

Growth Initiative

The Applicants' Growth Initiative diversions are {{REDACTED}} carloads, representing {{REDACTED}} million in Incremental Profits.¹ These diversions represent a substantial portion of the total, approximately {{REDACTED}} of the total diverted carloads and {{REDACTED}} of the Incremental Profits.²

Figure 1: Summary of Applicants' Incremental Profit Analysis³



Traffic comprising Applicants' Growth Initiative diversions are shown in Figure 2 below.

Figure 2: Applicants' Growth Initiative Summary Table ⁴



¹ The “Growth Initiative Summary Table” is identified at Applicants’ Responses to CSXT’s Second Set of Discovery and Interrogatory Requests, February 18, 2022, pages 2 and 3. *See* “Wahba and Naatz HC WP Growth Initiative Calculations.xlsx”, at tab “Summary”.

$$2 \{ \}$$

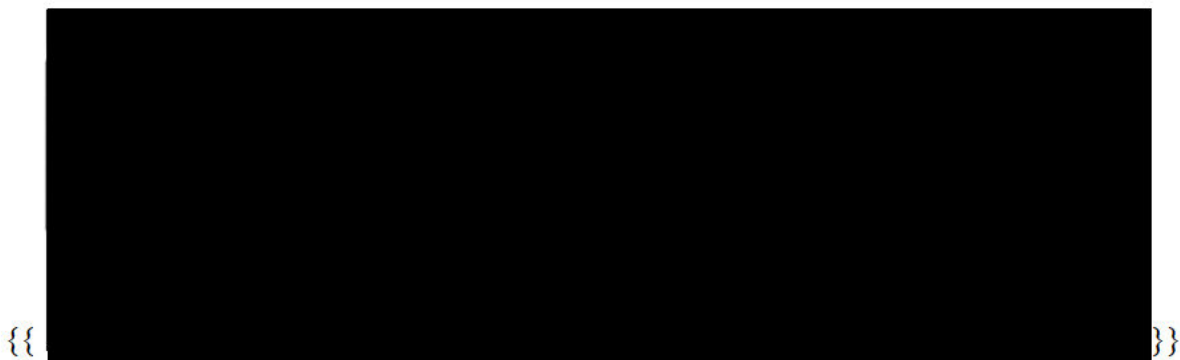
³ See Carey HC-WP ‘HC-Summary of Corrected Claims.xlsm’ at tab “Summary of Claimed Benefits”.

⁴ The “Growth Initiative Summary Table” is identified at Applicants’ Responses to CSXT’s Second Set of Discovery and Interrogatory Requests, , February 18, 2022, pages 2 and 3. See “Wahba and Naatz HC WP Growth Initiative Calculations.xlsx”, at tab “Summary”.

As discussed in Sections A-D below, there are concerns regarding the Applicants' claimed growth initiative diversions. Applicants' diversions include those achievable without the Transaction (Section A); face capacity restrictions, logistical issues and mileage disadvantages to or from Lazaro Cardenas, MX (Section B); rely on mileage disadvantaged routes (Section C); and include additional deficiencies (Section D). Section E includes interrogatory responses by the Applicants.

Correcting for these issues reduces the Applicants' Growth Initiative diversions from {{[REDACTED]}} to {{[REDACTED]}} carloads and Incremental profits from {{[REDACTED]}} million to {{[REDACTED]}} million. Compare Figure 1 and Figure 3. The corrected diverted Growth Initiative carloads are {{[REDACTED]}} of the Applicants' claimed amount and the correct Incremental Profits are {{[REDACTED]}} of the Applicants' claimed amount.⁵

Figure 3: Summary of Applicants' Incremental Profit Analysis After Corrections⁶



A. Growth Initiative Diversions Achievable without the Transaction

The Application includes Growth Initiative diversions that can be served by CP or KCS alone and are therefore achievable without the Transaction. Additionally, Growth Initiative diversions of crude from Alberta to the U.S. Gulf Coast can be achieved by CP without the proposed combination.

1. Origins/destinations in Kansas City to/from Mexico or Canada and origins/destinations in Dallas to/from Mexico

The Applicants' substantial Growth Initiative diversions pertain to moves destined from Mexico or Canadian Ports that are achievable without the Transaction. This reflects origins/destinations in Kansas City to/from Mexico or Canada and origins/destinations in Dallas to/from Mexico.

⁵ {{[REDACTED]}}

}}

⁶ See Carey HC-WP 'HC-Summary of Corrected Claims.xlsm' at tab "Summary of Claimed Benefits".

{{[REDACTED]}} million additional revenue and {{[REDACTED]}} diverted units and \${{[REDACTED]}} million of Incremental Profits (net Revenue less Variable Cost.)⁷

2. Crude by Rail from Alberta, Canada to the U.S. Gulf Coast

The Applicants' growth-related merger benefits include transport of substantial quantities of crude by rail from Alberta, Canada to the U.S. Gulf coast refining region. This comprises approximately \${{[REDACTED]}} million additional revenue, {{[REDACTED]}} diverted carloads and \${{[REDACTED]}} million of incremental profit.⁸ Applicants' {{[REDACTED]}} carloads of growth opportunity from crude by rail comprises a substantial portion of the total 229,171 carloads.⁹ CP assumes these carloads are transported to the U.S. Gulf Coast to {{[REDACTED]}}.¹⁰

Figure 4 below shows CP's estimated crude by rail with and without the Transaction. The figure reports nearly 20 million barrels per year (2019) and over 50 million barrels per year with and without the transaction, respectively. The 20 million barrels of crude by rail from 2019 is nearly double the estimated 2021 levels of crude by rail exports to the U.S. Gulf Coast (approximately 11.4 million barrels were delivered to the region where Port Arthur operates).¹¹ CP's crude by rail growth opportunity is approximately a factor of 5 of the current corrected quantity of crude by rail to the U.S. Gulf Coast (11.4 million barrels * 5 = 57 million barrels).

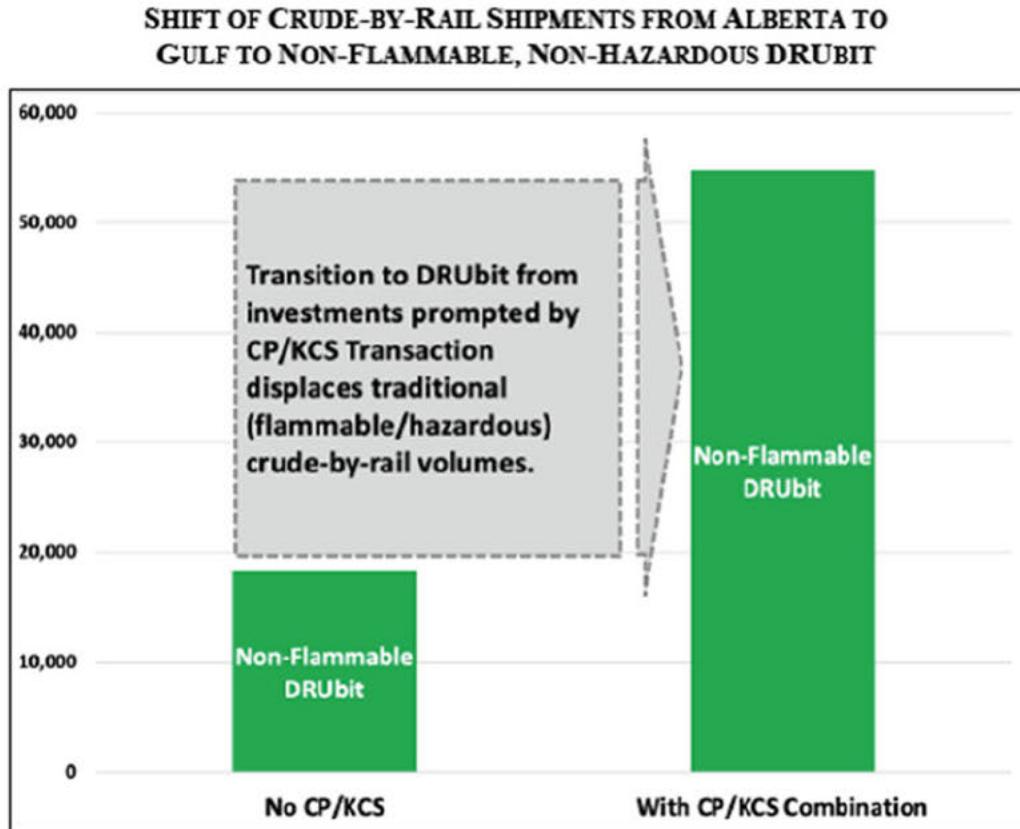
⁷ See Carey HC-WP 'HC-Summary of Corrected Claims.xlsx'.

⁸ {{[REDACTED]}}

⁹ "Wahba and Naatz HC WP Growth Initiative Calculations.xlsx", at tab "Summary".

¹⁰ "Wahba and Naatz HC WP Growth Initiative Calculations.xlsx", at tab "Summary".

¹¹ 11.4 million is derived from 54 million barrels 2021 annual estimate times 21% of Canadian crude oil exports destined for the US Gulf Coast (PADDIII). The 54 million barrels is based on 4.5 million monthly barrels (from 36 million barrels for Jan-Aug 2021). See Canada Energy Regulator, "Canadian Crude Oil Exports by Rail - Monthly Data," available at <https://www.cer-rec.gc.ca/en/data-analysis/energy-commodities/crude-oil-petroleum-products/statistics/canadian-crude-oil-exports-rail-monthly-data.html> and <https://www.cer-rec.gc.ca/en/data-analysis/energy-markets/market-snapshots/2019/market-snapshot-canadian-crude-oil-is-mainly-exported-two-regions-in-united-states.html>. Beginning October 2021 a major pipeline expansion - Enbridge's Line 3 replacement project began operating which can be expected to further reduce the crude by rail volumes because pipelines are more economic transporters of crude oil. See Williams, Nia, "Enbridge's Long-Delayed Line 3 Oil Pipeline Project to Star Up Oct. 1," Reuters, September 29, 2021, available at <https://www.reuters.com/business/energy/enbridge-completes-line-3-oil-pipeline-replacement-project-starts-linefill-2021-09-29/>. The expansion will provide an estimated additional 370,000 barrels per day capacity or 135 million barrels per year. See Canada Oil & Natural Gas Producers (CAPP), *2019 Crude Oil Forecast, Markets and Transportation*, p. 23, available at https://www.capp.ca/wp-content/uploads/2019/11/2019_Crude_Oil_Forecast_Markets_and_Transportation-338794.pdf.

Figure 4: Reproduction of Table in Wahba and Naatz V.S.¹²

CP has made {{ }}.¹³ It has already been {{ }}
 {{ }}
 {{ }}¹⁴ Neither its {{ }}
 {{ }} are dependent on the Transaction.¹⁵ This was likely a business goal without the proposed Transaction and CP already maintains a strong market position regarding this traffic.¹⁶ Even CP's internal investor documents do not indicate this traffic is only achievable as a result of the Proposed Transaction (rather suggesting it is more likely than without the Transaction).¹⁷ For instance, CP stated that {{ {{

¹² See Wahba and Naatz V.S. ¶ 93.

¹³ See {{ {{

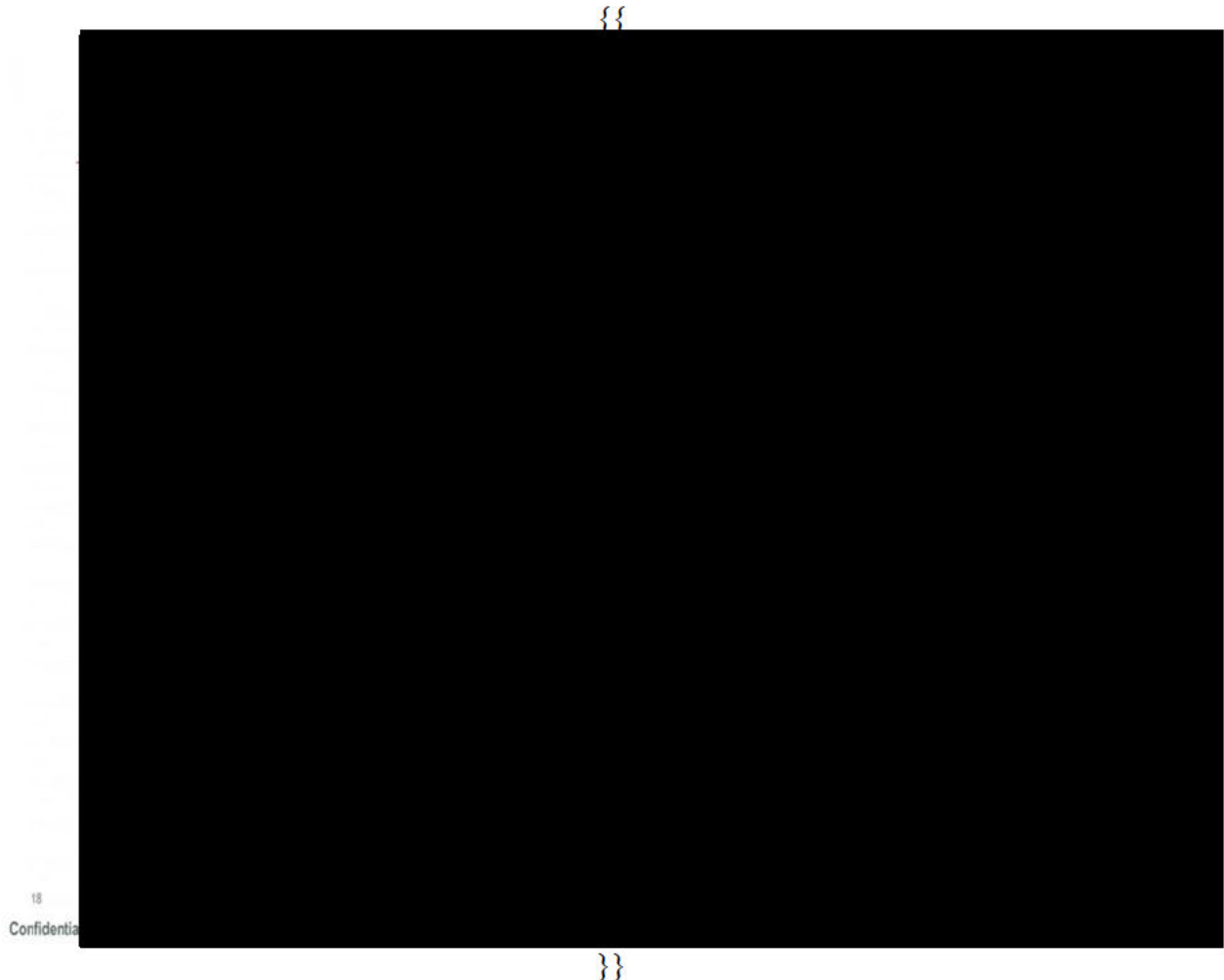
¹⁴ See {{ {{

¹⁵ See {{ {{

Wahba and Naatz V.S. ¶84-94. The Applicants assert this traffic volume will be created in the future since "[w]e anticipate that CP/KCS will be the catalyst for further investments in the Hardisty DRU facility to expand its capacity." Wahba and Naatz V.S., ¶92. {{ {{

See Figure 5 below.

Figure 5: Slide from CP Presentation¹⁸



For a movement that was capable of being achieved by the parties without the merger, a factor of 5 is extraordinary and unsupported. The Applicants simply state “[w]e anticipate that CP/KCS will be the catalyst for further investments in the Hardisty DRU facility to expand its capacity.”¹⁹

The Applicants admit that they do not currently provide transportation from Alberta to the U.S. Gulf Coast for the crude oil market and DRUbit, and that the outcome of this growth initiative is very uncertain. In response to an interrogatory on the topic they state:

“Applicants generally expect to increase their market share for crude in DRUbit form moving from Alberta to the U.S. Gulf Coast. Currently, the only single-line option to

¹⁸ See {}

¹⁹ See Wahba and Naatz V.S. page 43 in App. Vol. 1, ¶ 92.

move crude and DRUbit from Alberta to the Gulf Coast is via the Canadian National system. By combining, Applicants will create a new single-line option that competes with CN, thereby potentially attracting some of the traffic that CN currently handles. It is difficult for Applicants to predict how much traffic they will attract because those outcomes will depend on the choices made by customers and general economic factors surrounding the transportation of crude and DRUbit.”²⁰

Applicants' claim that the combination will not result in more crude oil to be shipped by rail²¹ directly contradicts their description of crude by rail "growth" diversion. By definition, if CPKC is not inducing more crude by rail, then they must be diverting from another carrier. There are indeed [REDACTED] to be moved from Canada by rail to the U.S. Gulf Coast,²² however crude by rail delivery will nonetheless face substantial economic challenges, making Applicants' estimates inherently unreliable, including:

- Price competition with the global suppliers of lower cost crude oil (Canada oil sands crude is high cost and rail is the high-cost transportation services provider).²³
- Lower cost pipeline transportation competitors.²⁴
- Crude-by-rail demand by refiners in the West coast, East coast, and Midwest (i.e., not all Canada crude by rail carloads will go to the U.S. Gulf Coast on CP/KCS).²⁵
- The U.S. Gulf Coast refining region that Applicants seek to transport crude oil to already receives substantial amounts of crude oil from U.S. crude oil basins that are much shorter distances than Alberta, Canada and for which the majority of volumes are transported by lower cost pipelines.²⁶

²⁰ Supplemental Responses to CSXT's Second Set of Discovery and Interrogatory Requests, February 18, 2022, No. 5.

²¹ See Wahba and Naatz V.S ¶ 80.

²² See

²³ There has been a substantial fall in the volume of crude transported by rail since the summer of 2015, and one cause of this has been the diminishing price gap between imported and domestic oil. The narrowing price gap leads to coastal refineries switching to importation of oil by tanker, which is much cheaper than rail transport. *See* Congressional Research Service, “Rail Transportation of Crude Oil and the FAST Act: An Update,” September 7, 2017, p. 1, available at Rail Transportation of Crude Oil and the FAST Act: An Update (congress.gov).

²⁴ Railroad transport of crude oil typically costs two to three times as much as pipeline transportation. See Frittelli, John et al., “U.S. Rail Transportation of Crude Oil: Background and Issues for Congress,” Congressional Research Service, December 4, 2014, p. 7, available at U.S. Rail Transportation of Crude Oil: Background and Issues for Congress (fas.org).

²⁵ Receipts by rail from Canada of crude oil has been gradually rising over the last decade. See U.S. Energy Information Administration Data, “Movements of Crude Oil and Selected Products by Rail,” available at https://www.eia.gov/dnav/pet/pet_move_railNA_a_EPC0_RAIL_mbb1_m.htm.

²⁶ For example, pipeline capacity from the Bakken has gradually increased over the years, including the construction of Dakota Access Pipeline. These pipelines can now carry all of the region's current production at a lower cost than rail. See Congressional Research Service, "Rail Transportation of Crude Oil and the FAST Act: An Update," September 7, 2017, p. 1.

- Asia is the world's largest source of crude oil demand, which is more directly transported from the Canadian crude oil production fields to the west coast of Canada or the U.S. for export versus transporting the Canadian crude oil to the U.S. Gulf Coast.²⁷
- Railroads typically experience peak demand during the Fall because of grain harvest and holiday shipping, and therefore locomotives and track capacity can be in short supply.²⁸

B. Growth Diversions Facing Disadvantages To/From Lazaro Cardenas

Applicants' growth diversion claims from Lazaro Cardenas are incomplete and do not reflect capacity restrictions, logistical issues, and mileage disadvantages. Growth opportunity traffic to or from Lazaro Cardenas which do not have Kansas City or Dallas as the identified origin/destination include \$ [REDACTED] million of additional revenue and [REDACTED] diverted units and \$ [REDACTED] million of incremental profits (net revenue less variable cost.)²⁹

The Applicants' growth-related transaction benefits are dependent on growth from single line intermodal service from the Port of Lazaro Cardenas Mexico and other international locations based on the Applicants' claim of effectively competing with service via Los Angeles/Long Beach and the Port of Houston.³⁰ As shown in Figure 2, [REDACTED] carloads of the [REDACTED] carloads of growth opportunity traffic identified by the Applicants, which is [REDACTED], is intermodal traffic.^{31 32} Those growth opportunities are substantially comprised of new intermodal traffic from western Mexican ports that Applicants claim will divert traffic from Los Angeles and Houston ports. There are [REDACTED] carloads with the Port of Lazaro Cardenas as an origin or destination of the total intermodal traffic of [REDACTED], which is [REDACTED].³³

²⁷ Statista, "Oil Demand Worldwide in 2019 and 2020, by region," available at <https://www.statista.com/statistics/272502/global-oil-demand-by-region/>.

²⁸ Railroad transport of crude oil typically costs around \$10-\$15 per barrel, compared with \$5 per barrel for pipeline transportation. See Frittelli, John et al., "U.S. Rail Transportation of Crude Oil: Background and Issues for Congress," Congressional Research Service, December 4, 2014, p. 7.

²⁹ See Carey HC-WP 'HC-Summary of Corrected Claims.xlsm'.

³⁰ [REDACTED]

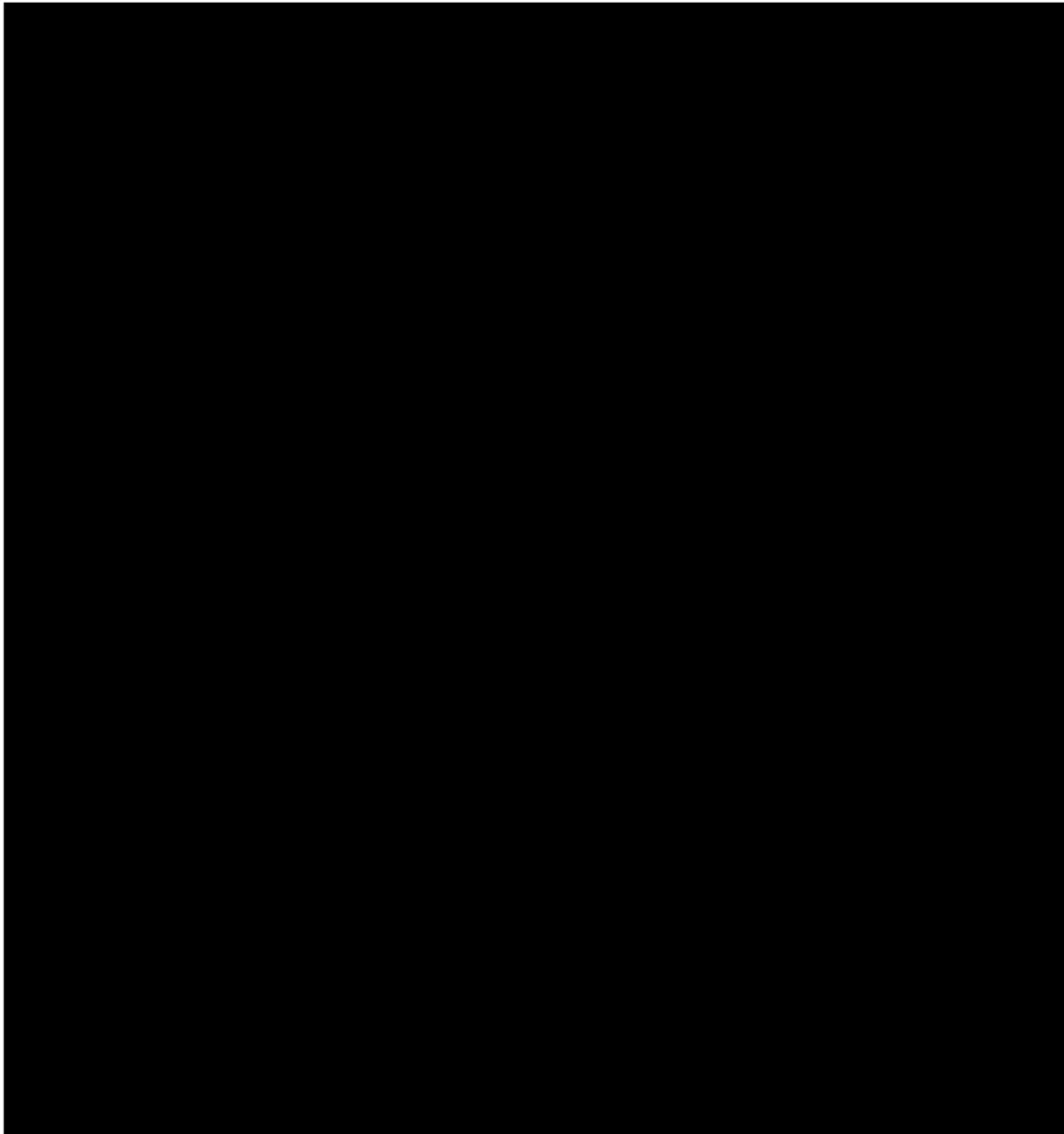
³¹ See Baranowski V.S. WP "HC – URCS Phase III Calculation For Growth Traffic.xlsm" at tab "Volume and Revenue Results" at rows 221 to 232. Note row 232 indicates Domestic IM from Mexico port. Tab "Final VC by Category Phased In" at rows 7949-7958 and 7964-7969, Column F, indicates international intermodal.

³² [REDACTED]

³³ [REDACTED]

Figure 6: Lazaro Competition with U.S. Ports³⁴

{{



The Applicants were asked a series of interrogatories regarding the Applicants support for the traffic increases listed in the “Lazaro Intermodal” category in the Growth Initiative Summary

³⁴ See [REDACTED]

Table.³⁵ The Applicants responded that they did not have documents that were responsive to the following:³⁶

"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."³⁷

"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."³⁸

"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."³⁹

"h. The potential for confiscation of assets owned by KCSM or non-Mexican companies in Mexico and the consequences of any such confiscation."⁴⁰

[REDACTED]

³⁵ The "Growth Initiative Summary Table" is identified in CSX Transportation, Inc. Second Set of Discovery Requests to Canadian Pacific Railway and Kansas City Southern, pages 2 and 3. Applicants' Highly Confidential work paper titled "Wahba and Naatz HC WP Growth Initiative Calculations.xlsx".

³⁶ Supplemental Responses to CSXT's Second Set of Discovery and Interrogatory Requests, February 18, 2022, No. 4. "After a reasonable search, Applicants do not have non-duplicative and non-privileged responsive documents with respect to subparts (a), (f), (g), and (h)."

³⁷ Supplemental Responses to CSXT's Second Set of Discovery and Interrogatory Requests, February 18, 2022, No. 4(a).

³⁸ Supplemental Responses to CSXT's Second Set of Discovery and Interrogatory Requests, February 18, 2022, No. 4(f).

³⁹ Supplemental Responses to CSXT's Second Set of Discovery and Interrogatory Requests, February 18, 2022, No. 4(g).

⁴⁰ Supplemental Responses to CSXT's Second Set of Discovery and Interrogatory Requests, February 18, 2022, No. 4(h).

⁴¹ Supplemental Responses to CSXT's Second Set of Discovery and Interrogatory Requests, February 18, 2022, No. 4(a).

⁴² [REDACTED]

⁴³ [REDACTED]

There are other factors that the Application does not discuss, such as security and stability concerns which suggest that the Applicants may face difficulty achieving reliable operations. For example, the port has long struggled with organized crime activities affecting port operations, requiring the Mexican military to intervene in port operations in 2013.⁴⁴ In addition, protests that involve blocking rail tracks through Michoacán have negatively impacted KCS's ability to move freight through Mexico. This problem is even acknowledged by KCSM President Óscar del Cueto, who said "Much of the commerce that arrived at Lázaro Cárdenas is being diverted to other ports, ports that are not in our country. There is a bad image. The message that these blockades send does not favor investment or job creation."⁴⁵

Additional risk arises from KCS's contractual agreement with Mexico (i.e., the concession agreement).⁴⁶ Notably, foreign assets were recently confiscated, and other proposed changes to the energy regulatory regime that are unfavorable to foreign investors are being contemplated.^{47,48} These issues were not addressed in the Application. In addition, the growth carloads are diversions from U.S. ports that may reduce the economic benefits in the U.S. The diversion negatively harms union jobs in Los Angeles, with currently over 15,000 union employees.⁴⁹ None of these issues are addressed in the Application.

Further, Applicants' port competition claims are incomplete and do not depict real world waterborne competition with railroads. A waterborne container ship coming from the Asia Pacific region is a highly economically competitive means of transportation compared to

⁴⁴ See Partlow, Joshua, "Mexican army has taken control of major port in effort to combat drug cartel," Washington Post, December 1, 2013, available at https://www.washingtonpost.com/world/the_americas/mexican-army-has-taken-control-of-major-port-in-effort-to-combat-drug-cartel/2013/11/30/ee768458-523b-11e3-9ee6-2580086d8254_story.html.

⁴⁵ See "Otra 'derrota' Mexicana: bloqueos ferreos en el pais benefician a puertos de EU," El Financiero, August 9, 2021, available at <https://www.elfinanciero.com.mx/empresas/2021/08/09/otra-derrota-mexicana-bloqueos-ferreos-en-el-pais-benefician-a-puertos-de-eu/>.

⁴⁶ KCS has a concession to operate track in Mexico through 2047, however the concession is up for review in 2027, and once the Mexican government changes the concession to be non-exclusive, other railways may seek to procure trackage rights. BNSF has expressed interest in bidding on these rights, which would severely diminish the utility of the asset. See Stephens, Bill, "BNSF Railway to Seek Concession to Operate in Mexico," Trains, January 14, 2022, available at <https://www.trains.com/tm/news-reviews/news-wire/bnsf-railway-to-seek-concession-to-operate-in-mexico/>. See Ministry of Communications and Transportation, *Concession Granted by the Mexican Federal Government*, available at <https://www.sec.gov/Archives/edgar/data/54480/000005448012000019/exhibit101010-k2011.htm>.

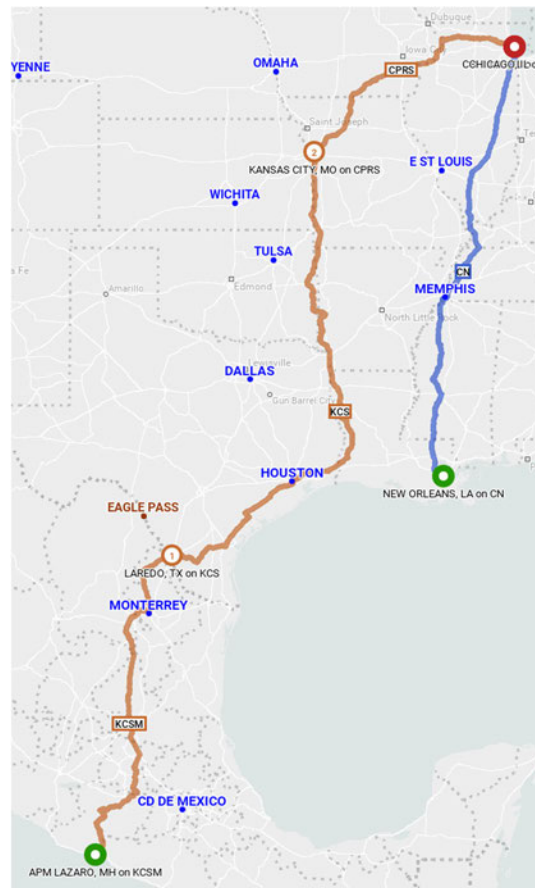
⁴⁷ See Barrera, Adriana, "Mexico launches reform to put state in charge of power market," Reuters, October 1, 2021, available at <https://www.reuters.com/world/americas/mexico-president-says-electricity-reform-has-been-sent-congress-2021-10-01/>; Fernandez, Marcelo Paramo et al., "Reforms in the energy legal framework in Mexico and challenge mechanisms," DLA Piper, June 4, 2021, available at <https://www.dlapiper.com/en/mexico/insights/publications/2021/06/reforms-in-the-energy-legal-framework-in-mexico-and-challenge-mechanisms/>; and O'Grady, Mary Anastasia, "Mexico Moves to Seize American Assets," Wall Street Journal, October 17, 2021, available at <https://www.wsj.com/articles/mexico-american-assets-obrador-amlo-energy-11634496785>.

⁴⁸ See regulatory risks in Mexico identified by { [REDACTED] }

⁴⁹ California Workforce Development, "The High Road to the Port," June 2019, page 5, available at https://cwdb.ca.gov/wp-content/uploads/sites/43/2019/11/High-Road-to-the-Port-11-25-2019_ACCESSIBLE.pdf.

railroads.⁵⁰ Waterborne container ships can choose to avoid all West Coast ports in North America and traverse the Panama Canal using U.S. Gulf Coast ports to access Chicago (via CN), or East coast ports to access Chicago via CSXT or NS. As an example, the map below in Figure 6 from Lazaro Cardenas, MX to Chicago, IL (“CPCKS”) and New Orleans, LA to Chicago, IL (“CN”) show the longer route of the Applicants being 2,647 miles compared to 940 miles with a more direct, customary route on CN, which is a difference of 1,707 miles.

Figure 7: Comparison of CPKCS and CN⁵¹



The map below in Figure 8 shows the shipping and rail transit times from Asia to North American ports and inland cities. The transit time from Asia to U.S. Gulf ports is approximately

⁵⁰ One study estimates that maritime transportation could save around \$2,000 per container as compared to rail transportation when moving containers between the port of Long Beach and Memphis, TN. *See* Valentine, Harry, “Comparing Maritime Versus Railway Transportation Costs,” *The Maritime Executive*, December 25, 2017, available at <https://www.maritime-executive.com/editorials/comparing-maritime-versus-railway-transportation-costs#:~:text=Cost%20comparisons%20based%20on%20mega-container%20ships%20%28%240.80%20per,arriving%20from%20Hong%20Kong%2C%20Singapore%20and%20South%20India.>

⁵¹ Maps from PC Miler.

the same with an all-water movement (28 days) as compared to a water movement to Lazaro Cardenas combined with a rail movement to the U.S. (27 = 19 + 8 days).⁵²

Further, a seaborne intermodal movement from Asia to Lazaro Cardenas to Chicago is slower than a move from Asia to the U.S. and Canadian West coasts to Chicago and has equivalent time as a move from Asia to the U.S. Gulf to Chicago. Therefore, shipments to Lazaro Cardenas have no economic advantage.⁵³ Applicant normal course of business documents focus on the “Texas Shortcut” rather than address fulsome waterborne analysis.⁵⁴

Figure 8: Shipping and Rail Times by Day from Shanghai to Interior U.S. Locations⁵⁵



Transit Times from Shanghai and North American Routing Options (in Days)

⁵² Likewise, many shipments have a shorter transport time if they are offshored at Vancouver, where CP already has access. See Theo Notteboom, Athanasios Pallis, Jean-Paul Rodrigue, “Port Economics Management and Policy”, forthcoming January 31, 2022, Section IX, Case Studies, Port of Savannah Logistics Cluster, available at <https://porteconomicsmanagement.org/>.

⁵³ In another example, waterborne container ships from Asia or elsewhere can choose to use U.S. East Coast ports to access eastern cities as well as midwestern cities like Chicago.

⁵⁴

⁵⁵ See Theo Notteboom, Athanasios Pallis, Jean-Paul Rodrigue, “Port Economics Management and Policy”, forthcoming January 31, 2022, Section IX, Case Studies, Port of Savannah Logistics Cluster, available at <https://porteconomicsmanagement.org/>.

C. Applicants' Mileage Disadvantaged, Growth Diversions

Applicants' rail to rail diversions reflect mileage disadvantaged routes.⁵⁶ My criticisms of their reliance on those mileage disadvantaged routes also apply to the Applicants' Growth Initiative diversion traffic.⁵⁷ Specifically, the growth diversions relating to these disadvantaged routes are:

- **Northern Midwest (Minneapolis, North and South Dakotas and Iowa) to or from South of Kansas City, MO:** These claimed growth diversions between the Northern Midwest and locations south of Kansas City, MO result in \$ [REDACTED] million of Incremental Revenue, [REDACTED] diverted carloads/units and \$ [REDACTED] million of Incremental Profits (Incremental Revenue minus Incremental Costs).⁵⁸
- **Mexico (through Laredo, TX) to or from Chicago, IL:** These claimed rail diversions result in \$ [REDACTED] million of Incremental Revenue, [REDACTED] diverted carloads/units and \$ [REDACTED] million of Incremental Profits (Incremental Revenue minus Incremental Costs).⁵⁹

D. Additional Deficiency of Applicants' Growth Initiative Diversions

Applicants have not demonstrated whether there is a double count between the claimed Growth Initiative diversions and the other claimed rail and truck diversions with their normal course of business forecasts. As an example, no details regarding the specificity of the assumed origins and destinations in the Applicants' analysis were provided. The Applicants admit that they don't know where the growth traffic will originate or terminate, instead identifying general geographies. The Applicants state that "[REDACTED]

[REDACTED]"⁶⁰ The Applicants further state that "Applicants refer CSXT without limitation to the "CP Growth Initiatives" tab of the Workpaper "URCS Phase III Calculation For Growth Traffic Input.xlsx," which identifies the origin and destination geographies for all anticipated growth traffic. The locations provided therein are those where it is reasonable to expect the growth traffic would come from, but are assumed locations for purposes of developing miles and are not intended to imply that these are the specific stations that handle, or will handle, the traffic."⁶¹

In short, there is no analysis or other supporting evidence provided by Applicants to reliably conclude that many of these additional Growth Initiative diversions are not already accounted for in Applicant's other rail and truck diversions, particularly with respect to Mexico.

⁵⁶ See Carey WP "Rail and Truck Diversions.pdf" at Sections I.B and I.C.

⁵⁷ See Carey WP "Rail and Truck Diversions.pdf" at Sections B and C.

⁵⁸ See Carey HC-WP "HC-Summary of Corrected Claims.xlsx" at tab "Appendix Figures".

⁵⁹ See Carey HC-WP "HC-Summary of Corrected Claims.xlsx" at tab "Mileage Table".

⁶⁰ Supplemental Responses to CSXT's Second Set of Discovery and Interrogatory Requests, February 18, 2022, No. 2.

⁶¹ Supplemental Responses to CSXT's Second Set of Discovery and Interrogatory Requests, February 18, 2022, No. 2.

Further, Applicants have not shown whether the Growth Initiative diversions are duplicative of their own business forecasts independent of the Proposed Transaction.⁶² Again there is dearth of evidence to be able to reliably conclude that these Growth Initiative diversions are not already contained in normal business forecasts by the Applicants.

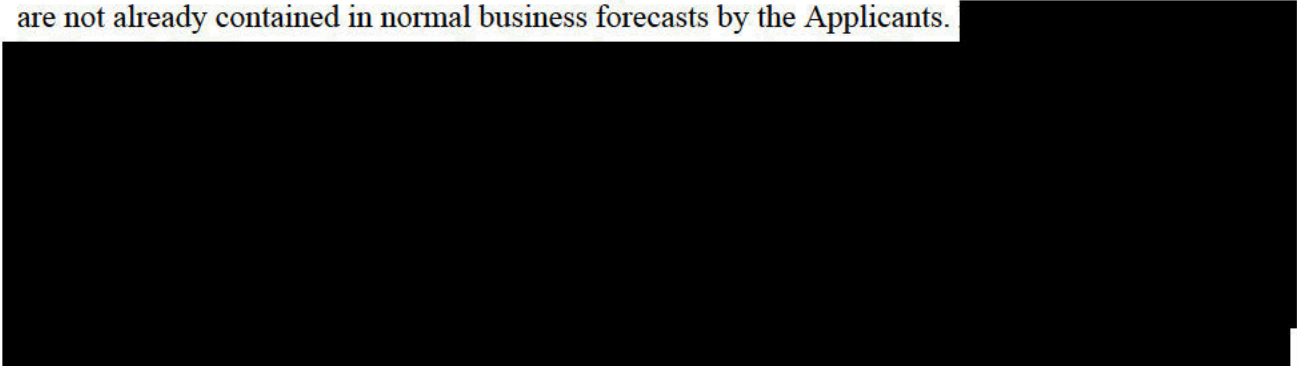
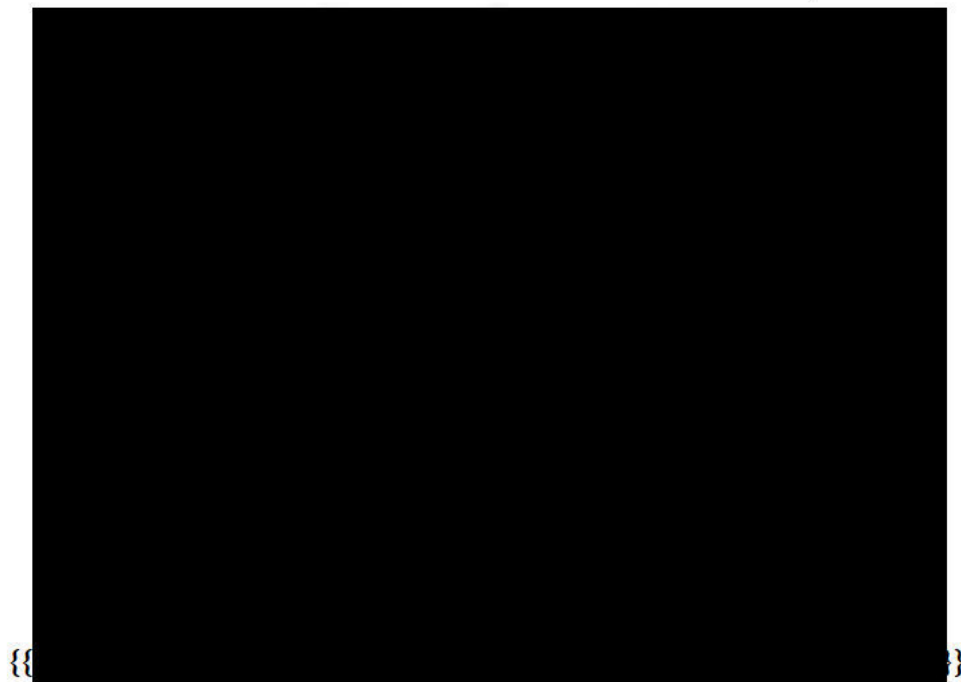


Figure 9: {  }⁶³



⁶² See Applicants Responses to CSXT's Second Set of Discovery and Interrogatory Requests, February 18, 2022, No. 1-7.

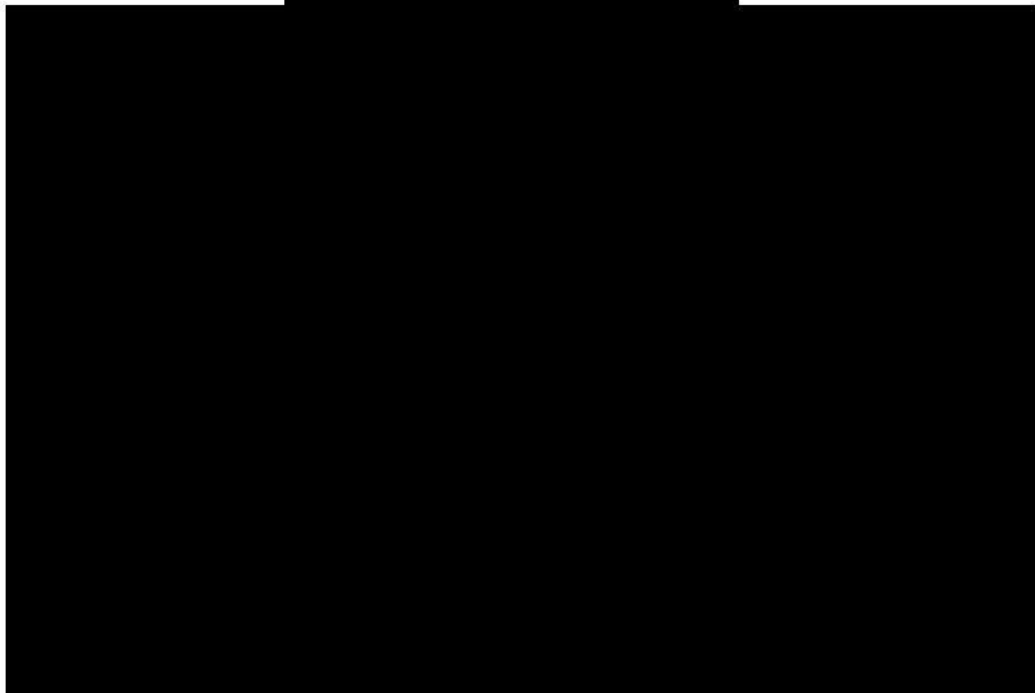


⁶³ See



Figure 10:

64



Further, applicants already projected strong individual CAGR growth with accounting for synergies.

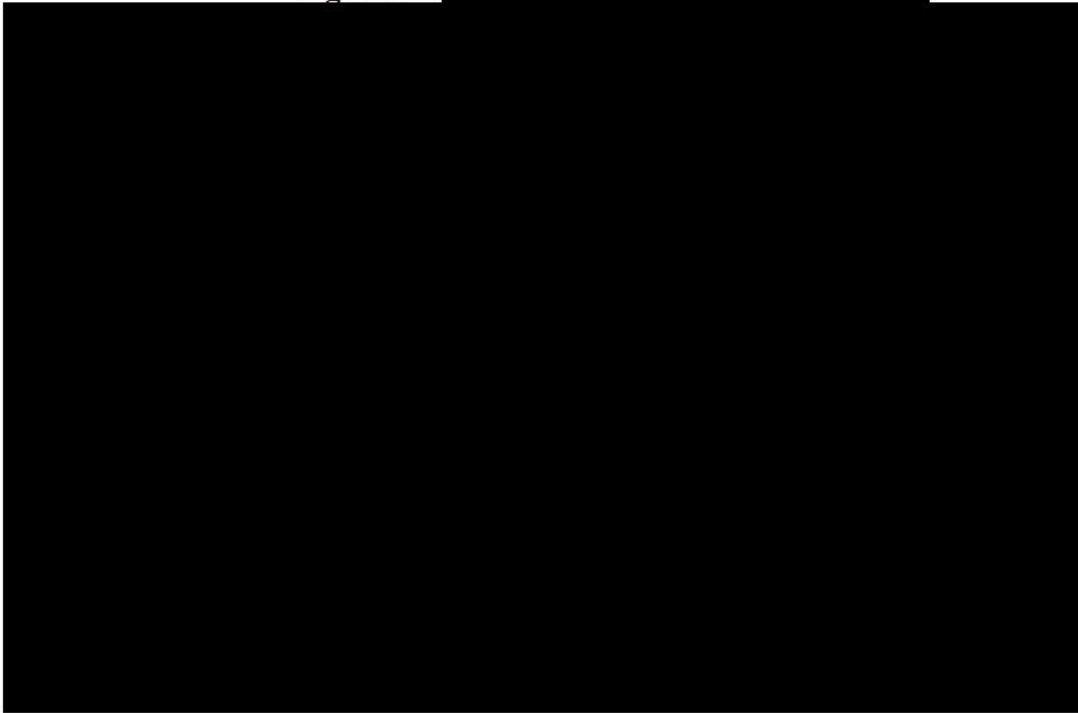
[Redacted]

⁶⁴ See [Redacted]

⁶⁵ See [Redacted]

Figure 11:

⁶⁶



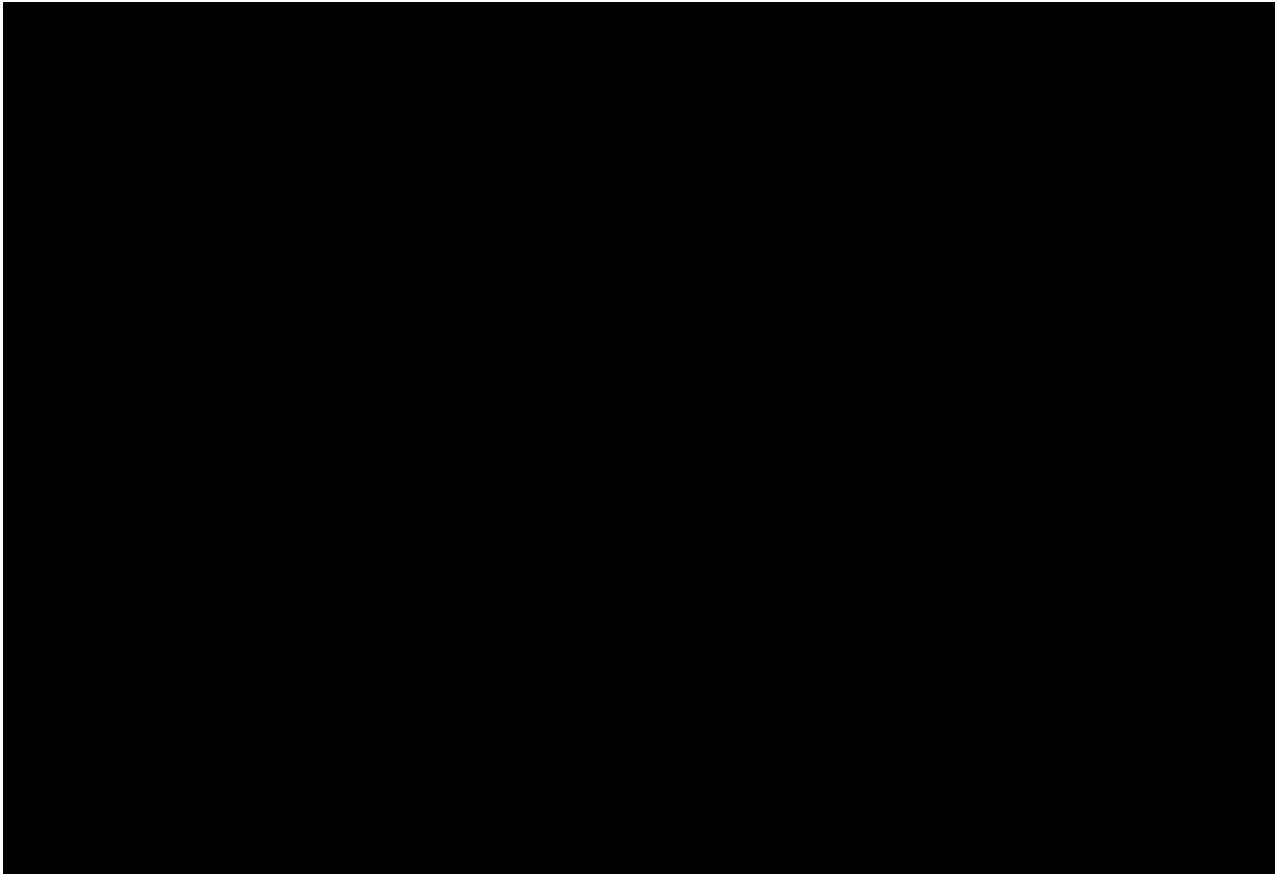
Regarding Figure 12 below, CPKC provided no customer specific correspondences to support their claim that [REDACTED] Further, no additional quantitative competitive assessment was provided to support the claim of [REDACTED]

⁶⁷

⁶⁶ See [REDACTED]

⁶⁷ See also [REDACTED]

Figure 12: [REDACTED] ⁶⁸



E. Interrogatory Responses by the Applicants

This section includes select interrogatory responses by the Applicants.⁶⁹

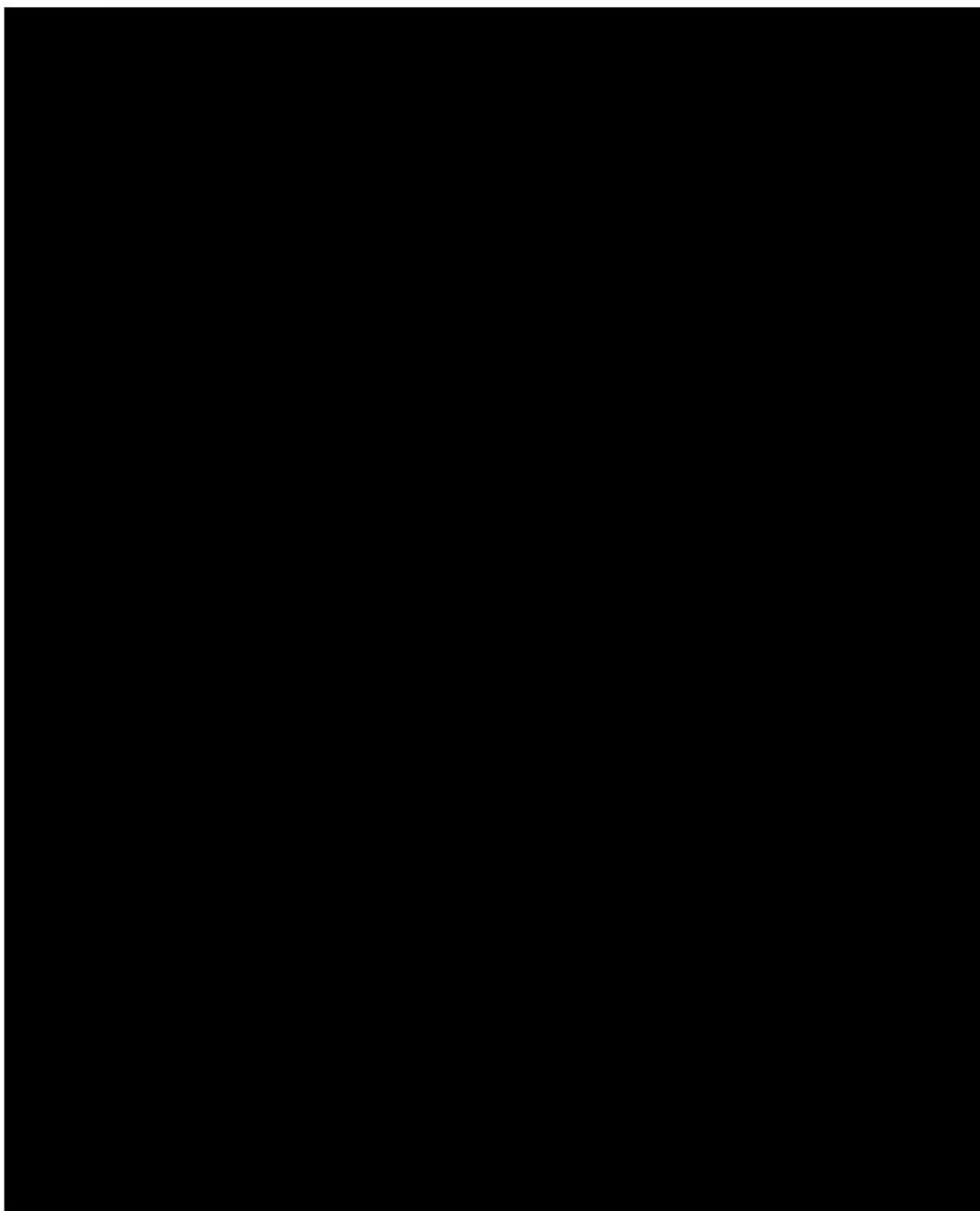
In response to Interrogatory No. 4, CP produced a document containing the email shown at Figure 12 below.⁷⁰

⁶⁸ See [REDACTED].

⁶⁹ See Applicants' Responses to CSXT's Second Set of Discovery and Interrogatory Requests, January 10, 2022. *See also* Applicants' Responses to CSXT's Second Set of Discovery and Interrogatory Requests, February 18, 2022,

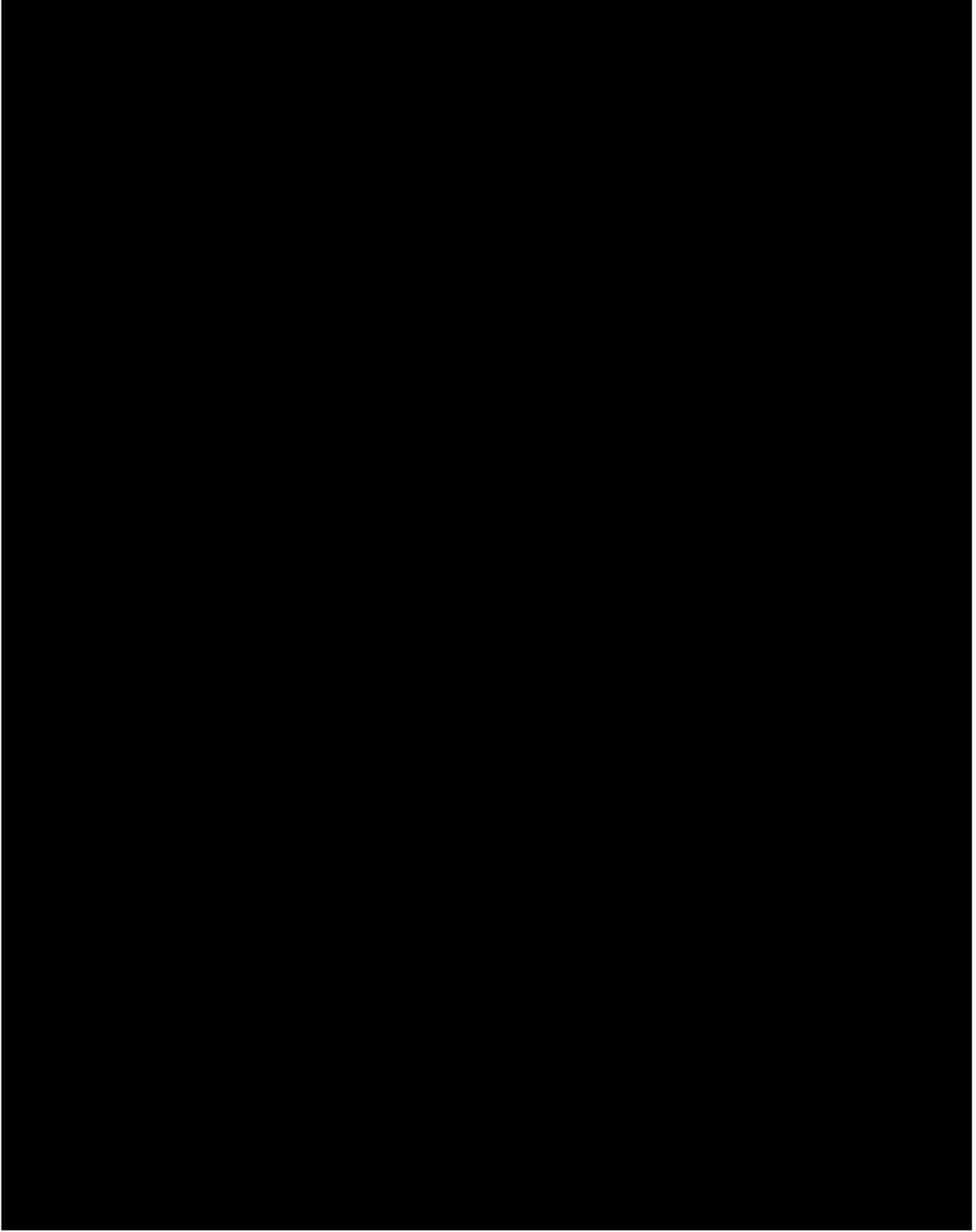
⁷⁰ See Applicants' Responses to CSXT's Second Set of Discovery and Interrogatory Requests, February 18, 2022, No. 4.

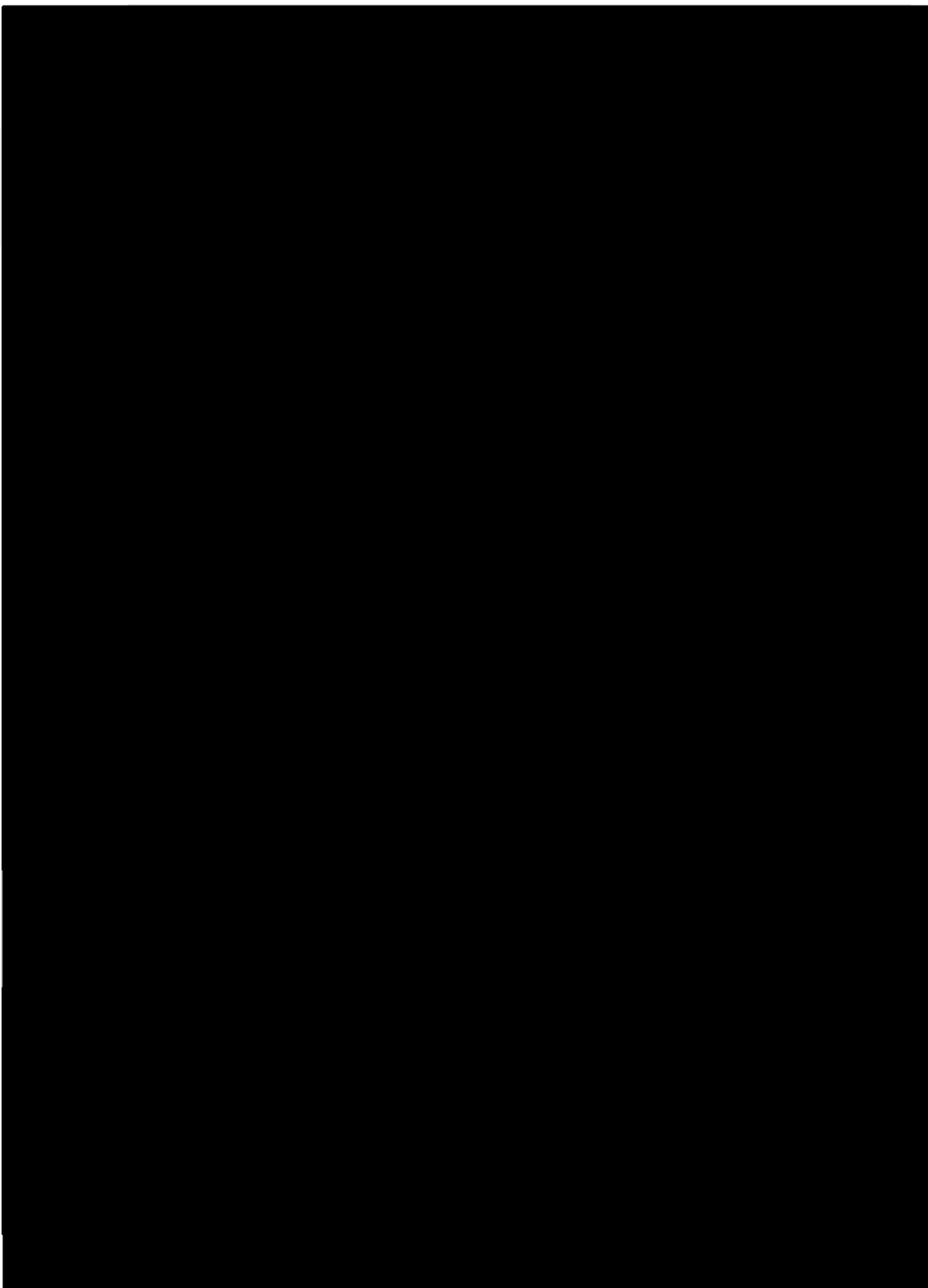
Figure 13: [REDACTED] ⁷¹



⁷¹ See [REDACTED]

{





{{

{

{{

{{

{

Interrogatory and Response to Interrogatory No. 21:⁷²

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

⁷² See Applicants' Responses to CSXT's Second Set of Discovery and Interrogatory Requests, January 10, 2022, No. 21.

[REDACTED]

[REDACTED]

Revised Interrogatory and Response to Interrogatory No. 26:⁷³

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

⁷³ See Applicants' Responses to CSXT's Second Set of Discovery and Interrogatory Requests, February 18, 2022, No. 26.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Interrogatory and Response to Interrogatory No. 29:⁷⁴

[REDACTED]

[REDACTED]

⁷⁴ See Applicants' Responses to CSXT's Second Set of Discovery and Interrogatory Requests, February 18, 2022, No. 29.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Revised Interrogatory and Response to Interrogatory No. 43:⁷⁵

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

⁷⁵ See Applicants' Responses to CSXT's Second Set of Discovery and Interrogatory Requests, February 18, 2022, No. 43.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]