 1995 and under Canadian securities laws, including statements based on management's assessment and assumptions and publicly available information with respect to KCS, regarding the proposed transaction between CN and KCS, the expected benefits of the proposed transaction and future opportunities for the combined company. By their nature, forward-looking statements involve risks, uncertainties and assumptions. CN cautions that its assumptions may not materialize and that current economic conditions render such assumptions, although reasonable at the time they were made, subject to greater uncertainty. Forward-looking statements may be identified by the use of terminology such as "believes," "expects," "anticipates," "assumes," "outlook," "plans," "targets," or other similar words.

Forward-looking statements are not guarantees of future performance and involve risks, uncertainties and other factors which may cause actual results, performance or achievements of CN, or the combined company, to be materially different from the outlook or any future results, performance or achievements implied by such statements. Accordingly, readers are advised not to place undue reliance on forward-looking statements. Important risk factors that could affect the forward-looking statements in this news release include, but are not limited to: the outcome of the proposed transaction between CN and KCS; the parties' ability to consummate the proposed transaction; the conditions to the completion of the proposed transaction; that the regulatory approvals required for the proposed transaction may not be obtained on the terms expected or on the anticipated schedule or at all; CN's indebtedness, including the substantial indebtedness CN expects to incur and assume in connection with the proposed transaction and the need to generate sufficient cash flows to service and repay such debt; CN's ability to meet expectations regarding the timing, completion and accounting and tax treatments of the proposed transaction; the possibility that CN may be unable to achieve expected synergies and operating efficiencies within the expected time-frames or at all and to successfully integrate KCS' operations with those of CN; that such integration may be more difficult, time-consuming or costly than expected; that operating costs, customer loss and business disruption (including, without limitation, difficulties in maintaining relationships with employees, customers or suppliers) may be greater than expected following the proposed transaction or the public announcement of the proposed transaction; the retention of certain key employees of KCS may be difficult; the duration and effects of the COVID-19 pandemic, general economic and business conditions, particularly in the context of the COVID-19 pandemic; industry competition; inflation, currency and interest rate fluctuations; changes in fuel prices; legislative and/or regulatory developments; compliance with environmental laws and regulations; actions by regulators; the adverse impact of any termination or revocation by the Mexican government of KCS de México, S.A. de C.V.'s Concession; increases in maintenance and operating costs; security threats; reliance on technology and related cybersecurity risk; trade restrictions or other changes to international trade arrangements; transportation of hazardous materials; various events which could disrupt operations, including illegal blockades of rail networks, and natural events such as severe weather, droughts, fires, floods and earthquakes; climate change; labor negotiations and disruptions; environmental claims; uncertainties of investigations, proceedings or other types of claims and litigation; risks and liabilities arising from derailments; timing and completion of capital programs; and other risks detailed from time to time in reports filed by CN with securities regulators in Canada and the United States. Reference should also be made to Management's Discussion and Analysis in CN's annual and interim reports, Annual Information Form and Form 40-F, filed with Canadian and U.S. securities regulators and available on CN's website, for a description of major risk factors relating to CN. Additional risks that may affect KCS' results of operations appear in Part I, Item 1A "Risks Related to KCS' Operations and Business" of KCS' Annual Report on Form 10-K for the year ended

December 31, 2020, and in KCS' other filings with the U.S. Securities and Exchange Commission ("SEC"). Forward-looking statements reflect information as of the date on which they are made. CN assumes no obligation to update or revise forward-looking statements to reflect future events, changes in circumstances, or changes in beliefs, unless required by applicable securities laws. In the event CN does update any forward-looking statement, no inference should be made that CN will make additional updates with respect to that statement, related matters, or any other forward-looking statement.

No Offer or Solicitation

This news release does not constitute an offer to sell or the solicitation of an offer to buy any securities or a solicitation of any vote or approval, nor shall there be any sale of securities in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such jurisdiction. No offer of securities shall be made except by means of a prospectus meeting the requirements of Section 10 of the Securities Act of 1933, as amended.

Additional Information and Where to Find It

In connection with the proposed transaction, CN has filed with the SEC a registration statement on Form F-4 to register the shares to be issued in connection with the proposed transaction. The registration statement includes a preliminary proxy statement of KCS which, when finalized, will be sent to the stockholders of KCS seeking their approval of the merger-related proposals. The registration statement has not yet become effective. This news release is not a substitute for the proxy statement or registration statement or other documents CN and/or KCS may file with the SEC or applicable securities regulators in Canada in connection with the proposed transaction.

INVESTORS AND SECURITY HOLDERS ARE URGED TO READ THE PRELIMINARY PROXY STATEMENT, THE REGISTRATION STATEMENT, THE PROSPECTUS AND ANY OTHER RELEVANT DOCUMENTS FILED WITH THE SEC OR APPLICABLE SECURITIES REGULATORS IN CANADA CAREFULLY IN THEIR ENTIRETY IF AND WHEN THEY BECOME AVAILABLE (INCLUDING ALL AMENDMENTS AND SUPPLEMENTS THERETO) BECAUSE THEY WILL CONTAIN IMPORTANT INFORMATION ABOUT CN, KCS AND THE PROPOSED TRANSACTIONS. Any definitive proxy statement(s), registration statement or prospectus(es) and other documents filed by CN and KCS (if and when available) will be mailed to stockholders of CN and/or KCS, as applicable. Investors and security holders will be able to obtain copies of these documents (if and when available) and other documents filed with the SEC and applicable securities regulators in Canada by CN free of charge through at www.sec.gov and www.sedar.com. Copies of the documents filed by CN (if and when available) will also be made available free of charge by accessing CN's website at www.CN.ca. Copies of the documents filed by KCS (if and when available) will also be made available free of charge at www.investors.kcsouthern.com, upon written request delivered to KCS at 427 West 12th Street, Kansas City, Missouri 64105, Attention: Corporate Secretary, or by calling KCS' Corporate Secretary's Office by telephone at 1-888-800-3690 or by email at corpsec@kcsouthern.com.

Participants

This news release is neither a solicitation of a proxy nor a substitute for any proxy statement or other filings that may be made with the SEC and applicable securities regulators in Canada. Nonetheless, CN, KCS, and certain of their directors and executive officers and other members of management and employees may be deemed to be participants in the solicitation of proxies in respect of the proposed transactions. Information about CN's executive officers and directors is available in its 2021 Management Information Circular, dated March 9, 2021, as well as its 2020 Annual Report on Form 40-F filed with the SEC on February 1, 2021, in each case available on its website at www.CN.ca/investors/ and at www.sec.gov and www.sedar.com. Information about KCS' directors and executive officers may be found on its website at www.kcsouthern.com and in its 2020 Annual Report on Form 10-K filed with the SEC on January 29, 2021, available at www.investors.kcsouthern.com and www.sec.gov. Additional information regarding the interests of such potential participants will be included in one or more registration statements, proxy statements or other documents filed with the SEC and applicable securities regulators in Canada if and when they become available. These documents (if and when available) may be obtained free of charge from the SEC's website at www.sec.gov and from www.sedar.com, as applicable.

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EXHIBIT 8

Transcript of “Rail Group On-Air” Podcast with Jean-Jacques Ruest and Patrick Ottensmeyer (June 11, 2021)

Filed by Canadian National Railway Company
Pursuant to Rule 425 under the Securities Act of 1933
and deemed filed pursuant to Rule 14a-12
under the Securities Exchange Act of 1934

Subject Company: Kansas City Southern
Commission File No.: 001-04717
Date: June 11, 2021

The following is the transcript of the "Rail Group On Air" podcast, a recording of which was made available on www.ConnectedContinent.com, the website maintained by Canadian National Railway Company ("CN") providing information relating to its proposed combination with Kansas City Southern ("KCS").

Host:

William Vantuono, *Editor-in-Chief*, Railway Age Editor-in-Chief

Participants:

Jean-Jacques Ruest, *President, Chief Executive Officer & Director*, Canadian National Railway Co.
Patrick Ottensmeyer, *President, Chief Executive Officer & Director*, Kansas City Southern

William Vantuono: Welcome to Rail Group On Air. A joint podcast of Railway Age, Railway Track and Structures and International Railway Journal. This is Railway Age Editor in Chief William C. Vantuono. Our podcast sponsor is the Greenbrier companies, which offers an innovative way for railcar customers to inspect, build quality Virtual Sample Railcars. Which remotely brings you into the Greenbrier Plant from the convenience of your own conference room or home office. Virtual Sample Railcar or VSR provides full access to a sample railcar while significantly reducing travel time and cost. It gives all the information needed to determine that your railcars meet all specifications and will be delivered as ordered. Narrated high resolution video follows the complete build of your sample railcar with tools like high resolution photos and 360 degree views, concluding with a live stream inspection from the plant's buyoff area. A process that normally takes 3 or more days is reduced to just one hour. Check out VSR, winner of the Canadian Association of Railway Suppliers 2020 Innovation Award at Go.gbrx.com/virtual. [Music interlude]. My guests for this edition of Rail Group On Air are Kansas City Southern, President and CEO, Pat Ottensmeyer, and CN President and CEO, JJ Ruest. And they are here to talk about their pending merger. Pat and JJ thanks so much for joining us. It's been a very busy month for both of you. For CN and Kansas City Southern. So appreciate your joining us to talk about this merger. So, there's been a lot of activity around the voting trust. Now how confident are you that the Surface Transportation Board will approve the new voting trust which has been jointly filed, instead of the initial voting trust application, as most people probably already know was strictly filed by CN.

Jean-Jacques Ruest: So thank you Bill again for having us today. Pat and I. It's always a pleasure to spend some time with you, and as well, to interact with all of your readers and the people who follow what you do. The voting trust of CN is nothing more than a plain vanilla voting trust. It's similar to the voting trust that was filed by the other bidder. It has the same trustee, Dave Starling. In our view we made it purposefully to be the same so that when the regulator look at it they see that he would provide the same protection for KCS, while KCS is on trust, and the same protection for the customers. While KCS can still compete with CN at the same time is waiting for STB decision, positive or negative, and obviously with condition [inaudible] (3:35). So where we are confident that we will get the voting trust, we don't assume though that it's a done deal. So maybe the question that the STB has for us, we take it very seriously and we provide them with the information that they need. But the voting trust that we filed is the same plain vanilla voting trust that the other bidder put in and by the same trustee. And in our view, we will get it approved. We don't take these things very lightly. Neither CN nor the KCS board management when they decided to go together and propose this combination, we understood clearly what we were in for. So we don't get in these things thinking that it may or may not work. We have a high level of confidence that we met everything we can to make sure that we make it to meet the need of the STB and was proceeding. So we are confident and we don't do these things lightly.

Patrick Ottensmeyer: The capital allocation policy that KCS had established and articulated to Wall Street and rating agencies and everyone else that was approved by our board actually back in December, or November, of 2020 is actually built into the merger agreement between us and CN, that that capital allocation policy will be maintained during the trust period. So that I think that provides a little extra dose of confidence that capital investment of strategy for KCS while we're in trust will be identical to what we had articulated and approved by our board as an independent company last year. So I think it gets to the point that JJ mentioned about assuring the financial viability and independence of KCS while we're in trust. Our capital expenditure policy, the percentage of cash flow that will be dedicated to capital expenditures, is identical to what we had approved as an independent company before this transaction was announced.

William Vantuono: So essentially, that addresses some of the concerns that have been raised, in general, about voting trust. It sort of restricts the company that's in trust from being able to proceed with investment with growth. And you're saying that that's not impacted at all under this arrangement.

Patrick Ottensmeyer: Absolutely. So our ability to make capital expenditures going forward as long as we're in trust, the flexibility, the magnitude of our CapX strategy will be unchanged from what we had previously approved.

Jean-Jacques Ruest: It does address the need of the STB. I think it addressed the need of the customer while depending on KCS to be served. But also from a CN point of view, it's a good thing, because while KCS is in trust their value will keep on rising, they will continue to invest. They will continue to gain business in their territory. And by the time the STB makes its final decision the company will actually be in even better shape and have an even better book of business than what it has today. So I think it just makes sense. But I think people should see it for the policy what it does. We don't control KCS. KCS already has a plan. They will roll out that plan. It actually makes KCS even more attractive to CN two years from now than what it is today.

William Vantuono: Now I'm going to try to avoid an ice cream analogy here, but can you please explain to me what does plain vanilla actually mean. Actually, frankly I like plain vanilla. Does that mean that there's no hidden nuts or something? Or you know?

Jean-Jacques Ruest: Well I think it just means it's as simple as can be. So that there's no trick in this voting trust. KCS is truly independent. We don't have a ways to control what they might do or not do. As Pat said, before even CN showed up at the door they had a plan already. They had a multi-year plan for what they wanted to do with their business including their capital program and their free cash flow. And that plan became part of the merger agreement plans. So they are gonna be executing what they were going to be executing without a merger, until the STB decides that it's okay for the company to come out of trust and be combined with CN. So the idea here is not to complicate things. Keep them very simple. So that the regulators and the customers can see it for what it is.

William Vantuono: So it's kind of like a smoothie. Tasty, simple, easy to digest. Plain vanilla.

Jean-Jacques Ruest: And it stays fresh until the day that the STB says we can combine together.

William Vantuono Okay. Well thank you for addressing that. I appreciate it. So here's the tough question. If the voting trust does not approve, what are the next steps. Could you possibly proceed, or would you proceed with the merger application without a voting trust.

Jean-Jacques Ruest: So obviously, Bill, our focus and our energy from day one, which is from the day which we decided that we would put an offer together for the board of KCS to consider is to actually get things done. Right? So I think in the rail industry in general we have a mindset about we're operator and we get things done. And that's definitely the way we approach things at CN. So what we're putting our effort is to get things done. To obtain from the STB what the commission will allow the voting trust. And eventually obtain from the STB and all those who are intervening, namely the customers and users of the freight network to allow for the combination. That's where our energy and focus. But we know that there's no guarantee in life. And if ever one of these steps were turned down, mainly on the voting trust, then we will have to sit down with KCS. And I'm sure that KCS will have their own discussion within themselves and their board, and CN will have our own discussion within our board. There's already in the merger agreement the specific things that KCS has the right to do and CN has the obligation to do. But rather than speculate what we specifically exactly we would do at that time, we'll deal with these things when they come up. We're confident to get a voting trust. It's the same voting trust that was already approved and it's plain vanilla. The business plan of KCS in the meantime remain the same. I'm convinced KCS will be even more valuable two years from now than what it is today. Especially with the economy the way we have and the future of USMCA and nearshoring, and the thing that Pat have and his team have in terms of cost control [inaudible] (10:51). All the things that we were talking about even before discussion of the merger were in place. So I think the future is bright for KCS no matter what, and I think the future for CN is also bright no matter what. But if you put these two companies together you already have something. You really have something I think that over time that may change the industry in North America.

William Vantuono: Pat, your thoughts?

Patrick Ottensmeyer: JJ captured it very well. We think by going forward with the, if you prefer Bill, the standard voting trust. The plain vanilla.

William Vantuono: I see you have a cup in that bowl. Is that coffee or ice cream.

Patrick Ottensmeyer: [Laugh] It's not ice cream. Save that for after three o'clock on a Friday. But no, just a standard voting trust. There's literally a hundred years of precedent for using that kind of standard voting trust that covers those requirements—the independence, the financial viability of both entities, and other public interest issues. So we tried to keep it as simple and straightforward as possible. I can't imagine that we could have done anything to make this hopefully less controversial, less objectionable by the STB. So we feel very confident that this will meet their requirements and we'll be able to get approval.

William Vantuono: Let's talk a little bit about the overlap issue. Now JJ, from the beginning with CN, you've identified only one overlap and that is the New Orleans to, and excuse my French, Baton Rouge line. And you've committed to divesting that line. It's about seventy miles. Are you anticipating any other, not necessarily blind divestitures, but are you anticipating any other conditions that might be imposed? Either that the STB identifies, or that maybe some of the other stakeholders in the industry—some of the other railroads—might identify as concerns.

Jean-Jacques Ruest: So the New Orleans, the Baton Rouge is the only area of overlap, where you have customers who are going from two to one. And you're right. We did identify that right away from day one when we made the offer. We said publicly that we know that this is an area two for one, and we will provide a good pragmatic solution to that. We felt compelled when we did our planning with STB last week to actually bring in, I guess, what is the ultimate solution, which is we'll bid it out. We'll do an auction at the right time subject to some feedback from the STB. And we will find another rail operator to step in the shoes of KCS to run to do what KCS was doing for those shippers. So those customers will continue to have two choices. We're committed to that. We will make that happen. And we will make that happen by selling the railroad to another operator who will operate post. I'm assuming that the STB would want us to divest after, when KCS comes out of trust, but we'll let them give us some guidance as to when is the right time.

There's no other area what is two for one. And after that you get into different views as to what we need to address in term of competitors. So definitely we need to be sure we are making strong commitments from the very beginning. The gateway will remain open. As a commercial person, I've always believed open gateway is actually a way to get more business. It's a way to attract more business back to the railroad as opposed to drive it away from the railroad to your competitor. Or worse, to the highway, by making things more complicated than what they should. Remember the old concept of riding protocol? What's the shortest distance from A to B? Often the shortest distance from A to B is your best route. Maybe not all the time. Because it may not be priced as your best route. Or maybe because the service even though the distance is less, the service from one of the carriers is not that great. But you want the gateway to stay open. And you want the customer, not the railroad, to decide how they want to route their freight. And obviously we'd encourage them to use the routing that they call the best route. But ultimately it's for them to make that choice. The other thing is the bottleneck. Right? It's not because you have a fantastic new single line route like KCS and CN would have. That you'll close other options. So you don't create bottlenecks. So we will keep the gateway open. We will not create bottleneck. We are committing to that, too. And after that we get into other items that will be in discussion post voting trust with customer associations and users and shippers to determine other areas that might need enhancement. But definitely we would like to railroad for the large customer. We would like to railroad for the small customer, as well. I think that's another area that we will focus on, is that what we're creating together here is we're creating a superior product. We're creating a single line product in some cases within a product that does not take away choices. Product that recreate the two-for-one option in the New Orleans to Baton Rouge corridor. But also we'd like to create a product that eventually will attract business back on the railroad from the highway. And maybe also from those who are smaller shippers, smaller customers. So these are all things that ultimately will create the value for the merger. This is a merger based on growth, so we want to enable growth. We want to attract more freight. We don't want to make it difficult for the freight to come to our combination.

William Vantuono: Pat, could you just give a snapshot of the traffic base on that corridor?

Patrick Ottensmeyer: Obviously a lot of petrochemical customers. And from what we can tell, we've had dialogue with those customers. And I think based on the feedback that we've gotten so far and the details that we've been able to share and that CN has shared – obviously, CN knows those companies as well – that a lot more discussion and detail ultimately will happen over the course of the next year and a half or two years. But we don't see any indication that there will be difficulty satisfying those customers and giving them the assurance that they will have the options that they need and want for rail service after this transaction is completed.

William Vantuono: I wanted to talk about the STB itself a bit. In recent days they've been a bit vocal. The chairman in particular, Mr. Oberman. Marty Oberman is raising concerns about overall railroad service quality, concerns from shippers. Now not specifically about this merger. That hasn't been really talked about at all. But do you see that as having any significance for what the STB ultimately decides for either a voting trust or a merger? Or both?

Jean-Jacques Ruest: You talking Bill about the letter that Mr. Oberman sent regarding service and preparation for the fall and next year?

William Vantuono: Yes. And there was also something that had to do with some service issues around Memphis, Tennessee. There was some back and forth between the AAR, and it got a little testy.

Jean-Jacques Ruest: So maybe I can briefly start. On Memphis, from my understanding is that the biggest part of the challenge is on the container side. So containers coming into Memphis from both coasts maybe. And also the supply of empty container. It basically has to do with the tsunami of freight coming to North America because of COVID. So the ports are very busy and the ports are a little backlogged. The ocean shipping line even more busy. And they also are backlogged. So because of the extended cycle of containers between Asia and North America, there's a shortage. Because if you extend the cycle you have a shortage of containers. And when all these [ph] containers (19:47) and they finally come in, and right now one [ph] bottleneck (19:49) is Memphis. It's difficult for the terminals, the 3 terminals — the 5 terminals — all the terminals of Memphis to deal with that. And then there's also a shortage of empty container. And the empty ocean container on [inaudible] (20:02) supply. Because the shipping line right now would rather have them go back expedited, empty back to Asia. Cause there's a lot of import in Asia waiting to come in. So I think it's way beyond the rail network that challenge about container. It has to do with spring of last year. The trade almost stopped. We stopped importing product. But we did not realize the people kept consuming. And then warehouse in North America got quite low. And then people's disposable income. People, you and I, didn't get to do a European trip. We stayed home and we consumed even more product. Actually, that disposable income went to imports. So since then the ocean shipping line have been running at record level, the ports are very busy and the railroad's also busy bringing the product to the interland. And when the container rolled back, those who export are struggling getting container capacity. Because the ocean shipping line would rather expedite a container empty back to Shanghai, reload them with load, as opposed to take and export and triangulate in the time it takes to triangulate. So eventually these things will get sorted out. Ocean shipping lines are buying ship. Lots of ship being built, ordered being built for the Chinese and Korean to build, but these are 18 to 24 months in delivery. And if you're a[inaudible] (21:35) company, North America, and you try to place an order to buy container, 53-foot container in China right now, you have to get at the end of the queue. Cause they are getting busy also for quite a number of quarter. So I think eventually these things get resolved by a lot of capital investment. Ocean shipping line containers. And also post-COVID, we'll see how the consumer spends his money. How much of that goes back to traveling and restaurant. And how much freight is generated from that versus doing home renovation and the likes, right? So in terms of the rail service I think CN, KCS, we do a pretty good job right now. We're very focused to what Mr. Oberman is asking us to focus, is to be ready for the fall peak. In the fall there is more grain, more industrial activities. There's more back-to-school type consumable, and there will be a back-to-school this year all over, at least the United States and Canada. So there will be demand that will be met and product coming from container. And we're hiring people, training people. I can't speak for KCS, but in the case of CN we've been recruiting and hiring since last fall. And we have regular training class to be sure that we have the crews qualified to meet the expected demand for the second half of 2021, and all of what 2022 has to offer.

William Vantuono: And JJ, just wanted to mention that the grain movements on the CN and also on the CP. The Canadian grain movements actually maintained their record levels and didn't let up.

Jean-Jacques Ruest: Yah. Grain has been fantastic. We have 14 months of record tonnage. And between right now and the next crop, this fall we won't be able to do a record tonnage, because a lot of the grain's been sold, right? So the inventory has been widely quite a bit depleted. So there's not as much trade right now than there was during these 14 months. But we are equipped to do even more other record this fall when the grain become available again.

William Vantuono: So Pat. Your thoughts on the world really, the world economy recovering or coming out of the pandemic.

Patrick Ottensmeyer: Well, I think as we look at the economy across you know, sort of the planning horizon here, we see a lot of reason to be optimistic. A lot of growth. Not only looking at sort of the macro statistics, but talking to our customers. I would imagine that this is the same for CN. Maybe not. But if we look at our customer base and the way we do our planning, our top 200 customers really represent a very large majority of our total volume and revenue. So that gives us pretty good visibility I think. We've learned over the years that our customers can be wrong, just as we can, about predictions for the future. But all that to say we think the near term outlook is very positive for our customer base, and the commodities, and the business that we're handling. And we're certainly trying to stay ahead of that. The nature of the capital and resource commitments and investments that we make in this industry—as Dave Starling used to say, "You can't pull capacity out of your pocket"—so we have to plan two, three, five years ahead. Best example, look at the announcement for the second span of the international bridge at Laredo, Texas. We've got the permit on the US side. We're working on the permit on the Mexican side. That's going to be a huge project in terms of being able to handle and facilitate cross-border growth for decades ahead into the future. So that's something that we are hopeful that we can do in the next couple of years. Again, based on the demand forecast that we see, in addition to the short-term which I talked about in terms of just feedback from customers and kind of macro-economic data, that would give us some indication of what to expect longer term. Bill, you and I talked about this a lot previously, that you've got this, which actually speaks to the wisdom and the logic of this combination. Longer term, you've got certainty in the trade relationship between Canada, U.S. and Mexico. USMCA is coming up on its one-year anniversary. You've got a lot of evidence and I think it's true, it's real. Supply chain leaders, manufacturing companies, they're interested in de-risking global supply chains, bringing supply and manufacturing of materials, all of that, closer to end markets. So that's gonna tie into manufacturing growth in North America. Or it should. And then you've just got the economic outlook to add on to that. The pandemic has taught a lot of lessons about the risks and consequences of extended global supply chains. I think if you put all of that together, the short-term outlook and the longer-term outlook for North America should be very positive. So again, look at the map of the network of this company after the merger, and it is extremely well-positioned to not only benefit from all of those trends but to drive those trends. The rail service. That single line rail service that this merger will offer I think will be a contributing factor to driving economic growth and in Mexico, US and Canada. But not only will we benefit from all of those trends, we will actually be in a position to hopefully drive some of those trends. So it's all very exciting. I think we're extremely excited about the opportunities that we see ahead. Investing to get ahead of that. And in fact, if I might—I know I've gone on here for quite awhile—but the letter that we all received from Chairman Oberman, we've gotten these letters in the past. There's concern. Part of STB obviously looking out for the interest of shippers about capacity. And there is no doubt that supply chains are stressed. There's an Op Ed piece in yesterday's Wall Street Journal that you probably saw from Peter Churchwell from the Journal of Commerce talking about "Behind your long wait for packages." If you have bought a Peloton, or a refrigerator, or are looking to build a home in the last few months, you know we're running out of everything. And some of that is driven by labor shortages at saw mills and plants that have been affected. So there's a shortage of some of the supply, some of the products, because of the manufacturing consequences of COVID and tightness in the labor market. But there's this also this massive shift of how consumers are spending their disposable income. As JJ mentioned, none of us have gone on international trips. So we have shifted 180 degrees very quickly from experiences to things. That'll shift back as the economy opens up, and people begin to travel and be more comfortable spending money on travel and entertainment and plays and theaters, instead of buying things. There'll be a kind of a contributing factor there. But not to dismiss the current level of rail service and what we're hearing from our customers, that it is not just a KCS thing. It is not just a railroad thing. There is extremely tight truck capacity. And obviously, we've talked about the ocean liners, and the container capacity supply chains are just really stressed right now. But we're taking it very seriously. We're bringing locomotives on our network. We're bringing people on as quickly as we can in some areas of tightness to respond to this, and to be ready to meet our customer's expectations, and to fulfill the demand growth that we know is out there.

William Vantuono: That doubletracking.

Patrick Ottensmeyer: Comprehensive answer.

William Vantuono: Yes. Well we appreciate comprehensive answers.

Patrick Ottensmeyer: Okay.

William Vantuono: Just doubletracking the Laredo gateway, that'll make a huge difference. Cause essentially, you know, you have the border pre-clearance facilities on either side. And so trains are queued up, but you've gotta wait. You know you've got a northbound waiting for a southbound to clear. So this'll make things a whole lot more fluid.

Patrick Ottensmeyer: It will. And we're doing a combination of things to get improvement more quickly. Working with the federal, state, local regulatory agencies. Law enforcement. When we talk about changing the processes for how we move trains across the border, we need a big conference room to get everybody at the same table at the same time, because there are a lot of interests on both sides. But the good news is we've got really great engagement, including the other railroads, and specifically, Union Pacific. They're working with us very well to try to change the way we move trains across the border until we get that second bridge in to work, and modify the systems that are required. Whether it's law enforcement, crews, tax authorities. All of that to make it more efficient for moving trains across the border, so that we can stretch the capacity that we have, and then eventually build the second bridge, which will really satisfy our growth outlook for decades to come.

William Vantuono: Just getting back to the regulatory process. While the merger rules established by the STB about 20 years ago apply in this case, as we know, Kansas City Southern will not receive an exemption. Do you see that as a positive, even if it means that the merger application could be more heavily scrutinized, and perhaps maybe take a little bit longer to approve?

Jean-Jacques Ruest: As you know Bill, we've actually signed up with the new merger role. When we made the proposal, our first filing with the STB, we actually suggested and asked that our proposal be looked at as a transaction to big Class 1 under the new current rule. And when the STB feedback, they said that they will look at our transaction under the current rule. So that's what we asked and the STB is seeing the same way. It's a major transaction. And therefore we will have to maintain and enhance competition, and we are prepared to do that. We have plans to do that and we are committed to do that. Our merger though is an end-to-end merger. It really is. We do not have an overlap. The overlap that we had between New Orleans and Baton Rouge, we actually have proposed very specifically to divest of the overlap and put another railroad in the shoes of KCS. So with the divestiture of the two-for-one segment, it is truly now an end-to-end merger. Under the new rule, you've been expected, and rightly so, to enhance competition. And I'll give you some example of how we do that. We will create new service, single-line service where they don't exist today. So I'll call it, say the green intermodal model service, which will run from Mexico City to Toronto, which is basically first and foremost aimed at converting long haul truck. I mean the distances here are huge. If you go on the website and you google what's the driving distance between Mexico City and Toronto, it's 2,600 driving miles. I mean…

William Vantuono: It's like driving from coast to coast in the United States.

Jean-Jacques Ruest: It's the longest intermodal service that you can find in North America. So should we be able to be successful and succeed and competing with truck option in these kind of distance? I would think so. But it has to do with what Pat was talking about. Putting the right infrastructure. For example, how you cross the border at Laredo and that bridge. And also provide a product which is single line. You know where the KCSM as part of CN has a integrative plan with CN. You get on KCS. The Meridian Speedway is in great shape as the railroad for intermodal. I see a lot of intermodal train today. When you get to Jackson, Mississippi, you go up on the CN network, and that main line of CN that follows the Mississippi is in great shape. You see a lot of intermodal product today. Our line from Chicago to Detroit-Toronto is also in great shape. We see a lot of intermodal product today and we own it. So when you run it as one – one operator, one game plan, one blocking system—you can create, especially over these very long distances, 2,600 driving mile that as if you follow the highway. We'll be following the railroad not the highway. But you should be able to compete, and you should be able to make money at it, and address some of the deficiencies of the options of today. Today you run on KCS, you go to the border, you do a handoff to another railroad. You do another handoff in Chicago, and then you put the truck on the road again for a very long haul. And I think in today's environment—maybe not 20 years ago when those rules were put together. But in today's environment, the green impact, the green positive impact of that kind of service has to be viewed as creating public benefit. You know the rail industry is four times more fuel efficient than the truck. We also create job though. I think what that means is over time, those who are entering the labor force, you know – and they're 25 and 30, 35 and maybe they're looking to join the transportation world—can join the transportation world as working as a locomotive engineer or conductor. Or transportation world as working in an intermodal yard running a crane or running operation. And so therefore, get a job out of that. Probably a better paying job. A job with better benefits. The railroad industry has a good pension system. As opposed to be a long haul driver and be away from home 7 to 10 days at a time. So we're going to be creating jobs. We're gonna be eventually probably converting truck driver jobs into railroad-related jobs, intermodal jobs. Much lower carbon footprint. Moving wide goods from Quebec City to Greater Toronto. Moving things has to do with auto sector, auto parts between San Luis Potosi and Detroit. And this flows in both ways between the midwest and the rust belt and Mexico. The two automotive sectors feeding one another with parts. Again using intermodal product, and making it greener, more cost effective, better service.

We talked quite a bit about the new, what we do about intermodal. But there's a lot of the things we do also in carload. I mean KCS has done a great job of moving US Midwest grain to Mexico. US Midwest has a lot of grain, a lot of open space, namely for yellow corn. And Mexico has a great population. Especially Mexico City. Half the people I think live in that big area. And so you could actually increase the [ph] catchment (38:21) area of KCS by adding the [ph] catchment area (38.24) of CN of corn and soybean. We also love to add the [ph] catchment area (38:28) of the Dakotas and stuff that should come to us, or would want to come us via the Kansas City Interchange from the CP rail. Because our venture here is about keeping the gateway open and taking freight where freight is. There is grain on the KCS franchise. There is grain on the CN franchise. And gateway will be open and we'd love to see some grain coming from the other [ph] catchment (38:55) area of the old Sioux line. So enhancing competition is all about that. It's about creating more option for more shippers. Having more people use the rail network. Get people off the highway because it's a little more expensive. It has a higher carbon footprint. And it's increasingly difficult to get people to want to be long-haul drivers. Maybe more appealing to be working on the same space, but something that allows you to be home more often working on a train or working in an intermodal yard. And there's a lot to be said about what the rail industry could become if we find a way to make this a win-win, with some help and understanding from the STB when they look at the full total picture of what we do to create public benefit without suppressing competition. Where it's kind of what we have today plus what we create over and above that. How we improve the environment, and how we help the economy in that north-south corridor. Huge corridor. We said 2,600 miles driving miles between Mexico City and Toronto. So that the people who make product and consume product in these areas also will get the [ph]economic (40:12) benefit of a very solid supply chain. And no country can really expand and [inaudible] (40:16) and strive without a very solid supply chain. And the beauty here, this is all private money. You know it's basically investors' money who is looking to put infrastructure that otherwise might have to be put by states and countries, which is the case for when you have to rely only on the highway system.

William Vantuono: And the border crossing. The northern part going into Ontario, that is your tunnel. That is already cleared for stack trains.

Jean-Jacques Ruest: That's right.

William Vantuono: So theoretically, you could run a stack train from Mexico City all the way to Montreal.

Jean-Jacques Ruest: The tunnel is actually quite young. It's a very long tunnel. It's about 2 miles long. It goes under the St. Clair river. And the tunnel was built [ph]by Paul Tellier (41:07), so you probably only have 25 years. It does double-stack container including the high-high container. It also does any size of multi-level including the auto max. It brings me to talk about another new product, new competition that we're bringing to marketplace. So today Kansas City is sort of stuck. It doesn't really have access to the Atlantic trade on the east coast. But we will, in conjunction with the team of KCS, we will invest in the rail line of Kansas City to Springfield. It's already been upgraded. We'll upgrade it a little more. We will especially upgrade the CN line from Springfield to Gilman, which is how we connect to the KCS network in the north. And in this way you can actually create direct single-line service from Detroit to Kansas City. [Inaudible] (42:02). You can also create a single-line direct service from the port of Montreal to Kansas City, for import and export coming back out. [ph] PATH (42:1) has got a great container terminal in Kansas City, which if you own Anybody in the greater Kansas City, whether its dry goods or frozen goods, wants to do trade. On the Atlantic side, we can make that happen right out of the port of Montreal single-line and using the tunnel you talked about, the Sarnia tunnel.

William Vantuono: The Sarnia tunnel.

Jean-Jacques Ruest: It goes from Sarnia on the Canada side to Port Huron on the Michigan side.

William Vantuono: So Pat, you'd mentioned as far as truck conversion, the I-35 corridor. The interstate 35 corridor.

Patrick Ottensmeyer: It's basically Mexico to and from the upper midwest. Chicago. Detroit. I think probably the best example of crates that moves in that corridor, both on rail and on truck, is auto parts, finished vehicles. But it's much bigger than that. It's a very large market. It would also include Minneapolis, on into Canada, Toronto. So actually the map that you guys had in the article this morning was really a great visual to kind of think about that market. It is a very large truck market. It is also a very large rail market. We move a lot of those products. Auto parts coming down from the supplier network in Illinois, Indiana, Michigan, Ohio, and even Canada. Ontario going down into Mexico to the assembly plant, then finished vehicles coming back. So that's a big part of our automotive and cross border intermodal today. Both directly as well as with other interchange railroad carriers and interstate partners. But it is a huge truck market and I think that's really one of the targets. The biggest opportunity that we see in merger-related synergies. The value of single-line service. Because to really go after and compete for that market and offer customers, particularly premium automotive auto parts—again, just to kind of use that as the example—we're gonna have to have very consistent, reliable, truck-like in terms of consistency and reliability. We'll never be as fast as truck. But we don't have to be. You just have to be highly consistent and highly reliable. And that ties back into the benefits of single-line service vs. joint-line service. To really offer that type of consistent and reliable service requires a common strategy, a common approach toward operating philosophy, capital investment, whether that's yard and track capital or equipment. And just making sure that all of that that is required to offer that sort of highly consistent, highly reliable service, is under common control. As opposed to 2 independent business partners requires an awful lot of trust for 2 independent companies to do that, to make those kinds of decisions regarding the way we invest capital over a long period of time, the way we operate the network. So I don't think there's any doubt that being able to offer that type of service under the common control of single entity vs. two independent business partners is a critical factor in being able to really go after that market and compete with the kind of highly consistent and highly reliable service that's gonna be required. And then that ties in again to something we talked about earlier, which is the other public benefits of that type of service and that opportunity, which tie into safety, tie into environment, fuel emissions. We've been spending a lot of time as you can imagine with members of congress and senators and lawmakers. And in almost every single conversation, they are curious and very interested in the environmental impact. And that'll be a huge part of the merger application here. But I think the benefits of rail vs. truck—you understand that Bill, most people do. A lot of members of congress and lawmakers and other people don't understand it maybe as well as we would like them to. But certainly, that is one of the advantages of this combination that we think will be very interesting to lawmakers and regulators, once we have the opportunity to articulate all of that in the environmental review portion of the merger application.

William Vantuono: In terms of your operating philosophies or strategies, they're both your own versions of PSR for Precision Scheduled Railroading. How closely aligned would you say they are?

Jean-Jacques Ruest: I think KCS and CN were already culturally aligned. How we go to market. How we deal with customers. How we want to focus on growth. The fact that Pat's team has made huge progress in terms of how they operate as an operator, asset utilization, cost efficiencies. Obviously culture, when you merge companies are extremely important. And you want to have similar culture from a diversity point of view. From focus on people, focus on customer. And the way you operate also is important. And I guess by choice, Pat decided to hire some of the CN retiree. He obviously has seen some of the work we've done over the years is valuable. And I think he just…. It's almost like another way to prepare for potential approval for the STB. So by the time we get there, there will already be a number of things which will naturally fit easier because of the similar culture and operation, as well as commercially and every other aspect of what KCS is bringing. And I said that many, many times, and let me say it again. This is a merger or combination where CN is not only looking just for the asset of the KCS. Not just for the geography and the book of business of customers that KCS brings in. But also CN is looking for the talent, for the people of KCS for what they know, for what they have. Their knowledge of the market, their knowledge of Mexico, their knowledge of operation. Their innovation will last many years to do what they did. And we value that, we cherish that and we want to create a melting pot of the best of the best. One plus one equal three, and not one plus one equal one and a half. And it's also a merger which is really focused on riding the economy in the continent. And being growth stories. It's not about cutting job, it's about making the company more productive and creating jobs up and down the railroad. Not just for us as railroaders, but also for those who are the potential user or benefiter of the network. I could throw in another one here. You know in the province of Quebec we produce a lot of aluminum. And all that aluminum is called "blue aluminum" cause it's made from hydroelectric power. Electricity is increasingly in demand for manufacture of vehicles, cause it makes for a vehicle which is lighter. And in Mexico. So having a single-line service that could go from the smelters of Northern Quebec to the producer who makes parts with aluminum in Mexico, will enable to create a new competition. In that case its source competition. It makes it easier for producer who produces aluminum for hydroelectric power in the northern part of our network to compete with aluminum coming from China, which is probably more like gray aluminum. It's made from electricity made from [inaudible] (50:55) coal, as well as the fact that… It's another way of nearsourcing. But in that case it's nearsourcing within a continent. But all that to say that when you start to really look at the positive of what we can do, and sometimes people do that, they focus on the negative. And there's so much focus on the negative they forget exactly what is gonna be building here. We are creating disruption. We're doing something that's different, something that's bold. But something that has the power to create a lot of good things. And these things are easier to do when you have a cultural fit.

Patrick Ottensmeyer: Yah, I would say one of the things that I remind you of Bill. I think you know this. When we sort of got interested in and embraced PSR, you remember me talking about my favorite catch phrase, "Service begets growth."

William Vantuono: Yes.

Patrick Ottensmeyer: We got into PSR because we wanted to understand what elements of PSR would help us improve consistency and reliability of service, and get more capacity out of our network. Because we truly believe that we had growth opportunities that we weren't able to handle – this goes back to 2018—and that the focus was all about improving consistency and reliability. It wasn't a singular focus on improving operating ratio, even from the very beginning. And so the thing that I have appreciated about Sammy coming on first, and then Manny, Manny Loreo—who actually now is our chief engineer—and then John Orr—who you know very well from a number of sources—is that those guys were involved in PSR at the very beginning before PSR was a brand, if you remember.

Go back to CN at the beginning. When PSR was really just doing smart things to get better, get assets, improve the asset efficiency. And before PSR became a brand that was unfortunately, you know, perceived or the reality of this singular focus on driving operating ratio down. And so that was, I think, a part of our strategy in bringing people in who were at CN at the time that PSR really first evolved. And before it became a brand that it is today. And again, focus on improving service, improving consistency and reliability, improving resiliency of the network. And really, at the bottom of that is all about growth. So I think we do have a very common philosophy that will be very helpful as we move forward and ultimately get approval to integrate the way we run this common network. But I think the other thing that ties into cultural compatibility is—and you've seen this over the, certainly the most recent period of time under JJ's leadership—is CN is very focused on growth. And there's a high urgency of improving your operating ratio. And in the industry and in a company where your operating ratio is in the high 80s or 90s, and you consider the capital intensity of our industry and our companies. But as you make those improvements and you become more efficient, and your operating ratio is in the 60s or 50s, and you have growth opportunities in all of the things that we've talked about here—with the economy, with nearshoring, with USMCA, and with trends in supply chains—I think you've seen the whole industry. And certainly CN was, in my opinion, a leader in this trend, is moving away from the focus on operating ratio and getting to growth in things like operating income, and cash flow, and earnings per share, and other things that become over time more important than just that kind of overweighted focus or singular focus on operating ratio. So I think we've got a shared vision with respect to the way that that has shifted over time, and we're certainly extremely focused on service and growth as is CN. We've introduced service metrics into our management incentive programs to move in that direction, so that service is tied to our executive compensation, our management compensation. So I think there are a number of areas there where you see cultural compatibilities, that I think is gonna make it much easier to get to the integration of these two companies and these two networks, that will help accelerate the benefit that we see in combining our two companies.

William Vantuono: Pat Ottensmeyer and JJ Ruest, I want to thank you both. We'll be following the merger very closely as we have been doing as things develop. Thanks again for joining us and have a safe day.

Jean-Jacques Ruest: Thank you for doing that.

Patrick Ottensmeyer: Thank you Bill.

William Vantuono: Well, that's it for this special edition of Rail Group On Air. Thanks very much to Pat Ottensmeyer and JJ Ruest. And a special thank you to our sponsor, the Greenbrier Companies. Be sure to check out Virtual Sample Railcar, VSR, the winner of the Canadian Association of Railway Suppliers 2020 Innovation Award at go.gbrx.com/virtual. This is Railway Age Editor in Chief, William C. Vantuono. Have a safe day.

Forward Looking Statements

Certain statements included in this communication constitute "forward-looking statements" within the meaning of the United States Private Securities Litigation Reform Act of 1995 and under Canadian securities laws, including statements based on management's assessment and assumptions and publicly available information with respect to KCS, regarding the proposed transaction between CN and KCS, the expected benefits of the proposed transaction and future opportunities for the combined company. By their nature, forward-looking statements involve risks, uncertainties and assumptions. CN cautions that its assumptions may not materialize and that current economic conditions render such assumptions, although reasonable at the time they were made, subject to greater uncertainty. Forward-looking statements may be identified by the use of terminology such as "believes," "expects," "anticipates," "assumes," "outlook," "plans," "targets," or other similar words.

Forward-looking statements are not guarantees of future performance and involve risks, uncertainties and other factors which may cause actual results, performance or achievements of CN, or the combined company, to be materially different from the outlook or any future results, performance or achievements implied by such statements. Accordingly, readers are advised not to place undue reliance on forward-looking statements. Important risk factors that could affect the forward-looking statements in this communication include, but are not limited to: the outcome of the proposed transaction between CN and KCS; the parties' ability to consummate the proposed transaction; the conditions to the completion of the proposed transaction; that the regulatory approvals required for the proposed transaction may not be obtained on the terms expected or on the anticipated schedule or at all; CN's indebtedness, including the substantial indebtedness CN expects to incur and assume in connection with the proposed transaction and the need to generate sufficient cash flows to service and repay such debt; CN's ability to meet expectations regarding the timing, completion and accounting and tax treatments of the proposed transaction; the possibility that CN may be unable to achieve expected synergies and operating efficiencies within the expected time-frames or at all and to successfully integrate KCS' operations with those of CN; that such integration may be more difficult, time-consuming or costly than expected; that operating costs, customer loss and business disruption (including, without limitation, difficulties in maintaining relationships with employees, customers or suppliers) may be greater than expected following the proposed transaction or the public announcement of the proposed transaction; the retention of certain key employees of KCS may be difficult; the duration and effects of the COVID-19 pandemic, general economic and business conditions, particularly in the context of the COVID-19 pandemic; industry competition; inflation, currency and interest rate fluctuations; changes in fuel prices; legislative and/or regulatory developments; compliance with environmental laws and regulations; actions by regulators; the adverse impact of any termination or revocation by the Mexican government of KCS de México, S.A. de C.V.'s Concession; increases in maintenance and operating costs; security threats; reliance on technology and related cybersecurity risk; trade restrictions or other changes to international trade arrangements; transportation of hazardous materials; various events which could disrupt operations, including illegal blockades of rail networks, and natural events such as severe weather, droughts, fires, floods and earthquakes; climate change; labor negotiations and disruptions; environmental claims; uncertainties of investigations, proceedings or other types of claims and litigation; risks and liabilities arising from derailments; timing and completion of capital programs; and other risks detailed from time to time in reports filed by CN with securities regulators in Canada and the United States. Reference should also be made to Management's Discussion and Analysis in CN's annual and interim reports, Annual Information Form and Form 40-F, filed with Canadian and U.S. securities regulators and available on CN's website, for a description of major risk factors relating to CN. Additional risks that may affect KCS' results of operations appear in Part I, Item 1A "Risks Related to KCS's Operations and Business" of KCS' Annual Report on Form 10-K for the year ended December 31, 2020, and in KCS' other filings with the U.S. Securities and Exchange Commission ("SEC").

Forward-looking statements reflect information as of the date on which they are made. CN assumes no obligation to update or revise forward-looking statements to reflect future events, changes in circumstances, or changes in beliefs, unless required by applicable securities laws. In the event CN does update any forward-looking statement, no inference should be made that CN will make additional updates with respect to that statement, related matters, or any other forward-looking statement.

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This communication does not constitute an offer to sell or the solicitation of an offer to buy any securities or a solicitation of any vote or approval, nor shall there be any sale of securities in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such jurisdiction. No offer of securities shall be made except by means of a prospectus meeting the requirements of Section 10 of the Securities Act of 1933, as amended.

Additional Information and Where to Find It

In connection with the proposed transaction, CN will file with the SEC a registration statement on Form F-4 to register the shares to be issued in connection with the proposed transaction. The registration statement will include a preliminary proxy statement of KCS which, when finalized, will be sent to the stockholders of KCS seeking their approval of the merger-related proposals. This communication is not a substitute for the proxy statement or registration statement or other document CN and/or KCS may file with the SEC or applicable securities regulators in Canada in connection with the proposed transaction.

INVESTORS AND SECURITY HOLDERS ARE URGED TO READ THE PROXY STATEMENT(S), REGISTRATION STATEMENT(S), TENDER OFFER STATEMENT, PROSPECTUS AND ANY OTHER RELEVANT DOCUMENTS FILED WITH THE SEC OR APPLICABLE SECURITIES REGULATORS IN CANADA CAREFULLY IN THEIR ENTIRETY IF AND WHEN THEY BECOME AVAILABLE BECAUSE THEY WILL CONTAIN IMPORTANT INFORMATION ABOUT CN, KCS AND THE PROPOSED TRANSACTIONS. Any definitive proxy statement(s), registration statement or prospectus(es) and other documents filed by CN and KCS (if and when available) will be mailed to stockholders of CN and/or KCS, as applicable. Investors and security holders will be able to obtain copies of these documents (if and when available) and other documents filed with the SEC and applicable securities regulators in Canada by CN free of charge through at www.sec.gov and www.sedar.com. Copies of the documents filed by CN (if and when available) will also be made available free of charge by accessing CN’s website at www.CN.ca. Copies of the documents filed by KCS (if and when available) will also be made available free of charge at www.investors.kcsouthern.com, upon written request delivered to KCS at 427 West 12th Street, Kansas City, Missouri 64105, Attention: Corporate Secretary, or by calling KCS’s Corporate Secretary’s Office by telephone at 1-888-800-3690 or by email at corpsec@kcsouthern.com.

Participants

This communication is neither a solicitation of a proxy nor a substitute for any proxy statement or other filings that may be made with the SEC and applicable securities regulators in Canada. Nonetheless, CN, KCS, and certain of their directors and executive officers and other members of management and employees may be deemed to be participants in the solicitation of proxies in respect of the proposed transactions. Information about CN's executive officers and directors is available in its 2021 Management Information Circular, dated March 9, 2021, as well as its 2020 Annual Report on Form 40-F filed with the SEC on February 1, 2021, in each case available on its website at www.CN.ca/investors/ and at www.sec.gov and www.sedar.com. Information about KCS' directors and executive officers may be found on its website at www.kcsouthern.com and in its 2020 Annual Report on Form 10-K filed with the SEC on January 29, 2021, available at www.investors.kcsouthern.com and www.sec.gov. Additional information regarding the interests of such potential participants will be included in one or more registration statements, proxy statements, tender offer statements or other documents filed with the SEC and applicable securities regulators in Canada if and when they become available. These documents (if and when available) may be obtained free of charge from the SEC's website at www.sec.gov and from www.sedar.com, as applicable.

EXHIBIT 9

May 13, 2021, KCS Board of Directors Presentation (KCSR-HC-00015131)

WITHHELD FROM PUBLIC VERSION

EXHIBIT 10

December 2, 2020, KCS Board of Directors Presentation (KCSR-HC-00014119)

WITHHELD FROM PUBLIC VERSION

EXHIBIT 11

1998 CN-KCS Alliance Agreement

WITHHELD FROM PUBLIC VERSION

EXHIBIT 12

Supplemental Agreement Between IC and KCS (Feb. 9, 2007)

WITHHELD FROM PUBLIC VERSION

EXHIBIT 13

Frank Malone, *Why IC Is Single-Tracking*, 191 RAILWAY AGE 2 (Feb. 1990)

Why IC Is Single-Tracking
Malone, Frank
Railway Age; Feb 1990; 191, 2; ABI/INFORM Global
pg. 32

Why IC is single-tracking

IC is eliminating nearly 500 miles of track between Chicago and New Orleans and installing a new ctc system—a project designed both to cut costs and improve service.

By FRANK MALONE,
Contributing Editor

Imagine a 980-mile freeway between Chicago and the Gulf of Mexico with just one traffic lane, and you get some idea of how Illinois Central sees its major route. The "Main Line of Mid-America," as a 1950 history dubbed it, is employing virtually all of its 1990 capital budget to go from double to single track between Chicago and New Orleans.

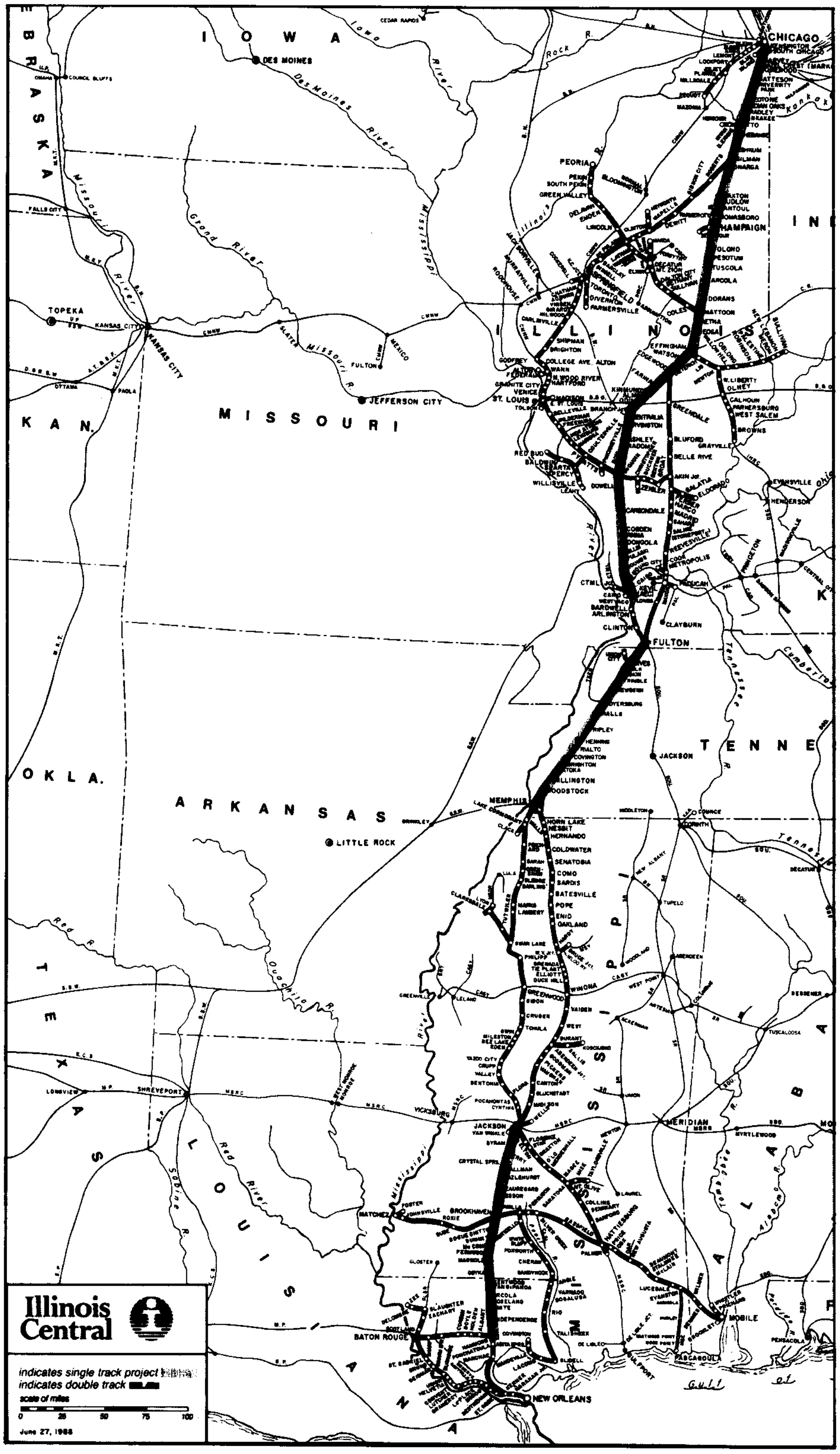
With new centralized traffic control and abundant long sidings, the line is expected to handle trains even better than when it had two lanes.

Considered the backbone of predecessor Illinois Central Gulf, once a 9,658-mile system, the Chicago-New Orleans line accounts for 33% of the 2,900 route miles operated by the "new" Illinois Central. Maximum traffic is about 35 million gross tons a year, compared with 38 million in 1984, when the line was part of a 6,700-mile system.

Shrinking through spinoffs, ICG became Illinois Central Transportation Co., which itself became a spinoff that was bought by New York City's Prospect Group in early 1989, after only 75 days as an independent. As IC president and chief executive officer, Prospect installed Edward L. Moyers, previously head of Prospect's MidSouth Corp., the operator of mostly ex-ICG trackage in Mississippi, Alabama, Tennessee, and Louisiana. Before joining MidSouth, Moyers had spent 12 years in the ICG engineering department and 10 years in various other departments. His father had been an IC section man for 45 years.

"I think I have an appreciation of track conditions and configurations that allows me to see clearly where we should go with capital and maintenance programs," he says.

• **From 100 trains to 25.** Moyers had watched the Chicago-New Orleans route handling about 25 trains a day with the same capacity as when it handled 100. Moving to IC, he saw a chance to cut trackage without hurting service. In fact, he promises better service from a massive conversion project that will have a significant



financial as well as operational impact.

Launched last summer, the project by late this year will have eliminated nearly 500 miles of train track and created 36 sidings up to four miles long at intervals of 12 to 15 miles.

With the exception of the 210-mile stretch between Memphis and Jackson, Miss., the Chicago-New Orleans route will come under control of a new ctc system. Between Memphis and Jackson, the main splits into two separate single-track lines, one with no signaling, the other with ABS. Also, the 169-mile "Edgewood cutoff" through southern Illinois to Fulton, Ky., will stay in operation along with a parallel 192-mile segment of converted main line to the west. The 53-mile stretch from Hammond, La., to New Orleans has been single-track with ctc for about 25 years.

Along with a major long-term saving in maintenance dollars, Moyers also sees a significant short-term gain in capital dollars. As a result of previous heavy main-line investment by ICG (an estimated $1.5 billion from 1976 to 1983), the main line generally is in good shape from rail through ballast. Sale of recovered rail alone will offset the conversion expense *and* pay for all the new ctc software and hardware, says Moyers.

As of Jan. 1, IC had buyers for 128 miles of rail. "There's a market," says Dave Kelly, chief engineer. "The only question is what the price is." Moyers says IC has been able to command prices "which were in our business plan."

Also to be recovered are more than 3 million tieplates, 1.6 million reusable main-line crossties, and more than 3 million tons of ballast. Besides paying for the conversion, recovered materials will give IC enough rail, ties, tieplates, and ballast for several years of capital programs.

IC projects 1990 capital spending at $40.6 million, up 145% from estimated 1989 outlays (*RA*, Jan., p. 26). The true value is higher, however, if cost of recovered usable materials is compared with cost of new materials. The capital budget carries crossties at $7 each, compared with the usual $18. This year, 325,000 ties will be installed. "If you multiply that by the $11 difference, you get a figure which you could add to the $40 million to see the real value of what we're doing," says Moyers.

> ***". . . We think the core system that exists today has the ability to be much more profitable than the system did five years ago. We have a better fit today for the IC."***
>
> **—Edward L. Moyers**
> **President and CEO**
> **Illinois Central**

This year's capital plan also contains 310,000 tons of ballast, carried at $2 a ton instead of the normal $6.

And it includes ten miles of rail, carried at $1.8 million, for a $300,000 savings over open market cost.

"If you look at what the free ties, ballast, and rail do for us, you see a capital program which, for the size of our railroad, is in the same ballpark with those of other railroads," says Moyers.

• **"Moving on schedule."** Last year, IC crews completed 67 miles of main-line conversion to ctc at sites between Chicago and Champaign, Ill., Fulton and Memphis, and Crystal Springs and Brookhaven in Mississippi. Work was set to resume in the South on Jan. 15. "It's a pretty straightforward process," says Kelly. "The scenario is driven by signal capabilities. It takes time to test and to do what's required for cutover. So far, it's moving on schedule."

Before the project started, about 15% of the route was under ctc. With a few leftover components, the new ctc includes software from Safetran and field equipment from Harmon. Kelly describes it as a state-of-the-art small system, with crt rather than projector displays in the Chicago control center. "For our needs and the size of the system, it certainly fits with what we're thinking of doing."

Mainly, IC is thinking of running a better railroad. With a new system service plan, the railroad is already operating as though it were entirely single track. Intermodal trains now run from Chicago to New Orleans in 26 hours, 45 minutes, compared with 30 hours before. Through train runs are seven and a half hours shorter.

Moyers sees better meets and runarounds improving operations over the previous practice of changing from one main track to the other, which caused delays. "The plan lets us choose the best bridges and operate on them, the track we want to operate so that we have more than 90% welded rail all the way, and the track with the best tie condition," he says.

Some observers have viewed the IC program as a form of cannibalization of assets designed primarily to provide cash to reduce debt, which totaled $850 million in late 1989. Moyers responds: "Five years ago, the Illinois Central had a total debt of $1.35 billion. If you look at the railroad then and as it is today, we think the core system that exists today has the ability to be much more profitable than the system did five years ago.

"We have a better fit today for the IC. I see us in a much better position today to handle our debt load than the Illinois Central has been in the past. We think the debt load is reasonable and that the company will generate a sufficient amount of money to pay our interest and to pay our debt.

"The single-tracking will cost us about 40% of the project's cash generation. The rest can go for our capital program or to reduce our debt or for whatever the need happens to be at that time.

"We have a plan for this company in which we have already made significant improvements in the operation and reductions in cost of the operation. At the same time, we have renewed a vigorous campaign to attract new shippers."

If the effort is successful, IC won't have any trouble handling the additional traffic. With the new ctc in full service, Moyers says, the main line still will have 45% extra capacity. ■

EXHIBIT 14

Letter from J. Blair to M. Matteucci (May 3, 2022)

WITHHELD FROM PUBLIC VERSION

EXHIBIT 15

Letter from J.J. Ruest to W. Flynn (Oct. 16, 2020)

WITHHELD FROM PUBLIC VERSION

EXHIBIT 16

2019–2021 Amtrak Monthly Contract OTP, by Train

WITHHELD FROM PUBLIC VERSION

APPENDIX

Additional Support Letters

INDEX OF ENCLOSED SUPPORT STATEMENTS

1. Quebec Government Delegate in Chicago, Mario W. Limoges – Chicago, IL
2. Parker-Migliorini International, LLC – Salt Lake City, UT
3. PSA Halifax, LP – Halifax, NS
4. Smithfield Foods – Kansas City, MO

PUBLIC VERSION

GOUVERNEMENT DU QUÉBEC
DÉLÉGATION DU QUÉBEC

CHICAGO

July 25, 2022

The Honorable Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36500, Canadian Pacific Railway—Control—Kansas City Southern

Dear Ms. Brown,

Quebec is an important trading partner to the United States, with exchanges of more than $80 billion in goods and services annually, powering job creation and economic growth on both sides of the border. The Quebec Government office has been in Chicago since 1969, with the objective of strengthening and expanding our economic ties on both sides.

More than ever before one may add, economic growth engine depends on a safe, cybersecured, reliable and sustainable transportation infrastructure, like the one Canadian National (headquartered in Montreal, Quebec) has been providing for more than 100 years in North America. As such, it is with great interest that the government of Quebec strongly supports Canadian National's requested condition seeking divestiture of Kansas City Southern's (KCS) line from Kansas City, MO to Springfield, IL and East St. Louis, IL, adding to its actual CN network, should the Canadian Pacific (CP) merger with KCS be approved by the Surface Transportation Board.

Creating then a renewed, single-line freight railroad service between our two countries, from the heart of the Quebec economy and the St-Lawrence seaway to Kansas City, the gateway to the American west, creating a range of new transportation solutions. It further allows job creators, large companies as well as small and medium sized businesses, on both sides of the border, to reach new growth markets and develop new foreign direct investment opportunities in the future. This transaction would also perform as an important step toward keeping our common sustainability commitments.

We believe that Canadian National's request that the Surface Transportation Board grant their divestiture conditions aligns with the neighborly and customer-focused approach to business that Canadian National has consistently shown, same as both countries' administrations have always achieved. Please consider the true benefits this option of CN's divestiture condition bears for the public best interest, in this sense, this is why Quebec encourages the Board to work closely with CN and all relevant parties to accept this condition, which promotes regional competition and customer choice.

Best regards,

Mario W. Limoges
Quebec Government Delegate in Chicago

Québec Government Office
444 N. Michigan Avenue
Suite 1110, Chicago, IL 60611 USA
Telephone: 312 471-1126 • Fax: 312 471-1128

PUBLIC VERSION

PMI Foods

PARKER-MIGLIORINI INTERNATIONAL

The Honorable Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36500, Canadian Pacific Railway—Control—Kansas City Southern

Dear Ms. Brown:

On behalf of Parker-Migliorini International LLC, I am writing to you today in support of CN's requested condition seeking divestiture of Kansas City Southern's (KCS) line from Kansas City, MO to Springfield, IL and East St. Louis, IL to CN should the Canadian Pacific (CP) merger with KCS be approved by the Surface Transportation Board.

CP and KCS have demonstrated they intend to focus their operations and plans for growth across CP's existing line connecting Kansas City to Chicago, making KCS's overlapping corridor between Kansas City to Springfield/East St. Louis redundant to their service offerings and rail operations after the merger. This will reduce the competitive shipping options for Parker-Migliorini International LLC and other shippers like us that rely on this corridor to efficiently move goods to and from Kansas City markets. Without the proposed CN condition, we are concerned that our competitive options will be reduced over the overlapping corridor.

Parker-Migliorini International LLC asks the Surface Transportation Board to condition any approval of the CP-KCS merger on CN's requested divesture condition of the Kansas City to Springfield/East St. Louis line should the Board approve the CP-KCS merger. CN's alternative would create a new single-line service between Kansas City, Chicago, and Detroit – directly competing with the service that would be provided by CP-KCS. while new service will be available, no options will be lost as KCS will retain access to the divested lines. If the divestiture condition is granted, CN has committed to invest in the Kansas City to Springfield/East St. Louis line to improve transit times over the line. CN's plan will create a viable alternative to trucks, diverting an estimated many thousands of trucks per year from the congested highways.

CN's request that the Surface Transportation Board grant their divestiture conditions aligns with the customer-focused approach to business that CN has demonstrated as a long term service provider. We hope the STB will also realize the customer-focused public interest benefits of CN's divestiture condition and will work closely with PMI, CN and all relevant parties to promote regional competition and customer choice.

Sincerely,

Robert Humbert

Robert Humbert
Freight Manager

PMI
PARKER-MIGLIORINI INTERNATIONAL
PARKER-MIGLIORINI
INTERNATIONAL, LLC
222 S. MAIN STREET #1500
SALT LAKE CITY, UTAH 84101
U.S.A.

PUBLIC VERSION

PSA HALIFAX

PSA Halifax Limited Partnership
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Halifax, Nova Scotia
Canada B3H 4P6
www.psahalifax.com
www.globalpsa.com
Company Registration No: 82886 2128 RT0001

01 March 2022

The Honorable Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36500, Canadian Pacific Railway—Control—Kansas City Southern

Dear Ms. Brown:

On behalf of PSA Halifax Limited Partnership, I am writing to you today in support of CN's requested condition seeking divestiture of Kansas City Southern's (KCS) line from Kansas City, MO to Springfield, IL and East St. Louis, IL to CN should the Canadian Pacific (CP) merger with KCS be approved by the Surface Transportation Board.

CP and KCS have indicated they intend to focus their operations and plan for growth across CP's existing line connecting Kansas City to Chicago, which makes KCS's overlapping corridor between Kansas City to Springfield/East St. Louis appear redundant to their service offerings and rail operations after the merger. Without the proposed CN condition, PSA Halifax Limited Partnership is concerned that competitive options via this gateway, particularly for US shippers, may be reduced through the overlapping corridor to and from Kansas City markets.

PSA Halifax Limited Partnership asks the Surface Transportation Board to condition any approval of the CP-KCS merger on CN's requested divesture condition of the Kansas City to Springfield/East St. Louis line should the Board approve the CP-KCS merger. We understand that CN's alternative creates a new single-line service between Kansas City, Chicago, and Detroit – directly competing with the service that would be provided by CP-KCS. Further that no options will be lost as KCS would retain access to the divested lines. If the divestiture condition is granted, we understand CN commits to invest in the Kansas City to Springfield/East St. Louis line to improve transit times and to create a viable alternative to otherwise congested highways.

PSA Halifax Limited Partnership recognizes CN as having a customer-focused approach and has demonstrated its commitment to our gateway and many others, as a long-term service provider. We hope the STB will work closely with CN and all relevant parties to promote regional competition and customer choice.

Yours sincerely,

Jan van Mosseveldc

Jan van Mosseveldc
Chief Executive Officer
PSA Halifax Limited Partnership

cc: Tracy Robinson, President and CEO, CN
Keith Reardon, Senior VP Consumer Product Supply Chain, CN
Lonny Kubas, Assistant VP, Supply Chain, CN
Dan Bresolin, VP, Intermodal Sales & Marketing, CN

Smithfield
Good food. Responsibly.
11500 NW Ambassador Drive
Suite 500
Kansas City, MO 64153

PUBLIC VERSION

The Honorable Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36500, Canadian Pacific Railway—Control—Kansas City Southern

Dear Ms. Brown:

On behalf of Smithfield Foods, I am writing to you today in support of CN's requested condition seeking divestiture of Kansas City Southern's (KCS) line from Kansas City, MO to Springfield, IL and East St. Louis, IL to CN should the Canadian Pacific (CP) merger with KCS be approved by the Surface Transportation Board.

CP and KCS have demonstrated they intend to focus their operations and plans for growth across CP's existing line connecting Kansas City to Chicago, making KCS's overlapping corridor between Kansas City to Springfield/East St. Louis redundant to their service offerings and rail operations after the merger. This will reduce the competitive shipping options for Smithfield Foods and other shippers like us that rely on this corridor to efficiently move goods to and from Kansas City markets. Without the proposed CN condition, we are concerned that our competitive options will be reduced over the overlapping corridor.

Smithfield Foods asks the Surface Transportation Board to condition any approval of the CP-KCS merger on CN's requested divesture condition of the Kansas City to Springfield/East St. Louis line should the Board approve the CP-KCS merger. CN's alternative would create a new single-line service between Kansas City, Chicago, and Detroit – directly competing with the service that would be provided by CP-KCS. while new service will be available, no options will be lost as KCS will retain access to the divested lines. If the divestiture condition is granted, CN has committed to invest in the Kansas City to Springfield/East St. Louis line to improve transit times over the line. CN's plan will create a viable alternative to trucks, diverting an estimated many thousands of trucks per year from the congested highways.

CN's request that the Surface Transportation Board grant their divestiture conditions aligns with the customer-focused approach to business that CN has demonstrated as a long-term service provider. We hope the STB will also realize the customer-focused public interest benefits of CN's divestiture condition and will work closely with Smithfield Foods, CN and all relevant parties to promote regional competition and customer choice.

Sincerely,

Shelly Phalen

Shelly Phalen
Smithfield Foods
Vice President, International Logistics and Finance

cc: Parties of Record