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BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36500

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January 20, 2022
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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

CSX TRANSPORTATION, INC. MOTION TO COMPEL ANSWERS
TO INTERROGATORIES AND PRODUCTION OF DOCUMENTS
REQUESTED IN DISCOVERY REQUESTS TO
KANSAS CITY SOUTHERN AND CANADIAN PACIFIC RAILWAY

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Dated: January 20, 2022

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CSX Transportation, Inc. (“CSXT”) moves to compel basic discovery from Kansas City Southern (“KCS”) and Canadian Pacific Railway (“CP”) (together, “Applicants”). Given the procedural status of the Application, the Board, CSXT, and other interested parties must have access to this information, subject to the Protective Order, soon to make even the most basic assessment of the Application. Therefore, CSXT moves for an order (draft attached) that the time for Response to this motion, set at 20 days pursuant to 49 C.F.R. § 1114.31(a)(1) and 49 C.F.R. § 1104.13(a), be reduced to 10 days, and that, should Your Honor require oral argument on this Motion, Your Honor may schedule that argument promptly thereafter.

¹ The text of the Motion to Compel Discovery is the same in the Public and Highly Confidential version of this filing. This version is labeled “Public” because Exhibit A is a public version of CSXT’s Second Discovery Request. In the Highly Confidential Version, Exhibit A is the unredacted version of the Highly Confidential Second Discovery Request.

INTRODUCTION

Applicants' responses (Exhibit "B" hereto) to the December 24, 2021, Second Set of Discovery Requests ("Second Set") (Exhibit "A" hereto)² consist primarily of objections and the words "information responsive to this Request is contained in the Application and accompanying Workpapers." Applicants have neither produced documents nor responded substantively to most of CSXT's Interrogatories.

Applicants, however, have provided no cognizable reason why they resist producing information that CSXT, other parties, and the Surface Transportation Board (the "Board") need to fairly evaluate Applicants' many apparently unsubstantiated claims regarding the public benefits and pro-competitive effects of their proposed CPKC merger (the "Transaction"). Given the expedited schedule for this proceeding and the Applicants' stonewalling to date, CSXT requests that Your Honor Order an expedited response to this Motion (in 10 days instead of 20) and Order Applicants to produce the documents and answers requested in the Second Set within 10 days of an order granting this motion.

Applicants' disregard for their discovery obligations is contrary to the public interest and their evasive responses are inconsistent with the purpose of this proceeding. Applicants seek the Board's approval for the first Class I railroad merger since the 1990s. CSXT's discovery requests fundamentally seek information about the many assumptions that underlie and support the public benefits and pro-competitive effects Applicants claim for the Transaction, information that appears after diligent review to be missing from the Application and its workpapers (the

² In this motion, CSXT describes the first set of discovery requests made on October 20, 2021 (the "First Set") as context for Applicants' continuing delay in producing discovery responses. CSXT did not move to compel the productions of documents requested in the First Set but chose instead to include many of the requests made in the First Set within the Second Set, which Applicants similarly ignored as set forth herein. Footnotes are included highlighting the instances in which the Second Set asks for documents previously asked for in the First Set.

accompanying “Workpapers” offered in support of the Application). This information is especially important because the voids in the modeling and analyses done by Applicants and others on their behalf could undermine those assumptions.

The public interest requires that CSXT, along with the Board and all other parties to this proceeding, secure that information – all readily available to Applicants. Without it, the public will never have the benefits of a fact-based professional assessment of Applicants’ claimed public benefits. With that information, CSXT and other parties can make informed comments on the Transaction and request any conditions that may be needed to remedy any harm to the public interest that may be threatened by the Transaction. All such comments and requests are due in short order, on February 28, 2022.

PROCEDURAL CONTEXT

The Applicants filed an application (the “Application”) for approval of the Transaction on October 29, 2021. Faced with a Petition arguing that the Application was incomplete because it contained “unsupported assertions” and did not “include all the information needed” to assess the Transaction’s market impact,³ Applicants responded that the Application was complete because it presented a “*prima facie* case” and because “the Board’s process allows for discovery” to “call into question” the Application’s claims of public benefits.⁴

Applicants argued the Application should be treated analogously to a complaint—complete as long as it offered plausible support for factual claims meeting the legal standard, regardless of potential weaknesses in that support—and that the process of discovery and presentation of opposition evidence are the crucible within which to “quarrel with the facts laid

³ Canadian Pac. Ry. Ltd. et al., STB FD 36500, *Union Pacific Railroad Company’s Petition to Reject Application as Incomplete* at 2-3 (November 19, 2021).

⁴ Canadian Pac. Ry. Ltd. et al., STB FD 36500, *Applicants’ Reply to Union Pacific’s “Petition to Reject Application as Incomplete,”* at 2-4 (November 22, 2021).

out in the Application.”⁵ On November 23, 2021, the Board found that the Application was indeed complete because Applicants had presented a *prima facie* case by “disclosing facts that, if construed in their most favorable light, are sufficient to support a finding that the proposed transaction is consistent with the public interest,” and reasoning that arguments that the Applicants’ claims are inadequately supported “are more appropriately raised as a response to the merits of the Transaction.”⁶

The Board accepted the Application effective November 26, 2021, and set forth an expedited schedule that called for “responsive applications”⁷ to be identified by January 12, 2022, and substantive comments and requests for conditions, including complete responsive applications, by February 28, 2022. On October 20, 2021, CSXT had served its first set of discovery requests (the “First Set”) (Exhibit “C” hereto) on Applicants and, because of Applicants’ failure to provide documents in response, served its Second Set on December 24, 2021. The First Set (primarily document requests) sought to obtain documents necessary to evaluate the anticipated claims by the Applicants that the Transaction would be in the public interest, with public benefits outweighing any public costs (including reduced competition). The Second Set (primarily Interrogatories) asked Applicants to specifically Identify where in the Application, Workpapers or elsewhere (as required by 49 C.F.R. 1114.26(b): “to *specify* the records from which the answer may be derived...” (emphasis added)) lay the support for the

⁵ *Id.*, at 3.

⁶ Canadian Pac. Ry. Ltd. et al., STB FD 36500 (No. 11), slip op. at 9-10 (STB served November 23, 2021).

⁷ “Applications filed in response to a primary application are those seeking affirmative relief either as a condition to or in lieu of the approval of the primary application. Responsive applications include inconsistent applications, inclusion applications, and any other affirmative relief that requires an application, petition, notice, or any other filing to be submitted to the Board (such as trackage rights, purchases, constructions, operation, pooling, terminal operations, abandonments, and other types of proceedings not otherwise covered).” 49 C.F.R. § 1180.3(h) (10-1-00 Edition).

many claims that the Transactions was in the public interest, support which after diligent review CSXT and its experts could not locate.

Given the apparent dearth of supporting information provided with the Application and this proceeding's expedited schedule, the only way for parties such as CSXT to fairly assess the claims made in the Application and its accompanying Verified Statements is to pursue discovery and fill in the blanks in the evidence and analysis presented.

BOARD DISCOVERY STANDARDS

The basic discovery that CSXT seeks but which Applicants have refused to provide is well supported by the Board's discovery rules. Those rules (at 49 C.F.R. Part 1114) permit "discovery . . . regarding any matter, not privileged, which is relevant to the subject matter involved in a proceeding . . ." 49 C.F.R. § 1114.21(a)(1). The Board has interpreted its regulations around discovery broadly.⁸

The Board's discovery rules "follow generally those in the Federal Rules of Civil Procedure" and permit parties to "obtain discovery regarding any matter that is not privileged and that is relevant to the subject matter involved in a proceeding." *PEPCO v. Consol. Rail Corp., et al.*, STB Docket No. 41989, slip op. at 1 n.5 (Service Date May 27, 1997). Referencing Rule 26 of the Federal Rules of Civil Procedure ("FRCP"), the Board determined that discovery

⁸ See *Canadian Pac. Ry. Ltd. et al.*, FD 36500 (No. 7), slip op. at 4 (STB served Aug. 2, 2021) (acknowledging authority to seek material relevant to subject matter of proceeding under 49 C.F.R. § 1114.21 and interpreting scope of relevance in discovery "[b]roadly"); Order of Administrative Law Judge Clarifying Prior Order on Motion to Compel Discovery Responses, Finch Paper LLC—Petition for Declaratory Order, FD 35981, slip op. at 2 (STB served Jan. 18, 2017) (referring to the Board's discovery regulations as using "a very liberal standard" and describing "relevant" as "a broad standard"); CSX Transportation, Inc. and Del. And Hudson Ry. Co., Inc.—Joint Use Agreement, Motion to Compel, FD 35348, slip op. at 3 (STB served Aug. 16, 2010) (parties are entitled to discovery regarding any matter, not privileged, which is relevant to the subject matter involved in a proceeding and relevance means that information might be able to affect the outcome of a proceeding) (citing 49 C.F.R. § 1114.21).

in Board proceedings covers “all documents, electronically stored information, and tangible things that are in the possession, custody, or control of the party and that the disclosing party may use to support its claims or defenses....” *Simplified Standards for Rail Rate Cases*, STB Ex Parte No. 646 (Sub.-No. 1), slip op. at 69 (STB served Sept. 5, 2007).

Under the FRCP, it is beyond dispute that contention interrogatories may legitimately request a party identify all support for a particular claim regarding the facts or application of law to fact, and that such interrogatories must be responded to promptly, completely, and with candor. *See, e.g., Barnes v. D.C.*, 270 F.R.D. 21, 23-24 (D.D.C. 2010); Fed R. Civ. Proc. 33 advisory committee's note to 1970 amendment (such interrogatories “can be most useful in narrowing and sharpening the issues, which is a major purpose of discovery.”).⁹ A party may not respond to such contention interrogatories with generic references to existing productions without citing particular documents, nor to the substantial entirety of a voluminous document without identifying the portion(s) supposedly supporting their contention. *See, e.g., English v. Wash. Metro. Area Transit Auth.*, 323 F.R.D. 1, 18-19 (D.D.C. 2017); *In re Rail Fuel Surcharge Antitrust Litig.*, 281 F.R.D. 1, 5, 7-8 (D.D.C. 2011). If a responding party does not have any

⁹ Applicants may respond that, in the litigation context, contention interrogatories are often reserved until later stages of discovery after all potentially relevant documents have been produced. That would be wrong here for two reasons. First, Applicants’ support must already be in their possession. The very purpose of the case-in-chief concept is to permit the Board and all interested parties “to have, upon the filing of an application, *all of the applicants’ supporting evidence.*” *Railroad Consolidation Procedures*, 363 I.C.C. 767, 770 (1980) (emphasis supplied). This is the very *prima facie* case concept on which Applicants and the Board relied to establish that the instant Application was complete; Applicants cannot have it both ways and now argue further discovery is necessary before they know what their supporting evidence is. *See Applicants’ Reply to Union Pacific’s “Petition to Reject Application as Incomplete”*; Decision No. 11. For that very reason, CSXT requested that Applicants provide the support *in their own possession* for the contentions *in their own Application*. Second, the BoardSTB consolidation approval process is much abbreviated relative to District Court litigation and does not permit the multi-stage discovery process on which such an argument would rely. Indeed, the process now before the Board is yet further expedited—at Applicants’ own request.

documentary support for a contention, the propounding party is entitled to know that. *See, e.g., Covad Commc'ns Co. v. Revonet, Inc.*, 258 F.R.D. 17, 20, 23 (D.D.C. 2009). Where a party fails to identify support for their contention even after an order compelling them to do so, they may be precluded from later claiming that the contention is supported by documents they already had in their possession. *See, e.g., Mich. Window Cleaning Co. v. Martino*, 173 F.2d 466, 468 (6th Cir. 1949); *see also* 49 C.F.R. § 1114.31(d) (“If a party or a person...fails to serve answers to interrogatories submitted under §1114.26, after proper service of such interrogatories, the Board on motion and notice may strike out all or any part of any pleading of that party or person, or dismiss the proceeding or any part thereof.”)

By these standards, Applicants’ responses are flagrant violations of their discovery responsibilities. Applicants have responded forty-one times that the support for their claims appeared somewhere, without specifying where, either in the almost 5,000-page Application, its thirty gigabytes of Workpapers, or its responses to other parties’ discovery requests. In eight of the sixteen instances that Applicants actually specified the supposed location of their support, Applicants circularly referred CSXT back to the very passage CSXT asked them to identify the support for. In seventeen instances, Applicants did not identify the support for claims made in their Application but offered instead to undertake a search for it—even though the purpose of the Application completeness requirement is to ensure the Board and parties “have, upon the filing of an application, all of the Applicants’ supporting evidence.” *Railroad Consolidation Procedures*, 363 I.C.C. 767, 770 (1980) (emphasis supplied). If Applicants made claims underlying the public benefits analysis in their Application without having support for those claims on hand, saying so is the correct answer to interrogatories asking for that support. *See, e.g., Covad Commc'ns*, 258 F.R.D. at 20, 23.

Simply put, when a discovery request asks for the information that an applicant contends provides the support for a particular factual claim it has made in an application, it is not a sufficient answer for the Applicant to respond “you can get it elsewhere” or “it is somewhere in the filings” or “it has been, or will be, produced.” Such a response is no response at all. But that is the approach Applicants have taken here. In the same way a civil litigant cannot merely invoke its pleadings when called in discovery to produce the evidence needed to *prove* its allegations, it is inconceivable how the Applicants expect to back up their *prima facie* Application before the Board if they are unwilling—or unable—to now identify or produce the factual support for it through Board-endorsed discovery procedures.

CSXT’S DISCOVERY REQUESTS AND APPLICANTS’ RESPONSES

1. CSXT’s First Set of Discovery Requests and Applicants’ Responses

CSXT’s First Set of Discovery Requests (Exhibit C) consisted of four document requests and one contingent interrogatory. Document Request 1 sought business plans, forecasts, analyses or other documents that Applicants developed that relate to traffic interchanged by Applicants before or after the announcement of this merger, to enable CSXT to determine whether the claimed public benefits from the Transaction were supported or undermined by those independent analyses. Exh. C, Req. 1. Document Request 2 (which consisted of many subparts) sought documents regarding KCS with respect to: a) employees; b) operating rights of KCS on other railroads and vice versa; c) KCS revenues and costs, and numbers, timing and data for density maps with respect to KCS locomotives and cars; and d) existing and planned capacity. *Id.*, Req. 2. The purpose of this document request was to determine whether the benefits claimed by the Applicants were feasible, whether they would result from the Transaction or exist independent of it, and whether there would be any public detriments.

On November 9, 2021, Applicants jointly objected and responded to CSXT's First Discovery Requests (Applicants' response is Exhibit "D" hereto). Applicants objected to Requests No. 1 and 2 on the grounds that they were "unintelligible," that "[t]he Applicants have already provided documents and information responsive to this request in connection with the Application and the accompanying Workpapers," that "much of the information was in the 100% traffic data information that Applicants have already made available," and that Applicants had or would be producing such data in response to other parties' document requests as requested by Request 3 or in the Workpapers requested by Request No. 4. Applicants said that additional productions (beyond what was already produced) would be made available on a "rolling basis," and asserted that they were not required to produce anything more but were "willing to meet and confer with CSXT about conducting a reasonable search for additional non-privileged responsive to" the Requests.¹⁰

The parties held a "meet and confer" session on November 16, 2021. Regarding Document Request 1, which seeks reports, plans, forecasts, or analyses developed in the normal course of business that describe the costs and benefits of the Transaction as seen by Applicants, Applicants' counsel claimed that such documents were already present in the Application. However, as CSXT's counsel explained, while the Application contains estimates of changes in traffic occasioned by the Transaction, CSXT needs documents actually considered by Applicants when determining the Transaction's merits, such as formal presentations to management and the board of directors at either company. Such information, which is easily accessible, is probative of the expectations of the Applicants in a way that the raw data and the post-decision analyses

¹⁰ On January 19, 2022, Applicants produced certain board of directors presentations that partially respond to Document Request 1 of the First Set.

and justifications by Applicants' experts are not.¹¹ Applicants promised to review available documents and report on same – that report was never provided.

At Applicants' counsel's insistence in the meet and confer session, CSXT reviewed the Application and Workpapers further and prioritized its requests in a November 21, 2021, letter (Exhibit "E" hereto). Applicants took nearly three weeks until December 9, 2021, to respond to the Letter (Exhibit "F" hereto). The response contained only additional objections, stated that Applicants did not maintain most of the documents sought, and produced no additional documents.

2. CSXT's Second Set of Discovery Requests

Rebuffed in its First Request, CSXT served its Second Set of Discovery Requests upon Applicants on December 24, 2021. CSXT's Second Set of Discovery Requests consists primarily of contention Interrogatories seeking explanations of many of the assertions contained in the Application and asking Applicants to specifically identify the support for those claims and produce any documents identified that had not already been produced. Although the Board accepted the Application on November 23, 2021, which means that the Board considered the Application to have stated a *prima facie* case, the Applicants will still be required to provide the support for the claims made therein before the Board. The purpose of CSXT's Interrogatories was to identify and analyze that purported support. With respect to many of the specific assertions in the Application that, after diligent review by CSXT and its retained experts, appear to rely solely on assumptions, theory, or unidentified (and unproduced) data, CSXT asked

¹¹ CSXT offered during the meet and confer that this information could be limited to the years 2020-21, rather than going back to 2017 as initially requested, in order to facilitate the production.

Applicants to specifically point to *where* in the Application—and in what backup documents or data in their Workpapers—any factual support for those specific assertions could be found.

Accordingly, the Interrogatories asked the Applicants to “Identify” any data or documents that would provide support for the claims they make in their Application. The definition of “Identify” (to which Applicants did not object), means:

a. when used with reference to a Document, means to: **(i) provide a description of such Document or thing sufficient to support a request for production**, (ii) state its author(s), addressee(s), recipient(s), title, subject matter, date, present location and custodian, (iii) specify the place where the Document or thing may be inspected, and (iv) **if the Document was produced in This Matter, specify the Document by Bates number(s)**. If a Document once existed and has since been lost, destroyed, or is otherwise missing or unavailable, You shall Identify the Document and state the details Concerning the unavailability of such Document;

[...]

e. **when referring to the Application or work papers requires You to specify the volume and page number in the Application and the file name and page in the work papers.**

In their January 11, 2022, response to the Second Set (Exhibit B), Applicants did not Identify a single Analysis or Document outside of the Application and its Workpapers.¹² And in those cases in which Applicants claim the support can be found within the Application and Workpapers, Applicants refused to Identify where. Instead, in most responses, Applicants simply stated that “information responsive to this Request is contained in the Application and accompanying Workpapers” without specifying where in the Application or Workpapers the information exists, as the above definition specifically requests, *see id.*, and discovery rules generally require, *see, e.g., English*, 323 F.R.D. at 18-19; *Fuel Surcharge*, 281 F.R.D. at 5, 7-8.

¹² Last evening at 8:16 PM, January 19, 2022, Applicants produced 872 new documents which respond partially to some of the requests herein. Based on a preliminary review of those documents, which is not complete, CSXT notes where those documents may be responsive in the discussion of the individual interrogatories.

The few places where Applicants did identify specific portions of the Application or Workpapers were portions that CSXT had reviewed that did not contain the information requested in the Interrogatory. More egregiously, Applicants sometimes cited documents that were the very documents referenced in the Interrogatory itself about which Information was being requested.

As with Applicant's Response to the First Request, that response flouts the purposes of discovery, which are to narrow the issues, to identify support for the responding party's contentions, and to enable the requesting party to evaluate the claims made in the Applicants' filing. Nonspecific reference to the filing itself is insufficient to satisfy those purposes, as the filing is merely a series of assertions that, *if construed in their most favorable light*, support a public interest finding. It is not necessarily proof of the validity of those assertions, nor proof that they should be construed favorably. Requesting parties are entitled to know whether Applicants contend they have that proof—and if so, *where* it is.

A detailed summary of the Second Request's Interrogatories and Applicant's Responses is below.

1. Interrogatories 1 Through 8 (Growth Initiative Traffic)

Interrogatories 1 through 8 of the Second Request pertain to Applicants' claim that the Transaction will create public benefits in part through significant increases in CPKC combined traffic. See Application at 10-13. Applicants' Highly Confidential Workpaper titled "Wahba and Naatz HC WP Growth Initiative Calculations.xlsx" describes a three-year "Growth Initiative" and estimates traffic increases resulting therefrom, including increases in intermodal traffic from Mexican Ports, increases in carloads of Crude by Rail from Alberta to the U.S Gulf Coast, and increases in carloads of many types of commodities and products through and from Canadian west coast ports. Interrogatories 1 through 8 seek the location of the data in the Application,

Workpapers or elsewhere that supports the existing volume and revenue based on which Wahba and Naatz calculate the expected increases in volume and revenue. That baseline information, which appears not to be included in the Application or its Workpapers, must exist as the calculation of increases could not be made without it.

As in the First Set, CSXT also seeks Identification of any Analyses of growth by either Applicant that precedes the notification of merger. Applicant's separate business plans for these claimed areas of growth diversions are necessary to ensure the Applicants are not attributing benefits to the Transaction which may have been realized independently.

Interrogatory 1 seeks Identification of Growth Initiative carloads/units, average revenue per unit and Applicants' definition of the origin and destination "area" in the Growth Initiative Summary Table (which table is reprinted in the Interrogatory). Applicants' response refers CSXT to their response to Union Pacific First Request Nos. 137 and 138 which asked Applicants to identify the source of and describe in detail the derivation of the figures in the column labeled "Average Revenues Per Car at 2019 Levels" and Fully Phased in Units" in the Workpaper "FD 36500 - Work Paper - HC - Growth Initiative Calculations.xls." and for which Applicants have said they will provide non-privileged and non-duplicative documents they can locate after a reasonable search. UP's Requests Nos. 137 and 138 do not address all questions raised in Interrogatory No. 1, specifically Applicants' definition of the origin and destination "area," and Applicants provide no bates numbers for the documents supposedly produced to UP that answer this Interrogatory. The response also cites the Workpaper "URCS Phase III Calculation For Growth Traffic Input.xlsx" in response to an interrogatory seeking the identity of Growth Initiative traffic identified using "Growth Initiative Calculations.xlsx". However, these Workpapers are the same Growth Initiative analysis which CSXT found not to provide that

information. Applicants must be compelled to provide a complete response consistent with the definition of Identify, or to respond there are no such documents.

Interrogatory 2 seeks Identification of Growth Initiative origin stations and destination stations pre- and post- Transaction. Applicants respond only that the information requested is “in the Application and accompanying Workpapers” but do not provide a precise location as the definition of Identify requires. Station level data is unequivocally not in the Growth Initiative Chart referenced. Applicants’ Response also cites Union Pacific First Request No. 115 requesting the KCSR, KCSM, and CP “business planning” documents that formed the basis for the growth forecasts described on page 31 of the Operating Plan (Exhibit 13) and states that Applicants will provide non-privileged and non-duplicative documents responsive to this Request that they are able to locate after a reasonable search. However, UP 115 does not address all questions raised in Interrogatory No. 2 and Applicants provide no bates numbers for the documents supposedly produced or, if not yet produced, a timetable for their production. Applicants must be compelled to respond to this Interrogatory, and to produce any additional documents within 10 days or state there are none.

Interrogatory 3 seeks Identification of documents that concern the traffic that is the subjects of the Growth Initiative. Applicants object to this Request because it seeks to compel the identification of documents that may contain confidential and/or proprietary information but also state they will meet and confer. The information could easily be produced under the Board’s existing Confidentiality Order, and it is unclear what would be accomplished by such a meet and confer because the Interrogatory is relatively straightforward. The response therefore appears to be nothing more than a delay tactic, as happened with respect to CSXT’s First Set, but there is no time for delay. Applicants must be compelled to provide a complete response consistent with the

definition of “Identify,” and to produce any additional documents within 10 days.

Interrogatory 4 seeks Identification of supporting information regarding “Intermodal” traffic at Lazaro Cardenas identified in the Growth Initiative Summary Table. Applicants state that the information requested in subparts (b) and (c) (Mexico port displacement) is identified in the Application, but again no volume or page location in the Application is identified. CSXT does not believe that forecasts of what railroad(s) may be displaced is in the Application or its Workpapers, and Applicants must be compelled to identify them consistent with the definition of Identify or confirm that they are not in the Application or its Workpapers. Regarding subparts (a), (f), (g) and (h), Applicants state that they have not located such documents, but have not confirmed that they do not exist. Regarding subparts (d) and (e), which seek information regarding waterborne containers and freight from West Coast and Mexican ports, Applicants state they will conduct a reasonable search and provide information if found, but again, they offer no timetable and the time is running short. On January 19, Applicants produced documents regarding Lazaro container terminal statistics and capacities, but those documents do not fully answer Interrogatory 4. Applicant must be compelled to provide any additional supporting documents within 10 days or confirm there is no additional documentation.

Interrogatory 5 seeks Identification of documents supporting the traffic increases listed as “Crude” in the Growth Initiative Summary Table. Applicants again simply point to the Application and the Workpapers generally, which ignores the definition of “Identify,” and then state they will conduct a reasonable search and provide non duplicative information with no timetable. On January 19, 2022, Applicants produced certain documents relating to the movement of crude, but those documents do not appear to respond to Interrogatory 5. Applicants must be compelled to identify the documents in the Application and Workpapers in accordance

with the definition of Identify and produce any additional documents requested within 10 days.

Interrogatory 6 seeks Identification of documents supporting the traffic increases claimed in the Growth Initiative Summary Table other than those listed under “*Lazaro Intermodal*” and as “Crude.” Yet again, Applicants respond that the information requested is in the Application and Workpapers but do not provide a location as required by the definition of “Identify.” Applicants must be compelled to identify the documents in the Application and Workpapers in accordance with the definition of “Identify.”

Interrogatory 7 seeks Identification of all Analyses or other Documents created by or for the Applicants in the ordinary course of business since January 1, 2020 that estimated growth of carloads, revenues, or profits for incremental traffic expected because of the Transaction.¹³ The purpose of this Interrogatory is to test the genuineness of the growth estimates in the Application. Applicants’ response that the information requested is in the Application and Workpapers, besides not providing a location, is evasive, as the request goes well beyond the Application. Applicant’s further Response cites UP 115 which requested “business planning” documents that supported the growth forecasts described on page 31 of the Operating Plan (Exhibit 13). Applicants state they will provide documents responsive to UP 115 that they can locate after a reasonable search, but UP 115 does not address all questions raised in Interrogatory No. 7 and, again, Applicants provide no bates numbers for the documents supposedly produced or, if not yet, a timetable for their production. Applicants must be compelled to answer this Interrogatory fully and produce all requested documents within 10 days.

Interrogatory 8 seeks, regarding Growth Initiative volumes that originate or terminate in Kansas City, Identification of the origin and destination stations from and to which Growth

¹³ The information requested by Interrogatory 7 encompasses Document Request 1(a) of the First Discovery Request.

Initiative volumes would move on CPKC, and how the Transaction is necessary for CP or KCS to achieve that traffic growth. Again, Applicants state only that the information requested is in the Application and Workpapers but do not provide a location. The response also cites testimony of Messrs. Wahba and Naatz (at Paragraphs 39 through 46 and 68 through 70), but that testimony does not address the question raised in Interrogatory No. 8. Applicants must be compelled to respond to this Interrogatory consistent with the definition of Identify.

2. Interrogatories 9-28 (Diverted Traffic To and From Mexico)

Applicants claim that the Transaction will produce public benefits through the Diversion of substantial traffic, including substantial traffic on routes to or from Mexico. Interrogatories 9 through 28 seek information on the substantial Diverted traffic Applicants claim the Transaction will cause for traffic to or from Mexico, and on the lack of competitive harm resulting therefrom. Traffic to and from Mexico is a significant component of the proposed Transaction. Applicants' competitive analysis, presented in the Verified Statement of W. Robert Majure, uses rail traffic moving through the Laredo Gateway as a proxy for all traffic moving between Mexico and the U.S. Dr. Majure's vertical effects analysis (Section 3), however, insufficiently addresses the Mexican portions of those Movements. In addition, the vertical effects analysis only considers northbound traffic and excludes Movements from the U.S. to Mexico. Interrogatories 9-28 (which are predicated on Exhibit 2 or the Majure V.S.) seek basic information that the Board and parties to this proceeding would require to verify or challenge Majure's conclusions regarding the impact of the Transaction on competition.

Interrogatory 9 asks whether Majure Exhibit 2 is supported by Analyses of the segments of the Movement of that traffic within Mexico provided in the Application or related

Workpapers, and, if the answer is “yes,” Identification of any such Analyses.¹⁴ Applicants did not respond to that Interrogatory, instead stating that Dr. Majure does not understand what is meant by analysis of “the segments of Movement of the[e] traffic within Mexico,” and that his verified statement “is predicated on the application of economic theory to the data underlying the Exhibit and the discussions surrounding the Exhibit.” That is a non-answer and Applicants must be compelled to provide a complete answer to Interrogatory No. 9, or to admit there are no supporting Analyses or Documents.

Interrogatory 10 seeks Identification of requests for Analyses, data or other Documents that Dr. Majure made to either Applicant regarding markets in Mexico or factors affecting markets in Mexico for the transportation of goods to, from or through the United States. In response to that relatively straightforward question, Applicants stated that “documents responsive to this Request are contained in the Application and Accompanying Workpapers.” Besides not providing the location of such documents, Applicant’s response is deficient. There is nothing in the Application or its Workpapers that involves such requests. Applicants should be compelled to answer this Interrogatory fully in good faith.

Interrogatory 11 asks Applicants to Identify the Analyses, data or other Documents that Applicants (or either of them) provided to Dr. Majure regarding markets in Mexico or factors affecting markets in Mexico for the transportation of goods to, from or through the United States. Again, Applicants merely cite the Application and Workpapers. That is non-responsive for the same reason as the Response to Interrogatory 10 is non-responsive. Applicants should be compelled to answer this Interrogatory fully in good faith.

¹⁴ Interrogatory 9 was initially misprinted in the Second Set served on December 24, 2021. CSXT later, on January 4, 2022, served a corrected version of Interrogatory 9 and Applicants responded to that corrected version.

Interrogatory 12 seeks Identification of any documents that support Dr. Majure’s claim that “A combined CP/KCS would not be expected to have any incentive to affect the competitive terms available to a Solely-Served shipper because KCS would already be collecting the full measure of returns associated with its existing market power.” Applicants Identify no documents, but simply state that “documents responsive to this request are contained in the Application and its workpapers,” which is ludicrous and immediately undercut by the next sentence in the response: “In particular, the referenced statement of Dr. Majure was not based on any specific documentary evidence in the possession of Applicants.” Applicants must be compelled to either identify the supporting documentation (general or specific) in accordance with the definition of “Identify” or admit there is no supporting documentation for the referenced claim.

Interrogatories 13 through 17 seek Identification of the stations and shippers that KCSM serves in Mexico for which Dr. Majure claims that FXE is a “ready alternative” to KCSM such that Applicants could not force inferior terms on the shipper, and Identification of Documents that support that claim. Applicants object that CSXT “misinterprets the Majure Verified Statement” but do not state how CSXT does so. Applicants then respond that Paragraph 25 of the Majure Verified Statement in which the claims are made “reflects the application of economic theory to a range of potentially applicable facts and does not make contentions of fact regarding specific individual stations and shippers.” Applicants must be compelled to respond to these Interrogatories fully or confirm that Dr. Majure’s statement is not based on facts and is merely speculation.

Interrogatories 18 and 19 seek a) Identification of stations and shippers in Mexico that are Solely-Served by KCSM and Identification of stations and shippers served by KCSM and FXE, and b) Identification of any documents that concern those stations and shippers since

January 1, 2018. Applicants state they cannot respond to part b) because it is overbroad, and state regarding part a) that they will produce documents they can locate after a reasonable search. But Part a) of Interrogatories 18 and 19 do not seek Identification of documents, rather they ask for Identification of stations and shippers and there is no reason Applicants cannot respond to this request immediately. The Board rules permit the use of documents to respond to interrogatories (49 C.F.R. § 1115.26(b)), but do not permit parties to fail to respond to interrogatories because they will not or cannot locate business records. Applicants must be compelled to respond fully to part (a), and they must be compelled to produce any documents in their possession that are responsive to part (b) as well, if there are any. Otherwise, the claim in Paragraph 25 of the Majure Verified Statement cannot be evaluated.

Interrogatory 20 seeks Identification of documents that support Majure’s claim that rate increases by KCSM would “lead to a loss of the traffic volumes or failure to attract new traffic.” Applicants identify no documents in response to this Interrogatory. Instead, they simply point back to the Majure Verified Statement from which the claim comes. Applicants must be compelled to respond to this Interrogatory fully or confirm there are no supporting documents, and that Dr. Majure’s statement is not based on facts and is merely speculation.

Interrogatory 21 seeks Identification of all Analyses or other Documents Concerning traffic that KCSM brings to Laredo that support Majure’s conclusion that the Transaction will enhance competition through vertical effects.¹⁵ Applicants respond that KCS does not have analysis related to market shares as compared with other carriers or analysis of KCS’s competitively significant elements of KCS’s service quality as sought and does not have responsive documents to subparts (a) and (c) (‘KCS market shares compared to other carriers’

¹⁵ The information requested in Interrogatory 21 would also represent a subset of that requested in Document Requests 2(c)(i)(a), 2(c)(i)(c), and 2(c)(ii)(c).

shares’ and ‘The competitively significant elements of KCS service quality compared to those of other carriers, Including route miles and cycle times’). Applicants respond with respect to subparts (b), (d) and (g) (‘Post-Transaction CPKC market shares compared to other carriers’ shares’, ‘The competitively significant elements of CPKC post-Transaction service’ and ‘Any Analyses or other Documents Concerning the Applicants’ expected Diversions as a result of the “Growth Initiative” of traffic from other carriers using any mode’), that Applicants do not have additional non-privileged responsive documents and refer CSXT to the Application and Workpapers. But Applicants do not provide a location for the supporting cites and their claim that Applicants do not track market shares and service quality is not credible. Applicants must be compelled to answer this Interrogatory fully, or to state there is no documentation to support Dr. Majure’s claim.

Interrogatories 22 and 23 seek Identification of an updated Exhibit 2 to the Majure Verified Statement that a) Includes KCSM Laredo gateway traffic to and from Mexico (Int. 22), and b) Includes a post-Transaction CPKC Laredo gateway traffic to and from Mexico (Int. 23). Applicants state that the information requested is already available to CSXT, but do not say where. Applicants then offer to meet and confer regarding these Interrogatories, but that is an obvious delay tactic. Applicants can immediately answer whether such an updated Exhibit exists and Identify it and they should be compelled to do so.

Interrogatory 24 seeks Identification of Analyses and Documents that justify the omission of geographic locations in Mexico from the single corridor analyses in the Majure Verified Statement. Applicants object that this Request misconstrues Majure and assert that “Dr. Majure’s analysis of potential reductions in the number of independent routes did not exclude any corridors from consideration.” But that is a non-sequitur. The question is what documents

justify the omission of geographic locations in Mexico from the analyses, not whether the analyses excluded any corridors. Applicants must be compelled to answer this Interrogatory fully in good faith.

Interrogatory 25 seeks Identification of Analyses or other Documents that support the claim that the transportation alternatives to CPKC in Majure Verified Statement are “viable independent routes.” Applicants respond that the information requested is in the Application and Workpapers but do not provide a precise location. The response cites Paragraph 59 through 71 of the Majure Verified Statement which CSXT found to be insufficient in addressing the issue, which is precisely why the Interrogatory was propounded. Applicants must be compelled to answer this Interrogatory fully, or to state there is no additional documentation to support Majure’s claim.

Interrogatory 26 seeks Identification of Analyses or other Documents Concerning each Applicants’ pre- Transaction participation in Movements of traffic between Mexico and the U.S. or Canada.¹⁶ Applicants object to this Request to the extent it seeks documents or information already available to CSXT but do not say even generally where that information might be. Applicant then offer to meet and confer regarding the Interrogatory, but that would accomplish nothing as the request is straightforward. Applicants must be compelled to respond to this Interrogatory fully.

Interrogatory 27 seeks Identification of Analyses or other Documents that support Dr. Majure’s assertion (in Paragraph 34 of his Verified Statement) that competitors “would not likely be foreclosed,” on routes originating or terminating in Mexico, and specifically identifies in

¹⁶ Interrogatory 26 asks for a subset of the information requested Document Requests 2(b)(ii), 2(c)(i)(a), and 2(c)(i)(d) of the First Discovery Request.

subparagraphs a) through k) what such documents might include.¹⁷ Applicants respond by stating that the information requested is in the Application and Workpapers but do not provide a location. On January 19, 2022, Applicants produced some documents that may be partially responsive to subparagraphs (e) and (f), but do not confirm whether their production represents the extent of responsive information in their possession. Applicants must be compelled to answer this Interrogatory fully, or to state that there is no additional documentation to support Dr. Majure's claim.

Interrogatory 28 seeks Identification of Analyses or other Documents that support the claim that "a combined CP/KCS will have incentives and ability to compete more effectively, rather than an incentive to impair competitors" on routes originating or terminating in Mexico. Applicants again respond by stating that the information requested is in the Application and Workpapers but do not provide a location. Applicants must be compelled to answer this Interrogatory fully, or to state there is no documentation to support Dr. Majure's claim.

3. **Interrogatory 29 (Public Benefits and Financial Feasibility)**

Interrogatory 29, like Interrogatories 1 through 8, seeks Identification of information with which CSXT can probe Applicants' assertion that the Transaction will create public benefits and be financially successful through the diversion of rail traffic. Interrogatory 29 focuses on the Verified Statements of Brown & Zebrowski and Mutén that forecast diversions of existing rail traffic and existing truck traffic over Applicant routes longer than other carriers' routes. Interrogatory 29 seeks Identification of Analyses or Documents supporting how such Diversions could be achieved without a rate reduction or, as pertinent, by the rate reduction assumed in the Verified Statements, what the competitive response might be, and whether Applicants could

¹⁷ The information requested by Interrogatory 27 represents a subset of Document Requests 2(c)(i)(a), 2(c)(i)(c), and 2(c)(ii)(c) of the First Discovery Request.

profitably reduce rates or improve service to counter the competitive response. The Application is devoid of such information.

In response to Interrogatory 29, Applicants state that the information requested is in the Application and Workpapers but do not provide a precise location, and they ignore that the question was asked precisely because the information is not in the Application. Applicants then cite Workpaper “8 - Diversion Identification.xlsx.” but that, again, is circular. Interrogatory 29 seeks supporting information precisely because the diversions identified on Workpaper “8 - Diversion Identification.xlsx.” lacked that information. Applicants must be compelled to answer this Interrogatory fully, or to state there is no documentation to support the statements made.

4. Interrogatories 30-42 (Costs of Diversions in Application Analyses)

Interrogatories 30 through 42 explore the costs side of the Applicants’ diversion Analyses. Applicants' Analyses assume that the incremental costs of transporting this incremental traffic will be no greater than those of the Board’s URCS costing model. But URCS does not consider certain categories of costs likely to be incurred for the claimed Diverted traffic at issue, costs that information within Applicants' possession would reveal. For example, URCS costing does not show movement specific reciprocal switching fee payments, haulage/trackage right payments, and other accessorial fees. Interrogatories 30-42 seek that information, and information based on historical costs referenced in the Application, and information on any expected new expenditures (or cost savings) that enable Applicants to handle the projected increase in traffic. Applicants refuse to provide that information.

Interrogatories 30 and 31 seek, with respect to the expected Movement of all Diverted carloads/units claimed as support for the benefits analyses in the Application, Identification of all Analyses or documents Concerning the incremental costs that Applicants or shippers would be

expected to pay because of charges or fees imposed by another carrier or party.¹⁸ Applicants object to this Request on the grounds that it misconstrues the Application, but that is unreasonable because the Application certainly claims diversions and benefits therefrom, but omits the incremental costs that might undermine such claims. Applicants' response then cites Workpaper "8 – Diversion Identification.xlsx," "URCS Phase III Calculation For Growth Traffic.xlsm," "URCS Diversion Costing Metrics.xlsx," "2019 URCS Phase II Model for Combined CP and KCS.xlsx," and "URCS Phase III Calculation For Growth Traffic Input.xlsx." These Workpapers are the very analyses which CSXT found not to provide the additional information regarding access fees paid to other carriers that the Interrogatory seeks. Applicants must be compelled to respond to these Interrogatories fully and in good faith.

Interrogatories 32 and 33 seek Identification of Analyses or other Documents Concerning KCS's haulage agreements between Kansas City and Omaha NE (32) and CP's haulage and trackage rights agreements between Chicago, Illinois and locations in Ohio, Pennsylvania, and New York (33).¹⁹ Applicants respond that Applicants will provide non-privileged and nonduplicative haulage and trackage rights agreements responsive to these Interrogatories they can locate after a reasonable search, but they do not give a time in which they will do so, and they do not commit to providing anything other than the agreements themselves. On January 19, 2022, Applicants produced agreements responsive to CSXT's Interrogatory 33 (requesting CP's trackage information between Chicago and Ohio, Pennsylvania, and New York), but those agreements only pertain to Chicago, and they do not include haulage agreements, switching costs, and other information sought. Applicants must be

¹⁸ Interrogatories 30 and 31 represent a subset of the information requested by Document Request 2(c)(i)(a) and Document Request 2(c)(i)(c) of the First Discovery Request.

¹⁹ Interrogatory 32 asks for a subset of the information requested by Document Request 2(b)(iii).

compelled to Identify all agreements, or in the alternative produce those agreements and any other related Documents within 10 days, or confirm that no others exist.

Interrogatory 34 seeks Identification of Analyses or other Documents created in the ordinary course of business by or for an Applicant Concerning incremental costs or profits for incremental traffic expected because of the Transaction. Applicants respond that Applicants will provide non-privileged and nonduplicative haulage and trackage rights agreements responsive to these Interrogatories they can locate after a reasonable search, but that is not responsive to this Interrogatory. Applicants must be compelled to Identify the documents requested, or in the alternative produce those documents.

Interrogatory 35 seeks the Identification of Analyses or other Documents Concerning the Applicant's estimates appearing in in the Summary of Benefits Exhibit (Appendix B), and **Interrogatory 36** seeks Identification of any additional Documents Concerning the costs CPKC will incur to serve the traffic it expects to Divert because of the Transaction. Applicants merely say without explanation that the Interrogatories misconstrue the Application, and then cite "the Application and accompanying Workpapers," including Workpaper "8 – Diversion Identification.xlsx," "URCS Phase III Calculation For Growth Traffic.xlsm," "URCS Diversion Costing Metrics.xlsx," "2019 URCS Phase II Model for Combined CP and KCS.xlsx," and "URCS Phase III Calculation For Growth Traffic Input.xlsx." This ignores that the Interrogatories were propounded precisely because the Application and the Workpapers (including those cited) do not contain the information requested. Applicants must be compelled to respond to these Interrogatories fully and in good faith.

Interrogatory 37 seeks Identification of Analyses or other Documents that support or explain the difference between (i) the \$306.3 million Total Incremental Cost from increased

traffic estimated in Baranowski V.S. Table 16 and the Summary of Benefits Exhibit (Appendix B) based on URCS unit costs and (ii) the \$422 million incremental costs based on Applicant's historical unit costs as implied by the 2019 R1s. Baranowski V.S. Table 9. Applicants respond that the information requested is in the Application and Workpapers but do not provide a location. Applicants then cite Tables 9 and 16 of the Baranowski Verified Statement, disregarding that the purpose of Interrogatory 37 is to obtain information supporting or explaining these very same Tables, which are not self-supporting. Applicants must be compelled to respond to this Interrogatory fully and in good faith.

Interrogatory 38 seeks Identification of Analyses or other Documents Concerning two specific estimates from the Baranowski Verified Statement that reduced the estimated cost of handling additional traffic that appears in the Operating Plan. Once again, Applicants identify the Application and its Workpapers and object that CSXT misconstrues them, but CSXT is simply requesting information that may explain their contents. The response then cites to "Base to Optimized Fuel Savings Summary.xlsx," "CP Operating Plan Output Cost Metrics Model.xlsx," and "Base to Optimized Operating Plan Savings.xlsx." which are, again, the very sections that contain the operating cost assumptions that the Interrogatory seeks to probe. Applicants must be compelled to respond to this Interrogatory fully and in good faith.

Interrogatory 39 seeks Identification of all Analyses or other Documents Concerning Applicants' plans to sell locomotives.²⁰ Applicant's response is that Applicants have no Transaction-related plans to sell locomotives. CSXT is prepared to accept this response as adequate.

Interrogatory 40 seeks Identification of Analyses or other Documents that Applicants

²⁰ The information requested by Interrogatory 39 represents a subset of the information requested by Document Requests 2(c)(ii)(e) and 2(d)(ii) of the First Discovery Request.

contend support the “circuitry factor” values listed in Cells F24, G24, and H24 of Tab “Phase III calculations” of Baranowski Workpaper “HC- URCS Phase II Calculations for Growth traffic.xlsx.” Applicants object that the Interrogatory misconstrues the application, which is strange because the Interrogatory construes nothing, and then Applicants answer that “all of the relevant circuitry factors were set to one” which begs the very question (“why?”) posed by the Interrogatory. Circuitry factor 1 is the lowest possible cost option and not a realistic default assumption for non-unit trains. Applicants must be compelled to answer this Interrogatory fully and in good faith.

Interrogatory 41 seeks Analyses or other Documents Applicants contend support the weight per car reported in Column R of Tab “Truck to Rail Diversions” of Baranowski Workpaper “HC- URCS Phase II Calculations for Growth traffic Input.xlsm.” Applicants respond that the information requested is in the Application and Workpapers but do not provide a location. Applicants also point to Workpaper “FD 36500 – Work Paper – HC – 1. Proposed Final FTI Rail to Rail Diversion Results for Merger Application_ matching Finance with Truck to Rail.xlsx.” CSXT is prepared to accept this response as adequate provided that Applicants confirm that no other such data exists.

Interrogatory 42 seeks Identification of “Information on Distance, Freight Car Type, Shipment Size, Car Ownership, Commodity, and Tonnage provided by CP Operating Team” described in Tab “CP Growth initiatives” of Baranowski work paper “HC- URCS Phase II Calculations for Growth traffic Input.xlsm.” Applicants give a by-now-familiar answer. They state that the information is in the Application and Workpapers, including the cited work paper itself. The Workpaper does not include the information requested, which is why CSXT propounded the Interrogatory. Applicants must be compelled to answer it.

5. Interrogatories 43-48 (Truck to Rail Diversions)

Interrogatories 43 through 48 seek information by which CSXT can verify or challenge Applicants' claims that the Transaction will result in Diverting substantial traffic from truck to rail transportation. Some of these estimates assume significant Diversions in lanes such as Texas-Minneapolis, where existing single-line intermodal service has failed to attract significant traffic, see *Mutén* ¶ 48, and Interrogatory 43 seeks information that would test those estimates. Interrogatories 44-47 seek information behind the estimates of rail to truck diversions between Mexico and U.S. points, including Ohio, Chicago, Detroit and Kansas City. Interrogatory 48 seeks any analysis of the impact of autonomous trucks on such diversion estimates.

Interrogatory 43 seeks Identification of all Analyses or other Documents that support the claim in the *Mutén* V.S. (¶ 48) that, “[Though] Texas-Minneapolis lanes are . . . served today by BNSF and UP, there was only minimal intermodal traffic in 2019, and CP/KCS would offer a more direct route and dedicated intermodal service.” Applicants claim that supporting information is contained in the Application and Workpapers, but they do not say where, and they state they will produce additional documentation if found but they do not say when. On January 19, 2022, Applicants produced agreements partially responsive to this interrogatory (requesting CP and KCS trackage information between Texas and Minnesota), but those agreements only pertain to Texas. Applicants must be compelled to identify all such documents requested or confirm there is no additional support for the statement quoted in Interrogatory 43, and to do so within 10 days.

Interrogatory 44 seeks Identification of Analyses or other Documents that support the estimated truck to rail Diversions between points in Mexico and the Columbus, Ohio BEA in Appendix A to the *Mutén* V.S. Applicants state they will produce additional documentation if

found but they do not say when. On January 19, 2022, Applicants produced agreements partially responsive to CSXT's Interrogatory 44 (requesting CP and KCS's trackage information between Texas and Columbus), but those agreements only pertain to Texas or Chicago and do not include haulage agreements, switching costs, or other requested information. Applicants should be compelled to identify all such documents requested within 10 days or confirm there is no additional support.

Interrogatory 45 seeks Identification of Analyses or other Documents that support the estimated truck to rail Diversions between (i) points in Mexico and (ii) Detroit MI or Chicago IL. Applicants state they will produce additional documentation if found but they do not say when. On January 19, 2022, Applicants produced agreements partially responsive to CSXT's Interrogatory 45 (requesting CP's trackage information between Mexico, Chicago, and Detroit) but those agreements only pertain to Chicago, and do not include haulage agreements, switching costs, or other requested information. Applicants should be compelled to identify all such documents requested within 10 days or confirm there is no additional support.

Interrogatory 46 seeks Identification of Analyses or other Documents Concerning truck to rail Diversions and rate setting (e.g. benchmarking, evaluations, negotiations, traffic volume, reductions or increases and impact of alternative carriers or other aspects). Applicants have offered to meet and confer regarding this Interrogatory and it is not the subject of this Motion..

Interrogatory 47 seeks, regarding claimed truck to rail Diversions that originate or terminate in Kansas City, Identification of Analyses or other Documents Concerning the specific origin station or destination station and customer and how the Transaction is necessary for CP or KCS to achieve the Diversion. Applicants simply state that the information sought is in the Application and Workpapers without specifying where, and refer to their response to

Interrogatory 8 above, which is itself not responsive, and contains no information on Truck to Rail Diversions. Applicants must be compelled to answer this Interrogatory fully and in good faith.

Interrogatory 48 seeks Identification of Analyses or other Documents produced by or for Applicants regarding autonomous vehicles, Including all Analyses or other Documents Concerning competition between transportation by rail and transportation by autonomous trucks and the effect of that competition on Applicants' future traffic. Applicants state they will produce additional documentation if found but they do not say when. Applicants should be compelled to identify all such documents within 10 days.

6. Interrogatories 49-51 (Diversion Percentages)

Interrogatories 49 through 51 seek the basis for claiming that certain percentages of existing rail traffic would be diverted to Applicants following the Transaction, either with no rate reduction or with a 5% rate reduction. Neither the Application nor the relevant verified statements identify or explain the basis for these Diversion percentages.

Interrogatory 49 seeks Identification of all Analyses or other Documents supporting the Diversion percentages in the Brown & Zebrowski V.S. Table 7. In response, Applicants state that the information requested is in the Application and Workpapers but do not provide the location. Applicants also reference Appendix B and the Workpaper "Traffic Distribution Analysis.xlsx." but that document does not explain the division percentages that are the subject of Interrogatory No. 49. Applicants should be compelled to identify all responsive documents within 10 days or confirm there is no documentary support for the Diversion percentages.

Interrogatory 50 seeks, regarding the Applicant's claim that traffic will be Diverted to CPKC single-line service because of a 5% rate reduction, confirmation of the Brown and

Zebrowski estimations and Identification of all documents that Applicants contend support the estimations for intermodal movements between Dallas and Chicago. Applicants confirm the estimations, but regarding supporting documents they only cite the Brown and Zebrowski Verified Statements and supporting Workpapers. Those documents do not support the claim, occasioning the Interrogatory. Applicants should be compelled to identify all responsive documents requested within 10 days or confirm there is no documentary support for the Diversion percentages.

Interrogatory 51 seeks Identification of all Analyses or other Documents Concerning rail Diversions and rate setting (e.g., benchmarking, evaluations, negotiations, reductions or increases, and impact of alternative carriers) for service or traffic between points on which single line service is or will be offered by (i) either Applicant or CPKC and (ii) another carrier. Applicants have offered to meet and confer regarding this request and it is not the subject of this Motion.

7. Interrogatories 52-57 (Diversion Revenues)

The Application estimates anticipated revenues from the traffic Diversions it estimates, based in part on sources that appear to overstate the revenues likely to be earned from such diversions. Interrogatories 52 through 57 ask for information about the sources for these anticipated diversion revenues.

Interrogatory 52 seeks Identification of all calculations related to the values of changing traffic patterns displayed in “Brown/Zebrowski HC WP Work Paper – HC – 8 - Diversion Identification.xlsx” at tab “Results” in Column E “diverted units” for rows 24 to 93 labeled “Forest Products”. Applicants respond that the information requested is in the Application and Workpapers but do not say where, and CSXT could find no such calculations. Applicants must

be compelled to answer this Interrogatory fully and in good faith.

Interrogatory 53 seeks Identification of Analyses or other Documents created in the normal course of business by or for an Applicant estimating incremental revenues or projected profit (or contribution) from incremental traffic expected as a result of the Transaction.

Applicants respond that after performing a reasonable search, they have no non-duplicative and non-privileged responsive documents other than those prepared in connection with the Transaction, which have been produced or will be produced in response to other requests.

However, the Interrogatory seeks Identification of those documents prepared in connection with the Application, if they exist, and Applicants fail to do so. They ought to be compelled to do so.

Interrogatory 54 seeks, regarding Diversions that originate or terminate in Kansas City, Identification of all Analyses or other Documents Concerning: a) Specific origin and destination stations and customers; and b) how the Transaction is necessary to achieve the Diversion.

Applicant's response refers to the Application and Workpapers but does not provide a precise location and also refers to the Responses to Interrogatories 8 and 47 which are non-responsive. Applicants must be compelled to answer this Interrogatory fully and in good faith.

Interrogatory 55 seeks Identification of the origin station, destination station, and all interchanges for claimed traffic Diversions in certain portions of the Brown and Zebrowski Tables 11, 23 and 24.²¹ Applicants respond that the information requested is in the Application and Workpapers but do not provide a precise location. They also identify Workpapers "10b – Grain Diversion Worksheet.xlsx," "10a - Lumber Diversion Worksheet.xlsx," and "8 – Diversion Identification.xlsx." CSXT is prepared to accept this response as adequate provided that Applicants confirm that no other such data exists.

²¹ Interrogatory 55 is a subset of Document Request 2(b)(i) in the First Discovery Request.

Interrogatory 56 seeks Identification of Analyses of changing traffic patterns or other Documents that support the claimed traffic Diversions identified in Interrogatory 55. Applicants state they will provide documents containing analyses responsive to this Request they can locate after a reasonable search but they do not say when. Applicants ought to be compelled to provide such Identification within 10 days.

Interrogatory 57 seeks Identification of all calculations related to the changing traffic patterns displayed in “Brown/Zebrowski HC WP Work Paper – HC – 8 - Diversion Identification.xlsx” at tab “Results” in Column E “diverted units” for rows 24 to 93 labeled: “Grain” or “Forest Products”. Appellants respond that the information requested is in the Application and Workpapers but do not provide the location. Applicants also cite Workpapers “10b – Grain Diversion Worksheet.xlsx,” and “10a - Lumber Diversion Worksheet.xlsx,” and CSXT is prepared to accept this response as adequate provided that Applicants confirm that no other such calculations exist.

Interrogatory 58 seeks Identification of Analyses or other Documents Concerning investments needed to achieve the results forecast in the Application, Including all Analyses or other Documents Concerning the costs of those investments. Applicants respond that the information requested is in the Application and Workpapers but do not provide a location, and CSXT could not find it in those documents. Applicants should be compelled to identify all responsive documents requested within 10 days.

8. Interrogatories 59-60 (Investments for Business Opportunities)

Interrogatories 59 through 60 ask for information about the many business opportunities resulting from the Transaction as described in the Application that will depend on additional investments. Applicants claim that many specific investments will be required to realize the

benefits of the Transaction, but, except for capital investment to upgrade trackage lines, the Application does not appear to describe or to quantify the costs of these specific investments. Responses to these Interrogatories are necessary to determine whether these additional investments are economically feasible, and thus whether such investments and the benefits claimed from them will occur.

Interrogatory 59 seeks Identification of Analyses or other Documents Concerning certain additional investments necessary to generate additional business to, from, or through Mexico.²² Applicants respond that they will provide documents containing analyses responsive to this Request they can locate after a reasonable search, but they do not say when. On January 19, 2022, Applicants produced current infrastructure statistics for the Lazaro Cardenas Port, but those documents only partially respond to Interrogatory 59. Applicants must be compelled to provide any additional documentation or confirm that no additional documentation exists within 10 days.

Interrogatory 60 seeks Identification of all Analyses or other Documents Concerning investments described in the Application, including the estimated costs. Applicants respond regarding Interrogatories 60 (b), (e), (k) and (l), that the referenced investments are those already addressed in the information in the Application and Workpapers. But Applicants do not provide the location of that information and they must be compelled to do so. Regarding Interrogatories 60 (h)-(j), Applicants state they will provide documents containing analyses sufficient to describe the referenced investments to the extent they can locate such documents after a reasonable search, but they do not say when. Applicants must be compelled to provide such Identification within 10 days.

²² The information requested by Interrogatory 59 represents a subset of the information requested by Document Request 2(d)(i) in the First Discovery Request.

9. Interrogatories 61-63 (Public vs. Private Benefits from the Transaction)

Interrogatories 61 through 63 seek information about the “public” as opposed to private benefits that Applicants claim from the Transaction. The Board defines public benefits to be efficiency gains that are cost reductions, cost savings, and service improvements, 1 S.T.B. 233 (1996), at 363. This information is critical, as Applicants may have conflated public benefits as defined by the Board with private benefits such as transfers of revenues from one carrier to another, but only “public” benefits may be considered in evaluating the merits of the Transaction from a public interest standpoint.

Interrogatory 61 asks Applicants to respond to contention Interrogatories. They have done this, but have failed to Identify support for their responses, as requested in Interrogatory 62 below.

Interrogatory 62 seeks Identification of Analyses or other Documents, Including regulatory decisions and academic work, that support the definition of the term “public benefits” as used in the Application, Including all Analyses or other Documents which support the responses to Interrogatory 61. Applicants respond that Applicants did not define the term “public benefits” in the Application; rather the definition comes from Board precedent. But Applicants never Identify that precedent, nor do they Identify any other regulatory decisions or academic authority for their responses to Interrogatory 61. They must be compelled to do so.

Interrogatory 63 seeks Identification of Analyses or other Documents Concerning Applicant’s determination of what effects of the Transaction constitute or generate Cognizable Public Benefits. Applicants respond that the information requested is in the Application and Workpapers but do not provide a location. They must be compelled to do so or confirm that it is not in those documents.

10. Interrogatories 64-72 (Transaction Pro-Forma Analyses)

Relatedly, Interrogatories 64 through 72 are necessary because Applicants offer the Transaction Pro Forma Analyses described and set out in the Vargas Verified Statement and Exhibits 16-18 as the basis for asserting that incremental benefits from the Transaction will exceed the incremental costs. These interrogatories seek to determine whether the Transaction Pro Forma Analyses are consistent with analyses used by Applicants in the ordinary course of business.

Interrogatory 64 seeks Identification of Analyses or other Documents Concerning any capital investments necessary to create the incremental revenues the Application claims or assumes will result from the Transaction, Including Identifying where in the Application Applicants contend any such investments are accounted for or otherwise addressed. Applicants respond that the information requested is in the Application and Workpapers but do not provide a location. They must be compelled to do so or confirm that it is not in those documents.

Interrogatory 65 seeks Identification of Analyses or other Documents Concerning certain aspects of Applicants' financials. Applicants have provided general descriptions and state they will produce final term sheets, credit facility schedules, and trade tickets responsive to this Request they can locate after a reasonable search. Applicants produced responsive documents on January 19, 2022, and therefore this interrogatory is no longer a subject of the motion to compel.

Interrogatory 66 seeks Identification of Analyses or other Documents Concerning the payments that would be required assuming Goldman Sachs' floating interest rate of 4.5% on \$8.5 billion worth of unsecured debt and compare those payments to the payments assumed in the Application. Application Volume 4 at 882. Applicants state that, as reflected in documents that Applicants will provide, CP's variable-rate bridge financing has been replaced by fixed-rate debt,

but they do not say when the supporting documents will be provided. Applicants produced responsive documents on January 19, 2022, and therefore this interrogatory is no longer a subject of the motion to compel.

Interrogatory 67 seeks Identification of Analyses or other Documents Concerning the effect of the potential increases in interest rates on Applicants' payments for both secured and unsecured debt incurred for the purpose of the Transaction. Applicants respond that, as reflected in documents that Applicants will provide in response to Interrogatory 66, CP's variable-rate bridge financing has been replaced by fixed-rate debt, such that interest rate increases will not affect Transaction-related debt. That response is adequate, and therefore this interrogatory is not a subject of the motion to compel.

Interrogatory 68 seeks Identification of Analyses or other Documents describing the methodologies and assumptions used by Applicants to conduct pro forma analyses of business opportunities or projects considered by each Applicant in the ordinary course of business and requiring approval by the Board of Directors. Applicants respond that KCS "does not normally prepare pro forma in the ordinary course of business, and thus does not have responsive documents," but that CP has such information and it is contained in the Application and Workpapers but do not provide a precise location. The response cites Exhibits E and F (pro forma balance sheets and pro forma income statements) which CSXT found to be insufficient in addressing all questions raised in Interrogatory No. 68. CP offers to meet and confer regarding this Interrogatory, but it is relatively straightforward and CP must be compelled to respond to this request.

Interrogatory 69 asks how any of either Applicant's ordinary course practices identified in Applicants' responses to Interrogatory 68 differs from the practices regarding the same

subjects Included or used in the Transaction Pro Forma Analyses. Applicants respond that KCS's response to Request No. 68 responds to this Request, and CP responds there are no material differences between the CP's ordinary course practices and practices used to assess the Transaction. This response is impossible to verify or to challenge without an adequate response to Interrogatory 68.

Interrogatory 70 seeks an explanation of how the statistical analysis that "has poor predictive power and there are high levels of variance" supports the sufficiency of a 5% reduction to displace intermodal traffic. (Brown and Zebrowski V.S. at Table 7 (p. 22) and at page 66, paragraph 7; Appendix B). Applicants respond that they are available to meet and confer regarding this Request, but it is unclear what that would accomplish as the request is straightforward. They must be compelled to answer it fully.

Interrogatory 71 seeks Identification of Analyses or other Documents Concerning Applicants' regression to determine intermodal market share in Mutén V.S. 1. Applicants respond that Mutén did not make certain assumptions and that the information responsive to this Request is in the Application and Workpapers but do not provide a location. They must be compelled to do so.

Interrogatory 72 seeks Identification of Analyses or other Documents Concerning Applicants' regression to determine the revenue that CP-KCS will receive from Displaced truck to rail traffic (Mutén V.S. 20-21). Again, Applicants indicate that the information responsive to this Request is in the Application and Workpapers but do not provide a location. They must be compelled to do so.

11. Interrogatories 73 and 74

Interrogatory 73 seeks information about the Meridian Speedway arrangement between

Applicants and Norfolk Southern (an issue of particular concern to CSX) and any potential environmental impacts of the transaction resulting from Diversions, growth, or the investments Applicants have articulated. Applicants respond that Documents responsive to the Interrogatory asking for information Concerning the formation of the Meridian Speedway, LLC is available in Finance Docket No. 34821-23, and have been produced in response to CN Request No. 139, but do not Identify those documents as requested. Applicants further respond that information on the assessment of environmental impacts is contained in the Application and Workpapers and “environmental materials, filed with the STB’s Office of Environmental Analysis,” but they do not Identify those documents as requested. Applicants must be compelled to do so.

Interrogatory 74 is a catch all seeking Identification of Analyses and other Documents supporting the claim (Application at 21) that CPKC will provide lower cost and more efficient service, enabling them to Displace traffic to and from Mexico over KCSM. Applicants indicate that the information responsive to this Request is in the Application and Workpapers but do not provide a location. They ought to be compelled to do so.

CONCLUSION

Applicants are demanding expedition but denying parties the information required to assess and comment upon the Transaction’s effects on the public interest. Applicants appear to believe their primary obligation in discovery is to rely on the documents filed with their Application, as if that is the last word on whether the Application is in the public interest. But that is not what they said when arguing the Application was complete, and that is not the standard in discovery. *See* 49 C.F.R. §§ 1114.21(a)(1), (2). CSXT’s requests are entirely consistent with the requirement that Applicants present information sufficient for the Board to assess the impacts of the proposed transaction. The rules provide that “applicants shall submit”

analyses of the anticipated effects of the transaction, together with supporting data, 49 C.F.R. § 1180.7(a), (c) (2000), and that this analysis and data must affirmatively “demonstrate both the relevancy of the market and issues analyzed and the validity of their methodology,” 49 C.F.R. § 1180.7(b) (2000). Where Applicants claim benefits, cost savings, or increases in revenue that will result from a transaction, they are required to provide information reasonably requested by potentially affected parties that exists and is readily available.

The information CSXT requests is readily available to Applicants, and easily produced in its original form. If the information requested is, indeed, in the Application and Workpapers, Applicants are required to Identify (in accordance with the instructions) where the information exists, by volume and page number, or state it is not in the Application. If the information has been produced, Applicants are required to provide the bates numbers of the specific pages or items in the documents to which it is referring. And if the information has not yet been produced, Applicants are required to produce it. Anything short of that would force that the Board and the parties take the Application on faith as opposed to rigorous analysis.

Following expedited consideration, CSXT asks for an Order compelling Applicants to provide, full and complete answers to its Interrogatories in the Second Request, as set forth above, within 10 days of the date of the Order.

Respectfully Submitted,

/S/ Paul A. Cunningham

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Attorneys for CSX Transportation, Inc.

Dated: January 20, 2022

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 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

[Proposed] ORDER ON TIMING OF RESPONSE TO CSX TRANSPORTATION, INC.
MOTION TO COMPEL ANSWERS TO INTERROGATORIES
AND PRODUCTION OF DOCUMENTS
REQUESTED IN ITS SECOND SET OF DISCOVERY REQUESTS TO
KANSAS CITY SOUTHERN AND CANADIAN PACIFIC RAILWAY

AND NOW, this _____ day of _____, 2022, upon consideration of CSX Transportation, Inc.'s Request in its Motion to Compel Answers to Interrogatories and Production Of Documents Requested in its Second Set Of Discovery Requests To Kansas City Southern And Canadian Pacific Railway that any Response be Due within Ten (10) Days of the Date of the Motion's Filing, it is hereby ORDERED that the Request is GRANTED. Kansas City Southern and Canadian Pacific Railway are to Respond to the motion to compel by January 30, 2022.

McCarthy, J.

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 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

[Proposed] ORDER ON CSX TRANSPORTATION, INC. MOTION TO COMPEL ANSWERS TO INTERROGATORIES AND PRODUCTION OF DOCUMENTS REQUESTED IN ITS SECOND SET OF DISCOVERY REQUESTS TO KANSAS CITY SOUTHERN AND CANADIAN PACIFIC RAILWAY

AND NOW, this _____ day of _____, 2022, upon consideration of CSX Transportation, Inc.'s Motion to Compel Answers to Interrogatories and Production Of Documents Requested in its Second Set Of Discovery Requests To Kansas City Southern And Canadian Pacific Railway, and the Response thereto, it is hereby ORDERED that the Motion is GRANTED. Kansas City Southern And Canadian Pacific Railway are to provide full and complete answers, as demanded in the Motion to Compel, to CSX Transportation Inc.'s Second Set Of Discovery Requests within ten (10) days of the date of this Order.

McCarthy, J.

EXHIBIT A

CSXT's Second Discovery Request

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 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

CSX TRANSPORTATION, INC. SECOND SET OF
DISCOVERY REQUESTS TO CANADIAN PACIFIC RAILWAY
AND KANSAS CITY SOUTHERN

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Attorneys for CSX Transportation, Inc.

Dated: December 24, 2021

BEFORE THE
SURFACE TRANSPORTATION
BOARD

DOCKET NO. FD 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

CSX TRANSPORTATION, INC. SECOND SET OF
DISCOVERY REQUESTS TO CANADIAN PACIFIC RAILWAY
AND KANSAS CITY SOUTHERN

Pursuant to 49 C.F.R. §§ 1114.21-.31, CSX Transportation Inc. (“CSXT”) requests that KCS (as defined below) and CP (as defined below) respond to the following discovery requests in accordance with the STB’s rules, and the Definitions and Instructions set forth below (see pages 26-31).

Pursuant to 49 C.F.R. § 1114.26(a) and §1114.30, CSXT specifies that responses to the Interrogatories and Requests for Production below should be served no later than January 10, 2022.

INTERROGATORIES

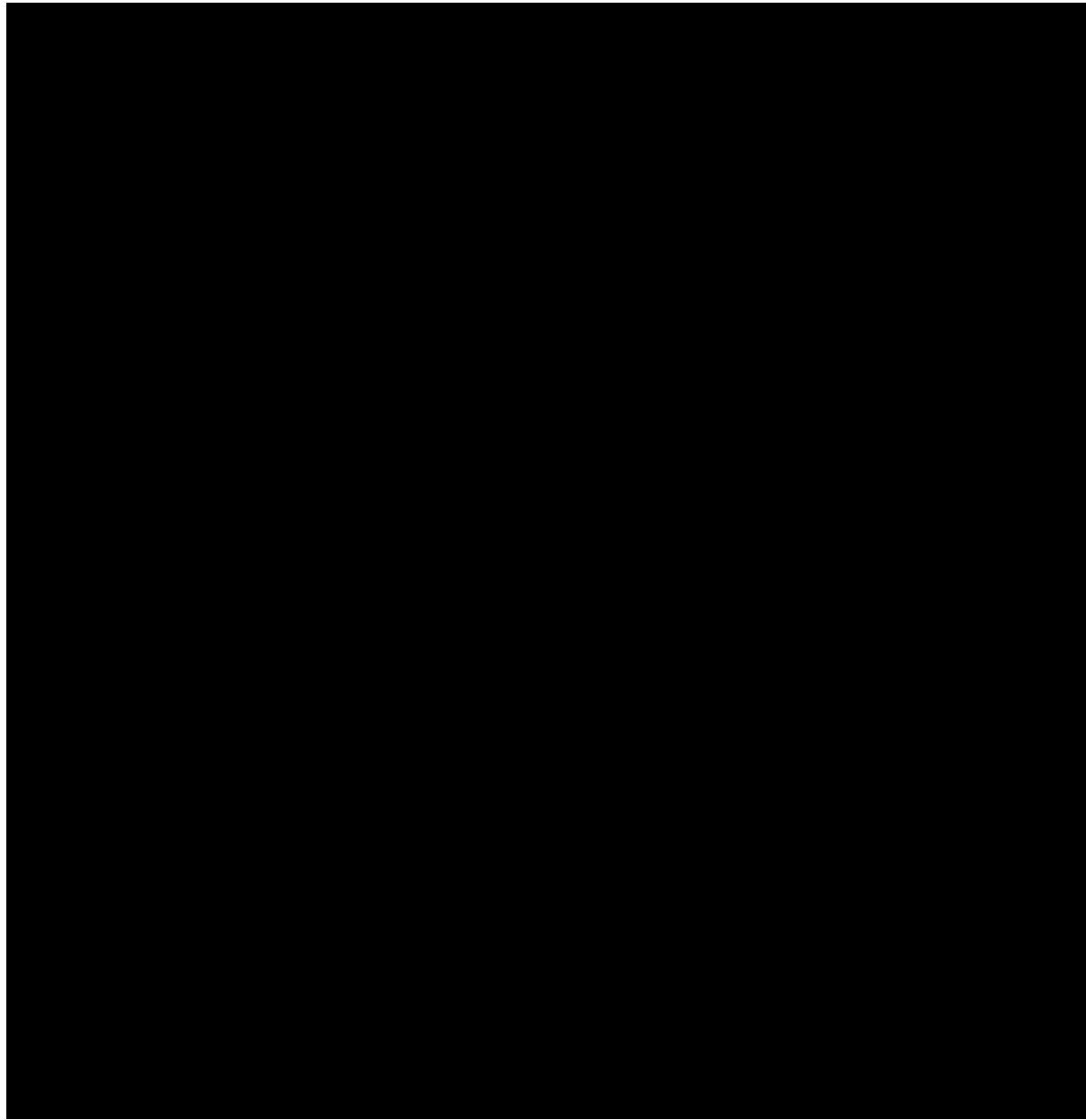
Growth Carloads/Units Included in Applicants' Public Benefits Analysis

Applicants' claim that the Transaction will create public benefits relies in part on significant increases in CPKC combined traffic. See Application at 10-13. Applicants' Highly Confidential work paper titled "Wahba and Naatz HC WP Growth Initiative Calculations.xlsx," offered to support these claimed benefits, indicates that almost [REDACTED] of this increase in traffic -- [REDACTED] } carloads/units of the total [REDACTED] carload/unit increase, or [REDACTED] -- is expected to result from a three-year "Growth Initiative." The same work paper calculates this "Growth Initiative" traffic increase by projecting traffic increases totaling (1) [REDACTED] carloads/units of intermodal traffic to or from Lázaro Cárdenas or other Mexican ports; (2) [REDACTED] carloads of Crude by Rail from Alberta to the U.S. Gulf Coast; and (3) [REDACTED] carloads/units of grain, LPG, "Automotives," "Domestic Perishables," and unspecified "International" intermodal cargo through Canadian ports.

These estimates of carloads/units and revenue increases appear to be based on average revenue per car and unit assumptions that are hardcoded into the spreadsheet without explanation or supporting documentation, which precludes proper assessment of Applicant's estimates. The requests in this section seek any data or Analyses underlying the hardcoded assumptions.

The following Interrogatories concern the "summary" tab of this work paper (defined herein as the Growth Initiative Summary Table), a screenshot from which is reproduced below for reference.

[REDACTED]



1. Identify all Analyses and other Documents Concerning (a) all hardcoded values for carloads/units and average revenue per unit for each line of business and origin area /destination area presented in the Growth Initiative Summary Table, (b) Applicants' definition of the origin and destination "area" information for all traffic reported in the Growth Initiative Summary Table, and (c) any rate reduction You assume will be made as part of the Growth Initiative.
2. For all traffic that is a subject of the Growth Initiative, (i) Identify the origin station and destination station pre- and post- Transaction; and (ii) describe with specificity the pre- and

post-Transaction transportation Movements of that traffic. *See* CSX Corp. – Control – Pan Am Systems, Inc., FD 36472, Decision No. 3 (May 26, 2021) (slip op. at 6-13) (distinguishing information sufficient and insufficient to permit the reader to assess the impacts of a transaction with respect to freight surface transportation and on the provision of essential service by Applicants and other carriers).

3. Identify all Analyses or other Documents created by or for either Applicant between January 1, 2018, and September 15, 2021, Concerning the types of traffic that are the subjects of the Growth Initiative.
4. For “Intermodal” traffic identified in the Growth Initiative Summary Table, Identify all Analyses or other Documents Concerning or supporting the traffic increases listed under “*Lazaro Intermodal*” in the Growth Initiative Summary Table, Including all Analyses or other Documents Concerning:
 - a. Any increase in Lazaro/Mexican Port traffic above any volumes forecast in the Analyses or other Documents identified pursuant to Interrogatory 3, Including any basis for claiming any of the [REDACTED] carloads/units of “*Lazaro Intermodal*” in the Growth Initiative Summary Table are incremental carloads/units Applicants can Displace only as a result of the Transaction.
 - b. The specific Movements to or from North American ports other than Mexican ports the Application claims or assumes Applicants will Displace with intermodal Movements to, from, or through the Lázaro Cárdenas Port and the amount of traffic to be Displaced.
 - c. Any Movement of traffic by any mode of transportation that the Application claims or assumes will be Displaced by the traffic identified as “*Lazaro Intermodal*” in the Growth Initiative Summary Table, Including the amount of traffic Displaced.
 - d. Waterborne container or other freight transportation to or from Pacific Coast ports in North America.
 - e. The technical or operational capabilities and limitations of the Lázaro Cárdenas Port, Including the number of piers with on-site rail service, berth depths, and other specifications that could limit the size of container ships or other waterborne vessels that can dock at the port.
 - f. Potential security or other operational concerns, Including organized crime activities, that may affect the Lázaro Cárdenas port or other Mexican ports served by KCSM.
 - g. Potential changes in the Mexico laws and regulatory regime pertaining to rail transportation in Mexico, and other factors that may affect the future of KCSM and its concession in Mexico.

- h. The potential for confiscation of assets owned by KCSM or non-Mexican companies in Mexico and the consequences of any such confiscation.
- 5. Identify all Analyses or other Documents Concerning or supporting the traffic increases listed as "Crude" in the Growth Initiative Summary Table, Including all Analyses or other Documents Concerning:
 - a. All increases in CPKC Crude by Rail Movements from Alberta above any volumes forecast in the Analyses or other Documents identified pursuant to Interrogatory 3, Including any basis for claiming any of the [REDACTED] carloads/units of "Crude" in the Growth Initiative Summary Table are incremental carloads/units Applicants can transport only as a result of the Transaction.
 - b. The specific railroad Movements from Alberta to the U.S. Gulf Coast that the Application claims or assumes the traffic identified as "Crude" in the Growth Initiative Summary Table will Displace, and the amount of traffic Displaced.
 - c. Any traffic by any other mode of transportation (e.g., pipeline transportation) that the Application claims or assumes the traffic identified as "Crude" in the Growth Initiative Summary Table will Displace, Including Identifying the mode, origin, destination, routes, and carriers for such Movements and the amount of traffic Displaced.
 - d. Crude by Rail from Alberta involving any existing Gibson Energy Inc. Crude by Rail loading facility, as described in the Wahaba and Naatz Verified Statement ¶ 91.
 - e. Crude by Rail from Alberta involving any potential or planned expansion of the Gibson Energy Inc. facility near Hardisty, as described in the Wahaba and Naatz Verified Statement ¶ 91.
 - f. Environmental assessments and safety issues Concerning Crude by Rail.
- 6. Identify all Analyses or other Documents supporting the traffic increases claimed in the Growth Initiative Summary Table other than those listed under "*Lazaro Intermodal*" and as "Crude," Including:
 - a. Any increase in traffic above any volumes forecast in the Analyses or other Documents identified pursuant to Interrogatory 3, Including any basis for claiming any of the [REDACTED] carloads/units of grain, LPG, "Automotives," "Domestic Perishables," and unspecified "International" intermodal cargo through Canadian ports in the Growth Initiative Summary Table are incremental carloads/units Applicants can only Displace as a result of the Transaction.
 - b. Analyses or other Documents detailing the Movements Displaced by those increases.
- 7. Identify all Analyses or other Documents created by or for an Applicant in the ordinary course of business since January 1, 2020, that estimated growth of carloads, revenues, or profits for incremental traffic expected as a result of the Transaction.

8. For all Growth Initiative volumes that originate or terminate in Kansas City, Identify all Analyses or other Documents Concerning the origin station and destination station from and to which those volumes would move on CPKC and how the Transaction is necessary for CP or KCS to achieve that traffic growth.

Analysis of traffic to and from Mexico

Almost [REDACTED] of the Diverted traffic Included in the public benefits Applicants claim the Transaction will produce relate to traffic to or from Mexico. See [REDACTED]

[REDACTED] Applicants' competitive analysis of traffic moving between the United States and Mexico is presented in the Verified Statement of Witness W. Robert Majure, which uses rail traffic moving through the Laredo Gateway as a proxy for all traffic moving between Mexico and the U.S. Dr. Majure's vertical effects analysis (Section 3), however, relates only to the U.S. portions of those Movements. In addition, the vertical effects analysis only considers northbound traffic and excludes Movements from the U.S. to Mexico.

The following Interrogatories seek the basic information that Board and parties to this proceeding would require to verify Majure's conclusions regarding the impact of the Transaction on competition.

[REDACTED]

[REDACTED]

workpapers filed with the Board. To the extent Your answer is "yes," Identify any such Analyses.

10. Identify all requests for Analyses, data, or other Documents that Dr. Majure made to either Applicant regarding markets in Mexico or factors affecting markets in Mexico (Including traffic types, origin stations, destination stations, and route of Movement, revenues, costs, profits etc.) for the transportation of goods to, from, or through the United States.
11. Identify all Analyses, data, or other Documents either Applicant provided to Dr. Majure regarding markets in Mexico or factors affecting markets in Mexico (Including traffic, Movements, origin stations, and destination stations) for the transportation of goods to, from, or through the United States.
12. Regarding customers served by KCSM or KCS, Identify all Analyses or other Documents You contend support the claim that "A combined CP/KCS would not be expected to have any incentive to affect the competitive terms available to a Solely-served shipper because KCS would already be collecting the full measure of returns associated with its existing market power," as stated in the Majure V.S. ¶ 24.
13. Identify each origin station, each destination station, and each shipper that KCSM serves in Mexico for which You contend that FXE is a "ready alternative" to KCSM as stated in the Majure Verified Statement ¶ 25.
14. Identify all Analyses or other Documents You contend support the claim that FXE is a "ready alternative" to KCSM for each origin station, each destination station, and each shipper Identified in response to Interrogatory 13.
15. Identify each origin station, each destination station, and each shipper that KCSM serves directly or indirectly in Mexico for which You contend that FXE is price-competitive and service-competitive to KCSM.
16. Identify all Analyses or other Documents You contend support the claim that FXE is price-competitive and service-competitive to KCSM for each origin station, each destination station, and each shipper identified in response to Interrogatory 15.
17. Identify all Analyses or other Documents Concerning the "ready alternatives" KCSM customers have in Mexico as stated in Majure V.S. ¶ 25 ("...For the shipper with ready alternatives, there would be no ability for a combined KCS/CP to force inferior terms on the shipper...").

18. Identify (a) each origin station, each destination station, and each shipper in Mexico that is Solely-Served by KCSM and (b) all Analyses or other Documents created by or for an Applicant since January 1, 2018 Concerning each such origin, destination, and shipper.
19. Identify (a) each origin station, each destination station, and each shipper in Mexico that is served by both FXE and KCSM and (b) all Analyses or other Documents created by or for an Applicant since January 1, 2018 Concerning each such origin, destination, and shipper.
20. Identify all Analyses or other Documents You contend support Majure's claim that rate increases by KCSM would "lead to a loss of the traffic volumes or failure to attract new traffic" Majure Verified Statement ¶ 25.
21. Identify all Analyses or other Documents You contend support Majure's conclusion that the Transaction will enhance competition through vertical effects, see Majure V.S. ¶¶ 15-19, Concerning traffic that KCSM brings to Laredo, see Majure V.S. Exhibit 2, Including all Analyses or other Documents Concerning traffic between Laredo and points in the U.S. and Canada:
 - a. KCS market shares compared to other carriers' shares.
 - b. Post-Transaction CPKC market shares compared to other carriers' shares.
 - c. The competitively significant elements of KCS service quality compared to those of other carriers, Including route miles and cycle times.
 - d. The competitively significant elements of CPKC post-Transaction service quality compared to those of other carriers, Including route miles and cycle times.
 - e. The shipper's total costs for using KCS compared to the shipper's total costs for using other carriers, Including KCS rates and any additional amounts shippers would pay for services provided KCS by other carriers, Including any haulage, trackage rights, terminal service, or switching fees.
 - f. The shipper's post-Transaction total costs for using CPKC compared to the shipper's total costs for using other carriers, Including post-Transaction CPKC rates and any additional amounts shippers would pay for services provided CPKC by other carriers, Including any haulage, trackage rights, terminal service, or switching fees.
 - g. Any Analyses or other Documents Concerning the Applicants' expected Diversions as a result of the "Growth Initiative" of traffic from other carriers using any mode.
22. Identify an updated Exhibit 2 to of the Majure V.S. that Includes KCSM Laredo gateway traffic to and from Mexico.

23. Identify an updated Exhibit 2 to of the Majure V.S. that Includes post-Transaction CPKC Laredo gateway traffic *to and from* Mexico.
24. Identify all Analyses or other Documents You contend justify the omission of geographic locations in Mexico from the single corridor analyses presented in Majure V.S. Exhibits 3-10 (which excludes all origins and destinations in Mexico).
25. Identify all Analyses or other Documents You contend support the claim that the transportation alternatives to CPKC presented in Majure V.S. Exhibits 3-10 are "viable independent routes," Including, for each traffic type analyzed by Majure, all Analyses or other Documents Concerning:
 - a. The competitively significant elements of CPKC post-Transaction service quality compared to those of other carriers, Including route miles and cycle times.
 - b. The shipper's post-Transaction total costs for using CPKC compared to the shipper's total costs for using other carriers, Including post-Transaction CPKC rates and any additional amounts shippers would pay for services provided CPKC by other carriers, Including any haulage, trackage rights, terminal service, or switching fees.
26. Identify all Analyses or other Documents Concerning each Applicants' pre-Transaction participation in Movements of traffic between Mexico and the U.S. or Canada.
27. Identify all Analyses or other Documents You contend support the claim that competitors "would not likely be foreclosed," see Majure V.S. ¶ 34, on routes originating or terminating in Mexico, Including all Analyses or other Documents Concerning, as regards Movements to, from, or through Mexico via Laredo or other U.S./Mexico border locations:
 - a. KCSM market shares of those compared to those of other carriers competing for those Movements.
 - b. CPKC market shares compared to those of other carriers competing for those Movements
 - c. The competitively significant elements of KCSM service quality compared to those of other carriers competing for those Movements, Including route miles and cycle times.
 - d. The competitively significant elements of CPKC service quality compared to those of other carriers competing for those Movements, Including route miles and cycle times.
 - e. The shipper's total costs for using KCSM compared to the shipper's total costs for using other carriers competing for those Movements, Including KCSM rates and any costs shippers would pay for services provided KCSM by other carriers, Including any haulage, trackage rights, terminal service, or switching fees.

- f. The shipper's total costs for using CPKC compared to the shipper's total costs for using other carriers competing for those Movements, Including CPKC rates and any costs shippers would pay for services provided CPKC by other carriers, Including any haulage, trackage rights, terminal service, or switching fees.
 - g. CPKC's ability to raise KCSM's rates or reduce KCSM's service quality Concerning Movements to or from stations in Mexico via Laredo to stations in the US. or Canada that can be served by CPKC or another carrier.
 - h. The economic impact on CPKC from raising KCSM's rates or reducing KCSM's service quality Concerning Movements to or from stations in Mexico via Laredo to stations in the US. or Canada that can be served by CPKC or another carrier.
 - i. Analyses of any conditions CPKC anticipates using to keep Laredo and other gateways open to interchange.
 - j. Any foreclosure Analyses Concerning KCSM.
 - k. Any Analysis of railroad rate regulation in Mexico.
28. Identify all Analyses or other Documents You contend support the claim that "a combined CP/KCS will have incentives and ability to compete more effectively, rather than an incentive to impair competitors" on routes originating or terminating in Mexico. See *Majure V.S.* ¶ 35.

Diversion of Existing Rail and Truck traffic to Longer Railroad Routes

Applicants' assertions that the Transaction will create public benefits, and that it will be financially successful, depend in significant part on forecasting the Diversion of existing rail and truck traffic to CPKC. See Application at 10-13. The Brown & Zebrowski V.S. and Mutén V.S. forecast the Diversion of [REDACTED] carloads of existing rail traffic and [REDACTED] units of existing truck traffic. See Brown & Zebrowski V.S. Table 26; Mutén V.S. Appx. A.0

These Verified Statements forecast that CPKC will Divert more than [REDACTED] of this traffic [REDACTED] to routings that are longer than other carriers' routes, without offering any rate decrease. They further forecast that CPKC will Divert another [REDACTED] of traffic to routings that are longer than other carriers' routes, while offering a rate decrease of [REDACTED]. Neither the Application nor the Verified Statements appear to explain how CPKC would induce these Diversions without a rate decrease or, as pertinent, by reducing their rates by [REDACTED] when equally- or more-efficient carriers could offer the same rate. Further, while the financial success of the Transaction depends upon these Diversions, neither the Application nor the Verified Statements assess whether CPKC could financially sustain further discounts necessary to induce these Diversions if equally- or more-efficient carriers also offer rate reductions to retain or attract the traffic. Nor do Applicants provide any

assessment of the risk that their expected Diversions will not be realized or of the implications of that risk for Applicants' financial projections.

The following Interrogatory seeks information regarding the basis for concluding these Diversions will occur.

29. Identify, for all traffic the Application claims or assumes will be Diverted to CPKC as a result of the Transaction, but which would have a longer route via CPKC than via the route from which the traffic will be Diverted:

- a. All Analyses or other Documents supporting the forecast that the traffic is likely to be Diverted to the longer CPKC route.
- b. All Analyses or other Documents Concerning cycle times of the CPKC route or routes as compared to those of the current carrier of the traffic.
- c. All Analyses or other Documents Concerning additional fuel costs and emissions of carbon dioxide (CO₂) or any other EPA regulated substance resulting from the longer CPKC Movement.
- d. All Analyses or other Documents Concerning any service that CPKC will provide that a carrier offering a shorter route does not offer, or that is superior to that of a carrier offering a shorter route, including the "seamless, origin-to-destination management of all facets of the service" and the "very-reliable third-morning availability to/from our strategically located Bensenville Terminal" referred to in the Wahba and Naatz V.S. ¶¶ 48, 52.

Incremental Costing of Transporting Diverted traffic

Applicants' claimed public benefits and financial analyses supporting their Application depend on the Diversion of significant amounts of traffic to CPKC. See Application at 21. Applicants' analyses assume that the incremental costs of transporting this incremental traffic will be no greater than those of the STB URCS costing model (\$306.3 million). See Baranowski V.S. Table 16 (below) and page 12. Though URCS costing is commonly used in various contexts, it does not consider certain categories of costs likely to be incurred for the claimed Diverted traffic at issue that information within Applicants' possession would reveal. For example, URCS costing does not show reciprocal switching fee payments, haulage/trackage right payments, and other accessorial fees. Applicants therefore claim public benefits and present financial analyses that do not appear to reflect all incremental costs that may be realized from the traffic they claim will be Diverted.

The following Interrogatories seek information about these incremental costs.

30. Identify, regarding the expected Movement of all Diverted carloads/units You claim as support for the benefits analyses in the Application, all Analyses or documents Concerning

the incremental costs that Applicants or a shipper would be expected to pay as a result of charges or fees imposed by another carrier or party for reciprocal or other switching, haulage services or trackage rights, demurrage, drayage, detention, or storage.

31. Identify all Analyses or other Documents Concerning fees or costs not identified in response to Interrogatory 30 that Applicants expect CPKC or a shipper to pay as a cost of the Movements that You claim will Divert traffic to CPKC.
32. Identify all Analyses or other Documents Concerning KCS's haulage agreements between Kansas City and Omaha NE, Including:
 - a. KCS haulage from Lincoln to Omaha, Nebraska to Council Bluffs, Iowa, to the Iowa/Missouri state line near Hamburg, Iowa to Kansas City, Kansas. See IOWA DEP'T OF TRANSP., IOWA STATE RAIL PLAN 232 (Feb. 2021) ("KCS has haulage rights over the following railroad segments in Iowa: • Union Pacific Railroad (UP) Omaha Subdivision between the Iowa/Nebraska state line at Council Bluffs, Iowa, and Council Bluffs, Iowa; approximately 4.0 miles. • BNSF Railway (BNSF) Council Bluffs Subdivision between BN Junction (Council Bluffs), Iowa, and Pacific Junction, Iowa; approximately 18.4 miles. • BNSF Railway (BNSF) Napier Subdivision between Pacific Junction, Iowa, and the Iowa/Missouri state line near Hamburg, Iowa; approximately 33.0 miles."), available at https://iowadot.gov/iowainmotion/railplan/2017/IowaSRP2017_Complete.pdf.
 - b. KCS haulage rights between Kansas City and each of Council Bluffs, IA and Omaha and Lincoln, NE. See KANSAS CITY SOUTHERN, 2003 ANNUAL REPORT 24 ("As a result of the 1988 acquisition of the Missouri-Kansas-Texas Railroad by UP, KCSR was granted (1) haulage rights between Kansas City and each of Council Bluffs, Iowa, Omaha and Lincoln, Nebraska."), available at <https://investors.kcsouthern.com/~media/Files/K/KC-Southern-IR-V2/annual-reports/annualreport2003.pdf>.
33. Identify all analyses or other Documents Concerning CP's haulage and trackage rights agreements between Chicago, Illinois and locations in Ohio, Pennsylvania, and New York, Including "A haulage agreement with Genesee & Wyoming Inc., Identify all Analyses or other Documents Concerning CP's haulage and trackage rights agreements between Chicago, Illinois and locations in Ohio, Pennsylvania, and New York, Including "A haulage agreement with Genesee & Wyoming Inc., provides intermodal service to Jeffersonville, OH" See CANADIAN PACIFIC, CP RAIL 2020 ANNUAL REPORT 51, available at https://s21.q4cdn.com/736796105/files/doc_financials/2020/ar/CP_AnnualReport2020_SECURED.pdf.

34. Identify all Analyses or other Documents created in the ordinary course of business by or for an Applicant Concerning incremental costs or profits for incremental traffic expected as a result of the Transaction, Including Documents created before March 2021.

Other Incremental Cost Factors

35. Identify all Analyses or other Documents Concerning the following Applicant estimates appearing in in the Summary of Benefits Exhibit (Appendix B):

- a. \$62.5 million of annual "transportation" cost savings benefits.
- b. \$57.1 million of annual "Support Functions (G&A)" cost savings benefits.
- c. \$20.5 million of annual "Purchasing" cost savings benefits (also appearing at Baranowski V.S. Table 8).
- d. \$19.9 million of annual "Mechanical" cost savings benefits.
- e. \$12.8 million of annual "Equipment Requirements & Utilization" cost savings benefits.
- f. "Engineering- maintenance of way" one-time costs from the Transaction of over \$125 million over three years.

36. Identify all Analyses or other Documents not identified in response to Interrogatory 35 Concerning the costs CPKC will incur to serve the traffic it expects to Divert as a result of the Transaction.

37. Identify all Analyses or other Documents You contend support or explain the difference between (i) the \$306.3 million Total Incremental Cost from increased traffic estimated in Baranowski V.S. Table 16 and the Summary of Benefits Exhibit (Appendix B) based on URCS unit costs and (ii) the \$422 million incremental costs based on Applicant's historical unit costs as implied by the 2019 R1s. Baranowski V.S. Table 9.

38. Identify all Analyses or other Documents Concerning the following estimates that significantly reduced the estimated cost of handling additional traffic:

- a. \$29.79 million of Total Annualized Fuel Savings appearing in Baranowski V.S. Table 4, Including all Analyses or other Documents Concerning the fuel price per gallon described in Baranowski V.S. ¶ 10.
- b. \$10.15 million in Total Operating Metric Savings from needing fewer locomotives appearing in Baranowski V.S. Table 5, Including all Analyses or other Documents You contend support Your locomotive unit mile reduction estimates and foregone depreciation and lease estimates therein.

39. Identify all Analyses or other Documents Concerning Applicants' plans to sell locomotives.

40. Identify all Analyses or other Documents You contend support the "circuitry factor" values listed in Cells F24, G24, and H24 of Tab "Phase III calculations" of Baranowski workpaper "HC- URCS Phase II Calculations for Growth traffic.xlsx."
41. Identify all Analyses or other Documents You contend support the weight per car reported in Column R of Tab "Truck to Rail Diversions" of Baranowski workpaper "HC- URCS Phase II Calculations for Growth traffic Input.xlsm."
42. Identify all "Information on Distance, Freight Car Type, Shipment Size, Car Ownership, Commodity, and Tonnage provided by CP Operating Team" described in Tab "CP Growth initiatives" of Baranowski work paper "HC- URCS Phase II Calculations for Growth traffic Input.xlsm."

Applicants' Truck to Rail Diversions

Applicants' claims that the Transaction will create public benefits and be financially successful depend on Diverting substantial traffic from truck to rail transportation. Applicants claim the Transaction will result in Diverting [REDACTED] carloads/units from truck to rail, Including [REDACTED] carloads/units in the Texas-Minneapolis and Mexico-Minneapolis lanes, [REDACTED] carloads/units in Ohio-Mexico lanes, and [REDACTED] carloads/units in other lanes. See Mutén V.S. ¶ 52, Appendix A. Some of these estimates assume significant Diversions in lanes such as Texas-Minneapolis, where existing single-line intermodal service has failed to attract significant traffic, see Mutén ¶ 48.

The following Interrogatories seek information necessary to evaluate the validity of these estimates.

43. Identify all Analyses or other Documents You contend support the claim that, "[Though] Texas-Minneapolis lanes are . . . served today by BNSF and UP, there was only minimal intermodal traffic in 2019, and CP/KCS would offer a more direct route and dedicated intermodal service." Mutén V.S. ¶ 48, Including all Analyses or other Documents Concerning:

- a. The competitively significant elements of CPKC service on Texas-Minneapolis lanes compared to those of other rail and truck carriers, Including any comparison of route miles, cycle times, rates, services, and network.
- b. All trackage right fees, haulage fees, reciprocal or other switching fees, or other accessorial fee payments that Applicants expect or may be required to make on Texas-Minneapolis and Mexico-Minneapolis lanes, by each customer, origin station and destination station and route, using company-specific estimates.

- c. Any estimated increase in traffic in Texas-Minneapolis and Mexico-Minneapolis lanes, above any volumes forecast by either Applicant prior to January 1, 2021.
44. Identify all Analyses or other Documents You contend support the estimated truck to rail Diversions between points in Mexico and the Columbus, Ohio BEA, Mutén V.S. Appendix A, Including all Analyses or other Documents Concerning:
- a. The competitively significant elements of CPKC service between Mexico and Columbus BEA Areas compared to those of other rail and truck carriers, Including any comparison of route miles, cycle times, rates, services, and network.
 - b. All trackage right fees, haulage fee, reciprocal or other switching fees or other accessorial fee payments that Applicants expect or may be required to make on Mexico-Columbus BEA lanes by each customer, origin station and destination station and route, using company-specific estimates.
 - c. Any estimated increase in traffic between Mexico and Ohio above any volumes forecast by either Applicant prior to January 1, 2021.
45. Identify all Analyses or other Documents You contend support the estimated truck to rail Diversions between (i) points in Mexico and (ii) Detroit MI or Chicago IL, Including the [REDACTED] carloads/units between points in Mexico and Detroit, MI and the [REDACTED] carloads/units between points in Mexico and Chicago, IL identified in Mutén V.S. Appendix A, Including all Analyses or other Documents Concerning:
- a. The competitively significant elements of CPKC service on the Mexico-Detroit or Mexico-Chicago lanes compared to those of other rail and truck carriers, Including any comparison of route miles, cycle times, rates, services, and network.
 - b. All trackage rights fees, haulage fees, reciprocal or other switching fees or other accessorial fee payments that Applicants may be required to make on the Mexico-Detroit and Mexico-Chicago lanes by each customer, origin and destination and route, using company-specific estimates.
 - c. Any increase in traffic in Mexico and Detroit, MI and Chicago, IL, above volumes forecast by either Applicant prior to January 1, 2021.
46. Identify all Analyses or other Documents Concerning truck to rail Diversions and rate setting (e.g. benchmarking, evaluations, negotiations, traffic volume, reductions or increases and impact of alternative carriers or other aspects).
47. For all truck to rail Diversions that originate or terminate in Kansas City, Identify all Analyses or other Documents Concerning:
- a. The specific origin station or destination station and customer.

b. How the Transaction is necessary for CP or KCS to achieve the Diversion.

48. Identify all Analyses or other Documents produced by or for Applicants regarding autonomous vehicles, Including all Analyses or other Documents Concerning competition between transportation by rail and transportation by autonomous trucks and the effect of that competition on Applicants' future traffic.

Railroad-to-Railroad Diversion Percentages and Associated Rate Reductions

Applicants estimate the amount of existing rail traffic that will Divert to CPKC (see Application at 10-12) by assuming that certain percentages of traffic would Divert to CPKC in the situations set out in the Brown & Zebrowski V.S. Table 7, reproduced below. Neither the Application nor the Verified Statements Identify or explain the basis for these Diversion percentages. The Application claims or assumes only [REDACTED] out of the [REDACTED] carloads/units will be Diverted from existing rail traffic to CPKC single-line service as a result of a 5% rate reduction; the remaining [REDACTED] carloads/units would be Diverted without any rate reduction.

TABLE 7
STARTING POINT DIVERSION RULES FOR TRAFFIC SUSCEPTIBLE TO DIVERSION

Existing Conditions	Post-Transaction Conditions	% of Traffic Shifted to CP/KCS
Traffic moves via single-line option via other carriers (e.g., BNSF Direct)	CP/KCS adds new single-line option	25%
Traffic moves via interline service via other carriers (e.g., CN-UP)	CP/KCS adds new single-line option eliminating interchange	50%
CP or KCS participates in traffic via interline service with other carriers (e.g., CP-UP)	CP/KCS could handle traffic in efficient single-line service eliminating interchange	50% (where origin/destination served by CP or KCS today is open to other carriers) 75% (where origin/destination served by CP or KCS today is sole-served)
Traffic moves in interline service via two interchanges, with CP and KCS at origin or destination and a third bridge carrier	CP/KCS could handle traffic in efficient single-line service eliminating two interchanges	75%

This section seeks to secure any data or Analyses underlying the assumptions of traffic Diversion and basis for the small level of a 5% rate reduction and limited traffic applied to.

49. Identify all Analyses or other Documents supporting the Diversion percentages in the Brown & Zebrowski V.S. Table 7.

50. With respect to the traffic that the Application claims or assumes will be Diverted to CPKC single-line service as a result of a 5% rate reduction:

- a. Confirm that the 5% rate reduction is applied to [REDACTED] out of the [REDACTED] carloads/units the Application claims or assumes will be Diverted from existing rail traffic, as appears from the work paper *Brown and Zebrowski V.S. HC – 8 Diversion Identification.xlsx*, at tabs "Results" and "Calculations."
- b. Confirm that intermodal Movements between Dallas and Chicago comprise [REDACTED] of all Diversions the Application claims or assumes will result from of a 5% rate reduction, as calculated from the Brown & Zebrowski V.S. ¶ 95 and work papers *Brown and Zebrowski V.S. HC – 8 Diversion Identification.xlsx*, at tabs "Results" and "Calculations."
- c. Identify all Analyses or other Documents You contend support the claim that CPKC will Divert intermodal Movements between Dallas and Chicago as a result of only a 5% rate reduction.

51. Identify all Analyses or other Documents produced by or for an Applicant since January 1, 2018 Concerning rail Diversions and rate setting (e.g., benchmarking, evaluations, negotiations, reductions or increases, and impact of alternative carriers) for service or traffic between points on which single line service is or will be offered by (i) either Applicant or CPKC and (ii) another carrier.

Incremental Revenues from Diverted traffic

Applicants claim that the Transaction will be financially successful in part by forecasting significant increases in revenue from increases in traffic on CPKC. See Application at 10-12, Appx. B; Baranowski V.S. Table 16. The Application and Verified Statements in support rely on a variety of sources to estimate the incremental revenues CPKC would earn from the incremental traffic resulting from the Transaction, Including sources that appear likely to overstate the revenues to be earned.

The following Interrogatories seek information regarding these sources.

52. Identify all calculations related to the values of changing traffic patterns displayed in "Brown/Zebrowski HC WP Work Paper – HC – 8 - Diversion Identification.xlsx" at tab "Results" in Column E "diverted units" for rows 24 to 93 labeled "Forest Products".

53. Identify all Analyses or other Documents created in the normal course of business by or for an Applicant estimating incremental revenues or projected profit (or contribution) from

incremental traffic expected as a result of the Transaction, Including Documents created before March 2021.

54. For all Diversions that originate or terminate in Kansas City, Identify all Analyses or other Documents Concerning:
- The specific origin station or destination station and customer.
 - How the Transaction is necessary for CP or KCS to achieve the Diversion. See Brown & Zebrowski V.S. ¶ 66.
55. Identify the origin station, destination station, and all interchanges for the claimed traffic Diversions appearing:
- In the "Diversion Carloads" column of Brown & Zebrowski Table 11.
 - As "Effect of Increasing CP's Share From [REDACTED] to Supply Lumber to Dallas" and "Total by 2021 After Accounting for 15% Growth from 2019 to 2021" in Brown & Zebrowski Table 23.
 - In the "Total Diverted Carloads" column of Brown & Zebrowski Table 24.
56. Identify all Analyses of changing traffic patterns or other Documents You contend support the claimed traffic Diversions identified in Interrogatory 55.
57. State all calculations related to the changing traffic patterns displayed in "Brown/Zebrowski HC WP Work Paper – HC – 8 - Diversion Identification.xlsx" at tab "Results" in Column E "diverted units" for rows 24 to 93 labeled:
- "Grain."
 - "Forest Products."

Capital Investments Needed to Implement the Transaction's Business Plans

Applicants' business plans and claims of public benefits assume that CPKCS will make significant investments to improve service and pursue specific business opportunities. See infra, Interrogatory 58 and sources cited. The Application and Verified Statements offered in support specifically describe many business opportunities resulting from the Transaction that will depend on additional investments. Except for capital investment to upgrade trackage lines, however, the Application does not appear to describe or to quantify the costs of each specific investment Applicants' claim will be required to realize the benefits of the Transaction.

58. Identify all Analyses or other Documents Concerning investments needed to achieve the results forecast in the Application, Including all Analyses or other Documents Concerning the costs of those investments. "We anticipate that this improved competitive posture will

support additional investments by CPKC in rail capacity on our North-South main line, while also justifying investments by us and our prospective shippers in new facilities (like intermodal terminals, auto compounds, transloads, and others) that realize the full potential of the CP/KCS network." See Wahba and Naatz V.S. ¶ 7.

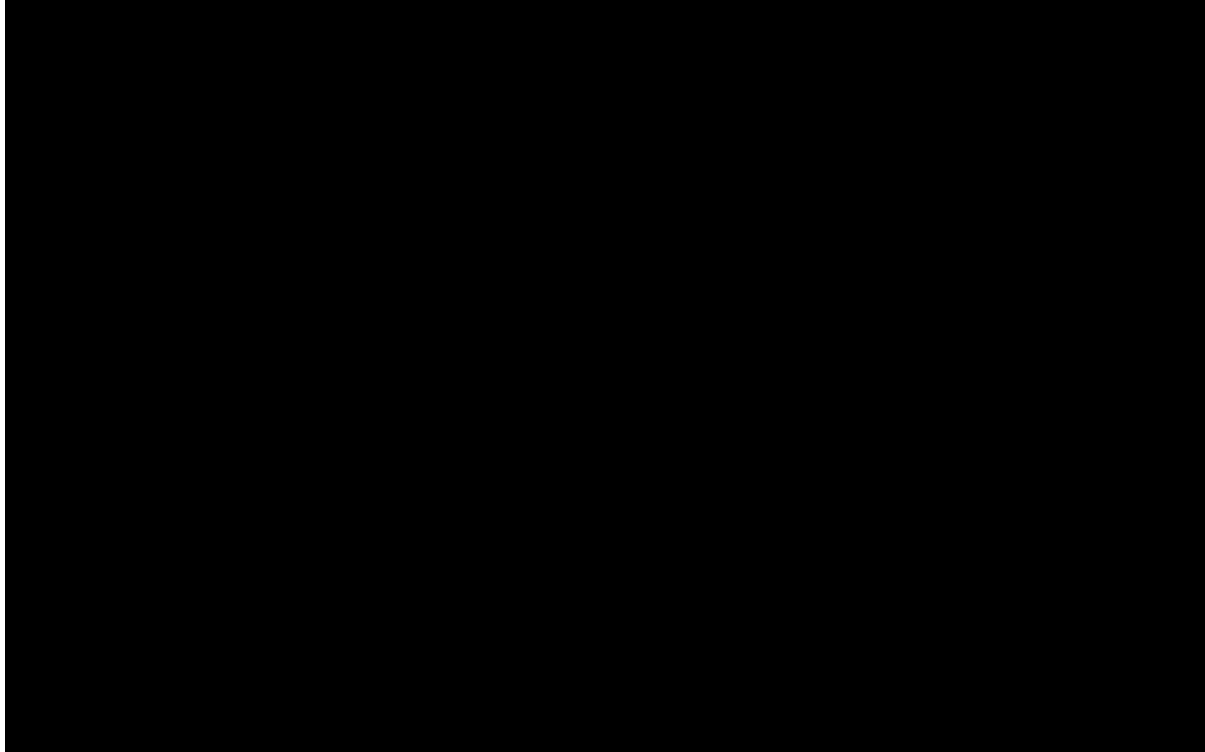
59. Identify all Analyses or other Documents Concerning additional investment necessary to generate additional business to, from, or through Mexico, Including the following:
- a. Purchases of CPKC-owned containers, rail cars, locomotives, or facilities used or useful in rail service.
 - b. Infrastructure improvements at the border crossings in Laredo, TX and Brownsville, TX.
 - c. Infrastructure improvements at the port of Lazaro Cardenas.
60. Describe, with specificity at least equal to that provided for the "Planned Infrastructure Investments" in Paragraphs 239-55, Tables 8-9, and Appendix R of the Operating Plan (Exhibit 13), the estimated costs of, and Identify all Analyses or other Documents Concerning, each of the following the investments described in the Application:
- a. "CP/KCS offerings will support investment in efficient new rail served grain elevators in the growing region of Southeastern Iowa." See Creel V.S. ¶ 25.
 - b. "CP and KCS were simply unable individually to financially justify certain infrastructure investments that were needed to unlock commercial opportunities to move more freight on intermodal trains." See Ottensmeyer V.S. 12.
 - c. "CP anticipates that new investments in grain-loading capacity on CP's lines in the United States could begin as soon as the first year following control approval, taking advantage of the improved market access we will offer and our improved incentives to support those investments with attractive transportation services." See Wahba and Naatz V.S. ¶ 26.
 - d. "CP anticipates that demand for fertilizers from Canada moving via efficient CPKC single-line routes to growers in Southwestern Missouri could support future investment in a potash shed on KCS's lines south of Kansas City. Such an investment could enable the rail Movement of potash originating on CP in Fort Saskatchewan, AB." See Wahba and Naatz V.S. ¶ 33.
 - e. "The broader reach of the combined CP/KCS network will open up opportunities for investment in intermodal network expansion that would not have made sense for CP or KCS standing alone." See Wahba and Naatz V.S. ¶ 54.
 - f. "CP's access to substantial originations of automotive traffic, will open up opportunities for the investment in traffic growth that would not have made sense for KCS standing alone." See Wahba and Naatz V.S. ¶ 77.

- g. "With the CP/KCS combination, the combined company would explore investing in a new auto compound adjacent to KCS's lines in the Beaumont/Port Arthur area (where UP's restrictions would not apply) that could allow CP/KCS to offer single-line Movement of finished autos from assembly plants in Ontario and imported autos from the Canadian ports served by CP to all of Eastern and Central Texas." See Wahba and Naatz V.S. ¶ 78.
- h. "CP/KCS Transaction will support the investments needed to accelerate the transition away from traditional crude-by-rail and towards the Movement of Alberta crude in private cars in non-hazardous DRUbit form." See Wahba and Naatz V.S. ¶ 92.
- i. "Transition to DRUbit from investments prompted by CP/KCS Transaction displaces traditional (flammable/hazardous) crude-by-rail volumes." See Wahba and Naatz V.S. Figure 11.
- j. "CP and KCS have been at the forefront of a transition toward a safer and more efficient way to move Alberta Crude by Rail. Through investments at origin and destination, the hazardous dilbit can be converted to non-hazardous "DRUbit" that can be more safely moved by rail." See Wahba and Naatz V.S. ¶ 90.
- k. "The benefits of a new, strong, competitor against other railroads and trucks that will possess new single-line services and routes will accrue to customers, employees, shareholders, and stakeholders. It will unleash new infrastructure investment that CP and KCS standing alone could not justify." See Ottensmeyer V.S. 2-3.
- l. "CP and KCS have already determined that there are several opportunities to route freight in more efficient ways, Including by routing certain freight away from Chicago. These new routings will require new infrastructure investment, investment that could not be justified if the parties were to remain separate entities." See Ottensmeyer V.S. 7.

Public Benefits Analysis Conceptual Framework

Applicants claim that the Transaction would produce "quantified public benefits" of "more than \$ 880 million annually." See Application at 19-21 and shown in Appendix B (App. Vol. 1, page 74). The Surface Transportation Board ("STB") defines public benefits to be efficiency gains that take the form of cost reductions, cost savings, and service improvements, 1 S.T.B. 233 (1996), at 363. Applicants may have conflated public benefits as identified by the STB with private benefits such as transfers of revenues from one carrier to another.

In the categories of public benefits identified by the STB, Applicants identify an estimated [REDACTED] [REDACTED] in rate reductions in the analysis of Diversions of exiting rail traffic (as calculated from Brown and Zebrowski HC WP "8-Diversion Identification" at tab "calculations"). Applicants do not appear to Identify any rate reductions associated with truck-to-rail Diversions or the "Growth Initiative" volumes. Applicants report \$172.8 million annual operating benefits as shown in Appendix B (App Vol 1 page 74) and the table below. In addition, Applicants claim \$115.7 million operating expense savings as stated in Baranowski V.S. Table 9 page 11.



The following Interrogatories seek information regarding the conceptual framework Applicants used to quantify what they refer to as "public benefits" and what Applicants contend the STB should and should not accept as Cognizable Public Benefits.

61. State whether Applicants contend that the Cognizable Public Benefits of the Transaction

Include or should reflect:

- a. Benefits other than, and in addition to, rate reductions, cost reductions, cost savings, and service quality improvements.
- b. Benefits not arising within the federal jurisdiction of the U.S. (i.e., U.S. localities and customers).
- c. Reductions in benefits to public or public interests in the U.S. resulting from increased benefits to the public or private interests outside the U.S.
- d. Additional risks associated with doing business in foreign countries.
- e. Benefits that could be achieved without the Transaction.
- f. Any financial impact associated with changes in the Applicants' cost of capital as result of the Transaction.

62. Identify all Analyses or other Documents, Including regulatory decisions and academic work, that You contend support the definition of the term "public benefits" as used in the Application, Including all Analyses or other Documents, Including regulatory decisions and academic work, which You contend support Your responses to Interrogatory 61.
63. Identify all Analyses or other Documents Concerning Applicant's determination of what effects of the Transaction constitute or generate Cognizable Public Benefits.

Financial Analysis Assumptions in the Applicants Public Benefits Analysis

Applicants offer the Transaction Pro Forma Analyses described and set out in the Vargas Verified Statement and Exhibits 16-18 as the basis for asserting that incremental benefits from the Transaction will exceed the incremental costs. These interrogatories seek to determine whether the Transaction Pro Forma Analyses are consistent with those used by Applicants in the ordinary course of business.

64. Identify all Analyses or other Documents Concerning any capital investments necessary to create the incremental revenues the Application claims or assumes will result from the Transaction, Including Identifying where in the Application Applicants contend any such investments are accounted for or otherwise addressed.
65. Identify all Analyses or other Documents Concerning:
- a. Applicants' assumed 2.3% for long-term debt and 1.0% for debt maturing within one year ("STB Rail Road Control Application Model – Final" at worksheet "Input – Assumptions" at rows 11-12.)
 - b. Applicants' actual base year debt rate, which can be calculated as 5.12% for CP and 3.57% for KCS using the pro forma income statement and balance sheet statement. ("STB Rail Road Control Application Model – Final" worksheets "Pro Forma Income Statement CP-K" And "Pro Forma Balance Sheet Cp-KCS").
 - c. The current Baa2 corporate Bond Yield. (De Bruyn V.S., page 7 at para. 15 (App. Vol. 1, page 443), Exhibit 4 to De Bruyn V.S. (App. Vol. 1, pages 507-512)).
 - d. Forecasts or actions concerning any planned upcoming financing, Including the amount, rate, repayment period etc. associated with the debt refinancing that CP/KCS indicate will be needed after the bridge loan of up to \$8.5 billion matures (e.g., the total amount to be refinanced, borrowing rate, and repayment period, etc.). (App. Vol. 1, pages 17-18).
66. Identify all Analyses and Documents Concerning the payments that would be required assuming Goldman Sachs' floating interest rate of 4.5% on \$8.5 billion worth of unsecured

debt and compare those payments to the payments assumed in the Application. Application Volume 4 at 882.

67. The Federal Reserve has said it will increase interest rates three times in the next year. Identify all Analyses and Documents Concerning the effect of the potential increases in interest rates on Applicants' payments for both secured and unsecured debt incurred for the purpose of the Transaction.
68. Identify all Analyses and Documents describing the methodologies and assumptions used by Applicants to conduct pro forma analyses of business opportunities or projects considered by each Applicant in the ordinary course of business and requiring approval by the Board of Directors and state (separately for each Applicant):
- a. Whether the Applicant's ordinary course pro forma analyses Include all costs associated with capital investments necessary for the project or opportunity. To the extent the answer is "yes" for either Applicant, explain with specificity why the Applicants have not Included all such costs in the Transaction Pro Forma Analyses.
 - b. The after-tax weighted average cost of capital (WACC) the Applicant uses in ordinary course pro forma analyses, Including each component (cost of debt, cost of equity, and debt/equity percentages) thereof.
 - c. The time horizon (e.g., ten years) and any terminal value the Applicant uses in ordinary course pro forma analyses.
69. To the extent any of either Applicant's ordinary course practices identified in Applicants' responses to Interrogatory 68 differs from the practices regarding the same subjects Included or used in the Transaction Pro Forma Analyses, explain with specificity why, and Identify any Analyses or other Documents supporting that explanation.
70. Explain how the statistical analysis that "has poor predictive power and there are high levels of variance." supports the sufficiency of a 5% reduction to displace intermodal traffic. (Brown and Zebrowski V.S. at Table 7 (p. 22) and at page 66, paragraph 7; Appendix B).
71. Applicants present a regression to determine intermodal market share (Mutén V.S. 1). Identify all Analyses or other Documents:
- a. You contend support Mutén's assumption that intermodal market shares do not have a relationship to trucking and rail costs.

- b. Concerning the “curiously high lane share” referred to by Mutén in the following: “In a few cases my analysis produced expected lane shares for rail intermodal that were curiously high” (Mutén V.S. 19).
 - c. Concerning how why curiously high lane support a reliable regression analysis suitable for Diversion analyses.
 - d. Concerning the 70.9% ceiling assumed by Mutén for CPKC’s rail intermodal market share for each lane analyzed. (Mutén V.S. 19).
 - e. Concerning Mutén’s statement that his market share estimates are potentially overestimated. (Mutén V.S. 19).
72. Applicants present a regression to determine the revenue that CP-KCS will receive from Displaced truck to rail traffic (Mutén V.S. 20-21). Identify all Analyses or other Documents Concerning:
- a. CPKC’s forecasted railroad rates for each lane reported by Mutén.
 - b. Mutén’s claim that the revenue from Diverted units in the lanes he analyzes is significantly influenced only by the factors included in the Intermodal Diversion Revenue Regression Equation, Including all Analyses or other Documents Concerning his claim that such revenue is not significantly influenced by existing truck and rail rates, or the type of commodity shipped.
 - c. The statement “Importantly, this formula should not be used to predict the specific market rates that would be charged for any given Movement or in any specific lane.”
 - d. Mutén’s reliance on the regression coefficient rather than the Applicant’s pre-or post-Transaction rates for the calculation of the market rate as presented in Mutén V.S. Appendix A.

Miscellaneous

73. Identify all Analyses or Documents Concerning:
- a. The formation of Meridian Speedway, LLC.
 - b. Communications between either Applicant and Norfolk Southern Railway Company regarding the operation or ownership of the Meridian Speedway during the period 1/1/2019-09/31/2021 and the period beginning 9/31/2021 until 12/31/2026.
 - c. Applicants’ assessment of the potential environmental impacts, Including increased locomotive miles, of:
 - i. Rerouting traffic subject to Diversions or Growth as a result of the Transaction;
 - ii. Any investments Applicants expect to make as a result of the Transaction.

- d. All communications between Applicants or between either Applicant and any other person Concerning commercial arrangements related to the Transaction.
74. Identify all Analyses and other Documents supporting the claim (Application at 21) that CPKC will provide lower cost and more efficient service, enabling them to Displace traffic to and from Mexico over KCSM.
75. Identify all Analyses and other Documents Applicant produce in response to discovery requests submitted by other Parties.

REQUESTS FOR PRODUCTION

1. Produce all Documents You Identify in response to Interrogatories 1 – 75 that are not Included in the Application or previously produced to CSXT in this proceeding.
2. Applicants submitted previously unattached workpapers and attachments in "FD 36500 – Work Paper – Work Papers Summary.xlsx". However, the updated list is still incomplete. Produce the following:
 - a. KCSM English Converted Timetable 4
 - b. Relating to traffic File – Methodology.doc
 - i. traffic file Script
 - c. Relating to Cars per day by Yard.doc
 - i. “Yard Volumes Processed Car Change Base vs Opt”
 - ii. “Yard Volumes Processed Car Change Opt vs Growth”
 - d. Relating to Methodology for Section 7.3 Maintenance of Way Practices & Equipment Update October 14 2021.doc
 - i. Engineering Fleet Support CarsEquipment.msg
 - ii. Track Systems testing fleet
3. Brown and Zebrowski provide an explanation of the SQL process used to create their combined waybill file at the Document "Process Description.docx". Produce the following Documents referenced in Parts 1A and 1C identified in "Process Description.docx" but not yet provided:
 - e. "CSM_2019", "CWS_2015_UNMASKED", "CWS_2016_UNMASKED", "CWS_2017_UNMASKED", "CWS_2018_UNMASKED", "CWS_2019_UNMASKED".

- f. Please detail all steps necessary to alter CSM_2019 to a usable format.
 - g. Please provide in readable data format (csv, excel, stata) all temporary SQL tables used to generate summaries/Analysis.
 - i. Including, all programs used to generate "CSM_2019", "CWS_2015_UNMASKED", "CWS_2016_UNMASKED", "CWS_2017_UNMASKED", "CWS_2018_UNMASKED", "CWS_2019_UNMASKED".
4. Concerning the files produced in "MajureVS_20211029_workpapers", the Carload Waybill Sample import program: File "01_waybill_build.R" contains a line of code that references multiple file names containing the term "...unmasked.rds". However, no lines of code/additional program have been provided that generate the multiple files with file names containing the term "...unmasked.rds". The final waybill build is impossible to construct without the code to generate "unmasked.rds" files. Produce the code, additional program, and files that with file names containing the term "...unmasked.rds".
5. In the Excel Output File to Exhibit 2 of the Majure V.S., the file "exhibit_02_wp_01.R" contains a line of code that generates an excel file, "exhibit_02_wp_01.xlsx", that should contain four tabs: "results", "car_counts", "results_3_9", and "wp_01". The "Exhibit 02.xlsx" file provided only contains one tab, "results". The data contained in the missing tabs is not available in any location in the excel file which was produced. Produce the missing tabs.

DEFINITIONS

- 1. "Analysis" or "Analyses" includes any examination, study, investigation, breakdown, assessment, scrutinization, calculation, quantification, or comparison.
- 2. "Applicant" refers to Canadian Pacific or Kansas City Southern, as defined herein.
- 3. "Applicants" refers to both Canadian Pacific and Kansas City Southern, as defined herein.
- 4. "Application" means the Railroad Control Application submitted by Applicants on October 29, 2021, in STB Finance Docket No. 36500, as corrected or amended, Including all Verified Statements, Exhibits, Appendices, Statements of Support, Work Papers, and other supporting materials.
- 5. "Canadian Pacific Kansas City" or "CPKC" refers to Applicants' post-Transaction combined services, network, and operations; to Applicants' post-Transaction "integrated system" referred to in Application at page 1; and to the post-Transaction integrated corporate entity or entities of Applicants, Including their predecessors, divisions, affiliates, and subsidiaries, whether individually or collectively, and to their present, former, and expected post-Transaction employees, board of directors, members of the

board of directors, and other persons acting or purporting to act on behalf of the foregoing.

6. "Canadian Pacific" or "CP" refers to Canadian Pacific Railway Limited; Canadian Pacific Railway Company; Central Maine & Quebec Railway US Inc.; Dakota, Minnesota & Eastern Railroad Corporation; Delaware and Hudson Railway Company, Inc.; and Soo Line Railroad Company, Including their predecessors, divisions, affiliates, and subsidiaries, whether individually or collectively, and to their past, present, or expected post-Transaction employees, board of directors, members of the board of directors, and other persons acting or purporting to act on behalf of the foregoing.
7. "Carload Waybill Sample" or "CWS" refers to the Surface Transportation Board's Confidential Carload Waybill Sample as referred to in the Brown & Zebrowski VS.
8. "Cognizable Public Benefits" refers to the benefits to the public from a transaction that the Surface Transportation Board relies on as evidence that the transaction is consistent with the public interest within the meaning of 49 U.S.C. § 11324(c) and applicable Surface Transportation Board regulations (whether 49 C.F.R. §§ 1180.1(c)-(c)(1) (2000) or other regulations).
9. "Concerning" means directly or indirectly, expressly, or impliedly, or in any other way, to bear upon, touch upon, incorporate, constitute, affect, include, pertain to, support, negate, and/or otherwise have any connection with the subject matter about which the request inquires.
10. "CSXT" refers to CSX Transportation, Inc., Including its railroad predecessors, divisions, affiliates, and subsidiaries, whether individually or collectively, and to their present and former employees, board of directors, present and former members of the board of directors, and other persons presently of formerly acting or purporting to act on behalf of the foregoing.
11. "Crude by Rail" refers to rail transportation of any type of petroleum crude oil product, Including light, medium, or heavy crude, and the "DRUbit" referred to in the Wahaba and Naatz V.S.
12. "Displace[ed]," "Displacing" and "Displacement" shall Include, to the extent different, "Divert[ed]," "Diverting," and "Diversion[s]" and vice versa.
13. "Document" has the meaning ascribed to that term under Rule 34(a) of the Federal Rules of Civil Procedure, and includes all originals, non-identical copies and drafts of any form of written, printed, typed, recorded, photocopied, photographed, graphically or electronically generated or stored matter, however produced or reproduced, of any kind or description, Including any book, pamphlet, periodical, correspondence, letter, official form, application, diary, written statement, minutes, memorandum, email, telephone call, invoice, bill, receipt, form, printout, financial statement, accounting record, telegram, cable report, record, contract, agreement, study, report, statistics, summary, handwritten note, tag, label, draft working paper, print, list, tape, photograph, microfilm, data sheet, data processing card, plan, specification list or any other written, recorded, transcribed, punched, taped, filmed, or graphic matter and things similar to the foregoing, however denominated, and any and all attachments to any of the above.
14. "Growth Initiative Summary Table" refers to the "summary" tab of the work paper titled "Wahba and Naatz HC WP Growth Initiative Calculations.xlsx" provided in support of the Application.
15. Unless otherwise specified, "Identify":

- a. when used with reference to a Document, means to: (i) provide a description of such Document or thing sufficient to support a request for production, (ii) state its author(s), addressee(s), recipient(s), title, subject matter, date, present location and custodian, (iii) specify the place where the Document or thing may be inspected, and (iv) if the Document was produced in This Matter, specify the Document by Bates number(s). If a Document once existed and has since been lost, destroyed, or is otherwise missing or unavailable, You shall Identify the Document and state the details Concerning the unavailability of such Document;
 - b. when used with reference to an entity, means to: state the entity's (i) full name, (ii) last known address(es), (iii) telephone number(s), and (iv) organizational form (e.g., corporation, sole proprietorship, partnership, joint venture, etc.); and
 - c. when used with reference to an event, means to: (i) provide the date and place of the event; (ii) Identify all persons involved in the event or who witnessed the event; and (iii) describe what took place during the event.
 - d. when used with reference to an individual person, means to: state that person's: (i) full name; (ii) last known job title or position, business affiliation and employer; (iii) last known business and residential address; and (iv) last known telephone number(s), fax number(s), and e-mail address(es).
 - e. when referring to the Application or work papers requires You to specify the volume and page number in the Application and the file name and page in the work papers.
16. "Including" shall mean including but not limited to. For avoidance of doubt, all matter specified by "Including" shall refer without limitation by, and even if not otherwise encompassed by, the remainder of the request in which it is used.
17. "Intermodal Diversion Revenue Regression Equation" refers to the equations or "formula" specified in the Mutén VS at or immediately following ¶ 53.
18. "Intermodal Market Share Regression Equation" refers to the "predictive equation" specified in the Mutén VS at or immediately following ¶ 46.
19. "Interrogatory" includes all subparts of the Interrogatory referred to.
20. "Kansas City Southern de México" or "KCSM" refers to Kansas City Southern de México, Including their predecessors, divisions, affiliates, and subsidiaries, whether individually or collectively, and to their past, present, or expected post-Transaction employees, board of directors, members of the board of directors, and other persons acting or purporting to act on behalf of the foregoing.
21. "Kansas City Southern" or "KCS" refers to Kansas City Southern, Gateway Eastern Railway Company, The Kansas City Southern Railway Company, The Texas Mexican Railway Company, and Kansas City Southern de México, Including their predecessors, divisions, affiliates, and subsidiaries, whether individually or collectively, and to their past, present, or expected post-Transaction employees, board of directors, members of the board of directors, and other persons acting or purporting to act on behalf of the foregoing.
22. "Lazaro/Mexican Port Traffic" refers to traffic to, from, or through the port of Lázaro Cárdenas or other Mexican ports and associated rail business in Mexico, the U.S. or Canada.

23. Sole-Served or Solely Served refers to a single railroad serving an origin or destination station (i.e., customer location) without access to another railroad through use of the trackage of the single railroad or otherwise.
24. "This Matter" refers to the proceedings before the Surface Transportation Board in Finance Docket No. 36500, Including discovery and correspondence related to the foregoing proceedings.
25. "Movement" or "Movements" means the carriage by one or more carriers by rail or other modes of any commodity or traffic type in any type of container from an origin station to a destination station, the route taken, and any points in the route where different interchange the traffic or commodity.
26. "Transaction Pro Forma Analyses" refers to the Analyses described and set out in the Vargas Verified Statement and Exhibits 16-18, Including all supporting Analyses and calculations.
27. "Transaction" refers to the proposed combination of CP and KCS as described in the Application, pursuant to which CP would acquire and exercise control of KCS, and to all proposed or consummated agreements and transactions further to or ancillary to that combination, Including any with parties other than Applicants.
28. "URCS" refers to the Uniform Rail Costing System as referred to in the Baranowski VS.
29. "V.S." means Verified Statement as used in the Application.
30. "You" refers to Applicants or an Applicant, whether individually or collectively.

INSTRUCTIONS APPLICABLE TO INTERROGATORIES

1. Your answers shall include all responsive information within Your possession, custody, or control.
2. When referring to the Application or work papers You shall specify the volume and page number in the Application and the file name and page in the work papers.
3. As necessary to bring within the scope of these Interrogatories any information and Documents which might otherwise be construed to be outside their scope, all words or phrases shall be construed as either singular, plural, masculine, feminine, or neuter; the singular form of a noun or pronoun shall Include within its meaning the plural form of the noun or pronoun and vice versa; and the use of any tense of any verb shall Include within its meaning all other tenses of the verb.
4. The terms "and" and "or" shall be construed either conjunctively or disjunctively as required by the context to bring within the scope of these requests any information which might be deemed outside their scope by any other construction.
5. If You object to an Interrogatory on the grounds of privilege, answer the Interrogatory with such non-privileged, non-work product information as is responsive, and state the privilege(s) or work product asserted and the basis for such assertion.
6. If You cannot answer any Interrogatory fully and completely after exercising due diligence, making inquiry, and securing the necessary information, You shall: (i) so declare in Your Interrogatory response; (ii) answer each such Interrogatory to the fullest extent possible; (iii) specify the portion of each Interrogatory that You claim You are unable to answer fully and completely; (iv) state the facts upon which You rely to support Your contention that You are unable to answer the Interrogatory wholly and completely; and (v) state what knowledge, information or belief You have Concerning the unanswered portion of each such Interrogatory.

7. If You object to any part of an Interrogatory and refuse to answer as to that part, You shall: (i) state Your objection(s); (ii) Identify and describe fully all facts supporting the objection(s); and (iii) answer the remaining portion of the Interrogatory. If You object to the scope covered by any Interrogatory, and refuse to answer for that scope, You shall: (i) state Your objection(s); (ii) Identify and describe fully all facts supporting Your objection(s); and (iii) answer the Interrogatory for the scope for which no objection is raised.
8. Whenever an Interrogatory requires You to Identify an oral communication, You shall: (i) specify the date on which the communication occurred; (ii) indicate the place where the communication occurred; (iii) Identify the medium through which the communication was established (in person, by phone, etc.); (iv) Identify each and every person who participated or heard the communication; (v) describe fully the substance of the communication, including the decisions or agreements reached, and the information exchanged; and (vi) Identify each Document that relates or refers to the communication or to the decisions or agreements reached and the information exchanged during the communication.
9. Whenever an Interrogatory requires You to Identify a written or electronic communication, You shall specify: (i) the name of each individual who signed or originated the Document or communication, or under whose name it was issued; (ii) the name of each individual to whom the Document or communication was addressed and the name of each individual who received it; (iii) the date the Document or communication bears; (iv) the title of the Document or communication; and (v) a description of the contents and substance of the Document or communication. In lieu of the foregoing, You may produce the Document or communication itself, provided that the Interrogatory response specifies with particularity the Document or communication(s) responsive thereto.
10. These Interrogatories impose on You a continuous obligation. If You become aware of information that renders Your answers to these Interrogatories incomplete, misleading or inaccurate, You must supplement or amend Your answers promptly to make Your answers complete and accurate.
Unless otherwise specified, the period for these Interrogatories is from January 1, 2018, through the present.

INSTRUCTIONS APPLICABLE TO REQUESTS FOR PRODUCTION

1. Furnish all responsive Documents or material in Your possession, custody, or control.
2. As necessary to bring within the scope of these requests any information and Documents which might otherwise be construed to be outside their scope, all words or phrases shall be construed as either singular, plural, masculine, feminine, or neuter; the singular form of a noun or pronoun shall include within its meaning the plural form of the noun or pronoun and vice versa; and the use of any tense of any verb shall include within its meaning all other tenses of the verb.
3. The terms "and" and "or" shall be construed either conjunctively or disjunctively as required by the context to bring within the scope of these requests any information which might be deemed outside their scope by any other construction.

4. If you are not producing any Documents in response to any of the requests herein, Your response should clarify that You are not producing any Documents in response to that request.
5. If Your response to any of these requests is qualified in any particular manner, set forth the details of such qualification and describe the Documents You are and are not producing.
6. All Documents should be produced in the manner, form, and position in which they are kept in the ordinary course of business, as is required in federal civil litigation by Federal Rule of Civil Procedure 36(b), Including, where applicable, any index tabs, file dividers, designations, or other information as to the location of the Documents. Documents containing calculations (e.g., .xlsx files) shall be produced with calculations intact. Documents shall be produced in their native file format unless You first confirm with CSXT or its counsel that the Document in its native file format would not be reasonably usable by CSXT or its counsel.
7. If You object to a request on the grounds of privilege, respond to the request with such non-privileged, non-work product Documents as are responsive, and state the privilege(s) or work product asserted and the basis for such assertion. You must set forth in your response to these requests a schedule which provides the information described in Federal Rule of Civil Procedure 26(b)(5)(A)(ii) and any order entered by the Surface Transportation Board regarding the production of electronically-stored information or hard copy documents.
8. If You object to part of a request and refuse to respond to that part, You must produce all Documents called for which are not subject to that objection. If You object to part of a request and refuse to respond to that part, or if You cannot respond to any request fully and completely after exercising due diligence, making inquiry, and securing the necessary information, You shall: (i) so declare in Your response; (ii) answer each such request to the fullest extent possible; (iii) specify the portion of each request to which you object and refuse to respond or that You claim You are unable to respond fully and completely; (iv) state the facts upon which You rely to support Your objection or Your contention that You are unable to respond to the request wholly and completely; and (v) describe, to the best of your knowledge, information, and belief, and with as much particularity as possible, those portions of the Document which are not produced. If You object to a request's scope or time period, state Your objection and respond to the request for the scope or time period You believe is appropriate.
9. Each request shall be construed independently, and no request shall be viewed as limiting the scope of any other request.
10. You are to produce the original and each non-identical copy of each Document or Documents requested herein which is in Your possession, custody, or control.
11. Unless otherwise specified, the time period for these requests is from January 1, 2018, through the present.

CERTIFICATE OF SERVICE

I hereby certify that I have caused this CSX Transportation, Inc. Second Discovery Request in Docket No. FD-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*, to be served electronically or by first class mail, postage pre-paid, on all parties of record in this proceeding.

/S/ Paul A. Cunningham

Paul A. Cunningham
Attorney for CSX
Transportation, Inc.

December 24, 2021

EXHIBIT B

Applicants' Response to CSXT's Second Discovery Request

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 36500

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

**KANSAS CITY SOUTHERN AND CANADIAN PACIFIC’S JOINT RESPONSES AND OBJECTIONS
TO CSX TRANSPORTATION’S SECOND SET OF DISCOVERY REQUESTS**

Pursuant to 49 C.F.R. Part 1114, Subpart B, Canadian Pacific Railway Limited, Canadian Pacific Railway Company, Soo Line Railroad Company, Central Maine & Quebec Railway US Inc., Dakota, Minnesota & Eastern Railroad Corporation, and Delaware and Hudson Railway Company, Inc. (collectively, “Canadian Pacific” or “CP”) and Kansas City Southern, The Kansas City Southern Railway Company, Gateway Eastern Railway Company, and The Texas Mexican Railway Company (collectively, “KCS”; together with CP, the “Applicants”) hereby respond and object as follows to CSX Transportation (“CSXT”)’s Second Set of Discovery Requests to Applicants (“Second CSXT Requests”) served on December 24, 2021 in connection with the above-captioned proceeding.

GENERAL OBJECTIONS

The following General Objections apply to each of the Second CSXT Requests and shall have the same force and effect as if set forth in full in response to each individually numbered Second CSXT Request.

1. Applicants object to the Second CSXT Requests and to each Definition, Instruction and Request contained therein to the extent they purport to impose upon the

Applicants burdens or duties that are greater than, or otherwise conflict with, the requirements or the permissible scope of discovery under 49 C.F.R. Part 1114, Subpart B, or under other Surface Transportation Board (the “Board”) rules or precedents.

2. Applicants object to the Second CSXT Requests and to each Definition, Instruction and Request contained therein to the extent they purport to seek information and/or documents that are not relevant to the issues raised in the above-captioned proceeding.

3. Applicants object to the Second CSXT Requests and to each Definition, Instruction and Request contained therein to the extent that they seek information protected from discovery by the attorney-client privilege, attorney work product doctrine, common interest, or any other applicable privilege, protection, immunity, doctrine, statute, regulation, agreement, or protective order. Any disclosure of such information is inadvertent and should not be construed as a waiver. Applicants reserve all rights under applicable law to demand and/or require the return of all copies thereof and non-use by CSXT, or by any other person or entity in this or any other proceeding.

4. Applicants object to the Second CSXT Requests and to each Definition, Instruction and Request contained therein to the extent that they seek the production or identification of documents prepared in connection with, or information relating to, possible settlement or mediation of this or any other proceeding.

5. Applicants object to the Second CSXT Requests and to each Definition, Instruction and Request contained therein to the extent they call for information or documents that are confidential, proprietary, or commercially or competitively sensitive. Applicants will make available information and documents subject to the Board’s Protective Order issued in this

proceeding on April 2, 2021, and all responses and documents should be treated in accordance with that Order.

6. Applicants object to the Second CSXT Requests and to each Definition, Instruction and Request contained therein to the extent that they purport to seek documents or information not in the Applicants' possession, custody or control.

7. Applicants object to the Second CSXT Requests and to each Definition, Instruction and Request contained therein to the extent that they are not proportional to the needs of the above-captioned proceeding and impose an undue burden on the Applicants.

8. Applicants object to the Second CSXT Requests and to each Definition, Instruction and Request contained therein to the extent they purport to seek the production or identification of documents that are unreasonably cumulative or duplicative of documents already in CSXT's possession, custody or control, or that are publicly available, or that are otherwise obtainable in a more convenient, less burdensome or less expensive manner than from the Applicants.

9. Applicants object to the Second CSXT Requests and to each Definition, Instruction and Request contained therein to the extent they purport to seek the production or identification of documents that are unreasonably cumulative or duplicative of documents or information encompassed by (i) the Railroad Control Application that CP and KCS filed on October 29, 2021 in this proceeding (the "Application"), and/or by (ii) the accompanying workpapers that CP and KCS submitted to the Board in connection with their Application (the "Workpapers").

10. Applicants object to the Second CSXT Requests and to each Definition, Instruction and Request¹ contained therein to the extent they purport to seek the identification of “Analyses and other Documents” that Applicants produce in response to the document requests of CSXT or other parties herein, and Applicants further object on grounds of unreasonable burden to any potential interpretation of “Analyses” other than as a form of “Document.”

11. Applicants object to the Second CSXT Requests and to each Definition, Instruction and Request contained therein to the extent they misstate or misconstrue the Application or accompanying Workpapers or any other facts or law.

12. Applicants object to the Second CSXT Requests and to each Definition, Instruction and Request contained therein to the extent they put forward arguments. The absence of a rejoinder to any argument put forward by CSXT in the Second CSXT Requests should not be taken as a suggestion that Applicants agree with such argument or as a waiver of any of Applicants’ rights.

13. Applicants object to the Second CSXT Requests and to each Definition, Instruction and Request contained therein as unduly burdensome and oppressive to the extent that they purport to require the Applicants to conduct a special study or to undertake anything more than a reasonable search for responsive information. In responding to the Second CSXT Requests, the Applicants will conduct a reasonable search of those accessible files in their possession in which information responsive to the Second CSXT Requests, as limited by the Applicants’ Objections, is likely to be located.

¹ For purposes of Applicants’ responses and objections to the Second CSXT Requests, “Request” encompasses discovery requests that CSXT refers to as Interrogatories as well as Requests for Production.

14. Applicants object to the Second CSXT Requests and to each Definition, Instruction and Request contained therein to the extent that they are unduly burdensome in failing to allow for a reasonable time for compliance.

15. Applicants reserve the right to redact non-responsive material from any document provided in response to the Second CSXT Requests.

16. Applicants reserve the right to provide responsive materials on a rolling basis.

17. Applicants reserve the right to challenge the competency, relevance, materiality, or admissibility of, or to object on any ground to, the use of information requested in the Second CSXT Requests and in any responses the Applicants may provide thereto, in any subsequent proceeding, or further proceedings in this matter. To the extent that the Applicants provide responsive information or documents, the Applicants do not concede that such information is relevant, material, or admissible into evidence, and any such production or identification is not intended to waive any of the Applicants' objections to any of the Second CSXT Requests.

18. Applicants' Responses and Objections are based upon information presently known to them. Applicants reserve the right to rely upon facts, documents, or other evidence that they may develop or that may subsequently come to their attention; to assert additional objections; and to supplement or amend these responses at any time as this proceeding continues.

RESPONSES AND OBJECTIONS TO SPECIFIC REQUESTS

Interrogatory No. 1:

Identify all Analyses and other Documents Concerning (a) all hardcoded values for carloads/units and average revenue per unit for each line of business and origin area /destination area presented in the Growth Initiative Summary Table, (b) Applicants' definition of the origin and destination "area" information for all traffic reported in the Growth Initiative Summary Table, and (c) any rate reduction You assume will be made as part of the Growth Initiative.

Response to Interrogatory No. 1:

In addition to the General Objections set forth above, Applicants object to this Request on the grounds that it is vague and ambiguous. Applicants further object to this Request on the grounds that it is overly broad, unduly burdensome and not proportional to the needs of this proceeding, including because it requests the identification of "all" documents without a reasonable scope limitation. Applicants further object to this Request to the extent it seeks the identification of documents or information that are accessible to CSXT. Applicants further object to the extent this Request asks Applicants to perform a special study. Applicants further object to this Request on the grounds that it misconstrues the Application.

Subject to and without waiving the General Objections and the specific objections set forth above, Applicants refer CSXT to their response to Union Pacific First Request Nos. 137 and 138 and to the Workpaper "URCS Phase III Calculation For Growth Traffic Input.xlsx."

Interrogatory No. 2:

For all traffic that is a subject of the Growth Initiative, (i) Identify the origin station and destination station pre- and post- Transaction; and (ii) describe with specificity the

pre- and post-Transaction transportation Movements of that traffic. *See CSX Corp. – Control – Pan Am Systems, Inc.*, FD 36472, Decision No. 3 (May 26, 2021) (slip op. at 6-13) (distinguishing information sufficient and insufficient to permit the reader to assess the impacts of a transaction with respect to freight surface transportation and on the provision of essential service by Applicants and other carriers).

Response to Interrogatory No. 2:

In addition to the General Objections set forth above, Applicants object to this Request on the grounds that it is vague and ambiguous. Applicants further object to this Request on the grounds that it is overly broad, unduly burdensome and not proportional to the needs of this proceeding. Applicants further object to this Request to the extent it seeks the identification of documents or information that are accessible to CSXT. Applicants further object to the citation to *CSX/Pan Am* as inapposite.

Subject to and without waiving the General Objections and the specific objections set forth above, Applicants respond that information responsive to this Request is contained in the Application and accompanying Workpapers.

Interrogatory No. 3:

Identify all Analyses or other Documents created by or for either Applicant between January 1, 2018, and September 15, 2021, Concerning the types of traffic that are the subjects of the Growth Initiative.

Response to Interrogatory No. 3:

In addition to the General Objections set forth above, Applicants object to this Request on the grounds that it is vague and ambiguous. Applicants further object to this Request on the grounds that it is overly broad, unduly burdensome and not proportional to the needs of

this proceeding, including because it requests the identification of “all” documents without a reasonable scope limitation. Applicants further object to this Request to the extent it seeks the identification of documents or information that are accessible to CSXT. Applicants further object to the extent this Request asks Applicants to perform a special study. Applicants further object to this Request on the grounds that it seeks to compel the identification of documents that may contain confidential and/or proprietary information.

Subject to and without waiving the General Objections and the specific objections set forth above, Applicants respond that they are available to meet and confer regarding this Request.

Interrogatory No. 4:

For “Intermodal” traffic identified in the Growth Initiative Summary Table, Identify all Analyses or other Documents Concerning or supporting the traffic increases listed under “*Lazaro Intermodal*” in the Growth Initiative Summary Table, Including all Analyses or other Documents Concerning:

- a. Any increase in Lazaro/Mexican Port traffic above any volumes forecast in the Analyses or other Documents identified pursuant to Interrogatory 3, Including any basis for claiming any of the {{ }} carloads/units of “*Lazaro Intermodal*” in the Growth Initiative Summary Table are incremental carloads/units Applicants can Displace only as a result of the Transaction.
- b. The specific Movements to or from North American ports other than Mexican ports the Application claims or assumes Applicants will Displace with intermodal Movements to, from, or through the Lázaro Cárdenas Port and the amount of traffic to be Displaced.
- c. Any Movement of traffic by any mode of transportation that the Application claims or assumes will be Displaced by the traffic identified as “*Lazaro Intermodal*” in the Growth Initiative Summary Table, Including the amount of traffic Displaced.
- d. Waterborne container or other freight transportation to or from Pacific Coast ports in North America.

- e. The technical or operational capabilities and limitations of the Lázaro Cárdenas Port, Including the number of piers with on-site rail service, berth depths, and other specifications that could limit the size of container ships or other waterborne vessels that can dock at the port.
- f. Potential security or other operational concerns, Including organized crime activities, that may affect the Lázaro Cárdenas port or other Mexican ports served by KCSM.
- g. Potential changes in the Mexico laws and regulatory regime pertaining to rail transportation in Mexico, and other factors that may affect the future of KCSM and its concession in Mexico.
- h. The potential for confiscation of assets owned by KCSM or non-Mexican companies in Mexico and the consequences of any such confiscation.

Response to Interrogatory No. 4:

In addition to the General Objections set forth above, Applicants object to this Request on the grounds that it is overly broad, unduly burdensome, ambiguous, vague, lacking in any appropriate scope, and not proportional to the needs of the proceeding. The Request seeks “all” documents on eight subparts that relate to freight transportation from the Pacific Coast without any limitation that such analyses relate to or were conducted in light of the Transaction. For example, the Request appears to seek all documents concerning any freight transportation that originate or terminates on the entire Pacific Coast for all of North America for a period of four years. Applicants further object to this Request to the extent it seeks the identification of documents or information that are accessible to CSXT or are publicly available. Applicants further object to the extent this Request asks Applicants to perform a special study. Applicants further object to this Request to the extent that it seeks documents protected from discovery by the attorney-client privilege, attorney work product doctrine, or any other applicable privilege, protection, immunity, law, or rule.

Subject to and without waiving the General Objections and specific objections as set forth above, Applicants respond that they have conducted a reasonable search for the topics

sought for above. For subparts (b) and (c), information responsive to this Request is found in the Application and Workpapers. After a reasonable search, Applicants do not have non-duplicative and non-privileged responsive documents with respect to subparts (a), (f), (g), and (h).

Applicants further respond that Applicants will produce non-privileged, non-duplicative documents containing analyses responsive to subparts (d) and (e) that they are able to locate after a reasonable search (to the extent any such documents exist and are not already available to CSXT).

Interrogatory No. 5:

Identify all Analyses or other Documents Concerning or supporting the traffic increases listed as “Crude” in the Growth Initiative Summary Table, Including all Analyses or other Documents Concerning:

- a. All increases in CPKC Crude by Rail Movements from Alberta above any volumes forecast in the Analyses or other Documents identified pursuant to Interrogatory 3, Including any basis for claiming any of the {{ }} carloads/units of “Crude” in the Growth Initiative Summary Table are incremental carloads/units Applicants can transport only as a result of the Transaction.
- b. The specific railroad Movements from Alberta to the U.S. Gulf Coast that the Application claims or assumes the traffic identified as “Crude” in the Growth Initiative Summary Table will Displace, and the amount of traffic Displaced.
- c. Any traffic by any other mode of transportation (e.g., pipeline transportation) that the Application claims or assumes the traffic identified as “Crude” in the Growth Initiative Summary Table will Displace, Including Identifying the mode, origin, destination, routes, and carriers for such Movements and the amount of traffic Displaced.
- d. Crude by Rail from Alberta involving any existing Gibson Energy Inc. Crude by Rail loading facility, as described in the Wahaba and Naatz Verified Statement ¶ 91.
- e. Crude by Rail from Alberta involving any potential or planned expansion of the Gibson Energy Inc. facility near Hardisty, as described in the Wahaba and Naatz Verified Statement ¶ 91.

- f. Environmental assessments and safety issues Concerning Crude by Rail.

Response to Interrogatory No. 5:

In addition to the General Objections set forth above, Applicants object to this Request on the grounds that it is vague and ambiguous. Applicants further object to this Request on the grounds that it is overly broad, unduly burdensome and not proportional to the needs of this proceeding, including because it requests the identification of “all” documents without a reasonable scope limitation. Applicants further object to this Request to the extent it seeks the identification of documents or information that are accessible to CSXT. Applicants further object to the extent this Request asks Applicants to perform a special study.

Subject to and without waiving the General Objections and the specific objections set forth above, Applicants respond that information responsive to this Request is contained in the Application and accompanying Workpapers. Nonetheless, Applicants will provide documents containing analyses responsive to this Request that they are able to locate after a reasonable search (to the extent any such documents exist that are not already included in the Application and accompanying Workpapers).

Interrogatory No. 6:

Identify all Analyses or other Documents supporting the traffic increases claimed in the Growth Initiative Summary Table other than those listed under “*Lazaro Intermodal*” and as “Crude,” Including:

- a. Any increase in traffic above any volumes forecast in the Analyses or other Documents identified pursuant to Interrogatory 3, Including any basis for claiming any of the {{ }} carloads/units of grain, LPG, “Automotives,” “Domestic Perishables,” and unspecified “International” intermodal cargo through Canadian ports in the Growth Initiative Summary Table are incremental carloads/units Applicants can only Displace as a result of the Transaction.

- b. Analyses or other Documents detailing the Movements Displaced by those increases.

Response to Interrogatory No. 6:

In addition to the General Objections set forth above, Applicants object to this Request on the grounds that it is vague and ambiguous. Applicants further object to this Request on the grounds that it is overly broad, unduly burdensome and not proportional to the needs of this proceeding, including because it requests the identification of “all” documents without a reasonable scope limitation. Applicants further object to this Request to the extent it seeks the identification of documents or information that are accessible to CSXT. Applicants further object to the extent this Request asks Applicants to perform a special study.

Subject to and without waiving the General Objections and the specific objections set forth above, Applicants respond that information responsive to this Request is contained in the Application and accompanying Workpapers.

Interrogatory No. 7:

Identify all Analyses or other Documents created by or for an Applicant in the ordinary course of business since January 1, 2020, that estimated growth of carloads, revenues, or profits for incremental traffic expected as a result of the Transaction.

Response to Interrogatory No. 7:

In addition to the General Objections set forth above, Applicants object to this Request on the grounds that it is vague and ambiguous. Applicants further object to this Request on the grounds that it is overly broad, unduly burdensome and not proportional to the needs of this proceeding, including because it requests the identification of “all” documents without a reasonable scope limitation. Applicants further object to this Request to the extent it seeks the

identification of documents or information that are accessible to CSXT. Applicants further object to the extent this Request asks Applicants to perform a special study.

Subject to and without waiving the General Objections and the specific objections set forth above, Applicants refer CSXT to the Application and accompanying Workpapers and documents produced in response to previous discovery requests, including to documents they will soon produce in response to Union Pacific First Requests No. 115.

Interrogatory No. 8:

For all Growth Initiative volumes that originate or terminate in Kansas City, Identify all Analyses or other Documents Concerning the origin station and destination station from and to which those volumes would move on CPKC and how the Transaction is necessary for CP or KCS to achieve that traffic growth.

Response to Interrogatory No. 8:

In addition to the General Objections set forth above, Applicants object to this Request on the grounds that it is vague and ambiguous. Applicants further object to this Request on the grounds that it is overly broad, unduly burdensome and not proportional to the needs of this proceeding, including because it requests the identification of “all” documents without a reasonable scope limitation. Applicants further object to this Request to the extent it seeks the identification of documents or information that are accessible to CSXT. Applicants further object to the extent this Request asks Applicants to perform a special study.

Subject to and without waiving the General Objections and the specific objections set forth above, Applicants respond that information responsive to this Request is contained in the Application and accompanying Workpapers, including without limitation the testimony of Messrs. Wahba and Naatz (at Paragraphs 39 through 46 and 68 through 70) that the Transaction

would give CP access to an intermodal facility and automotive compound near Kansas City, and would also support for the first time efficient train service for international intermodal containers moving between the Port of Lazaro Cardenas and the U.S. Midwest via Kansas City.

Replacement for Interrogatory No. 9:²

State whether Exhibit 2 of the Majure V.S. (reproduced above),³ which summarizes rail traffic at the Laredo, Texas interchange, is supported by Analyses of the segments of the Movement of that traffic within Mexico that have been provided in the Application or related workpapers filed with the Board. To the extent Your answer is “yes,” Identify any such Analyses.

Response to Replacement for Interrogatory No. 9:

In addition to the General Objections set forth above, Applicants object to this Request on the grounds that it is vague and ambiguous. Applicants further object to this Request on the grounds that it is overly broad, unduly burdensome and not proportional to the needs of this proceeding. Applicants further object to this Request to the extent it seeks the identification of documents or information that are accessible to CSXT. Applicants further object to the extent this Request asks Applicants to perform a special study. Applicants further object to this Request on the grounds that it misconstrues the Majure Verified Statement.

Subject to and without waiving the General Objections and the specific objections set forth above, Applicants respond that Exhibit 2 of the Majure Verified Statement is predicated

² Applicants have not included a response to the original Interrogatory No. 9 here because CSXT withdrew Interrogatory No. 9 and replaced it with Replacement for Interrogatory 9, which was served on Applicants on January 4, 2022.

³ Exhibit 2 of the Majure V.S. is not reproduced in this replacement. It is reproduced on page 6 of CSXT’s Second Discovery Request.

on the application of economic theory to the data underlying the Exhibit and the discussion surrounding the Exhibit (paragraphs 22-35). Further, Dr. Majure does not understand what CSXT means by its reference to analysis of “the segments of the Movement of th[e] traffic within Mexico.”

Interrogatory No. 10:

Identify all requests for Analyses, data, or other Documents that Dr. Majure made to either Applicant regarding markets in Mexico or factors affecting markets in Mexico (Including traffic types, origin stations, destination stations, and route of Movement, revenues, costs, profits etc.) for the transportation of goods to, from, or through the United States.

Response to Interrogatory No. 10:

In addition to the General Objections set forth above, Applicants object to this Request on the grounds that it is vague and ambiguous. Applicants further object to this Request on the grounds that it is overly broad, unduly burdensome and not proportional to the needs of this proceeding, including because it requests identification of “all requests” without a reasonable scope limitation. Applicants further object to this Request to the extent it seeks the identification of documents that are accessible to CSXT.

Subject to and without waiving the General Objections and the specific objections set forth above, Applicants respond that documents responsive to this Request are contained in the Application and accompanying Workpapers.

Interrogatory No. 11:

Identify all Analyses, data, or other Documents either Applicant provided to Dr. Majure regarding markets in Mexico or factors affecting markets in Mexico (Including traffic,

Movements, origin stations, and destination stations) for the transportation of goods to, from, or through the United States.

Response to Interrogatory No. 11:

In addition to the General Objections set forth above, Applicants object to this Request on the grounds that it is vague and ambiguous. Applicants further object to this Request on the grounds that it is overly broad, unduly burdensome and not proportional to the needs of this proceeding, including because it requests identification of “all” documents without a reasonable scope limitation. Applicants further object to this Request to the extent it seeks the identification of documents that are accessible to CSXT.

Subject to and without waiving the General Objections and the specific objections set forth above, Applicants respond that documents responsive to this Request are contained in the Application and accompanying Workpapers.

Interrogatory No. 12:

Regarding customers served by KCSM or KCS, Identify all Analyses or other Documents You contend support the claim that “A combined CP/KCS would not be expected to have any incentive to affect the competitive terms available to a Solely-served shipper because KCS would already be collecting the full measure of returns associated with its existing market power,” as stated in the Majure V.S. ¶ 24.

Response to Interrogatory No. 12:

In addition to the General Objections set forth above, Applicants object to this Request on the grounds that it is vague and ambiguous. Applicants further object to this Request on the grounds that it is overly broad, unduly burdensome and not proportional to the needs of this proceeding, including because it requests identification of “all” documents without a

reasonable scope limitation. Applicants further object to this Request to the extent it seeks the identification of documents that are accessible to CSXT. Applicants further object to the extent this Request asks Applicants to perform a special study.

Subject to and without waiving the General Objections and the specific objections set forth above, Applicants respond that documents responsive to this Request are contained in the Application and accompanying Workpapers. In particular, the referenced statement of Dr. Majure was not based on any specific documentary evidence in the possession of Applicants.

Interrogatory No. 13:

Identify each origin station, each destination station, and each shipper that KCSM serves in Mexico for which You contend that FXE is a “ready alternative” to KCSM as stated in the Majure Verified Statement ¶ 25.

Response to Interrogatory No. 13:

In addition to the General Objections set forth above, Applicants object to this Request on the grounds that it is vague and ambiguous. Applicants further object to this Request on the grounds that it is overly broad, unduly burdensome and not proportional to the needs of this proceeding. Applicants further object to this Request to the extent it seeks the identification of documents or information that are accessible to CSXT. Applicants further object to the extent this Request asks Applicants to perform a special study. Applicants further object to this Request on the grounds that it misconstrues the Majure Verified Statement.

Subject to and without waiving the General Objections and the specific objections set forth above, Applicants respond that Paragraph 25 of the Majure Verified Statement reflects the application of economic theory to a range of potentially applicable facts and does not make contentions of fact regarding specific individual stations and shippers.

Interrogatory No. 14:

Identify all Analyses or other Documents You contend support the claim that FXE is a “ready alternative” to KCSM for each origin station, each destination station, and each shipper Identified in response to Interrogatory 13.

Response to Interrogatory No. 14:

In addition to the General Objections set forth above, Applicants object to this Request on the grounds that it is vague and ambiguous. Applicants further object to this Request on the grounds that it is overly broad, unduly burdensome and not proportional to the needs of this proceeding, including because it requests identification of “all” documents without a reasonable scope limitation. Applicants further object to this Request to the extent it seeks the identification of documents that are accessible to CSXT. Applicants further object to the extent this Request asks Applicants to perform a special study. Applicants further object to this Request on the grounds that it misconstrues the Majure Verified Statement.

Subject to and without waiving the General Objections and the specific objections set forth above, Applicants refer CSXT to their responses and objections to Interrogatory No. 13.

Interrogatory No. 15:

Identify each origin station, each destination station, and each shipper that KCSM serves directly or indirectly in Mexico for which You contend that FXE is price-competitive and service-competitive to KCSM.

Response to Interrogatory No. 15:

In addition to the General Objections set forth above, Applicants object to this Request on the grounds that it is vague and ambiguous. Applicants further object to this Request on the grounds that it is overly broad, unduly burdensome and not proportional to the needs of this proceeding. Applicants further object to this Request to the extent it seeks the identification of documents or information that are accessible to CSXT. Applicants further object to the extent this Request asks Applicants to perform a special study. Applicants further object to this Request on the grounds that it misconstrues the Application.

Subject to and without waiving the General Objections and the specific objections set forth above, Applicants respond that the “conten[tion]” this Interrogatory purports to refer to reflects the application of economic theory to a range of potentially applicable facts and not contentions of fact by Applicants regarding specific individual stations and shippers.

Interrogatory No. 16:

Identify all Analyses or other Documents You contend support the claim that FXE is price- competitive and service-competitive to KCSM for each origin station, each destination station, and each shipper identified in response to Interrogatory 15.

Response to Interrogatory No. 16:

In addition to the General Objections set forth above, Applicants object to this Request on the grounds that it is vague and ambiguous. Applicants further object to this Request on the grounds that it is overly broad, unduly burdensome and not proportional to the needs of this proceeding, including because it requests identification of “all” documents without a reasonable scope limitation. Applicants further object to this Request to the extent it seeks the identification of documents that are accessible to CSXT. Applicants further object to the extent

this Request asks Applicants to perform a special study. Applicants further object to this Request on the grounds that it misconstrues the Majure Verified Statement.

Subject to and without waiving the General Objections and the specific objections set forth above, Applicants refer CSXT to their responses and objections to Interrogatory No. 15.

Interrogatory No. 17:

Identify all Analyses or other Documents Concerning the “ready alternatives” KCSM customers have in Mexico as stated in Majure V.S. ¶ 25 (“...For the shipper with ready alternatives, there would be no ability for a combined KCS/CP to force inferior terms on the shipper...”).

Response to Interrogatory No. 17:

In addition to the General Objections set forth above, Applicants object to this Request on the grounds that it is vague and ambiguous. Applicants further object to this Request on the grounds that it is overly broad, unduly burdensome and not proportional to the needs of this proceeding, including because it requests identification of “all” documents without a reasonable scope limitation. Applicants further object to this Request to the extent it seeks the identification of documents that are accessible to CSXT. Applicants further object to the extent this Request asks Applicants to perform a special study. Applicants further object to this Request on the grounds that it misconstrues the Majure Verified Statement.

Subject to and without waiving the General Objections and the specific objections set forth above, Applicants respond that Paragraph 25 of the Majure Verified Statement reflects the application of economic theory to a range of potentially applicable facts and does not make contentions of fact regarding specific individual stations and shippers.

Interrogatory No. 18:

Identify (a) each origin station, each destination station, and each shipper in Mexico that is Solely-Served by KCSM and (b) all Analyses or other Documents created by or for an Applicant since January 1, 2018 Concerning each such origin, destination, and shipper.

Response to Interrogatory No. 18:

In addition to the General Objections set forth above, Applicants further object to this Request on the grounds that it is overly broad, unduly burdensome and not proportional to the needs of this proceeding, including because it requests identification of “all” documents without a reasonable scope limitation. The Request seeks all documents concerning stations and shippers without any basic connection to the Transaction or even rail freight service. Because the Request lacks any reasonable limitations, Applicants cannot respond to part (b) of the Request. Applicants further object to this Request to the extent it seeks the identification of documents that are accessible to CSXT. Applicants further object to the extent this Request asks Applicants to perform a special study.

Subject to and without waiving the General Objections and specific objections as set forth above, Applicants respond they will produce non-duplicative and non-privileged documents responsive to part (a) of this Request that they are able to locate after a reasonable search.

Interrogatory No. 19:

Identify (a) each origin station, each destination station, and each shipper in Mexico that is served by both FXE and KCSM and (b) all Analyses or other Documents created by or for an Applicant since January 1, 2018 Concerning each such origin, destination, and shipper.

Response to Interrogatory No. 19:

In addition to the General Objections set forth above, Applicants further object to this Request on the grounds that it is overly broad, unduly burdensome and not proportional to the needs of this proceeding, including because it requests identification of “all” documents without a reasonable scope limitation. The Request seeks all documents concerning stations and shippers without any basic connection to the Transaction or even rail freight service. Because the Request lacks any reasonable limitations, Applicants cannot respond to part (b) of the Request. Applicants further object to this Request to the extent it seeks the identification of documents that are accessible to CSXT. Applicants further object to the extent this Request asks Applicants to perform a special study.

Subject to and without waiving the General Objections and specific objections as set forth above, Applicants respond they will produce non-duplicative and non-privileged documents responsive to part (a) of this Request that they are able to locate after a reasonable search.

Interrogatory No. 20:

Identify all Analyses or other Documents You contend support Majure’s claim that rate increases by KCSM would “lead to a loss of the traffic volumes or failure to attract new traffic” Majure Verified Statement ¶ 25.

Response to Interrogatory No. 20:

In addition to the General Objections set forth above, Applicants object to this Request on the grounds that it is vague and ambiguous. Applicants further object to this Request on the grounds that it is overly broad, unduly burdensome and not proportional to the needs of this proceeding, including because it requests identification of “all” documents without a

reasonable scope limitation. Applicants further object to this Request as vague and ambiguous. The Request seeks documents supporting a general economic concept. To the extent this Request seeks all documents that may support the general proposition that increasing rates may lose business or fail to attract new business, encompassing nearly all of KCS's day-to-day business documents, the Request is overbroad, unduly burdensome, and not proportional to the needs of the proceeding. To the extent the Request seeks studies or analyses on general economic concepts, Applicants do not conduct analysis of general economic statements as part of their normal course of business. Applicants further object to the extent this Request asks Applicants to perform a special study. Applicants further object to this Request on the grounds that it misconstrues the Majure Verified Statement.

Subject to and without waiving the General Objections and specific objections as set forth above, Applicants respond that Paragraph 25 of the Majure Verified Statement reflects the application of economic theory to a range of potentially applicable facts and does not make contentions of fact regarding specific individual shippers, and Applicants therefore do not have responsive documents.

Interrogatory No. 21:

Identify all Analyses or other Documents You contend support Majure's conclusion that the Transaction will enhance competition through vertical effects, see Majure V.S. ¶¶ 15-19, Concerning traffic that KCSM brings to Laredo, see Majure V.S. Exhibit 2, Including all Analyses or other Documents Concerning traffic between Laredo and points in the U.S. and Canada:

- a. KCS market shares compared to other carriers' shares.
- b. Post-Transaction CPKC market shares compared to other carriers' shares.

- c. The competitively significant elements of KCS service quality compared to those of other carriers, Including route miles and cycle times.
- d. The competitively significant elements of CPKC post-Transaction service quality compared to those of other carriers, Including route miles and cycle times.
- e. The shipper's total costs for using KCS compared to the shipper's total costs for using other carriers, Including KCS rates and any additional amounts shippers would pay for services provided KCS by other carriers, Including any haulage, trackage rights, terminal service, or switching fees.
- f. The shipper's post-Transaction total costs for using CPKC compared to the shipper's total costs for using other carriers, Including post-Transaction CPKC rates and any additional amounts shippers would pay for services provided CPKC by other carriers, Including any haulage, trackage rights, terminal service, or switching fees.
- g. Any Analyses or other Documents Concerning the Applicants' expected Diversions as a result of the "Growth Initiative" of traffic from other carriers using any mode.

Response to Interrogatory No. 21:

In addition to the General Objections set forth above, Applicants object to this Request on the grounds that it is overly broad, unduly burdensome, ambiguous, vague, lacking in any appropriate scope, and not proportional to the needs of the proceeding. The Request seeks "all" documents concerning KCS's competitive analysis of itself, all other carriers, shippers, customers, the market, and rates and costs, for a period of four years, for traffic moving from Laredo to any point in the US and Canada. Applicants further object to this Request to the extent it seeks the identification of documents or information that are accessible to CSXT or are publicly available. Applicants further object to the extent this Request asks Applicants to perform a special study. Applicants further object to this Request to the extent that it seeks competitively sensitive information of third parties. Applicants further object to the extent this Request asks Applicants to perform a special study.

Subject to and without waiving the General Objections and specific objections as set forth above, Applicants respond that information responsive to this Request, supporting the cited conclusion in the Request, is found in the Application and Workpapers, in particular Majure Verified Statement, Exhibit 2. The surrounding paragraphs in Dr. Majure's Verified Statement includes empirical analysis and related theory discussions to further support this conclusion. Applicants have conducted a reasonable search and respond that KCS does not have analysis related to market shares as compared with other carriers or analysis of KCS's competitively significant elements of KCS's service quality as sought above, and does not have responsive documents to subparts (a) and (c). Applicants further respond that with respect to subparts (b), (d) and (g), outside the Application and Workpapers, Applicants do not have additional non-privileged responsive documents and refer CSXT to the Application and Workpapers. Applicants further respond that with respect to subparts (e) and (f) and the Request as a whole, Applicants understand that shippers will make these kinds of decisions when assessing improved shipping options resulting from the Transaction.

Interrogatory No. 22:

Identify an updated Exhibit 2 to of the Majure V.S. that Includes KCSM Laredo gateway traffic to and from Mexico.

Response to Interrogatory No. 22:

In addition to the General Objections set forth above, Applicants object to this Request on the grounds that it is unintelligible. Applicants further object to this Request on that grounds that it asks Applicants to perform a special study. Applicants further object to this Request on the grounds that it is vague and ambiguous, overly broad, unduly burdensome and not proportional to the needs of this proceeding. Applicants further object to this Request to the

extent it seeks documents or information already available to CSXT including that was provided in response to other parties' discovery requests.

Subject to and without waiving the General Objections and the specific objections set forth above, Applicants are available to meet and confer regarding this Request.

Interrogatory No. 23:

Identify an updated Exhibit 2 to of the Majure V.S. that Includes post-Transaction CPKC Laredo gateway traffic *to and* from Mexico.

Response to Interrogatory No. 23:

In addition to the General Objections set forth above, Applicants object to this Request on the grounds that it is unintelligible. Applicants further object to this Request on that grounds that it asks Applicants to perform a special study. Applicants further object to this Request on the grounds that it is vague and ambiguous, overly broad, unduly burdensome and not proportional to the needs of this proceeding. Applicants further object to this Request to the extent it seeks documents or information already available to CSXT.

Subject to and without waiving the General Objections and the specific objections set forth above, Applicants are available to meet and confer regarding this Request.

Interrogatory No. 24:

Identify all Analyses or other Documents You contend justify the omission of geographic locations in Mexico from the single corridor analyses presented in Majure V.S. Exhibits 3-10 (which excludes all origins and destinations in Mexico).

Response to Interrogatory No. 24:

In addition to the General Objections set forth above, Applicants object to this Request on the grounds that it is vague and ambiguous. Applicants further object to this Request

on the grounds that it is overly broad, unduly burdensome and not proportional to the needs of this proceeding. Applicants further object to this Request to the extent it seeks the identification of documents or information that are accessible to CSXT. Applicants further object to the extent this Request asks Applicants to perform a special study. Applicants further object to this Request on the grounds that it misconstrues the Majure Verified Statement.

Subject to and without waiving the General Objections and the specific objections set forth above, Applicants respond that this Interrogatory is founded upon an incorrect premise; Dr. Majure's analysis of potential reductions in the number of independent routes did not exclude any corridors from consideration.

Interrogatory No. 25:

Identify all Analyses or other Documents You contend support the claim that the transportation alternatives to CPKC presented in Majure V.S. Exhibits 3-10 are "viable independent routes," Including, for each traffic type analyzed by Majure, all Analyses or other Documents Concerning:

- a. The competitively significant elements of CPKC post-Transaction service quality compared to those of other carriers, Including route miles and cycle times.
- b. The shipper's post-Transaction total costs for using CPKC compared to the shipper's total costs for using other carriers, Including post-Transaction CPKC rates and any additional amounts shippers would pay for services provided CPKC by other carriers, Including any haulage, trackage rights, terminal service, or switching fees.

Response to Interrogatory No. 25:

In addition to the General Objections set forth above, Applicants object to this Request on the grounds that it is vague and ambiguous. Applicants further object to this Request on the grounds that it is overly broad, unduly burdensome and not proportional to the needs of

this proceeding, including because it requests identification of “all” documents without a reasonable scope limitation. Applicants further object to this Request to the extent it seeks the identification of documents that are accessible to CSXT. Applicants further object to the extent this Request asks Applicants to perform a special study.

Subject to and without waiving the General Objections and the specific objections set forth above, Applicants respond that documents responsive to this Request are contained in the Application and accompanying Workpapers, including in Paragraphs 59 through 71 of the Majure Verified Statement.

Interrogatory No. 26:

Identify all Analyses or other Documents Concerning each Applicants’ pre-Transaction participation in Movements of traffic between Mexico and the U.S. or Canada.

Response to Interrogatory No. 26:

In addition to the General Objections set forth above, Applicants object to this Request on the grounds that it is vague and ambiguous. Applicants further object to this Request on the grounds that it is overly broad, unduly burdensome and not proportional to the needs of this proceeding, including because it requests identification of “all” documents without a reasonable scope limitation. Applicants further object to this Request to the extent it seeks the identification of documents or information that are accessible to CSXT.

Subject to and without waiving the General Objections and the specific objections set forth above, Applicants respond that they are available to meet and confer regarding this Request.

Interrogatory No. 27:

Identify all Analyses or other Documents You contend support the claim that competitors “would not likely be foreclosed,” see *Majure V.S.* ¶ 34, on routes originating or terminating in Mexico, Including all Analyses or other Documents Concerning, as regards Movements to, from, or through Mexico via Laredo or other U.S./Mexico border locations:

- a. KCSM market shares of those compared to those of other carriers competing for those Movements.
- b. CPKC market shares compared to those of other carriers competing for those Movements
- c. The competitively significant elements of KCSM service quality compared to those of other carriers competing for those Movements, Including route miles and cycle times.
- d. The competitively significant elements of CPKC service quality compared to those of other carriers competing for those Movements, Including route miles and cycle times.
- e. The shipper’s total costs for using KCSM compared to the shipper’s total costs for using other carriers competing for those Movements, Including KCSM rates and any costs shippers would to pay for services provided KCSM by other carriers, Including any haulage, trackage rights, terminal service, or switching fees.
- f. The shipper’s total costs for using CPKC compared to the shipper’s total costs for using other carriers competing for those Movements, Including CPKC rates and any costs shippers would to pay for services provided CPKC by other carriers, Including any haulage, trackage rights, terminal service, or switching fees.
- g. CPKC’s ability to raise KCSM’s rates or reduce KCSM’s service quality Concerning Movements to or from stations in Mexico via Laredo to stations in the US. or Canada that can be served by CPKC or another carrier.
- h. The economic impact on CPKC from raising KCSM’s rates or reducing KCSM’s service quality Concerning Movements to or from stations in Mexico via Laredo to stations in the US. or Canada that can be served by CPKC or another carrier.

- i. Analyses of any conditions CPKC anticipates using to keep Laredo and other gateways open to interchange.
- j. Any foreclosure Analyses Concerning KCSM.
- k. Any Analysis of railroad rate regulation in Mexico.

Response to Interrogatory No. 27:

In addition to the General Objections set forth above, Applicants object to this Request on the grounds that it is vague and ambiguous. Applicants further object to this Request on the grounds that it is overly broad, unduly burdensome and not proportional to the needs of this proceeding, including because it requests identification of “all” documents without a reasonable scope limitation. Applicants further object to this Request to the extent it seeks the identification of documents that are accessible to CSXT. Applicants further object to the extent this Request asks Applicants to perform a special study.

Subject to and without waiving the General Objections and the specific objections set forth above, Applicants respond that documents responsive to this Request are contained in the Application and accompanying Workpapers.

Interrogatory No. 28:

Identify all Analyses or other Documents You contend support the claim that “a combined CP/KCS will have incentives and ability to compete more effectively, rather than an incentive to impair competitors” on routes originating or terminating in Mexico. *See* Majure V.S. ¶ 35.

Response to Interrogatory No. 28:

In addition to the General Objections set forth above, Applicants object to this Request on the grounds that it is vague and ambiguous. Applicants further object to this Request on the grounds that it is overly broad, unduly burdensome and not proportional to the needs of

this proceeding, including because it requests identification of “all” documents without a reasonable scope limitation. Applicants further object to this Request to the extent it seeks the identification of documents that are accessible to CSXT. Applicants further object to the extent this Request asks Applicants to perform a special study.

Subject to and without waiving the General Objections and the specific objections set forth above, Applicants respond that documents responsive to this Request are contained in the Application and accompanying Workpapers.

Interrogatory No. 29:

Identify, for all traffic the Application claims or assumes will be Diverted to CPKC as a result of the Transaction, but which would have a longer route via CPKC than via the route from which the traffic will be Diverted:

- a. All Analyses or other Documents supporting the forecast that the traffic is likely to be Diverted to the longer CPKC route.
- b. All Analyses or other Documents Concerning cycle times of the CPKC route or routes as compared to those of the current carrier of the traffic.
- c. All Analyses or other Documents Concerning additional fuel costs and emissions of carbon dioxide (CO₂) or any other EPA regulated substance resulting from the longer CPKC Movement.
- d. All Analyses or other Documents Concerning any service that CPKC will provide that a carrier offering a shorter route does not offer, or that is superior to that of a carrier offering a shorter route, Including the “seamless, origin-to-destination management of all facets of the service” and the “very-reliable third-morning availability to/from our strategically located Bensenville Terminal” referred to in the Wahba and Naatz V.S. ¶¶ 48, 52.

Response to Interrogatory No. 29:

In addition to the General Objections set forth above, Applicants object to this Request on the grounds that it is vague and ambiguous. Applicants further object to this Request on the grounds that it is overly broad, unduly burdensome and not proportional to the needs of

this proceeding, including because it requests the identification of “all” documents without a reasonable scope limitation. Applicants further object to this Request to the extent it seeks the identification of documents or information that are accessible to CSXT.

Subject to and without waiving the General Objections and the specific objections set forth above, information responsive to this Request is contained in the Application and accompanying Workpapers, including Appendix B to the Brown and Zebrowski Verified Statement and Workpaper “8 - Diversion Identification.xlsx.”

Interrogatory No. 30:

Identify, regarding the expected Movement of all Diverted carloads/units You claim as support for the benefits analyses in the Application, all Analyses or documents Concerning the incremental costs that Applicants or a shipper would be expected to pay as a result of charges or fees imposed by another carrier or party for reciprocal or other switching, haulage services or trackage rights, demurrage, drayage, detention, or storage.

Response to Interrogatory No. 30:

In addition to the General Objections set forth above, Applicants object to this Request on the grounds that it is vague and ambiguous. Applicants further object to this Request on the grounds that it is overly broad, unduly burdensome and not proportional to the needs of this proceeding, including because it requests the identification of “all” documents without a reasonable scope limitation. Applicants further object to this Request to the extent it seeks the identification of documents or information that are accessible to CSXT. Applicants further object to the extent this Request asks Applicants to perform a special study. Applicants further object to the extent this Request misconstrues the Application.

Subject to and without waiving the General Objections and the specific objections set forth above, Applicants respond that information responsive to this Request is contained in the Application and accompanying Workpapers, including Workpapers “8 - Diversion Identification.xlsx,” “URCS Phase III Calculation For Growth Traffic.xlsm,” “URCS Diversion Costing Metrics.xlsx,” “2019 URCS Phase II Model for Combined CP and KCS.xlsx,” and “URCS Phase III Calculation For Growth Traffic Input.xlsx.”

Interrogatory No. 31:

Identify all Analyses or other Documents Concerning fees or costs not identified in response to Interrogatory 30 that Applicants expect CPKC or a shipper to pay as a cost of the Movements that You claim will Divert traffic to CPKC.

Response to Interrogatory No. 31:

In addition to the General Objections set forth above, Applicants object to this Request on the grounds that it is vague and ambiguous. Applicants further object to this Request on the grounds that it is overly broad, unduly burdensome, cumulative and not proportional to the needs of this proceeding, including because it requests the identification of “all” documents without a reasonable scope limitation. Applicants further object to this Request to the extent it seeks the identification of documents or information that are accessible to CSXT. Applicants further object to the extent this Request asks Applicants to perform a special study. Applicants further object to the extent this Request misconstrues the Application.

Subject to and without waiving the General Objections and the specific objections set forth above, Applicants respond that information responsive to this Request is contained in the Application and accompanying Workpapers as explained in Applicants’ response to Interrogatory No. 30.

Interrogatory No. 32:

Identify all Analyses or other Documents Concerning KCS's haulage agreements between Kansas City and Omaha NE, Including:

- a. KCS haulage from Lincoln to Omaha, Nebraska to Council Bluffs, Iowa, to the Iowa/Missouri state line near Hamburg, Iowa to Kansas City, Kansas. *See* IOWA DEP'T OF TRANSP., IOWA STATE RAIL PLAN 232 (Feb. 2021) ("KCS has haulage rights over the following railroad segments in Iowa: • Union Pacific Railroad (UP) Omaha Subdivision between the Iowa/Nebraska state line at Council Bluffs, Iowa, and Council Bluffs, Iowa; approximately 4.0 miles. • BNSF Railway (BNSF) Council Bluffs Subdivision between BN Junction (Council Bluffs), Iowa, and Pacific Junction, Iowa; approximately 18.4 miles. • BNSF Railway (BNSF) Napier Subdivision between Pacific Junction, Iowa, and the Iowa/Missouri state line near Hamburg, Iowa; approximately 33.0 miles."), available at https://iowadot.gov/iowainmotion/railplan/2017/IowaSRP2017_Complete.pdf.
- b. KCS haulage rights between Kansas City and each of Council Bluffs, IA and Omaha and Lincoln, NE. *See* KANSAS CITY SOUTHERN, 2003 ANNUAL REPORT 24 ("As a result of the 1988 acquisition of the Missouri-Kansas-Texas Railroad by UP, KCSR was granted (1) haulage rights between Kansas City and each of Council Bluffs, Iowa, Omaha and Lincoln, Nebraska."), available at <https://investors.kcsouthern.com/~media/Files/K/KC-Southern-IR-V2/annual-reports/annualreport2003.pdf>.

Response to Interrogatory No. 32:

In addition to the General Objections set forth above, Applicants object to this Request on the grounds that it is overly broad, unduly burdensome, ambiguous, vague, lacking in any appropriate scope, and not proportional to the needs of the proceeding. The Request seeks "all" documents concerning haulage rights between Kansas City, MO and Omaha, NE, for a period of four years, without any reasonable scope. Applicants further object to the extent this Request asks Applicants to perform a special study.

Subject to and without waiving the General Objections and specific objections set forth above, Applicants will produce non-duplicative and non-privileged haulage agreements identified in the Request.

Interrogatory No. 33:

Identify all analyses or other Documents Concerning CP's haulage and trackage rights agreements between Chicago, Illinois and locations in Ohio, Pennsylvania, and New York, Including "A haulage agreement with Genesee & Wyoming Inc., Identify all Analyses or other Documents Concerning CP's haulage and trackage rights agreements between Chicago, Illinois and locations in Ohio, Pennsylvania, and New York, Including "A haulage agreement with Genesee & Wyoming Inc., provides intermodal service to Jeffersonville, OH" *See* CANADIAN PACIFIC, CP RAIL 2020 ANNUAL REPORT 51, available at [https://s21.q4cdn.com/736796105/files/doc_financials/2020/ar/CP AnnualReport2020 SECURED.pdf](https://s21.q4cdn.com/736796105/files/doc_financials/2020/ar/CP%20AnnualReport2020%20SECURED.pdf).

Response to Interrogatory No. 33:

In addition to the General Objections set forth above, Applicants object to this Request on the grounds that it is vague and ambiguous. Applicants further object to this Request on the grounds that it is overly broad, unduly burdensome and not proportional to the needs of this proceeding, including because it Requests the identification of "all" documents without a reasonable scope limitation. Applicants further object to this Request to the extent it seeks the identification of documents or information that are accessible to CSXT.

Subject to and without waiving the General Objections and the specific objections set forth above, Applicants respond that Applicants will provide non-privileged and non-duplicative haulage and trackage rights agreements responsive to this Request that they are able

to locate after a reasonable search (to the extent any such documents exist and are not already in the possession of CSXT).

Interrogatory No. 34:

Identify all Analyses or other Documents created in the ordinary course of business by or for an Applicant Concerning incremental costs or profits for incremental traffic expected as a result of the Transaction, Including Documents created before March 2021.

Response to Interrogatory No. 34:

In addition to the General Objections set forth above, Applicants object to this Request on the grounds that it is vague and ambiguous. Applicants further object to this Request on the grounds that it is overly broad, unduly burdensome, cumulative and not proportional to the needs of this proceeding, including because it requests the identification of “all” documents without a reasonable scope limitation. Applicants further object to this Request to the extent it seeks the identification of documents or information that are accessible to CSXT. Applicants further object to the extent this Request asks Applicants to perform a special study.

Subject to and without waiving the General Objections and the specific objections set forth above, Applicants respond that, to the extent not already produced in response to other document requests, they will provide non-duplicative and non-privileged documents containing analyses responsive to this Request that they are able to locate after a reasonable search (to the extent any such documents exist).

Interrogatory No. 35:

Identify all Analyses or other Documents Concerning the following Applicant estimates appearing in in the Summary of Benefits Exhibit (Appendix B):

- a. \$62.5 million of annual “transportation” cost savings benefits.

- b. \$57.1 million of annual “Support Functions (G&A)” cost savings benefits.
- c. \$20.5 million of annual “Purchasing” cost savings benefits (also appearing at Baranowski V.S. Table 8).
- d. \$19.9 million of annual “Mechanical” cost savings benefits.
- e. \$12.8 million of annual “Equipment Requirements & Utilization” cost savings benefits.
- f. “Engineering- maintenance of way” one-time costs from the Transaction of over \$125 million over three years.

Response to Interrogatory No. 35:

In addition to the General Objections set forth above, Applicants object to this Request on the grounds that it is vague and ambiguous. Applicants further object to this Request on the grounds that it is overly broad, unduly burdensome, cumulative and not proportional to the needs of this proceeding, including because it requests the identification of “all” documents without a reasonable scope limitation. Applicants further object to this Request to the extent it seeks the identification of documents or information that are accessible to CSXT. Applicants further object to the extent this Request asks Applicants to perform a special study. Applicants further object to the extent this Request misconstrues the Application.

Subject to and without waiving the General Objections and the specific objections set forth above, Applicants respond that information responsive to this Request is contained in the Application and accompanying Workpapers.

Interrogatory No. 36:

Identify all Analyses or other Documents not identified in response to Interrogatory 35 Concerning the costs CPKC will incur to serve the traffic it expects to Divert as a result of the Transaction.

Response to Interrogatory No. 36:

In addition to the General Objections set forth above, Applicants object to this Request on the grounds that it is vague and ambiguous. Applicants further object to this Request on the grounds that it is overly broad, unduly burdensome, cumulative and not proportional to the needs of this proceeding, including because it requests the identification of “all” documents without a reasonable scope limitation. Applicants further object to this Request to the extent it seeks the identification of documents or information that are accessible to CSXT. Applicants further object to the extent this Request asks Applicants to perform a special study. Applicants further object to the extent this Request misconstrues the Application.

Subject to and without waiving the General Objections and the specific objections set forth above, Applicants refer CSXT to their response to Request No. 31 above, and to documents produced in response to other parties’ discovery requests to which CSXT has access.

Interrogatory No. 37:

Identify all Analyses or other Documents You contend support or explain the difference between (i) the \$306.3 million Total Incremental Cost from increased traffic estimated in Baranowski V.S. Table 16 and the Summary of Benefits Exhibit (Appendix B) based on URCS unit costs and (ii) the \$422 million incremental costs based on Applicant’s historical unit costs as implied by the 2019 R1s. Baranowski V.S. Table 9.

Response to Interrogatory No. 37:

In addition to the General Objections set forth above, Applicants object to this Request on the grounds that it is vague and ambiguous. Applicants further object to this Request on the grounds that it is overly broad, unduly burdensome, cumulative and not proportional to the needs of this proceeding, including because it requests the identification of “all” documents

without a reasonable scope limitation. Applicants further object to this Request to the extent it seeks the identification of documents or information that are accessible to CSXT. Applicants further object to the extent this Request asks Applicants to perform a special study. Applicants further object to the extent this Request misconstrues the Application.

Subject to and without waiving the General Objections and the specific objections set forth above, information responsive to this Request is contained in the Application and accompanying Workpapers, including Tables 9 and 16 of the Baranowski Verified Statement.

Interrogatory No. 38:

Identify all Analyses or other Documents Concerning the following estimates that significantly reduced the estimated cost of handling additional traffic:

- a. \$29.79 million of Total Annualized Fuel Savings appearing in Baranowski V.S. Table 4, Including all Analyses or other Documents Concerning the fuel price per gallon described in Baranowski V.S. ¶ 10.
- b. \$10.15 million in Total Operating Metric Savings from needing fewer locomotives appearing in Baranowski V.S. Table 5, Including all Analyses or other Documents You contend support Your locomotive unit mile reduction estimates and foregone depreciation and lease estimates therein.

Response to Interrogatory No. 38:

In addition to the General Objections set forth above, Applicants object to this Request on the grounds that it is vague and ambiguous. Applicants further object to this Request on the grounds that it is overly broad, unduly burdensome, cumulative and not proportional to the needs of this proceeding, including because it requests the identification of “all” documents without a reasonable scope limitation. Applicants further object to this Request to the extent it seeks the identification of documents or information that are accessible to CSXT. Applicants further object to the extent this Request asks Applicants to perform a special study. Applicants further object to the extent this Request misconstrues the Application.

Subject to and without waiving the General Objections and the specific objections set forth above, information responsive to this Request is contained in the Application and accompanying Workpapers, including “Base to Optimized Fuel Savings Summary.xlsx,” “CP Operating Plan Output Cost Metrics Model.xlsx,” and “Base to Optimized Operating Plan Savings.xlsx.”

Interrogatory No. 39:

Identify all Analyses or other Documents Concerning Applicants’ plans to sell locomotives.

Response to Interrogatory No. 39:

In addition to the General Objections set forth above, Applicants object to this Request on the grounds that it is vague and ambiguous. Applicants further object to this Request on the grounds that it is overly broad, unduly burdensome and not proportional to the needs of this proceeding, including because it requests the identification of “all” documents without a reasonable scope limitation and seeks the identification of documents that are not relevant to this proceeding. Applicants further object to the extent this Request asks Applicants to perform a special study. Applicants further object to the extent this Request misconstrues the Application.

Subject to and without waiving the General Objections and the specific objections set forth above, Applicants respond that Applicants have no Transaction-related plans to sell locomotives.

Interrogatory No. 40:

Identify all Analyses or other Documents You contend support the “circuitry factor” values listed in Cells F24, G24, and H24 of Tab “Phase III calculations” of Baranowski workpaper “HC- URCS Phase II Calculations for Growth traffic.xlsx.”

Response to Interrogatory No. 40:

In addition to the General Objections set forth above, Applicants object to this Request on the grounds that it is vague and ambiguous. Applicants further object to this Request on the grounds that it is overly broad, unduly burdensome, cumulative and not proportional to the needs of this proceeding, including because it requests the identification of “all” documents without a reasonable scope limitation. Applicants further object to this Request to the extent it seeks the identification of documents or information that are accessible to CSXT. Applicants further object to the extent this Request asks Applicants to perform a special study. Applicants further object to the extent this Request misconstrues the Application.

Subject to and without waiving the General Objections and the specific objections set forth above, Applicants respond that all of the referenced circuitry factors were set to one.

Interrogatory No. 41:

Identify all Analyses or other Documents You contend support the weight per car reported in Column R of Tab “Truck to Rail Diversions” of Baranowski workpaper “HC- URCS Phase II Calculations for Growth traffic Input.xlsm.”

Response to Interrogatory No. 41:

In addition to the General Objections set forth above, Applicants object to this Request on the grounds that it is vague and ambiguous. Applicants further object to this Request on the grounds that it is overly broad, unduly burdensome, cumulative and not proportional to the needs of this proceeding, including because it requests the identification of “all” documents without a reasonable scope limitation. Applicants further object to this Request to the extent it seeks the identification of documents or information that are accessible to CSXT. Applicants

further object to the extent this Request asks Applicants to perform a special study. Applicants further object to the extent this Request misconstrues the Application.

Subject to and without waiving the General Objections and the specific objections set forth above, information responsive to this Request is contained in the Application and accompanying Workpapers, including “FD 36500 – Work Paper – HC – 1.Proposed Final FTI Rail to Rail Diversion Results for Merger Application_ matching Finance with Truck to Rail.xlsx.”

Interrogatory No. 42:

Identify all “Information on Distance, Freight Car Type, Shipment Size, Car Ownership, Commodity, and Tonnage provided by CP Operating Team” described in Tab “CP Growth initiatives” of Baranowski work paper “HC- URCS Phase II Calculations for Growth traffic Input.xlsm.”

Response to Interrogatory No. 42:

In addition to the General Objections set forth above, Applicants object to this Request on the grounds that it is vague and ambiguous. Applicants further object to this Request on the grounds that it is overly broad, unduly burdensome, cumulative and not proportional to the needs of this proceeding, including because it requests the identification of “all” documents without a reasonable scope limitation. Applicants further object to this Request to the extent it seeks the identification of documents or information that are accessible to CSXT. Applicants further object to the extent this Request asks Applicants to perform a special study. Applicants further object to the extent this Request misconstrues the Application.

Subject to and without waiving the General Objections and the specific objections set forth above, information responsive to this Request is contained in the Application and

accompanying Workpapers, including “HC- URCS Phase II Calculations for Growth traffic Input.xlsm.”

Interrogatory No. 43:

Identify all Analyses or other Documents You contend support the claim that, “[Though] Texas-Minneapolis lanes are . . . served today by BNSF and UP, there was only minimal intermodal traffic in 2019, and CP/KCS would offer a more direct route and dedicated intermodal service.” Mutén V.S. ¶ 48, Including all Analyses or other Documents Concerning:

- a. The competitively significant elements of CPKC service on Texas-Minneapolis lanes compared to those of other rail and truck carriers, Including any comparison of route miles, cycle times, rates, services, and network.
- b. All trackage right fees, haulage fees, reciprocal or other switching fees, or other accessorial fee payments that Applicants expect or may be required to make on Texas- Minneapolis and Mexico-Minneapolis lanes, by each customer, origin station and destination station and route, using company-specific estimates.
- c. Any estimated increase in traffic in Texas-Minneapolis and Mexico-Minneapolis lanes, above any volumes forecast by either Applicant prior to January 1, 2021.

Response to Interrogatory No. 43:

In addition to the General Objections set forth above, Applicants object to this Request on the grounds that it is vague and ambiguous. Applicants further object to this Request on the grounds that it is overly broad, unduly burdensome and not proportional to the needs of this proceeding, including because it requests the identification of “all” documents without a reasonable scope limitation. Applicants further object to this Request to the extent it seeks the identification of documents or information that are accessible to CSXT. Applicants further object to the extent this Request asks Applicants to perform a special study. Applicants further object to this Request to the extent it misconstrues the Application.

Subject to and without waiving the General Objections and the specific objections set forth above, Applicants respond that information responsive to this Request is contained in the Application and accompanying Workpapers. In addition, Applicants will provide non-duplicative and non-privileged documents containing analyses responsive to this Request that they are able to locate after a reasonable search (to the extent any such documents exist and are not contained in the Application and accompanying Workpapers).

Interrogatory No. 44:

Identify all Analyses or other Documents You contend support the estimated truck to rail Diversions between points in Mexico and the Columbus, Ohio BEA, Mutén V.S. Appendix A, Including all Analyses or other Documents Concerning:

- a. The competitively significant elements of CPKC service between Mexico and Columbus BEA Areas compared to those of other rail and truck carriers, Including any comparison of route miles, cycle times, rates, services, and network.
- b. All trackage right fees, haulage fee, reciprocal or other switching fees or other accessorial fee payments that Applicants expect or may be required to make on Mexico-Columbus BEA lanes by each customer, origin station and destination station and route, using company-specific estimates.
- c. Any estimated increase in traffic between Mexico and Ohio above any volumes forecast by either Applicant prior to January 1, 2021.

Response to Interrogatory No. 44:

In addition to the General Objections set forth above, Applicants object to this Request on the grounds that it is vague and ambiguous. Applicants further object to this Request on the grounds that it is overly broad, unduly burdensome and not proportional to the needs of this proceeding, including because it requests the identification of “all” documents without a reasonable scope limitation. Applicants further object to this Request to the extent it seeks the identification of documents or information that are accessible to CSXT. Applicants further

object to the extent this Request asks Applicants to perform a special study. Applicants further object to this Request to the extent it misconstrues the Application.

Subject to and without waiving the General Objections and the specific objections set forth above, Applicants respond that Applicants will provide non-duplicative and non-privileged documents containing analyses responsive to this Request that they are able to locate after a reasonable search (to the extent any such documents exist and are not contained in the Application and accompanying Workpapers).

Interrogatory No. 45:

Identify all Analyses or other Documents You contend support the estimated truck to rail Diversions between (i) points in Mexico and (ii) Detroit MI or Chicago IL, Including the {{ }} carloads/units between points in Mexico and Detroit, MI and the {{ }} carloads/units between points in Mexico and Chicago, IL identified in Mutén V.S. Appendix A, Including all Analyses or other Documents Concerning:

- a. The competitively significant elements of CPKC service on the Mexico-Detroit or Mexico-Chicago lanes compared to those of other rail and truck carriers, Including any comparison of route miles, cycle times, rates, services, and network.
- b. All trackage rights fees, haulage fees, reciprocal or other switching fees or other accessorial fee payments that Applicants may be required to make on the Mexico- Detroit and Mexico-Chicago lanes by each customer, origin and destination and route, using company-specific estimates.
- c. Any increase in traffic in Mexico and Detroit, MI and Chicago, IL, above volumes forecast by either Applicant prior to January 1, 2021.

Response to Interrogatory No. 45:

In addition to the General Objections set forth above, Applicants object to this Request on the grounds that it is vague and ambiguous. Applicants further object to this Request on the grounds that it is overly broad, unduly burdensome and not proportional to the needs of

this proceeding, including because it requests the identification of “all” documents without a reasonable scope limitation. Applicants further object to this Request to the extent it seeks the identification of documents or information that are accessible to CSXT. Applicants further object to the extent this Request asks Applicants to perform a special study. Applicants further object to this Request to the extent it misconstrues the Application.

Subject to and without waiving the General Objections and the specific objections set forth above, Applicants respond that Applicants will provide non-duplicative and non-privileged documents containing analyses responsive to this Request that they are able to locate after a reasonable search (to the extent any such documents exist and are not contained in the Application and accompanying Workpapers).

Interrogatory No. 46:

Identify all Analyses or other Documents Concerning truck to rail Diversions and rate setting (e.g. benchmarking, evaluations, negotiations, traffic volume, reductions or increases and impact of alternative carriers or other aspects).

Response to Interrogatory No. 46:

In addition to the General Objections set forth above, Applicants object to this Request on the grounds that it is vague and ambiguous. Applicants further object to this Request on the grounds that it is overly broad, unduly burdensome and not proportional to the needs of this proceeding, including because it requests identification of “all” documents without a reasonable scope limitation. Applicants further object to this Request to the extent it seeks the identification of documents or information that are accessible to CSXT.

Subject to and without waiving the General Objections and the specific objections set forth above, Applicants are available to meet and confer regarding this Request.

Interrogatory No. 47:

For all truck to rail Diversions that originate or terminate in Kansas City, Identify all Analyses or other Documents Concerning:

- a. The specific origin station or destination station and customer.
- b. How the Transaction is necessary for CP or KCS to achieve the Diversion.

Response to Interrogatory No. 47:

In addition to the General Objections set forth above, Applicants object to this Request on the grounds that it is vague and ambiguous. Applicants further object to this Request on the grounds that it is overly broad, unduly burdensome, cumulative and not proportional to the needs of this proceeding, including because it requests the identification of “all” documents without a reasonable scope limitation. Applicants further object to this Request to the extent it seeks the identification of documents or information that are accessible to CSXT. Applicants further object to the extent this Request asks Applicants to perform a special study. Applicants further object to the extent this Request misconstrues the Application.

Subject to and without waiving the General Objections and the specific objections set forth above, Applicants respond that information responsive to this Request is contained in the Application and accompanying Workpapers. Applicants also refer CSXT to their response to Interrogatory No. 8 set forth above.

Interrogatory No. 48:

Identify all Analyses or other Documents produced by or for Applicants regarding autonomous vehicles, Including all Analyses or other Documents Concerning competition between transportation by rail and transportation by autonomous trucks and the effect of that competition on Applicants’ future traffic.

Response to Interrogatory No. 48:

In addition to the General Objections set forth above, Applicants object to this Request on the grounds that it is vague and ambiguous. Applicants further object to this Request on the grounds that it is overly broad, unduly burdensome and not proportional to the needs of this proceeding, including because it requests the identification of “all” documents without a reasonable scope limitation. Applicants further object to this Request to the extent it seeks the identification of documents or information that are accessible to CSXT. Applicants further object to the extent this Request asks Applicants to perform a special study. Applicants further object to this Request to the extent it seeks the identification of documents irrelevant to this proceeding.

Subject to and without waiving the General Objections and the specific objections set forth above, Applicants respond that Applicants will provide non-duplicative and non-privileged board presentations responsive to this Request that they are able to locate after a reasonable search (to the extent any such documents exist).

Interrogatory No. 49:

Identify all Analyses or other Documents supporting the Diversion percentages in the Brown & Zebrowski V.S. Table 7.

Response to Interrogatory No. 49:

In addition to the General Objections set forth above, Applicants object to this Request on the grounds that it is vague and ambiguous. Applicants further object to this Request on the grounds that it is overly broad, unduly burdensome and not proportional to the needs of this proceeding, including because it requests the identification of “all” documents without a reasonable scope limitation. Applicants further object to this Request to the extent it seeks the

identification of documents or information that are accessible to CSXT. Applicants further object to the extent this Request asks Applicants to perform a special study.

Subject to and without waiving the General Objections and the specific objections set forth above, Applicants respond that information responsive to this Request is contained in the Application and accompanying Workpapers, including Appendix B and the Workpaper “Traffic Distribution Analysis.xlsx.”

Interrogatory No. 50:

With respect to the traffic that the Application claims or assumes will be Diverted to CPKC single-line service as a result of a 5% rate reduction:

- a. Confirm that the 5% rate reduction is applied to {{ }} out of the {{ }} carloads/units the Application claims or assumes will be Diverted from existing rail traffic, as appears from the work paper *Brown and Zebrowski V.S. HC – 8 Diversion Identification.xlsx*, at tabs “Results” and “Calculations.”
- b. Confirm that intermodal Movements between Dallas and Chicago comprise {{ }} of all Diversions the Application claims or assumes will result from of a 5% rate reduction, as calculated from the Brown & Zebrowski V.S. ¶ 95 and work papers *Brown and Zebrowski V.S. HC – 8 Diversion Identification.xlsx*, at tabs “Results” and “Calculations.”
- c. Identify all Analyses or other Documents You contend support the claim that CPKC will Divert intermodal Movements between Dallas and Chicago as a result of only a 5% rate reduction.

Response to Interrogatory No. 50:

In addition to the General Objections set forth above, Applicants object to this Request on the grounds that it is vague and ambiguous. Applicants further object to this Request on the grounds that it is overly broad, unduly burdensome and not proportional to the needs of this proceeding. Applicants further object to this Request to the extent it seeks the identification of documents or information that are accessible to CSXT. Applicants further object to the extent

this Request asks Applicants to perform a special study. Applicants further object to this Request on the grounds that it misconstrues the Application.

Subject to and without waiving the General Objections and the specific objections set forth above, Applicants confirm that the “5% rate reduction is applied to {{ }} out of the {{ }} carloads/units the Application claims or assumes will result from [] a 5% rate reduction” and “intermodal Movements between Dallas and Chicago comprise {{ }} of all Diversions the Application claims or assumes will result from [] a 5% rate reduction” as referenced above. The documents sought by part (c) of this Request are the Brown and Zebrowski Verified Statement and supporting Workpapers.

Interrogatory No. 51:

Identify all Analyses or other Documents produced by or for an Applicant since January 1, 2018 Concerning rail Diversions and rate setting (e.g., benchmarking, evaluations, negotiations, reductions or increases, and impact of alternative carriers) for service or traffic between points on which single line service is or will be offered by (i) either Applicant or CPKC and (ii) another carrier.

Response to Interrogatory No. 51:

In addition to the General Objections set forth above, Applicants object to this Request on the grounds that it is vague and ambiguous. Applicants further object to this Request on the grounds that it is overly broad, unduly burdensome and not proportional to the needs of this proceeding, including because it requests identification of “all” documents without a reasonable scope limitation. Applicants further object to this Request to the extent it seeks the identification of documents or information that are accessible to CSXT.

Subject to and without waiving the General Objections and the specific objections set forth above, Applicants respond that they are available to meet and confer regarding this Request.

Interrogatory No. 52:

Identify all calculations related to the values of changing traffic patterns displayed in “Brown/Zebrowski HC WP Work Paper – HC – 8 - Diversion Identification.xlsx” at tab “Results” in Column E “diverted units” for rows 24 to 93 labeled “Forest Products”.

Response to Interrogatory No. 52:

In addition to the General Objections set forth above, Applicants object to this Request on the grounds that it is unintelligible. Applicants further object to this Request on the grounds that it is vague, ambiguous, overly broad, unduly burdensome and not proportional to the needs of this proceeding, including because it requests the identification of “all” documents without a reasonable scope limitation. Applicants further object to this Request to the extent it seeks the identification of documents or information that are accessible to CSXT. Applicants further object to this Request on the grounds that it misconstrues the Application.

Subject to and without waiving the General Objections and the specific objections set forth above, Applicants respond that information responsive to this Request is contained in the Application and accompanying Workpapers.

Interrogatory No. 53:

Identify all Analyses or other Documents created in the normal course of business by or for an Applicant estimating incremental revenues or projected profit (or contribution) from incremental traffic expected as a result of the Transaction, Including Documents created before March 2021.

Response to Interrogatory No. 53:

In addition to the General Objections set forth above, Applicants object to this Request on the grounds that it is vague and ambiguous. Applicants further object to this Request on the grounds that it is overly broad, unduly burdensome, cumulative and not proportional to the needs of this proceeding, including because it requests the identification of “all” documents without a reasonable scope limitation. Applicants further object to this Request to the extent it seeks the identification of documents or information that are accessible to CSXT. Applicants further object to the extent this Request asks Applicants to perform a special study.

Subject to and without waiving the General Objections and the specific objections set forth above, Applicants respond that after performing a reasonable search, they have no non-duplicative and non-privileged responsive documents other than those prepared in connection with the Transaction, which have been produced (or will be produced) in response to other requests.

Interrogatory No. 54:

For all Diversions that originate or terminate in Kansas City, Identify all Analyses or other Documents Concerning:

- a. The specific origin station or destination station and customer.
- b. How the Transaction is necessary for CP or KCS to achieve the Diversion. See Brown & Zebrowski V.S. ¶ 66.

Response to Interrogatory No. 54:

In addition to the General Objections set forth above, Applicants object to this Request on the grounds that it is vague and ambiguous. Applicants further object to this Request on the grounds that it is overly broad, unduly burdensome, cumulative and not proportional to the needs of this proceeding, including because it requests the identification of “all” documents

without a reasonable scope limitation. Applicants further object to this Request to the extent it seeks the identification of documents or information that are accessible to CSXT. Applicants further object to the extent this Request asks Applicants to perform a special study. Applicants further object to the extent this Request misconstrues the Application.

Subject to and without waiving the General Objections and the specific objections set forth above, Applicants respond that information responsive to this Request is contained in the Application and accompanying Workpapers. Applicants also refer CSXT to their responses to Interrogatory Nos. 8 and 47 set forth above.

Interrogatory No. 55:

Identify the origin station, destination station, and all interchanges for the claimed traffic Diversions appearing:

- a. In the “Diversion Carloads” column of Brown & Zebrowski Table 11.
- b. As “Effect of Increasing CP’s Share From {{{ }}}} to Supply Lumber to Dallas” and “Total by 2021 After Accounting for 15% Growth from 2019 to 2021” in Brown & Zebrowski Table 23.
- c. In the “Total Diverted Carloads” column of Brown & Zebrowski Table 24.

Response to Interrogatory No. 55:

In addition to the General Objections set forth above, Applicants object to this Request on the grounds that it is vague and ambiguous. Applicants further object to this Request on the grounds that it is overly broad, unduly burdensome and not proportional to the needs of this proceeding. Applicants further object to this Request to the extent it seeks the identification of documents or information that are accessible to CSXT. Applicants further object to the extent this Request asks Applicants to perform a special study.

Subject to and without waiving the General Objections and the specific objections set forth above, Applicants respond that information responsive to this Request is contained in

the Application and accompanying Workpapers, including the Workpapers “10b - Grain Diversion Worksheet.xlsx,” “10a - Lumber Diversion Worksheet.xlsx,” and “8 - Diversion Identification.xlsx.”

Interrogatory No. 56:

Identify all Analyses of changing traffic patterns or other Documents You contend support the claimed traffic Diversions identified in Interrogatory 55.

Response to Interrogatory No. 56:

In addition to the General Objections set forth above, Applicants object to this Request on the grounds that it is vague and ambiguous. Applicants further object to this Request on the grounds that it is overly broad, unduly burdensome and not proportional to the needs of this proceeding, including because it requests the identification of “all” documents without a reasonable scope limitation. Applicants further object to this Request to the extent it seeks the identification of documents or information that are accessible to CSXT. Applicants further object to the extent this Request asks Applicants to perform a special study.

Subject to and without waiving the General Objections and the specific objections set forth above, Applicants respond that Applicants will provide non-duplicative and non-privileged documents containing analyses responsive to this Request that they are able to locate after a reasonable search (to the extent any such documents exist and are not contained in the Application and accompanying Workpapers).

Interrogatory No. 57:

State all calculations related to the changing traffic patterns displayed in “Brown/Zebrowski HC WP Work Paper – HC – 8 - Diversion Identification.xlsx” at tab “Results” in Column E “diverted units” for rows 24 to 93 labeled:

- a. “Grain.”
- b. “Forest Products.”

Response to Interrogatory No. 57:

In addition to the General Objections set forth above, Applicants object to this Request on the grounds that it is vague and ambiguous. Applicants further object to this Request on the grounds that it is overly broad, unduly burdensome and not proportional to the needs of this proceeding. Applicants further object to this Request to the extent it seeks the identification of documents or information that are accessible to CSXT. Applicants further object to the extent this Request asks Applicants to perform a special study.

Subject to and without waiving the General Objections and the specific objections set forth above, Applicants respond that information responsive to this Request is contained in the Application and accompanying Workpapers, including the Workpapers “10b - Grain Diversion Worksheet.xlsx,” and “10a - Lumber Diversion Worksheet.xlsx.”

Interrogatory No. 58:

Identify all Analyses or other Documents Concerning investments needed to achieve the results forecast in the Application, Including all Analyses or other Documents Concerning the costs of those investments. “We anticipate that this improved competitive posture will support additional investments by CPKC in rail capacity on our North-South main line, while also justifying investments by us and our prospective shippers in new facilities (like intermodal terminals, auto compounds, transloads, and others) that realize the full potential of the CP/KCS network.” *See* Wahba and Naatz V.S. ¶ 7.

Response to Interrogatory No. 58:

In addition to the General Objections set forth above, Applicants object to this Request on the grounds that it is vague and ambiguous. Applicants further object to this Request on the grounds that it is overly broad, unduly burdensome and not proportional to the needs of this proceeding, including because it requests the identification of “all” documents without a reasonable scope limitation. Applicants further object to this Request to the extent it seeks the identification of documents or information that are accessible to CSXT. Applicants further object to the extent this Request asks Applicants to perform a special study.

Subject to and without waiving the General Objections and the specific objections set forth above, Applicants respond that information responsive to this Request is contained in the Application and accompanying Workpapers.

Interrogatory No. 59:

Identify all Analyses or other Documents Concerning additional investment necessary to generate additional business to, from, or through Mexico, Including the following:

- a. Purchases of CPKC-owned containers, rail cars, locomotives, or facilities used or useful in rail service.
- b. Infrastructure improvements at the border crossings in Laredo, TX and Brownsville, TX.
- c. Infrastructure improvements at the port of Lazaro Cardenas.

Response to Interrogatory No. 59:

In addition to the General Objections set forth above, Applicants object to this Request on the grounds that it is vague and ambiguous. Applicants further object to this Request on the grounds that it is overly broad, unduly burdensome and not proportional to the needs of this proceeding. Applicants further object to this Request to the extent it seeks the identification of documents or information that are accessible to CSXT.

Subject to and without waiving the General Objections and the specific objections set forth above, Applicants will produce non-duplicative and non-privileged documents containing analyses responsive to this Request that they are able to locate after a reasonable search (to the extent any such documents exist and are not contained in the Application and accompanying Workpapers).

Interrogatory No. 60:

Describe, with specificity at least equal to that provided for the “Planned Infrastructure Investments” in Paragraphs 239-55, Tables 8-9, and Appendix R of the Operating Plan (Exhibit 13), the estimated costs of, and Identify all Analyses or other Documents Concerning, each of the following the investments described in the Application:

- a. “CP/KCS offerings will support investment in efficient new rail served grain elevators in the growing region of Southeastern Iowa.” See Creel V.S. ¶ 25.
- b. “CP and KCS were simply unable individually to financially justify certain infrastructure investments that were needed to unlock commercial opportunities to move more freight on intermodal trains.” See Ottensmeyer V.S. 12.
- c. “CP anticipates that new investments in grain-loading capacity on CP’s lines in the United States could begin as soon as the first year following control approval, taking advantage of the improved market access we will offer and our improved incentives to support those investments with attractive transportation services.” See Wahba and Naatz V.S. ¶ 26.
- d. “CP anticipates that demand for fertilizers from Canada moving via efficient CPKC single-line routes to growers in Southwestern Missouri could support future investment in a potash shed on KCS’s lines south of Kansas City. Such an investment could enable the rail Movement of potash originating on CP in Fort Saskatchewan, AB.” See Wahba and Naatz V.S. ¶ 33.
- e. “The broader reach of the combined CP/KCS network will open up opportunities for investment in intermodal network expansion that would not have made sense for CP or KCS standing alone.” See Wahba and Naatz V.S. ¶ 54.

- f. “CP’s access to substantial originations of automotive traffic, will open up opportunities for the investment in traffic growth that would not have made sense for KCS standing alone.” See Wahba and Naatz V.S. ¶ 77.
- g. “With the CP/KCS combination, the combined company would explore investing in a new auto compound adjacent to KCS’s lines in the Beaumont/Port Arthur area (where UP’s restrictions would not apply) that could allow CP/KCS to offer single-line Movement of finished autos from assembly plants in Ontario and imported autos from the Canadian ports served by CP to all of Eastern and Central Texas.” See Wahba and Naatz V.S. ¶ 78.
- h. “CP/KCS Transaction will support the investments needed to accelerate the transition away from traditional crude-by-rail and towards the Movement of Alberta crude in private cars in non-hazardous DRUbit form.” See Wahba and Naatz V.S. ¶ 92.
- i. “Transition to DRUbit from investments prompted by CP/KCS Transaction displaces traditional (flammable/hazardous) crude-by-rail volumes.” See Wahba and Naatz V.S. Figure 11.
- j. “CP and KCS have been at the forefront of a transition toward a safer and more efficient way to move Alberta Crude by Rail. Through investments at origin and destination, the hazardous dilbit can be converted to non-hazardous “DRUbit” that can be more safely moved by rail.” See Wahba and Naatz V.S. ¶ 90.
- k. “The benefits of a new, strong, competitor against other railroads and trucks that will possess new single-line services and routes will accrue to customers, employees, shareholders, and stakeholders. It will unleash new infrastructure investment that CP and KCS standing alone could not justify.” See Ottensmeyer V.S. 2-3.
- l. “CP and KCS have already determined that there are several opportunities to route freight in more efficient ways, Including by routing certain freight away from Chicago. These new routings will require new infrastructure investment, investment that could not be justified if the parties were to remain separate entities.” See Ottensmeyer V.S. 7.

Response to Interrogatory No. 60:

In addition to the General Objections set forth above, Applicants object to this Request on the grounds that it is vague and ambiguous. Applicants further object to this Request on the grounds that it is overly broad, unduly burdensome and not proportional to the needs of

this proceeding. Applicants further object to this Request to the extent it seeks documents or information that are accessible to CSXT. Applicants further object to the extent this Request asks Applicants to perform a special study. Applicants further object to the extent this Request misconstrues the Application.

Regarding Request Nos. 60(a) and (c), the referenced investments are not ones that would be made by Applicants. Rather, they are investments that would be made by shippers and/or third parties in response to the improved availability of efficient rail access to grain markets that would be afforded by the Transaction. In Applicants' experience, the grain loading facilities of the sort Applicants' anticipate would be constructed could cost in the range of \$35 Million to \$45 Million and take 18 to 24 months to complete. Applicants have no knowledge of the precise locations of such facilities beyond that presented in the Application.

Regarding Request Nos. 60(b), (e), (k) and (l), the referenced investments are those already addressed in detail in the information responsive to this Request that is included in the Application and accompanying Workpapers.

Regarding Request No. 60(d), the referenced investments are not ones that would be made by Applicants. Rather, they are investments that would be made by shippers and/or third parties in response to the improved availability of efficient rail access for shipments of potash to end destinations in Missouri and Arkansas. In Applicants' experience, a facility of the sort Applicants' anticipate would be constructed could cost in the range of \$5 million to \$15 million and take 12 to 18 months to complete. Applicants have no knowledge of the precise locations of such a facility beyond that presented in the Application.

Regarding Request Nos. 60(f) and (g), Applicants have no present plans to make such an investment, the viability of which would depend on market demand and the inability of

CPKC to make use of KCS's facility in Kendleton, TX for the contemplated automotive traffic. In Applicants' experience, a facility of the sort Applicants' anticipate could be constructed could cost in the range of \$5 Million to \$20 Million and take six to 12 months to complete. Applicants have no knowledge of the precise locations of such a facility beyond that presented in the Application.

Regarding Request Nos. 60(h)-(j), Applicants will provide non-duplicative and non-privileged documents containing analyses sufficient to describe the referenced investments to the extent they are able to locate such documents after a reasonable search (to the extent any such documents exist and are not contained in the Application and accompanying Workpapers).

Interrogatory No. 61:

State whether Applicants contend that the Cognizable Public Benefits of the Transaction Include or should reflect:

- a. Benefits other than, and in addition to, rate reductions, cost reductions, cost savings, and service quality improvements.
- b. Benefits not arising within the federal jurisdiction of the U.S. (i.e., U.S. localities and customers).
- c. Reductions in benefits to public or public interests in the U.S. resulting from increased benefits to the public or private interests outside the U.S.
- d. Additional risks associated with doing business in foreign countries.
- e. Benefits that could be achieved without the Transaction.
- f. Any financial impact associated with changes in the Applicants' cost of capital as result of the Transaction.

Response to Interrogatory No. 61:

In addition to the General Objections set forth above, Applicants object to this Request on the grounds that it is vague and ambiguous. Applicants further object to this Request on the grounds that it is overly broad, unduly burdensome and not proportional to the needs of

this proceeding. Applicants further object to this Request to the extent it seeks the identification of documents or information that are accessible to CSXT. Applicants further object to the extent this Request asks Applicants to perform a special study. Applicants further object to this Request on the grounds that it misconstrues the Application.

Subject to and without waiving the General Objections and the specific objections set forth above, Applicants respond as follows:

Regarding Request No. 61(a), yes, Applicants do contend that cognizable public benefits include “[b]enefits other than, and in addition to, rate reductions, cost reductions, cost savings, and service quality improvements.”

Regarding Request No. 61(b), yes, Applicants do contend that cognizable public benefits include or reflect “[b]enefits not arising within the federal jurisdiction of the U.S. (i.e., U.S. localities and customers),” to the extent benefits outside the United States yield benefits for the U.S. public interest, including the interests of U.S. rail labor, U.S. rail customers, and the U.S. economy. One example of such a benefit to the U.S. public interest is the economic value created by improved connectivity between the United States and its Canadian and Mexican trading partners.

Regarding Request No. 61(c), no, Applicants do not contend that the U.S. public interest would be harmed by benefits of the Transaction that may be realized outside the United States.

Regarding Request No. 61(d), no, Applicants do not contend that the U.S. public interest would be harmed were it the case—as posited in CSXT’s framing of this Interrogatory, to which Applicants object—that businesses choosing to do business in foreign countries might

face greater risks than those choosing not to do business in foreign countries. Improved transportation options for all such businesses is an unambiguous benefit.

Regarding Request No. 61(e), yes, Applicants do contend that cognizable public benefits can include “[b]enefits that could be achieved without the Transaction” if there is uncertainty whether such benefits would actually be achieved absent the Transaction.

Regarding Request No. 61(f), Applicants object to the premise of this Interrogatory, given the lack of any impact of the Transaction on Applicants’ cost of capital. See response to Interrogatory No. 67.

Interrogatory No. 62:

Identify all Analyses or other Documents, Including regulatory decisions and academic work, that You contend support the definition of the term “public benefits” as used in the Application, Including all Analyses or other Documents, Including regulatory decisions and academic work, which You contend support Your responses to Interrogatory 61.

Response to Interrogatory No. 62:

In addition to the General Objections set forth above, Applicants object to this Request on the grounds that it is vague and ambiguous. Applicants further object to this Request on the grounds that it is overly broad, unduly burdensome and not proportional to the needs of this proceeding, including because it requests the identification of “all” documents without a reasonable scope limitation. Applicants further object to this Request to the extent it seeks the identification of documents or information that are accessible to CSXT. Applicants further object to this Request on the grounds that it misconstrues the Application.

Subject to and without waiving the General Objections and the specific objections set forth above, Applicants respond that Applicants did not define the term “public benefits” in the Application; rather the definition comes from STB precedent to which CSXT has access.

Interrogatory No. 63:

Identify all Analyses or other Documents Concerning Applicant’s determination of what effects of the Transaction constitute or generate Cognizable Public Benefits.

Response to Interrogatory No. 63:

In addition to the General Objections set forth above, Applicants object to this Request on the grounds that it is vague and ambiguous. Applicants further object to this Request on the grounds that it is overly broad, unduly burdensome and not proportional to the needs of this proceeding, including because it requests identification of “all” documents without a reasonable scope limitation. Applicants further object to this Request to the extent it seeks the identification of documents or information that are accessible to CSXT.

Subject to and without waiving the General Objections and the specific objections set forth above, Applicants respond that information responsive to this Request is contained in the Application and accompanying Workpapers.

Interrogatory No. 64:

Identify all Analyses or other Documents Concerning any capital investments necessary to create the incremental revenues the Application claims or assumes will result from the Transaction, Including Identifying where in the Application Applicants contend any such investments are accounted for or otherwise addressed.

Response to Interrogatory No. 64:

In addition to the General Objections set forth above, Applicants object to this Request on the grounds that it is vague and ambiguous. Applicants further object to this Request on the grounds that it is overly broad, unduly burdensome and not proportional to the needs of this proceeding, including because it requests identification of “all” documents without a reasonable scope limitation. Applicants further object to this Request to the extent it seeks the identification of documents or information that are accessible to CSXT.

Subject to and without waiving the General Objections and the specific objections set forth above, Applicants respond that information responsive to this Request is contained in the Application and accompanying Workpapers.

Interrogatory No. 65:

Identify all Analyses or other Documents Concerning:

- a. Applicants’ assumed 2.3% for long-term debt and 1.0% for debt maturing within one year (“STB Rail Road Control Application Model – Final” at worksheet “Input – Assumptions” at rows 11-12.)
- b. Applicants’ actual base year debt rate, which can be calculated as 5.12% for CP and 3.57% for KCS using the pro forma income statement and balance sheet statement. (“STB Rail Road Control Application Model – Final” worksheets “Pro Forma Income Statement CP-K” And “Pro Forma Balance Sheet Cp-KCS”).
- c. The current Baa2 corporate Bond Yield. (De Bruyn V.S., page 7 at para. 15 (App. Vol. 1, page 443), Exhibit 4 to De Bruyn V.S. (App. Vol. 1, pages 507-512)).
- d. Forecasts or actions concerning any planned upcoming financing, Including the amount, rate, repayment period etc. associated with the debt refinancing that CP/KCS indicate will be needed after the bridge loan of up to \$8.5 billion matures (e.g., the total amount to be refinanced, borrowing rate, and repayment period, etc.). (App. Vol. 1, pages 17-18).

Response to Interrogatory No. 65:

In addition to the General Objections set forth above, Applicants object to this Request on the grounds that it is vague and ambiguous. Applicants further object to this Request on the grounds that it is overly broad, unduly burdensome and not proportional to the needs of this proceeding, including because it requests the identification of “all” documents without a reasonable scope limitation. Applicants further object to this Request to the extent it seeks the identification of documents or information that are accessible to CSXT. Applicants further object to the extent this Request asks Applicants to perform a special study. Applicants further object to the extent this Request misconstrues the Application.

Subject to and without waiving the General Objections and the specific objections set forth above, Applicants respond that Applicants will produce non-duplicative and non-privileged final term sheets, credit facility schedules, and trade tickets responsive to this Request they are able to locate after a reasonable search (to the extent any such documents exist and were not already provided).

Regarding Request No. 65(a), the long-term debt assumption of 2.30% was arrived at based on discussions with financial advisors Bank of Montreal and Goldman Sachs as well as other banks in CP’s credit facility which provide periodic indicative new debt issuance pricing. On November 17th, CP priced \$6.7 billion in new debt across five tranches with a weighted average coupon of 2.36%. That same day CP priced \$2.2 billion CAD in new debt across two tranches with a weighted average coupon of 2.11%. The weighted average coupon across the seven tranches of debt issued in the two markets was 2.29%.

The 1.0% assumption for debt maturing within one year incorporates the estimated short term borrowing cost using CP's cost to issue commercial paper or borrow on the \$1.3 billion credit facility in order.

Regarding Request No. 65(b), Applicants refer CSXT to CP and KCS's 2019 Annual Reports, which were included as part of Exhibit 9 to the Application.

Regarding Request No. 61(c), Debt issuances to fund the transaction have closed.

Regarding Request No. 61(d), to fund the cash consideration of the merger, CP's wholly-owned subsidiary, Canadian Pacific Railway Company, sold new debt of CAD \$2.2 billion and USD \$6.7 billion, both of which are guaranteed by CP. The debt transactions closed on Nov. 24, 2021 and Dec. 2, 2021, following which the bridge loan \$8.5 billion was terminated.

Interrogatory No. 66:

Identify all Analyses and Documents Concerning the payments that would be required assuming Goldman Sachs' floating interest rate of 4.5% on \$8.5 billion worth of unsecured debt and compare those payments to the payments assumed in the Application. Application Volume 4 at 882.

Response to Interrogatory No. 66:

In addition to the General Objections set forth above, Applicants object to this Request on the grounds that it is vague and ambiguous. Applicants further object to this Request on the grounds that it is overly broad, unduly burdensome and not proportional the needs of this proceeding, including because it requests the identification of "all" documents without a reasonable scope limitation. Applicants further object to this Request to the extent it seeks the identification of documents that are irrelevant to this proceeding. Applicants further object to this Request to the extent it seeks the identification of documents or information that are

accessible to CSXT. Applicants further object to the extent this Request asks Applicants to perform a special study. Applicants further object to the extent this Request misconstrues the Application.

Subject to and without waiving the General Objections and the specific objections set forth above, Applicants state that, as reflected in documents that Applicants will provide, CP's variable-rate bridge financing has been replaced by fixed-rate debt.

Interrogatory No. 67:

The Federal Reserve has said it will increase interest rates three times in the next year. Identify all Analyses and Documents Concerning the effect of the potential increases in interest rates on Applicants' payments for both secured and unsecured debt incurred for the purpose of the Transaction.

Response to Interrogatory No. 67:

In addition to the General Objections set forth above, Applicants object to this Request on the grounds that it is vague and ambiguous. Applicants further object to this Request on the grounds that it is overly broad, unduly burdensome and not proportional to the needs of this proceeding, including because it requests the identification of "all" documents without a reasonable scope limitation. Applicants further object to this Request to the extent it seeks the identification of documents that are irrelevant to this proceeding. Applicants further object to this Request to the extent it seeks the identification of documents or information that are accessible to CSXT. Applicants further object to the extent this Request asks Applicants to perform a special study.

Subject to and without waiving the General Objections and the specific objections set forth above, Applicants state that, as reflected in documents that Applicants will provide in

response to 67, CP's variable-rate bridge financing has been replaced by fixed-rate debt, such that interest rate increases will have no effect on Transaction-related debt.

Interrogatory No. 68:

Identify all Analyses and Documents describing the methodologies and assumptions used by Applicants to conduct pro forma analyses of business opportunities or projects considered by each Applicant in the ordinary course of business and requiring approval by the Board of Directors and state (separately for each Applicant):

- a. Whether the Applicant's ordinary course pro forma analyses Include all costs associated with capital investments necessary for the project or opportunity. To the extent the answer is "yes" for either Applicant, explain with specificity why the Applicants have not Included all such costs in the Transaction Pro Forma Analyses.
- b. The after-tax weighted average cost of capital (WACC) the Applicant uses in ordinary course pro forma analyses, Including each component (cost of debt, cost of equity, and debt/equity percentages) thereof.
- c. The time horizon (e.g., ten years) and any terminal value the Applicant uses in ordinary course pro forma analyses.

Response to Interrogatory No. 68:

In addition to the General Objections set forth above, Applicants object to this Request on the grounds that it is vague and ambiguous. Applicants further object on the grounds that it is overly broad, unduly burdensome and not proportional to the needs of this proceeding, including because it requests identification of "all" documents without a reasonable scope limitation. Applicants further object to this Request to the extent it seeks documents or information already available to CSXT.

Subject to and without waiving the General Objections and the specific objections set forth above, Applicants respond as follows: KCS does not normally prepare pro forma in the ordinary course of business, and thus does not have responsive documents. KCS refers CSXT to

the Application, particularly Exhibits E and F. CP is available to meet and confer regarding this Request.

Interrogatory No. 69:

To the extent any of either Applicant's ordinary course practices identified in Applicants' responses to Interrogatory 68 differs from the practices regarding the same subjects Included or used in the Transaction Pro Forma Analyses, explain with specificity why, and Identify any Analyses or other Documents supporting that explanation.

Response to Interrogatory No. 69:

In addition to the General Objections set forth above, Applicants object to this Request on the grounds that it is vague and ambiguous. Applicants further object on the grounds that it is overly broad, unduly burdensome and not proportional to the needs of this proceeding. Applicants further object to this Request to the extent it would require Applicants to perform a special study.

Subject to and without waiving the General Objections and the specific objections set forth above, Applicants respond that KCS's response to Request No. 68 responds to this Request, and CP responds that there are no material differences between the CP's ordinary course practices and practices used to assess the Transaction.

Interrogatory No. 70:

Explain how the statistical analysis that "has poor predictive power and there are high levels of variance." supports the sufficiency of a 5% reduction to displace intermodal traffic. (Brown and Zebrowski V.S. at Table 7 (p. 22) and at page 66, paragraph 7; Appendix B).

Response to Interrogatory No. 70:

In addition to the General Objections set forth above, Applicants object to this Request on the grounds that it is unintelligible, vague and ambiguous. Applicants further object to this Request on the grounds that it is overly broad, unduly burdensome and not proportional to the needs of this proceeding. Applicants further object to this Request to the extent it seeks the identification of documents or information that are accessible to CSXT. Applicants further object to this Request on the grounds that it misconstrues the Application.

Subject to and without waiving the General Objections and the specific objections set forth above, Applicants are available to meet and confer regarding this Request.

Interrogatory No. 71:

Applicants present a regression to determine intermodal market share (Mutén V.S.

1). Identify all Analyses or other Documents:

- a. You contend support Mutén's assumption that intermodal market shares do not have a relationship to trucking and rail costs.
- b. Concerning the "curiously high lane share" referred to by Mutén in the following: "In a few cases my analysis produced expected lane shares for rail intermodal that were curiously high" (Mutén V.S. 19).
- c. Concerning how why curiously high lane support a reliable regression analysis suitable for Diversion analyses.
- d. Concerning the 70.9% ceiling assumed by Mutén for CPKC's rail intermodal market share for each lane analyzed. (Mutén V.S. 19).
- e. Concerning Mutén's statement that his market share estimates are potentially overestimated. (Mutén V.S. 19).

Response to Interrogatory No. 71:

In addition to the General Objections set forth above, Applicants object to this Request on the grounds that it is vague and ambiguous. Applicants further object to this Request on the grounds that it is overly broad, unduly burdensome, cumulative and not proportional to

the needs of this proceeding, including because it requests the identification of “all” documents without a reasonable scope limitation. Applicants further object to this Request to the extent it seeks the identification of documents or information that are accessible to CSXT. Applicants further object to the extent this Request asks Applicants to perform a special study. Applicants further object to the extent this Request misconstrues the Application.

Subject to and without waiving the General Objections and the specific objections set forth above, Applicants respond by stating that Mr. Mutén did not make the referenced assumptions, and that information responsive to this Request is included in the Application and accompanying Workpapers.

Interrogatory No. 72:

Applicants present a regression to determine the revenue that CP-KCS will receive from Displaced truck to rail traffic (Mutén V.S. 20-21). Identify all Analyses or other Documents Concerning:

- a. CPKC’s forecasted railroad rates for each lane reported by Mutén.
- b. Mutén’s claim that the revenue from Diverted units in the lanes he analyzes is significantly influenced only by the factors included in the Intermodal Diversion Revenue Regression Equation, Including all Analyses or other Documents Concerning his claim that such revenue is not significantly influenced by existing truck and rail rates, or the type of commodity shipped.
- c. The statement “Importantly, this formula should not be used to predict the specific market rates that would be charged for any given Movement or in any specific lane.”
- d. Mutén’s reliance on the regression coefficient rather than the Applicant’s pre-or post- Transaction rates for the calculation of the market rate as presented in Mutén V.S. Appendix A.

Response to Interrogatory No. 72:

In addition to the General Objections set forth above, Applicants object to this Request on the grounds that it is vague and ambiguous. Applicants further object to this Request on the grounds that it is overly broad, unduly burdensome, cumulative and not proportional to the needs of this proceeding, including because it requests the identification of “all” documents without a reasonable scope limitation. Applicants further object to this Request to the extent it seeks the identification of documents or information that are accessible to CSXT. Applicants further object to the extent this Request asks Applicants to perform a special study. Applicants further object to the extent this Request misconstrues the Application.

Subject to and without waiving the General Objections and the specific objections set forth above, Applicants respond that information responsive to this Request is included in the Application and accompanying Workpapers.

Interrogatory No. 73:

Identify all Analyses or Documents Concerning:

- a. The formation of Meridian Speedway, LLC.
- b. Communications between either Applicant and Norfolk Southern Railway Company regarding the operation or ownership of the Meridian Speedway during the period 1/1/2019-09/31/2021 and the period beginning 9/31/2021 until 12/31/2026.
- c. Applicants’ assessment of the potential environmental impacts, Including increased locomotive miles, of:
 - i. Rerouting traffic subject to Diversions or Growth as a result of the Transaction;
 - ii. Any investments Applicants expect to make as a result of the Transaction.
- d. All communications between Applicants or between either Applicant and any other person Concerning commercial arrangements related to the Transaction.

Response to Interrogatory No. 73:

In addition to the General Objections set forth above, Applicants object to this Request on the grounds that it is vague and ambiguous. Applicants further object to this Request on the grounds that it is overly broad, unduly burdensome and not proportional to the needs of this proceeding, including because it requests identification of “all” documents without a reasonable scope limitation. Applicants further object to the extent this Request seeks documents or information irrelevant to this proceeding. Applicants further object to this Request to the extent it seeks the identification of documents or information that are accessible to CSXT. Applicants further object to this Request to the extent it seeks information or documents protected from discovery by the attorney-client privilege, attorney work product doctrine, common interest, or any other applicable privilege, protection, immunity, doctrine, statute, regulation, agreement, or protective order. Applicants further object to this Request to the extent that it seeks identification of documents prepared in connection with, or information relating to, possible settlement or mediation of this or any other proceeding.

Subject to and without waiving the General Objections and the specific objections set forth above, Applicants respond as follows:

Documents responsive to Request No. 73(a) are available in Finance Docket No. 34821-23, to which CSXT has access. Responsive documents have also been produced in response to CN Request No. 139 to which CSXT has access.

Information responsive to Request No. 73(c) is contained in the Application and accompanying Workpapers and environmental materials filed with the STB’s Office of Environmental Analysis, which are available to CSXT.

Applicants are available to meet and confer regarding Request Nos. 73(b) and (d).

Interrogatory No. 74:

Identify all Analyses and other Documents supporting the claim (Application at 21) that CPKC will provide lower cost and more efficient service, enabling them to Displace traffic to and from Mexico over KCSM.

Response to Interrogatory No. 74:

In addition to the General Objections set forth above, Applicants object to this Request on the grounds that it is vague and ambiguous. Applicants further object to this Request on the grounds that it is overly broad, unduly burdensome and not proportional to the needs of this proceeding, including because it requests identification of “all” documents without a reasonable scope limitation. Applicants further object to this Request to the extent it seeks the identification of documents or information that are accessible to CSXT.

Subject to and without waiving the General Objections and the specific objections set forth above, Applicants respond that information responsive to this Request is contained in the Application.

Interrogatory No. 75:

Identify all Analyses and other Documents Applicant produce in response to discovery requests submitted by other Parties.

Response to Interrogatory No. 75:

Subject to and without waiving the General Objections set forth above, Applicants will make available on a rolling basis non-privileged documents responsive to this Request.

Request for Production No. 1:

Produce all Documents You Identify in response to Interrogatories 1 – 75 that are not Included in the Application or previously produced to CSXT in this proceeding.

Response to Request for Production No. 1:

See Responses and Objections to the foregoing Interrogatories.

Request for Production No. 2:

Applicants submitted previously unattached workpapers and attachments in “FD 36500 – Work Paper – Work Papers Summary.xlsx”. However, the updated list is still incomplete. Produce the following:

- a. KCSM English Converted Timetable 4
- b. Relating to traffic File – Methodology.doc
 - i. traffic file Script
- c. Relating to Cars per day by Yard.doc
 - i. “Yard Volumes Processed Car Change Base vs Opt”
 - ii. “Yard Volumes Processed Car Change Opt vs Growth”
- d. Relating to Methodology for Section 7.3 Maintenance of Way Practices & Equipment Update October 14 2021.doc
 - i. Engineering Fleet Support CarsEquipment.msg
 - ii. Track Systems testing fleet

Response to Request for Production No. 2:

In addition to the General Objections set forth above, Applicants object to this Request on the grounds that it is vague and ambiguous, and unduly burdensome. Applicants further object to this Request to the extent it seeks the identification or production of documents or information that are accessible to CSXT.

Subject to and without waiving the General Objections and the specific objections set forth above, all of the aforementioned files have been provided to CSXT and are available in the Virtual Data Room Applicants are using to produce documents responsive to discovery requests to which CSXT has access.

Request for Production No. 3:

Brown and Zebrowski provide an explanation of the SQL process used to create their combined waybill file at the Document “Process Description.docx”. Produce the following Documents referenced in Parts 1A and 1C identified in “Process Description.docx” but not yet provided:

- e. “CSM_2019”, “CWS_2015_UNMASKED”,
“CWS_2016_UNMASKED”, “CWS_2017_UNMASKED”,
“CWS_2018_UNMASKED”, “CWS_2019_UNMASKED”.
- f. Please detail all steps necessary to alter CSM_2019 to a usable format.
- g. Please provide in readable data format (csv, excel, stata) all temporary SQL tables used to generate summaries/Analysis.
 - i. Including, all programs used to generate “CSM_2019”,
“CWS_2015_UNMASKED”, “CWS_2016_UNMASKED”,
“CWS_2017_UNMASKED”, “CWS_2018_UNMASKED”,
“CWS_2019_UNMASKED”.

Response to Request for Production No. 3:

In addition to the General Objections set forth above, Applicants object to this Request on the grounds that it is vague and ambiguous. Applicants further object to this Request on the grounds that it is overly broad, unduly burdensome and not proportional to the needs of this proceeding. Applicants further object to this Request to the extent it seeks the identification or production of documents or information that are accessible to CSXT.

Subject to and without waiving the General Objections and the specific objections set forth above, Applicants respond that this Request refers to Carload Waybill Data that CSXT must procure from the Board and 2019 Centralized Station Master data that CSXT must procure from the Association of American Railroads.

Request for Production No. 4:

Concerning the files produced in “MajureVS_20211029_workpapers”, the Carload Waybill Sample import program: File “01_waybill_build.R” contains a line of code that references multiple file names containing the term “...unmasked.rds”. However, no lines of code/additional program have been provided that generate the multiple files with file names containing the term “...unmasked.rds”. The final waybill build is impossible to construct without the code to generate “unmasked.rds” files. Produce the code, additional program, and files that with file names containing the term “...unmasked.rds”.

Response to Request for Production No. 4:

In addition to the General Objections set forth above, Applicants object to this Request on the grounds that it is vague and ambiguous. Applicants further object to this Request on the grounds that it is unduly burdensome and not proportional to the needs of this proceeding. Applicants further object to this Request to the extent it seeks the identification or production of documents that are accessible to CSXT.

Subject to and without waiving the General Objections and the specific objections set forth above, Applicants respond that the files CSXT seeks are available in the files CSXT refers to. Nonetheless, Applicants refer CSXT to the “README.txt” file and “waybill_data_read_me.txt” file Applicants have provided for instructions on how CSXT may properly run the code to generate the documents it seeks.

Request for Production No. 5:

In the Excel Output File to Exhibit 2 of the Majure V.S., the file “exhibit_02_wp_01.R” contains a line of code that generates an excel file, “exhibit_02_wp_01.xlsx”, that should contain four tabs: “results”, “car_counts”, “results_3_9”,

and “wp_01”. The “Exhibit 02.xlsx” file provided only contains one tab, “results”. The data contained in the missing tabs is not available in any location in the excel file which was produced. Produce the missing tabs.

Response to Request for Production No. 5:

In addition to the General Objections set forth above, Applicants object to this Request on the grounds that it is vague and ambiguous. Applicants further object to this Request on the grounds that it is unduly burdensome and not proportional to the needs of this proceeding. Applicants further object to this Request to the extent it seeks the identification or production of documents that are accessible to CSXT.

Subject to and without waiving the General Objections and the specific objections set forth above, Applicants respond that the files CSXT seeks are available in the files CSXT refers to. Nonetheless, Applicants refer CSXT to the “README.txt” file Applicants have provided for instructions on how CSXT may properly run the code to generate the documents it seeks.

Dated: January 10, 2022

Respectfully submitted,

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Counsel for CP

CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing Joint Responses and Objections to CSXT's Second Set of Discovery Requests to Kansas City Southern and Canadian Pacific to be served electronically or by first-class mail, postage pre-paid, on all parties of record in these proceedings.

/s/ Sonia Gupta

Sonia Gupta

January 10, 2022

EXHIBIT C

CSXT's First Discovery Request

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 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

CSX TRANSPORTATION, INC. FIRST SET OF DISCOVERY REQUESTS
TO KANSAS CITY SOUTHERN AND CANADIAN PACIFIC

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Attorneys for CSX Transportation, Inc.

Dated: October 20, 2021

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 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, GATEWAYEASTERN RAILWAY
COMPANY, AND THE TEXAS MEXICAN RAILWAY COMPANY

CSX TRANSPORTATION, INC. FIRST SET OF DISCOVERY REQUESTS
TO KANSAS CITY SOUTHERN AND CANADIAN PACIFIC

Pursuant to 49 C.F.R. §§ 1114.21-.31, CSX Transportation Inc. (“CSXT”) request that KCS (as defined below) and CP (as defined below) respond to the following discovery requests in accordance with the STB’s rules, and the Definitions and Instructions set forth below. Except as otherwise specified, these requests are for materials:

- a) maintained as an original or copy in digital form;
- b) that were produced in, are regarding, or (in the case of internal, industry, or governmental rules, agreements, regulations, or laws) are applicable to the years 2018, 2019, 2020, or the last pertinent period of the year 2021; and
- c) readily provided upon request or accessible to senior management of any organizational subdivision of KCS or CP.

Pursuant to 49 C.F.R. § 1114.30(b), responses to the requests below should be served no later than twenty days from the date of service hereof.

DEFINITIONS AND INSTRUCTIONS

1. “CP” means Canadian Pacific Railway Limited, Canadian Pacific Railway Company, Soo Line Railroad Company, Central Maine & Quebec Railway US Inc., Dakota, Minnesota & Eastern Railroad Corporation, and Delaware and Hudson Railway Company, Inc., individually and collectively, and its predecessors and successors in interest, as well as the present and former directors, officers, employees, agents, managing agents, representatives, attorneys, predecessors, successors, parents, subsidiaries, affiliates, divisions, area offices, and regional offices of the foregoing companies; and all persons acting or purporting to act on their behalf.

2. “KCS” means Kansas City Southern, The Kansas City Southern Railway Company, Gateway Eastern Railway Company, The Texas Mexican Railway Company, and Kansas City Southern de Mexico, and its predecessors and successors in interest, as well as the present and former directors, officers, employees, agents, managing agents, representatives, attorneys, predecessors, successors, parents, subsidiaries, affiliates, divisions, area offices, and regional offices of the foregoing companies; and all persons acting or purporting to act on their behalf.
3. “Document” means any writing or other compilation of information, whether printed, typed, handwritten, recorded, or produced or reproduced by any other process, including but not limited to intra-company communications, correspondence, telegrams, memoranda, contracts, instruments, studies, projections, forecasts, summaries or records of conversations or interviews, minutes or records of conferences or meetings, records or reports of negotiations, diaries, calendars, photographs, maps, tape recordings, computer tapes, computer disks, other computer storage devices, computer programs, computer printouts, models, statistical statements, graphs, charts, diagrams, plans drawings, brochures, pamphlets, advertisements, circulars, trade letters, press releases, invoices, receipts, financial statements, accounting records, worksheets, drafts, revisions of drafts, and original or preliminary notes. Further, the term “document” includes
 - a. Both basic records and summaries of such records (including computer runs);
 - b. Both original versions and copies that differ in any respect from original versions; and
 - c. Both documents in the possession, custody, or control of KCS or CP and documents in the possession, custody or control of consultants or others who have assisted KCS or CP in the creation of those documents.
4. “Description” shall mean a statement or account giving the characteristics of something.
5. “Any” shall be construed as “all” and vice versa, as necessary to bring within the scope of the Request all information that might otherwise be construed to be outside of its scope.
6. “Including” shall be construed to mean “including but not limited to.”
7. “KCS System” shall mean all rail lines and facilities owned or operated by KCS, whether in the United States or Mexico, including rail lines and facilities that KCS utilizes via trackage rights or other joint facility or joint use agreements on another railroad.
8. “KCS subdivision” shall include any units, subdivisions, and districts of KCS for which reports and analyses are prepared to assist KCS conduct of its business, including: Springfield, Godfrey, East Saint Louis, Roodhouse, Mexico, Pittsburg, Heavener, Fort Smith, Shreveport, Alliance, White Rock, Dallas, Greenville, Shreveport Term, Vicksburg, Alexandria, Hodge, New Orleans, Lake Charles, Beaumont, Redwood Branch, Gulfport, Bay Springs, Meridian, Artesia, Aberdeen, Tuscaloosa, Counce, Yellow Creek, Rosenberg, Laredo, Caltzontzin, Toluca, Texcoco, Veracruz, San Juan del Rio, Tula, Celaya, Rio Verde, Tomasopo, Venegas, Las Cruces, Salina, Venegas, Matamoros, Saltillo, Queretaro, Monterrey. See <https://www.kcsouthern.com/en-us/work-with-us/partners/network-map>.

9. The use of the singular shall be deemed to include the plural, as appropriate in context.
10. Discovery responses should be supplemented when a supplemental response is required pursuant to 49 C.F.R. § 1114.29.
11. References to railroads, shippers, consultants, or companies include affiliates, subsidiaries, predecessors, successors, officers, directors, employees, attorneys, agents, and representatives thereof.
12. All uses of the conjunctive include disjunctive and vice versa. Words in the singular include the plural and vice versa.
13. To the extent materials called for herein are confidential, CSXT will protect them from disclosure to third parties in accord with the Protective Order entered in this proceeding and will solely use those materials for the purposes of this proceeding, and not for any other business, commercial, or other competitive purposes. CSXT will cooperate with counsel for KCS and CP to identify information that would warrant a confidential or highly confidential designation.
14. KCS or CP may contact Mr. Paul Cunningham, undersigned counsel for CSXT, to discuss any questions regarding these requests.

REQUESTS

- 1) Please identify and produce documents sufficient to show, regarding KCS, or regarding any traffic interchanged or forecast to be interchanged between KCS and CP before or after any CP – KCS merger:
 - a) All business reports, plans, forecasts, and analyses (including those conducted by a third-party); and
 - b) Any forecasts or analyses not otherwise identified and produced in response to request 1a) above regarding KCS's and CP's corporate structure.
- 2) To the extent not included in any response to Request 1a) above,
 - a) Please identify and produce documents regarding KCS employees, including contract employees, sufficient to show:
 - i) KCS's labor collective agreements, and any related schedule, amendment, or addendum related to any employment relationships in the United States and in Mexico; and
 - ii) The number of employees, by employee function, at each KCS location or subdivision.
 - b) Regarding KCS operating rights and rights of other carriers please identify and produce documents sufficient to show:

- i) All points at which KCS directly interchanges traffic with another rail carrier and the carrier with which it interchanges;
 - ii) All points at which KCS indirectly directly interchanges traffic with another rail carrier, the carrier with which it indirectly interchanges, and the nature of the arrangements for the indirect interchange;
 - iii) All trackage, haulage, or lease agreements and any governmental licenses, franchises, grants, or other authorizations (and any ongoing disputes regarding such authorizations) that permit:
 - (1) KCS to transport or have transported in KCS's account any traffic over another railroad's network or rail properties owned by a governmental entity; and
 - (2) Another railroad to transport or have transported in its account any traffic over KCS's network.
- c) Please identify and produce documents sufficient to show:
- i) By 2-digit, 5-digit, and 7-digit STCC code, by AAR car type if applicable, and by originating, terminating, or overhead traffic types:
 - (a) KCS's total net revenue, line haul revenue, fuel surcharge, switching revenue, and all other shipment specific revenue; total revenue by provider of car and container trailer; contribution margins or profits; shipment costs including haulage, switch absorption, crew costs, and any other shipment; net-tons, gross tons, gross ton miles, net-ton miles, and train miles including road locomotives, freight train cars, unit trains, way trains, freight train cars and through trains by intermodal category by the provider of the container/trailer by originating, terminating, or overhead traffic types; KCS's locomotive unit miles train and yard switching;
 - (b) KCS's yard-switching hours by yard, train hours and train miles including road service and train-switching hours, and all train miles, including work train miles for all geographic categories for which records are regularly maintained;
 - (c) KCS's incurred cost of switching and all relevant accessorial fees received or paid by KCS;
 - (d) All KCS's net-tons, gross ton-miles, total freight cars, revenues, fuel surcharges, and fees associated with:
 - (i) Moving traffic into and out of SIT by SIT location, origin location, and destination location;
 - (ii) Interchanging traffic by subdivision/region and interchange partner;

- ii) Regarding KCS's originating, terminating, or overhead traffic:
 - (a) For KCS's Trailer on Flat Car ("TOFC")/Container on Flat Car ("COFC") equipment, the number of revenue trailers and containers loaded and unloaded picked up;
 - (b) For Multi-level cars, the number of motor vehicles loaded and unloaded;
 - (c) KCS's freight car cycle times, including cycles by fleet and cycles by month;
 - (d) KCS's gross ton miles per operating (or available) horsepower by subdivision;
 - (e) The number of KCS's operating (or available) locomotives by subdivision;
 - (f) All data used to produce KCS's official density maps, including:
 - a. Identification of the railroad divisions, subdivisions, and individual line segments for each unique density segment;
 - b. Beginning and ending mileposts for each unique density segment;
 - c. Rail and track mileage for each unique density segment;
 - d. Total density (both directions including empty and loaded trains) by segment expressed in net ton-miles or in gross ton-miles; and
 - e. KCS's fuel consumption in liters or gallons by road, and by month.
- d) Please identify and produce documents regarding KCS's assets sufficient to show:
 - i) Identification of and capacity, usage, and other operational information regarding existing and planned future KCS owned or leased trackage assets, including but not limited to terminals, SITs, yards, and intermodal facilities;
 - ii) For KCS's locomotive fleet, the number of units owned, and the number of units leased, organized by type of lease and expiry date;
 - iii) The number of freight cars held in storage, organized by fleet; and
 - iv) The maximum permissible gross weight on rail (GWR) per railcar for all KCS lines and all segments. Please produce documents sufficient to show the items and factors that limit GWR for all segments with GWR less than 286,000 lbs.
- e) Please identify and produce the current operating timetables, station lists, station books, track charts, and condensed profiles covering the KCS system.
- 3) Please identify and produce all information and documents that KCS produces in response to discovery requests submitted by other participants in this proceeding.
- 4) All workpapers submitted to the Surface Transportation Board with or in support of any filings related to this proceeding.

INTERROGATORY

If any of the documents requested above by CSXT does not provide a full response to the referenced issue, please instead offer a more complete description.

Respectfully Submitted,

/S/ Paul A. Cunningham

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Attorneys for CSX Transportation, Inc.

Dated: October 20, 2021

CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing CSX Transportation Inc. First Set of Discovery Requests to KCS and CP to be served electronically or by first-class mail, postage pre-paid, on the Secretary of Transportation, the Attorney General of the United States, Applicants' representatives, Administrative Law Judge Thomas McCarthy, and all parties of record in this proceeding.

/s/ Paul A. Cunningham

Paul A. Cunningham
*Attorney for CSX Corporation
and CSX Transportation, Inc.*

October 20, 2021

EXHIBIT D

Applicants' Response to CSXT's First Discovery Request

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

**KANSAS CITY SOUTHERN AND CANADIAN PACIFIC’S JOINT RESPONSES AND OBJECTIONS
TO CSX TRANSPORTATION, INC.’S FIRST SET OF DISCOVERY REQUESTS**

Pursuant to 49 CFR Part 1114, Subpart B, Canadian Pacific Railway Limited, Canadian Pacific Railway Company, Soo Line Railroad Company, Central Maine & Quebec Railway US Inc., Dakota, Minnesota & Eastern Railroad Corporation, and Delaware and Hudson Railway Company, Inc. (collectively, “Canadian Pacific” or “CP”) and Kansas City Southern, The Kansas City Southern Railway Company, Gateway Eastern Railway Company, and The Texas Mexican Railway Company (collectively, “KCS”; together with CP, the “Applicants”) hereby respond and object as follows to CSX Transportation, Inc.’s First Set of Discovery Requests to Kansas City Southern and Canadian Pacific (referred to herein as the “CSXT Requests”) served on October 20, 2021 in connection with the above-captioned proceeding.

GENERAL OBJECTIONS

The following General Objections apply to each of the CSXT Requests and shall have the same force and effect as if set forth in full in response to each individually numbered CSXT Request.

1. The Applicants object to the CSXT Requests and to each Definition, Instruction and Request contained therein to the extent they purport to impose upon the Applicants burdens or duties that are greater than, or otherwise conflict with, the requirements or the permissible scope of discovery under 49 CFR Part 1114, Subpart B, or under other Surface Transportation Board (the “Board”) rules or precedents.

2. The Applicants object to the CSXT Requests and to each Definition, Instruction and Request contained therein to the extent they purport to seek information and/or documents that are not relevant to the issues raised in the above-captioned proceeding.

3. The Applicants object to the CSXT Requests and to each Definition, Instruction and Request contained therein to the extent that they seek information protected from discovery by the attorney-client privilege, attorney work product doctrine, common interest, or any other applicable privilege, protection, immunity, doctrine, statute, regulation, agreement, or protective order. Any disclosure of such information is inadvertent and should not be construed as a waiver. The Applicants reserve all rights under applicable law to demand and/or require the return of all copies thereof and non-use by CSXT or by any other person or entity in this or any other proceeding.

4. The Applicants object to the CSXT Requests and to each Definition, Instruction and Request contained therein to the extent that they seek the production of

documents prepared in connection with, or information relating to, possible settlement or mediation of this or any other proceeding.

5. The Applicants object to the CSXT Requests and to each Definition, Instruction and Request contained therein to the extent they call for information or documents that are confidential, proprietary, or commercially or competitively sensitive. The Applicants will make available information and documents subject to the Board's Protective Order issued in this proceeding on April 2, 2021, and all responses and documents should be treated in accordance with that Order.

6. The Applicants object to the CSXT Requests and to each Definition, Instruction and Request contained therein to the extent that they purport to seek documents or information not in the Applicants' possession, custody or control.

7. The Applicants object to the CSXT Requests and to each Definition, Instruction and Request contained therein to the extent that they are not proportional to the needs of the above-captioned proceeding and impose an undue burden on the Applicants.

8. The Applicants object to the CSXT Requests and to each Definition, Instruction and Request contained therein to the extent they purport to seek the production of documents that are unreasonably cumulative or duplicative of documents already in CSXT's possession, custody or control, or that are publicly available, or that are otherwise obtainable in a more convenient, less burdensome or less expensive manner than from the Applicants.

9. The Applicants object to the CSXT Requests and to each Definition, Instruction and Request contained therein to the extent they purport to seek the production of documents that are unreasonably cumulative or duplicative of documents or information encompassed by (i) the railroad control application that CP and KCS filed on October 29, 2021

in this proceeding (the “Application”), and/or by (ii) the accompanying workpapers that CP and KCS submitted to the Board in connection with their Application (the “Workpapers”).

10. The Applicants object to the CSXT Requests and to each Definition, Instruction and Request contained therein as unduly burdensome and oppressive to the extent that they purport to require the Applicants to conduct a special study or to undertake anything more than a reasonable search for responsive information. In responding to the CSXT Requests, the Applicants will conduct a reasonable search of those accessible files in its possession in which information responsive to the CSXT Requests, as limited by the Applicants’ Objections, is likely to be located.

11. The Applicants object to the CSXT Requests and to each Definition, Instruction and Request contained therein to the extent that they are unduly burdensome in failing to allow for a reasonable time for compliance.

12. The Applicants object to the definition of “KCS,” “KCS System,” and “KCS subdivision,” and the use of those defined terms, to the extent that they seek information from or about Kansas City Southern de Mexico (“KCSM”) and KCS’s Mexican operations beyond what is provided in the Application and Workpapers. KCSM is not subject to the jurisdiction of the Surface Transportation Board and the rules governing this proceeding do not require information from Mexican carriers absent an established nexus to effects on the U.S. public interest. For purposes of these responses, “KCS” will be defined only as Kansas City Southern and its U.S. rail carrier subsidiaries The Kansas City Southern Railway Company, Gateway Eastern Railway Company, and The Texas Mexican Railway Company.

13. The Applicants reserve the right to redact non-responsive material from any document provided in response to the CSXT Requests.

14. The Applicants reserve the right to provide responsive materials on a rolling basis.

15. The Applicants reserve the right to challenge the competency, relevance, materiality, or admissibility of, or to object on any ground to, the use of information requested in the CSXT Requests and in any responses the Applicants may provide thereto, in any subsequent proceeding, or further proceedings in this matter. To the extent that the Applicants provide responsive information or documents, the Applicants do not concede that such information is relevant, material, or admissible into evidence, and any such production is not intended to waive any of the Applicants' objections to any of the CSXT Requests.

16. The Applicants' Responses and Objections are based upon information presently known to them. The Applicants reserve the right to rely upon facts, documents, or other evidence that they may develop or that may subsequently come to their attention; to assert additional objections; and to supplement or amend these responses at any time as this proceeding continues.

RESPONSES AND OBJECTIONS TO SPECIFIC REQUESTS

Request No. 1:

Please identify and produce documents sufficient to show, regarding KCS, or regarding any traffic interchanged or forecast to be interchanged between KCS and CP before or after any CP – KCS merger:

- a) All business reports, plans, forecasts, and analyses (including those conducted by a third-party); and
- b) Any forecasts or analyses not otherwise identified and produced in response to request 1a) above regarding KCS's and CP's corporate structure.

Response to Request No. 1:

In addition to the General Objections set forth above, the Applicants object to this Request on the grounds that it is vague, ambiguous and unintelligible. The Applicants further object to this Request on the grounds that it seeks documents that are not relevant to this proceeding. The Applicants further object to this Request to the extent that it seeks information that would require the Applicants to conduct a special study.

The Applicants have already provided documents and information responsive to this Request in connection with the Application and accompanying Workpapers. To the extent this Request seeks documents or information beyond what the Applicants have already provided, in addition to the General Objections and the specific objections set forth above, the Applicants object to this Request on the grounds that it is overly broad, unduly burdensome, and not proportional to the needs of this proceeding.

Subject to and without waiving the General Objections and the specific objections set forth above, following CSXT's review of the Application and Workpapers, the Applicants are willing to meet and confer with CSXT about conducting a reasonable search for additional non-privileged and non-duplicative documents responsive to this Request (to the extent any such documents exist).

Request No. 2:

To the extent not included in any response to Request 1a) above,

- a) Please identify and produce documents regarding KCS employees, including contract employees, sufficient to show:
 - i) KCS's labor collective agreements, and any related schedule, amendment, or addendum related to any employment relationships in the United States and Mexico; and
 - ii) The number of employees, by employee function, at each KCS location or subdivision.

- b) Regarding KCS operating rights and rights of other carriers please identify and produce documents sufficient to show:
- i) All points at which KCS directly interchanges traffic with another rail carrier and the carrier with which it interchanges;
 - ii) All points at which KCS indirectly interchanges traffic with another rail carrier, the carrier with which it indirectly interchanges, and the nature of the arrangements for the indirect interchange;
 - iii) All trackage, haulage, or lease agreements and any governmental licenses, franchises, grants, or other authorizations (and any ongoing disputes regarding such authorizations) that permit:
 - (1) KCS to transport or have transported in KCS's account any traffic over another railroad's network or rail properties owned by a governmental entity; and
 - (2) Another railroad to transport or have transported in its account any traffic over KCS's network.
- c) Please identify and produce documents sufficient to show:
- i) By 2-digit, 5-digit, and 7-digit STCC code, by AAR car type if applicable, and by originating, terminating, or overhead traffic types:
 - (a) KCS's total net revenue, line haul revenue, fuel surcharge, switching revenue, and all other shipment specific revenue; total revenue by provider of car and container trailer; contribution margins or profits; shipment costs including haulage, switch absorption, crew costs, and any other shipment; net-tons, gross tons, gross ton miles, net-ton miles, and train miles including road locomotives, freight train cars, unit trains, way trains, freight train cars and through trains by intermodal category by the provider of the container/trailer by originating, terminating, or overhead traffic types; KCS's locomotive unit miles train and yard switching;
 - (b) KCS's yard-switching hours by yard, train hours and train miles including road service and train-switching hours, and all train miles, including work train miles for all geographic categories for which records are regularly maintained;
 - (c) KCS's incurred cost of switching and all relevant accessorial fees received or paid by KCS;
 - (d) All KCS's net-tons, gross ton-miles, total freight cars, revenues, fuel surcharges, and fees associated with:

- (i) Moving traffic into and out of SIT by SIT location, origin location, and destination location;
 - (ii) Interchanging traffic by subdivision/region and interchange partner;
- ii) Regarding KCS's originating, terminating, or overhead traffic:
 - (a) For KCS's Trailer on Flat Car ("TOFC")/Container on Flat Car ("COFC") equipment, the number of revenue trailers and containers loaded and unloaded picked up;
 - (b) For Multi-level cars, the number of motor vehicles loaded and unloaded;
 - (c) KCS's freight car cycle times, including cycles by fleet and cycles by month;
 - (d) KCS's gross ton miles per operating (or available) horsepower by subdivision;
 - (e) The number of KCS's operating (or available) locomotives by subdivision;
 - (f) All data used to produce KCS's official density maps, including:
 - a. Identification of the railroad divisions, subdivisions, and individual line segments for each unique density segment;
 - b. Beginning and ending mileposts for each unique density segment;
 - c. Rail and track mileage for each unique density segment;
 - d. Total density (both directions including empty and loaded trains) by segment expressed in net ton-miles or in gross ton-miles; and
 - e. KCS's fuel consumption in liters or gallons by road, and by month.
- d) Please identify and produce documents regarding KCS's assets sufficient to show:
 - i) Identification of and capacity, usage, and other operational information regarding existing and planned future KCS owned or leased trackage

assets, including but not limited to terminals, SITs, yards, and intermodal facilities;

- ii) For KCS's locomotive fleet, the number of units owned, and the number of units leased, organized by type of lease and expiry date;
- iii) The number of freight cars held in storage, organized by fleet; and
- iv) The maximum permissible gross weight on rail (GWR) per railcar for all KCS lines and all segments. Please produce documents to show the items and factors that limit GWR for all segments with GWR less than 286,000 lbs.

- e) Please identify and produce the current operating timetables, station lists, station books, track charts, and condensed profiles covering the KCS system.

Response to Request No. 2:

In addition to the General Objections set forth above, the Applicants object to this Request on the grounds that it is overly broad, unduly burdensome, seeks documents that are not relevant to this proceeding, and is not proportional to the needs of this proceeding. The Applicants further object to this Request to the extent that it seeks to compel the production of documents not in the Applicants' possession, custody or control. The Applicants further object to this Request to the extent that it seeks information that would require the Applicants to conduct a special study or that is publicly available through the AAR Official Railroad Station List (OPSL).

The Applicants have already provided documents and information responsive to this Request in connection with the Application and accompanying Workpapers and Applicants' production of documents in response to discovery by other parties that will be produced to CSXT in accordance with Applicants' Response to Request No. 3, below. In addition, much of the information requested in this Request No. 2 is contained in the 100% traffic data information for KCS that Applicants have already made available (as previously stated in their Notice of Intent to File Application for Approval of Transaction Subject to 49 U.S.C. §§ 11323-25, dated March

22, 2021, and their Amended Notice, dated September 15, 2021) upon the written request of a requesting party, provided that—as contemplated by 49 C.F.R. § 1180.4(b)(4)(iii) (though not formally applicable to this transaction)—if the requesting party is a railroad or represents a railroad, Applicants’ provision of access to their 100% traffic tapes is conditioned upon the written agreement of such other railroad to provide reciprocal access to its 100% traffic tapes for use by the Applicants in this proceeding (subject to the terms of the Protective Order). Applicants note that CSXT has not yet agreed in writing to provide reciprocal access to CSXT’s 100% traffic tapes.

To the extent this Request seeks documents or information beyond what the Applicants have already offered or provided, in addition to the General Objections and the specific objections set forth above, the Applicants object to this Request on the grounds that it is overly broad, unduly burdensome, and not proportional to the needs of this proceeding.

Subject to and without waiving the General Objections and the specific objections set forth above, following CSXT’s review of the Application, Workpapers, and the discovery produced to other parties, the Applicants are willing to meet and confer with CSXT about conducting a reasonable search for additional non-privileged and non-duplicative documents responsive to this Request (to the extent any such documents exist).

Request No. 3:

Please identify and produce all information and documents that KCS produces in response to discovery requests submitted by other participants in this proceeding.

Response to Request No. 3:

Subject to and without waiving the General Objections set forth above, and subject to the parties' meet-and-confer discussions, the Applicants will make available on a rolling basis non-privileged documents responsive to this Request.

Request No. 4:

All workpapers submitted to the Surface Transportation Board with or in support of any filings related to this proceeding.

Response to Request No. 4:

The Applicants already provided CSXT with the Application and accompanying Workpapers on November 3, 2021. Subject to and without waiving the General Objections, and subject to the parties' meet-and-confer discussions, the Applicants will continue to make available on a rolling basis any additional non-privileged documents responsive to this Request.

RESPONSES AND OBJECTIONS TO INTERROGATORY

Interrogatory No. 1:

If any of the documents requested above by CSXT does not provide a full response to the referenced issue, please instead offer a more complete description.

Response to Interrogatory No. 1:

In addition to the General Objections set forth above, the Applicants object to this Interrogatory on the grounds that it is vague, ambiguous and unintelligible. The Applicants further object to this Interrogatory to the extent that it purports to impose upon the Applicants any burdens or duties that are greater than, or otherwise conflict with, the requirements or the permissible scope of discovery under 49 CFR Part 1114, Subpart B, or under other Board rules or precedents.

Respectfully submitted,

/s/ David L. Meyer

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Attorneys for KCS

Dated: November 9, 2021

CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing Joint Responses and Objections to CSXT's First Set of Discovery Requests to Kansas City Southern and Canadian Pacific to be served electronically or by first-class mail, postage pre-paid, on all parties of record in these proceedings.

/s/ Stefan Mitrovic
Stefan Mitrovic

November 9, 2021

EXHIBIT E

CSXT's November 21, 2021, Letter to Applicants

H A R K I N S C U N N I N G H A M L L P
Attorneys at Law

1750 K Street N. W., 3rd Floor
Washington, D.C. 20006-3817

Telephone 202.973.7600
Facsimile 202.973.7610

November 21, 2021

VIA-E-MAIL

David Meyer
1105 S Street N.W.
Washington, D.C. 20009
Email: David@MeyerLawDC.com
Telephone: (202) 294-1399

Re: Finance Docket No. 36500, 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

First follow up discovery request

Dear David:

This is to follow up on our November 16 meet and confer discussion regarding CSXT's First Set of Data Requests served on October 20, 2021, that sought information CSXT believes is needed to analyze the sufficiency of the analyses and supporting data provided in the CPKC Merger Application.

In our discussion, you stated Applicants had provided certain waybill traffic information in their Application that would both a) enable CSXT to meaningfully assess the impacts of the proposed transaction, including its claimed benefits and competitive effects and b) permit the Board to review whether the proposed transaction is in the public interest. You stated, consistent with the Applicants' responses and objections to CSXT's First Set of Discovery Requests, that CSXT should first more closely evaluate the information provided by Application before pressing for the discovery previously requested.

We have now been able to delve further into the Application and the supposedly supporting work papers. Much of the information you said had been provided apparently was not provided to the Board, even though the Board's rules require this information and many of the Applicants' assertions require this information for support. We must therefore reiterate our request.

To permit the most expeditious initial production by Applicants, we have identified the following limited set of that missing information as our top priority and the goal of this first follow up request. This is information that, based on our discussion, we should have been able to find in the

work papers. And it is indisputably required for the most basic assessment of the impacts and claimed benefits of the proposed transaction.

If you have provided this information in the form in which it is maintained by the Applicants, please identify where, exactly, it is in the Application or the work papers.

Otherwise, please provide promptly the following information for the calendar years 2020, 2019, 2018, and 2017 for each Applicant in the form it is maintained by each Applicant for all waybill traffic and operations data records for traffic Applicants expected to be affected by the Transaction:

1. Switch Costs and Switch Absorption Costs: The waybill records both Applicants have provided contain a “switch description” field but no rate/cost information for fees received or paid to other carriers. This switch-related cost information is required to evaluate the estimated benefits and competitive impacts discussed in the Application.
2. Loaded and Empty Car Miles, Days, and Hours for Offline and Online Movements: The waybill records and workpapers both Applicants have provided do not provide actual times, and they provide only estimates for mileage that assume the shortest potential routes, which is insufficient to permit the Board to properly evaluate actual quality of service and the estimated benefits and competitive impacts discussed in the Application.
3. Fees paid or received for haulage, trackage, lease, or other agreements with other carriers for each waybill record applicable: The waybill records Applicants have provided do not identify the contract, tariff, and pricing authority information or show the fees/costs associated with haulage, trackage, or lease/other agreements, which are necessary to evaluate actual revenue performance and potential transaction benefits. If the Applicants do not maintain this information in waybill records, please provide the information associated with the agreements in whatever native format available, in a machine and manipulable format.
4. Drayage and other accessorial fees received or paid: The waybill records Applicants have provided do not show drayage costs necessary to evaluate the estimated benefits and competitive impacts discussed in the Application.
5. Rule 11: The waybill records both Applicants have provided do not explicitly identify Rule 11 information, which is necessary to evaluate potentially affected traffic and the transaction’s effects on that traffic.
6. Finally, Applicants did not provide data dictionaries to define the fields in their electronic records. Please provide those for each of carrier’s waybill record files submitted as workpapers to the Application.

Our request is entirely consistent with the requirement that Applicants include information sufficient for the Board to assess the impacts of the proposed transaction. The rules provide that “applicants shall submit” analyses of the anticipated effects of the transaction, together with supporting data, 49 C.F.R. § 1180.7(a), (c) (2000), and that this analysis and data must affirmatively “demonstrate both the relevancy of the market and issues analyzed and the validity of their methodology,” 49 C.F.R. § 1180.7(b) (2000).

The information Applicants submit must meet this burden, and an Applicant omitting recommended data must submit information that would otherwise satisfy their informational requirements. Where Applicants claim benefits, cost savings, or increases in revenue will result from a transaction, their Application is incomplete if it fails to provide the information readily available from Applicants' own traffic data.

The information we request is readily available to Applicants, required to complete the Application, and easily produced in its original form. Given the procedural status of the Application, the Board, CSXT, and other interested parties must have access to this information, subject to the Protective Order, soon to make even the most basic assessment of the Application. CSXT therefore renews its request that Applicants provide, at minimum, the information listed above. We will be following up further when we receive the responses you agreed to on November 16 and as we learn more about the Transaction.

Respectfully submitted,

/s/ Paul A. Cunningham

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Attorneys for CSX Transportation, Inc.

Dated: November 21, 2021

cc: Zachary Byers <zbyers@fmshrc.gov>, William Mullins <wmullins@bakerandmiller.com>,
and all Parties of Record

CERTIFICATE OF SERVICE

I hereby certify that I have caused this CSX Transportation, Inc. Letter to Applicants Re the Incomplete Application in Docket No. FD-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*, to be served electronically or by first class mail, postage pre-paid, on all parties of record in this proceeding.

/s/ Paul A. Cunningham

Paul A. Cunningham
*Attorney for CSX Corporation
and CSX Transportation, Inc.*

November 21, 2021

EXHIBIT F

Applicants' Response to CSXT's November 21 Letter

LAW OFFICE OF DAVID L. MEYER

WWW.MEYERLAWDC.COM

1105 S STREET, N.W.
WASHINGTON, D.C. 20009
202-294-1399

December 9, 2021

BY EMAIL

Paul A. Cunningham, Esq.
Harkins Cunningham, LLP
1750 K Street NW, Suite 300
Washington, DC 20006

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

Dear Paul:

I write in response to your November 21, 2021 letter regarding CSXT's First Set of Discovery Requests (the "Requests") directed at Kansas City Southern and Canadian Pacific ("Applicants") in the above-captioned proceeding.

Contrary to the characterizations in your letter, the Application and supporting Workpapers that Applicants submitted to the Board (and provided to interested parties, including CSXT) fully satisfy the applicable regulatory requirements and are more than sufficient to allow the Board to assess the impacts of the Transaction. I note that on November 23, the Board accepted the Application and found that "the Application is complete as it contains all information required by the Board's regulations." *See* Decision No. 11 at 1.

Regarding your specific requests, Applicants remain willing to meet and confer. To that end, Applicants respond as follows to the specific items listed in your November 21 letter:

1. ***Switch Costs and Switch Absorption Costs:*** Applicants do not maintain in the ordinary course of business the specific "switch-related cost information" data that CSXT describes. To the extent this request purports to require Applicants to conduct a special study, Applicants object to this request on the grounds that it is overly broad, unduly burdensome and not proportional to the needs of this proceeding. Nevertheless, Applicants are willing to continue to meet-and-confer with CSXT to understand what CSXT is requesting and identify whether there are any reasonably available documents or data that Applicants maintain in the ordinary course of business that can be provided in response to this request, perhaps for a specific set of movements of interest to CSXT and relevant the issues in the case.

Paul A. Cunningham, Esq.

December 9, 2021

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2. ***Loaded and Empty Car Miles, Days, and Hours for Offline and Online Movements:*** Applicants do not maintain in the ordinary course of business the particular car and movement data that CSXT is requesting. To the extent this request purports to require Applicants to conduct a special study, Applicants object to this request on the grounds that it is overly broad, unduly burdensome and not proportional to the needs of this proceeding.
3. ***Fees paid or received for haulage, trackage, lease, or other agreements with other carriers for each waybill record applicable:*** Applicants' waybill records do not contain the particular information that CSXT is requesting. Applicants do not understand CSXT's secondary request for "information associated with the agreements in whatever native format available, in a machine and manipulable format," and therefore object on the grounds that this request is vague and ambiguous. Nevertheless, Applicants are willing to continue to meet-and-confer with CSXT to understand what CSXT is requesting and identify whether there are any reasonably available documents or data that Applicants maintain in the ordinary course of business that can be provided in response to this request.
4. ***Drayage and other accessorial fees received or paid:*** CSXT's request for data related to "drayage and other accessorial fees received or paid" is vague, ambiguous, and overly broad. Regardless, Applicants do not maintain in the ordinary course of business the particular "drayage" data that CSXT is requesting. To the extent this request purports to require Applicants to conduct a special study, Applicants object to this request on the grounds that it is overly broad, unduly burdensome and not proportional to the needs of this proceeding.
5. ***Rule 11:*** Contrary to CSXT's characterization, the waybill records Applicants have provided do in fact identify Rule 11 information. The Rule 11 information is included in a column called "code" in the waybill records that Applicants provided. If CSXT is still unable to identify the Rule 11 information in Applicants' waybill records, Applicants will respond to reasonable requests for assistance.
6. ***"Data Dictionaries."*** Applicants' request for "data dictionaries to define the fields in their electronic records" is vague and ambiguous. To the extent this request purports to require Applicants to conduct a special study, Applicants object to this request on the grounds that it is overly broad, unduly burdensome and not proportional to the needs of this proceeding. The Workpapers that Applicants made available to CSXT (together with the Confidential Waybill Sample, which is readily available from the Board) already contain the information necessary to read and interpret the data. Nevertheless, if CSXT has a

Paul A. Cunningham, Esq.
December 9, 2021
Page Three

specific question or has difficulty reading or using a particular Workpaper,
Applicants will respond to reasonable requests for assistance.

If you have any questions about any of the foregoing, please do not hesitate to
contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read 'D. Meyer', with a long horizontal stroke extending to the left.

David L. Meyer

*Attorney for Canadian Pacific Railway
Limited*

cc: William A. Mullins
Zachary A. Sarnoff

CERTIFICATE OF SERVICE

I hereby certify that I have caused this CSX Transportation, Inc. Motion to Compel Production in Docket No. FD-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*, to be served electronically or by first class mail, postage pre-paid, on all parties of record in this proceeding.

/S/ Paul A. Cunningham

Paul A. Cunningham
Attorney for CSX
Transportation, Inc.

January 20, 2022