

Rail and Truck Diversions

The Application includes rail and truck diversions for traffic movements that must traverse longer railroad routes and often require use of another carrier's rail facilities (trackage or haulage), adding costs and further disadvantages. Additionally, the Application includes rail and truck diversions that can be served by CP or KCS alone and are therefore achievable without the Transaction. Examples of such rail and truck diversions are provided in Sections I and II, respectively.

The competitively significant elements of CPKCS post-Transaction service quality compared to those of other carriers, including route miles and cycle times, were requested by CSXT.¹ Applicants did not produce sufficient documents to compare cycle times between applicants and potentially competitive carriers.² See Section II.D for select interrogatory responses by the Applicants.

I. RAIL DIVERSIONS

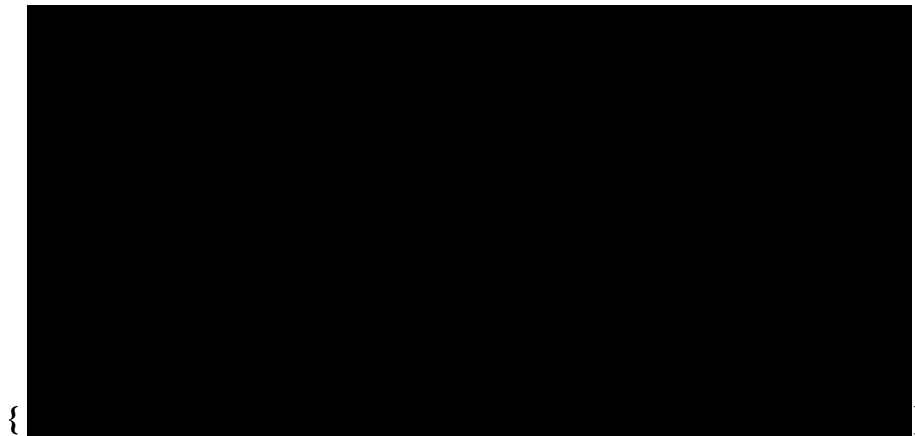
As shown in Figure 1, the Application estimates that there are {{[REDACTED]}} annual carloads, the majority of which are intermodal containers. These units are expected to divert each year from existing routes to CPKCS as a result of the CPKCS combination.³ For this reason the Application refers to rail (and truck) to rail diversions as *existing* traffic diversions.⁴ In total, the {{[REDACTED]}} carloads estimated by Applicants face route disadvantages as compared to competitors or are achievable without the transaction, accounting for {{[REDACTED]}} percent of the {{[REDACTED]}} rail diversions assumed in the Application. This is shown in Figure 2 below.

¹ CP and KCS Joint Supplemental Responses and Objections to CSXT's Second Set of Requests at Response to Interrogatory, February 18, 2022, No. 26, 29, 43.

² In relation to Dr. Majure's conclusion that the Transaction will enhance competition through vertical effects, CSXT requested documents or analyses regarding "the competitively significant elements of KCS [and CPKC post-Transaction] service quality compared to those of other carriers, including route miles and cycle times". The response was that Applicants do "not have responsive documents" and "do not have additional non-privileged responsive documents". See CP and KCS Joint Supplemental Responses and Objections to CSXT's Second Set of Requests at Response to Interrogatory, January 10, 2022, No. 21 (c) and (d).

³ See *Brown/Zebrowski V.S.* ¶ 6.

⁴ See Application, Vol. 1, p. 21.

Figure 1: Reproduction of Table 1 in Brown/Zebrowski V.S.⁵


The Application claims \${{█}} million in incremental profits on those {{█}} annual railcar diversions.⁶ After accounting for disadvantaged routes and diversions that are achievable without the transaction, corrected claims total {{█}} carloads/units resulting in incremental profits of \${{█}} million, as shown in Figure 2 below. The disadvantaged diversions comprising the longer routes summarized at Figure 2 are presented in Sections B-D. Section E presents rail diversions that are achievable without the Transaction. Section F identifies deficiencies in Applicants' diversion estimation methodology.

⁵ See Brown/Zebrowski V.S. ¶ 6.

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

Figure 2: Summary of Corrected Claims from Existing Rail Traffic in Applicants' Incremental Contribution Analyses⁷

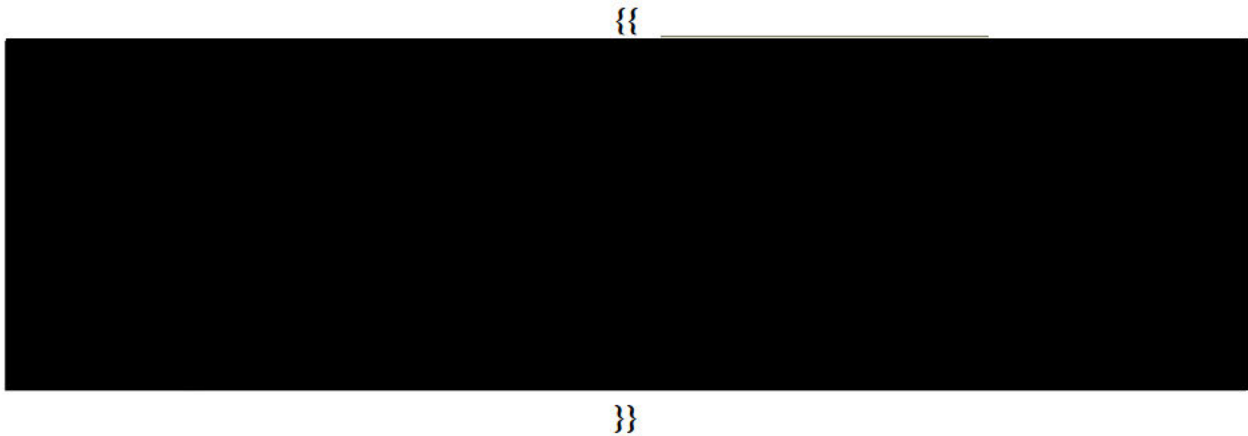
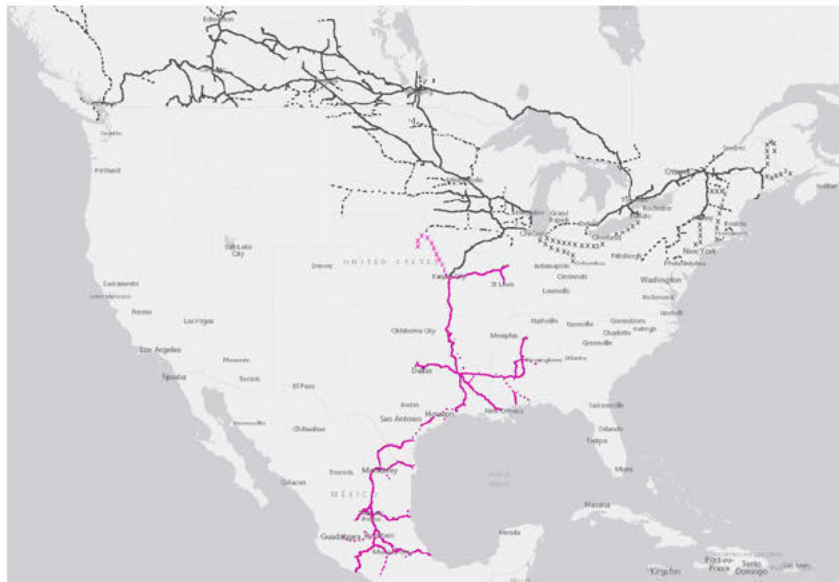


Figure 3: CPKCS Network⁸



⁷ See Carey HC-WP 'HC-Summary of Corrected Claims.xlsm' at tab "Summary of Claimed Benefits".

⁸ See Carey WP 'CPKCS Map with Trackage.png'

Figure 4: Maps of Principal KCS Yard Locations⁹

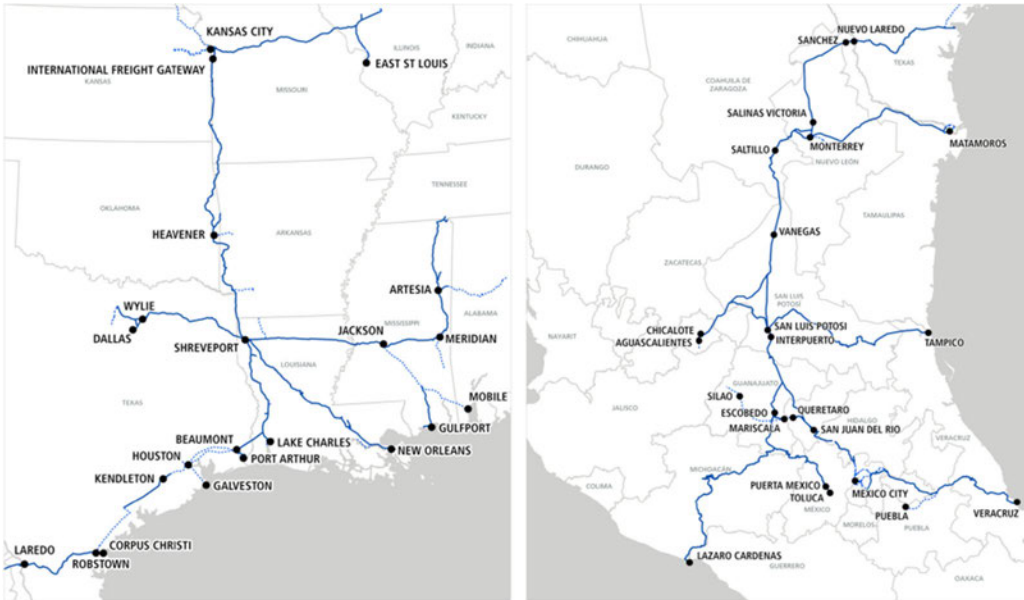


Figure 5: Maps of Principal CP Yard Locations¹⁰



⁹ See Operating Plan, Appendix B, page 36

¹⁰ See Operating Plan, Appendix B, page 35

A. Applicants claim that “more effective competition is a core transaction rationale” and point to major gateways for which CPKCS will now provide a third single-line connection¹¹

Applicants assume they can effectively compete on gateway routes, which are frequently longer mileage hauls with less efficient routes and other disadvantages such as congestion. The Applicants’ own statements highlight support for the strong competitive positioning of the other railroads, which calls into question how CPKCS can overcome such strong positioning with only a 5% rate decrease.¹² Such statements include:

- “Even though the CPKC single-line route between Chicago and Laredo would be longer than UP’s route, CPKC would offer seamless, origin-to-destination management of all facets of the service, likely unlocking superior economics as well.”¹³
- “In the Dallas-Chicago lane, this new service would compete head-to-head with BNSF’s intermodal offering. Though BNSF’s service would be both shorter and faster, CPKC would compete by offering very-reliable third-morning availability to/from our strategically located Bensenville Terminal. Further, both KCS’s Wylie terminal and CP’s Chicago facilities have available capacity. The CP/KCS combination will increase network capacity in this congested, delay-prone truck lane. We anticipate that this service will be particularly attractive to U.S. asset-based providers and expedited carriers.”¹⁴
- “We would also be able to offer single-line intermodal service from Dallas to Eastern Canada for the first time ever (with the ability to move limited volumes to Detroit as well). Existing interline services require an expensive, time-consuming local connecting assignment in Chicago’s crowded rail network to move from one line to another, adding up to a day of delay. CPKC’s single-line option will eliminate this delay entirely.”¹⁵

B. Applicants’ Mileage Disadvantaged, Existing Railroad Diversions Between Chicago, IL and Major Competitive Gateways

While recognizing the inferior competitive position that CP has on major gateways, the Application assumes a very large quantity of diversion carloads and revenues. Indeed, mileage disadvantaged diversions that originate or terminate in the U.S and move to, from or through Chicago, IL comprise a substantial amount ({{{redacted}}} carloads) of the Applicants’ existing rail diversions ({{{redacted}}} carloads) and a large portion of the Applicants’ total existing and growth diversions ({{{redacted}}} total anticipated diversions).^{16, 17}

¹¹ See Brooks V.S. ¶ 12.

¹² See Brown/Zebrowski V.S. ¶ 32.

¹³ See Wahba and Naatz V.S. ¶ 48.

¹⁴ See Wahba and Naatz V.S. ¶ 52.

¹⁵ See Wahba and Naatz V.S. ¶ 53.

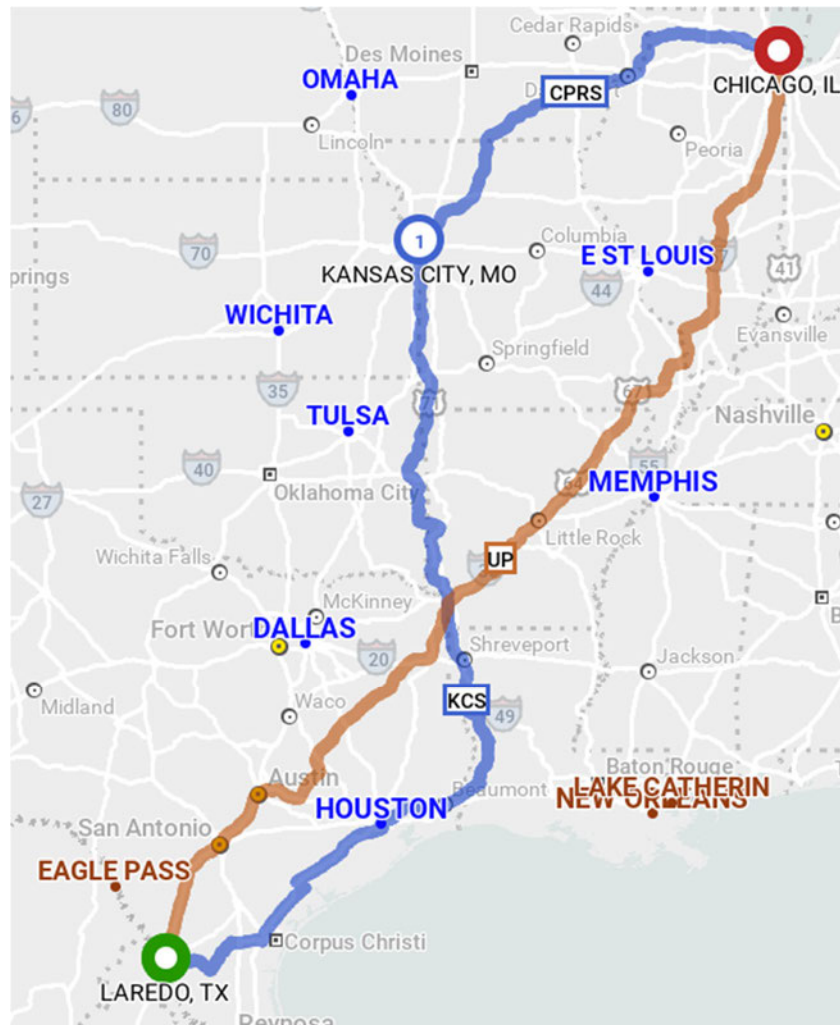
¹⁶ See Brown/Zebrowski V.S. ¶ 6.

¹⁷ Other movements included in CPKCS diversions that CPKCS moves through Chicago such as traffic between Mexico and Canada (which isn’t quantified) could also be impacted by the disadvantaged gateway routes.

Maps and mileage tables at Figures 6-12 below compare UP, CN, BNSF-KCS and CPKCS route differences between Chicago, IL and major gateway areas.

Mexico (through Laredo, TX) to or from Chicago, IL: Applicants' rail diversion from Laredo, TX to or from Chicago, IL will be made to traverse the CPKCS network in a longer route for traffic to or from Mexico. The map at Figure 6 from Laredo, TX to Chicago, IL shows the longer route with the CPKCS (blue) being 1,710 miles compared with UP's more direct, customary route that spans 1,390 miles (orange). 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).¹⁸

Figure 6: Comparison of UP and CPKCS Routes to/from Laredo, TX and Chicago, IL¹⁹



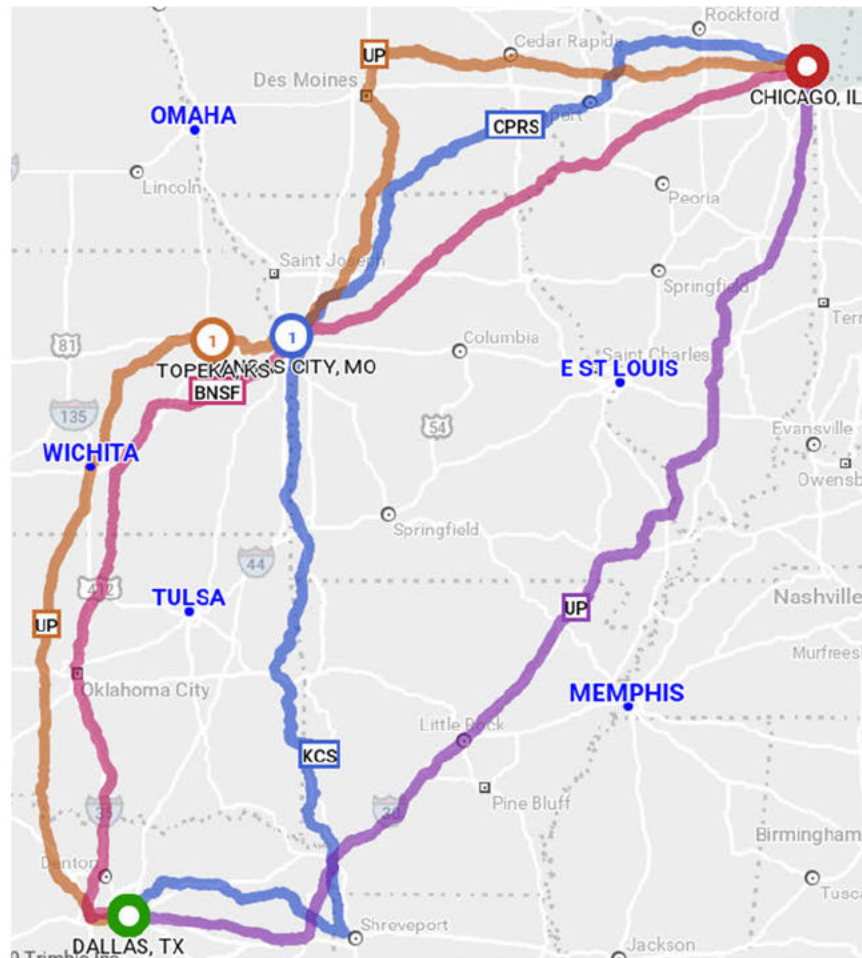
Texas to or from Chicago, IL: As shown below in Figures 7 and 8, Applicants' rail diversion from Texas to or from Chicago, IL will be made to traverse the CPKCS network in a longer

¹⁸ See Carey HC-WP 'HC-Summary of Corrected Claims.xlsx' at tab "Mileage Table".

¹⁹ Map from PC Miler. Laredo, TX to Chicago, IL route with UP was confirmed by checking miles reported in the 2019 CWS.

route. Figure 7 depicts routes from Dallas, TX to Chicago, IL on CPKCS, UP and BNSF. The map shows the longer route with the CPKCS (blue) being 1,264 miles. This compares with UP's more direct, customary routes that span 992 miles (purple) and 1,187 miles (orange) and BNSF's route that spans 1,024 miles (red). These claimed rail diversions result in \${{█}} million of Incremental Revenue, {{█}} diverted carloads/units and \${{█}} million of Incremental Profits (Incremental Revenue minus Incremental Costs).²⁰

Figure 7: Comparison of BNSF, UP and CPKCS Routes Between Texas and Chicago, IL²¹



²⁰ Of the {{█}} diverted carloads/units moving between Texas and Chicago, {{█}} carloads/units move between Chicago and Dallas or {{█}}. See Carey HC-WP 'HC-Summary of Corrected Claims.xlsm' at tab "Appendix Figures".

²¹ Map from PC Miler.

Figure 8: Mileage Table For Comparison of UP, BNSF and CPKCS Routes Between Dallas, TX and Chicago, IL²²

Origin	Destination	Interchange	CPKCS Mileage	Alternative Mileage	Alternative Carrier(s)	Ratio
[a]	[b]	[c]	[d]	[e]	[f]	[g] = [e]/[d]
Dallas, TX	Chicago, IL	NA	1,265	992	UP	78%
Dallas, TX	Chicago, IL	Topeka, KS	1,265	1,187	UP	94%
Dallas, TX	Chicago, IL	NA	1,265	1,024	BNSF	81%

In addition, the Applicants claim that customer benefits from the Transaction include a (1) new, third single-line connection between the U.S. Midwest and Texas/Mexico, and (2) a new, direct link between U.S. Midwest / Canada to Gulf Coast / Mexico.²³ The Applicants' competition analysis focuses on the limited potential of overlap and does not demonstrate enhanced competition.²⁴ An economic analysis could have been completed to evaluate whether CPKCS could effectively compete based on price (including with the claimed 5% rate discount²⁵) and service quality. However, such an analysis was not proffered by Applicants.

Further, the Applicants' diversion analysis has largely unsupported assumptions and assumes that a 5% railroad rate reduction will only apply to existing railroad traffic diverted carloads where single line service already exists.²⁶ Intermodal movements between Chicago and Dallas, where CPKCS has a significant mileage disadvantage, comprise most of this traffic.²⁷ Applicants confirmed that rate reductions were not applied to truck or growth carloads.²⁸ Further, a 5% railroad rate reduction can readily be matched by its competitors.²⁹

Louisiana to or from Chicago, IL: As shown in Figures 9 and 10, Applicants' rail diversion from Louisiana to or from Chicago, IL will be made to traverse the CPKCS network in a longer route for traffic to or from the Gulf Coast. The map at Figure 9 from New Orleans, LA to Chicago, IL shows the longer route with the CPKCS (blue) being 1,376 miles compared with CN's more direct, customary route that spans 940 miles (orange). The map at Figure 9 from Baton Rouge, LA to Chicago, IL shows the longer route with the CPKCS (blue) being 1,295 miles compared with CN's more direct, customary route that spans 930 miles (orange). The map

²² See Carey HC-WP 'HC-Summary of Corrected Claims.xlsm' at tab "Mileage Table".

²³ See App. Vol. 1 page 196.

²⁴ See Majure V.S. ¶ 12.

²⁵ See Brown/Zebrowski V.S. ¶ 32.

²⁶ FD 36500, "Joint Responses and Objections to CSXT's Second Set of Requests" at Response to IR No. 50. Therefore, the vast majority of estimated diversions do not include any rate decrease whatsoever, and therefore no savings for shippers as a result of the merger.

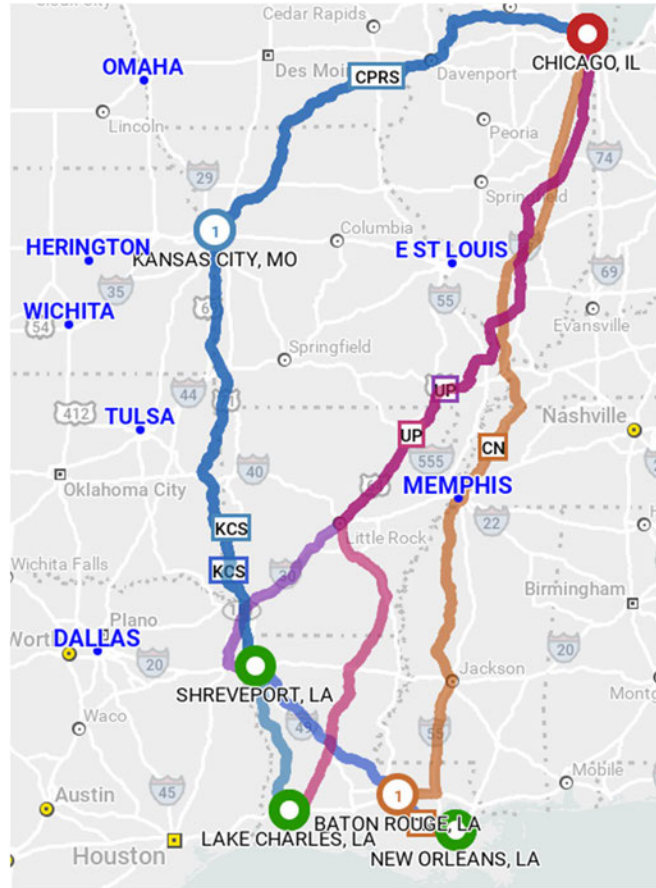
²⁷ See Brown and Zebrowski WP "HC-8 – Diversion Identification at tab "Results"

²⁸ FD 36500, "Joint Responses and Objections to CSXT's Second Set of Requests" at Response to IR No. 50.

²⁹ Moreover, the competitive bid process that exists transcends gateways. For example, companies that have multiple locations may seek bids from a carrier that can offer services to many locations at an overall lower cost. That is to say that a 5% discount on a single gateway may not be attractive enough for a customer to switch.

at Figure 9 from Lake Charles, LA to Chicago, IL shows the longer route with the CPKCS (blue) being 1,247 miles compared with UP's more direct, customary route that spans 1,018 miles (red). The map at Figure 9 from Shreveport, LA to Chicago, IL shows the longer route with the CPKCS (blue) being 1,059 miles compared with UP's more direct, customary route that spans 891 miles (purple). These claimed rail diversions result in \$ { } million of Incremental Revenue, { } diverted carloads/units and \$ { } million of Incremental Profits (Incremental Revenue minus Incremental Costs).³⁰

Figure 9: Comparison of CN, UP and CPKCS Routes Between Louisiana and Chicago, IL³¹



³⁰ See Carey HC-WP 'HC-Summary of Corrected Claims.xlsm' at tab "Appendix Figures".

³¹ Map from PC Miler.

Figure 10: Mileage Table For Comparison of UP and CPKCS Routes Between Louisiana and Chicago, IL³²

Origin	Destination	Interchange	CPKCS Mileage	Alternative Mileage	Alternative Carrier(s)	Ratio
[a]	[b]	[c]	[d]	[e]	[f]	[g] = [e]/[d]
New Orleans, LA	Chicago, IL	NA	1,376	940	CN	68%
Baton Rouge, LA	Chicago, IL	NA	1,295	930	CN	72%
Lake Charles, LA	Chicago, IL	NA	1,247	1,018	UP	82%
Shreveport, LA	Chicago, IL	NA	1,059	891	UP	84%

Notes/sources:

1. Mileages calculated using PC Miler
2. All CPKCS mileages assume an interchange in Kansas City, MO
3. [c] is the alternative carrier interchange location

Mississippi to or from Chicago, IL: As shown in Figures 11 and 12, Applicants' rail diversion from Mississippi to or from Chicago, IL will be made to traverse the CPKCS network in longer routes. The map at Figure 11 from Gulfport, MS to Chicago, IL shows the longer route with the CPKCS (blue) being 1,443 miles compared with CN's more direct, customary route that spans 916 miles (orange). The map at Figure 11 from Jackson, MS to Chicago, IL shows the longer route with the CPKCS (blue) being 1,282 miles compared with CN's more direct, customary route that spans 755 miles (orange). The map at Figure 11 from Meridian, MS to Chicago, IL shows the longer route with the CPKCS (blue) being 1,378 miles compared with KCS-BNSF's more direct, customary route that spans 954 miles (red). These claimed rail diversions result in \${{█}} million of Incremental Revenue, {{█}} diverted carloads/units and \${{█}} million of Incremental Profits (Incremental Revenue minus Incremental Costs).³³

³² See Carey HC-WP 'HC-Summary of Corrected Claims.xlsx' at tab "Mileage Table".

³³ See Carey HC-WP 'HC-Summary of Corrected Claims.xlsx' at tab "Appendix Figures".

Figure 11: Comparison of CN, BNSF-KCS and CPKCS Routes Between Mississippi and Chicago, IL³⁴

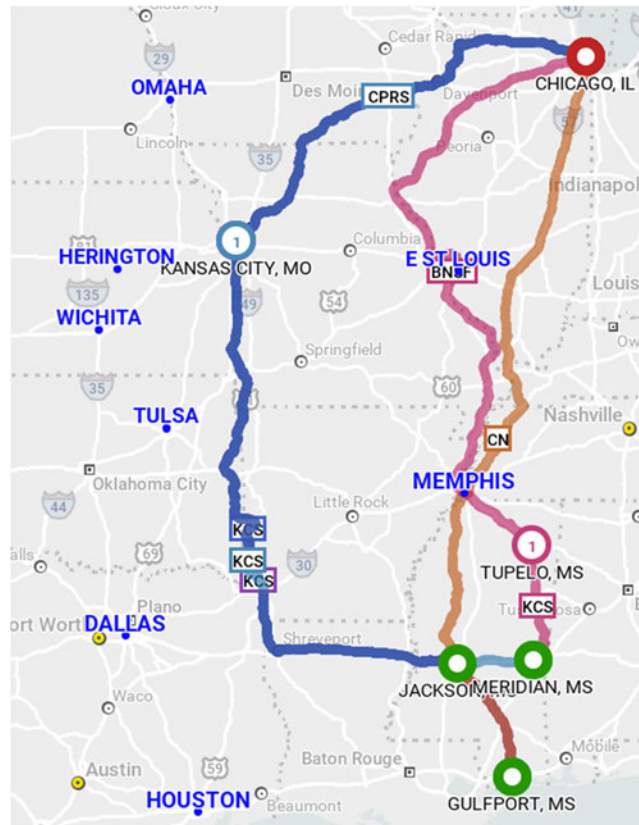


Figure 12: Mileage Table For Comparison of UP and CPKCS Routes Between Mississippi and Chicago, IL³⁵

Origin	Destination	Interchange	CPKCS Mileage	Alternative Mileage	Alternative Carrier(s)	Ratio
[a]	[b]	[c]	[d]	[e]	[f]	[g] = [e]/[d]
Jackson, MS	Chicago, IL	NA	1,282	755	CN	59%
Gulfport, MS	Chicago, IL	NA	1,443	916	CN	63%
Meridian, MS	Chicago, IL	Tupelo, MS	1,378	954	KCS-BNSF	69%

Notes/sources:

1. Mileages calculated using PC Miler
2. All CPKCS mileages assume an interchange in Kansas City, MO
3. [c] is the alternative carrier interchange location

³⁴ Map from PC Miler.

³⁵ See Carey 'HC-Summary of Corrected Claims.xlsm' at tab "Mileage Table".

C. Applicants' Mileage Disadvantaged, Existing Rail Diversions from the Northern Midwest (Minneapolis, Wisconsin, North and South Dakotas and Iowa) to South of Kansas City, MO

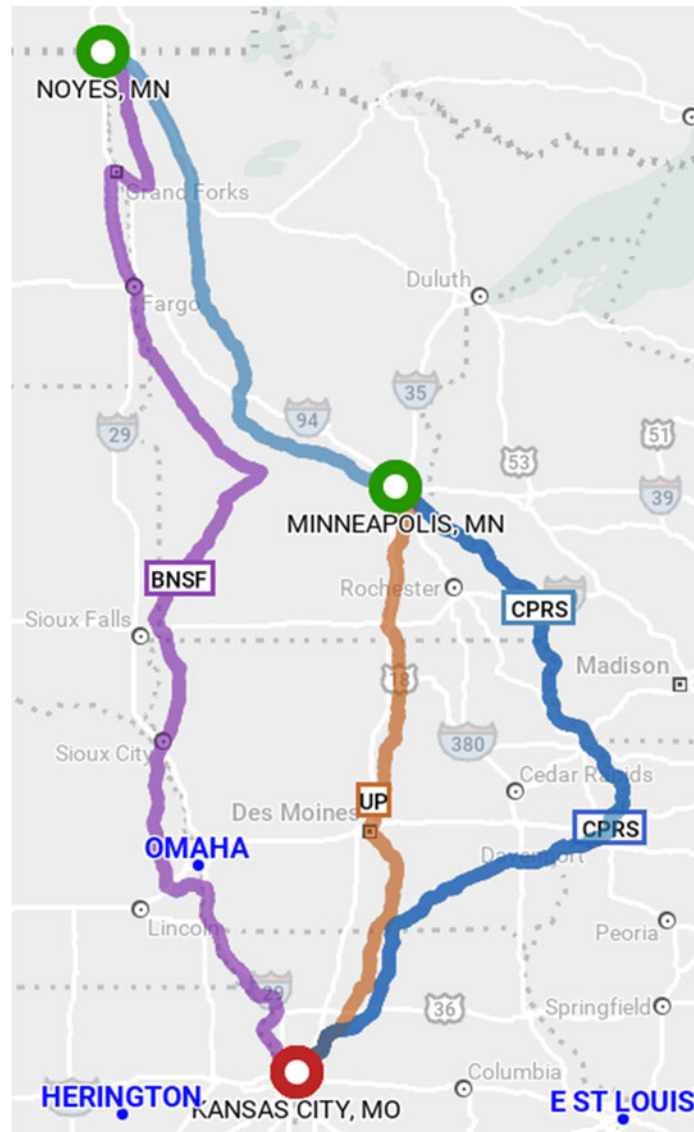
The Application assumes diversion carloads and revenues from traffic moving south of Kansas City, MO to or from Minneapolis, Wisconsin, North and South Dakotas and Iowa which will be made to traverse the CPKCS network in a longer route. Mileage disadvantaged diversions that originate or terminate in the U.S and move to or from Minneapolis, Wisconsin, North and South Dakotas and Iowa comprise a substantial amount ({[REDACTED]}) carloads) of the Applicants' existing rail diversions ({[REDACTED]}) carloads).³⁶

Maps and mileage tables at Figures 13-19 below compare UP, BNSF, CN-BNSF, UP-BNSF, WSOR-BNSF and CPKCS route differences between the Northern Midwest and locations south of Kansas City, MO.

Minnesota: Applicants' rail diversion in Minnesota will be made to traverse the CPKCS network in a longer route for traffic moving south of Kansas City, MO. The map at Figure 13 from Noyes, MN to Kansas City, MO shows the longer route with the CPKCS (blue) being 1,048 miles compared with BNSF's more direct, customary route that spans 892 miles (purple). The map at Figure 13 from Minneapolis, MN to Kansas City, MO shows the longer route with the CPKCS (blue) being 660 miles compared with UP's more direct, customary route that spans 483 miles (orange).

³⁶ See Brown/Zebrowski V.S. ¶ 6.

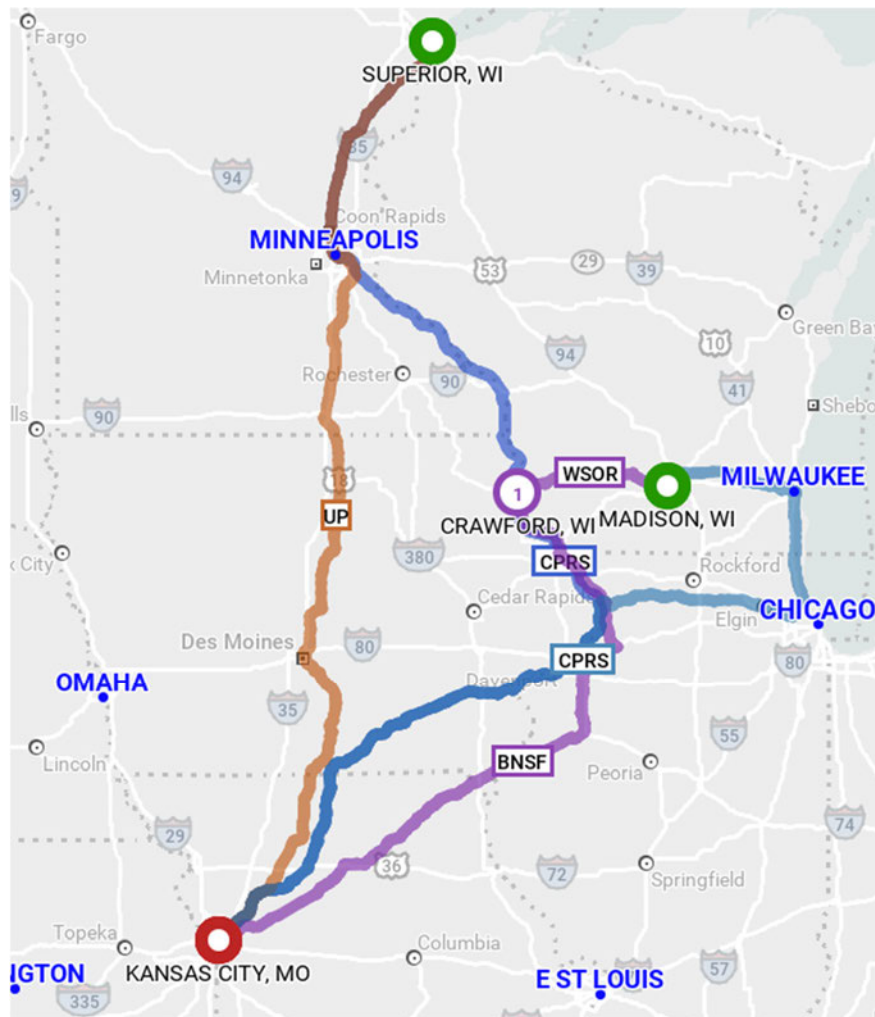
Figure 13: Comparison of BNSF, UP and CPKCS Routes Between Minnesota and Kansas City, MO³⁷



Wisconsin: Applicants' rail diversion in Wisconsin will be made to traverse the CPKCS network in a longer route for traffic moving south of Kansas City, MO. The map at Figure 14 from Superior, WI to Kansas City, MO shows the longer route with the CPKCS (blue) being 804 miles compared with UP's more direct, customary route that spans 626 miles (orange). The map at Figure 14 from Milwaukee, WI to Kansas City, MO shows the longer route with the CPKCS (blue) being 648 miles compared with WSOR-BNSF's more direct, customary route that spans 557 miles (purple).

³⁷ Map from PC Miler.

Figure 14: Comparison of UP, BNSF-WSOR and CPKCS Routes Between Wisconsin and Kansas City, MO³⁸



Iowa: Applicants' rail diversion in Iowa will be made to traverse CP's network in a longer route for traffic moving south of Kansas City, MO. The map below at Figure 15 from Hartley, IA to Kansas City, MO shows the longer route with CPKCS (blue) of 696 miles compared to 404 miles with a more direct, customary route on UP (orange).

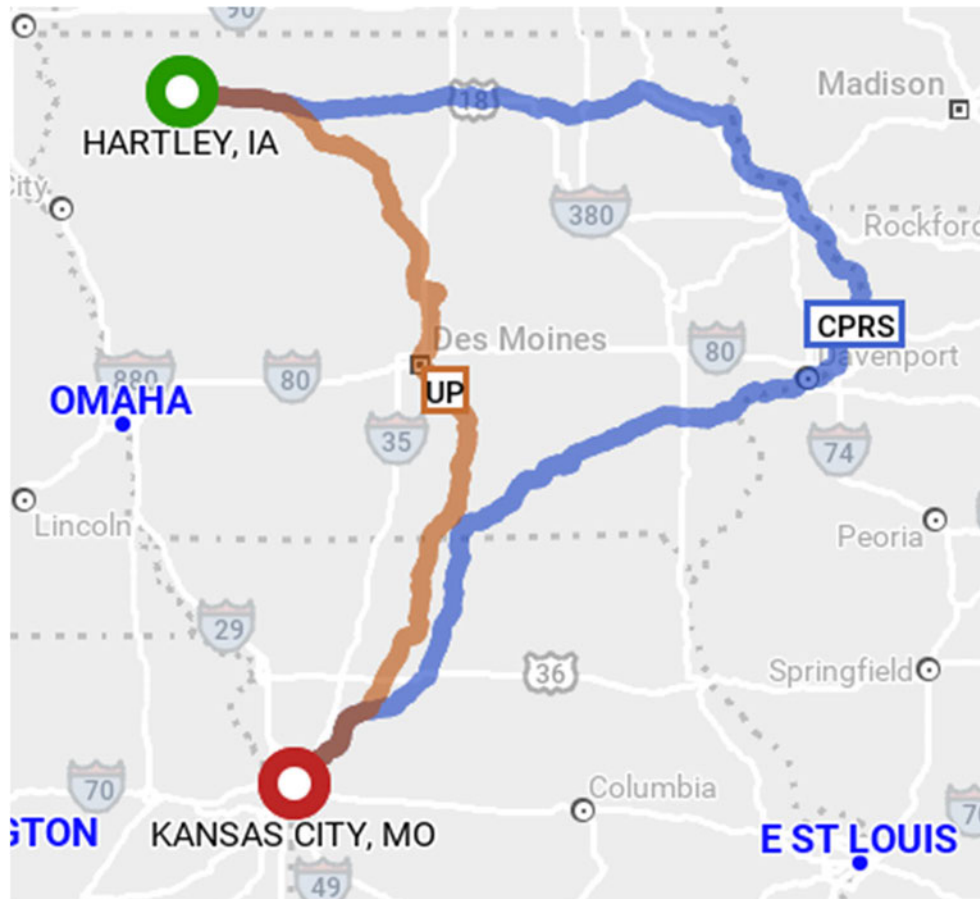
The map at Figure 16 from Davenport, IA to Dallas, TX shows the longer route with the CPKCS (blue) being 1,073 miles compared with BNSF's more direct, customary route that spans 915 miles (purple). The map at Figure 16 from Davenport, IA to Houston, TX shows the longer route with the CPKCS (blue) being 1,163 miles compared with BNSF's more direct, customary route that spans 1,081 miles (orange). The map at Figure 16 from Davenport, IA to Laredo, TX shows the longer route with the CPKCS (blue) being 1,533 miles compared with UP-BNSF's more direct, customary route that spans 1,380 miles (purple). The map at Figure 16 from Davenport, IA to New Orleans, LA shows the longer route with the CPKCS (blue) being 1,185 miles compared with CN-BNSF's more direct, customary route that spans 968 miles (purple). The

³⁸ Map from PC Miler.

map at Figure 16 from Davenport, IA to Shreveport, LA shows the longer route with the CPKCS (blue) being 868 miles compared with BNSF's more direct, customary route that spans 856 miles (orange).

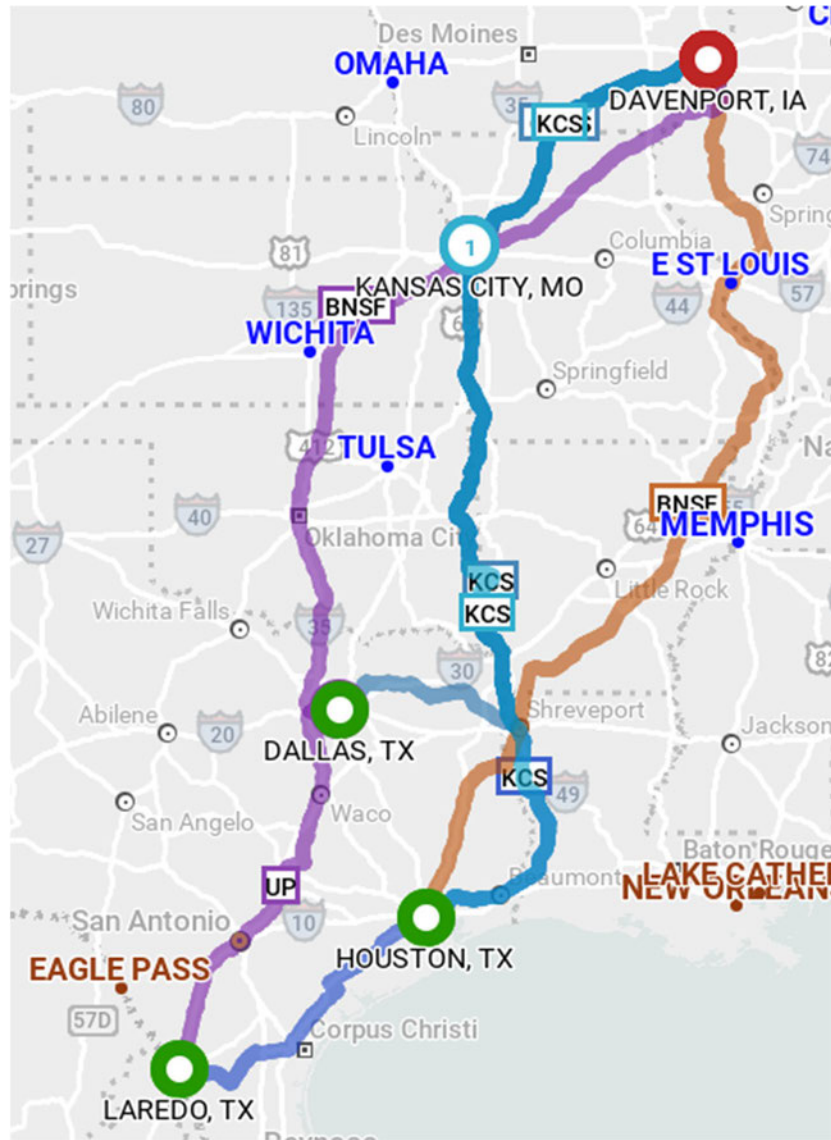
The map at Figure 17 from Davenport, IA to Jackson, MS shows the longer route with the CPKCS (blue) being 1,091 miles compared with CN-BNSF's more direct, customary route that spans 826 miles (purple).

Figure 15: Comparison of UP and CPKCS Routes Between Hartley, IA and Kansas City, MO³⁹



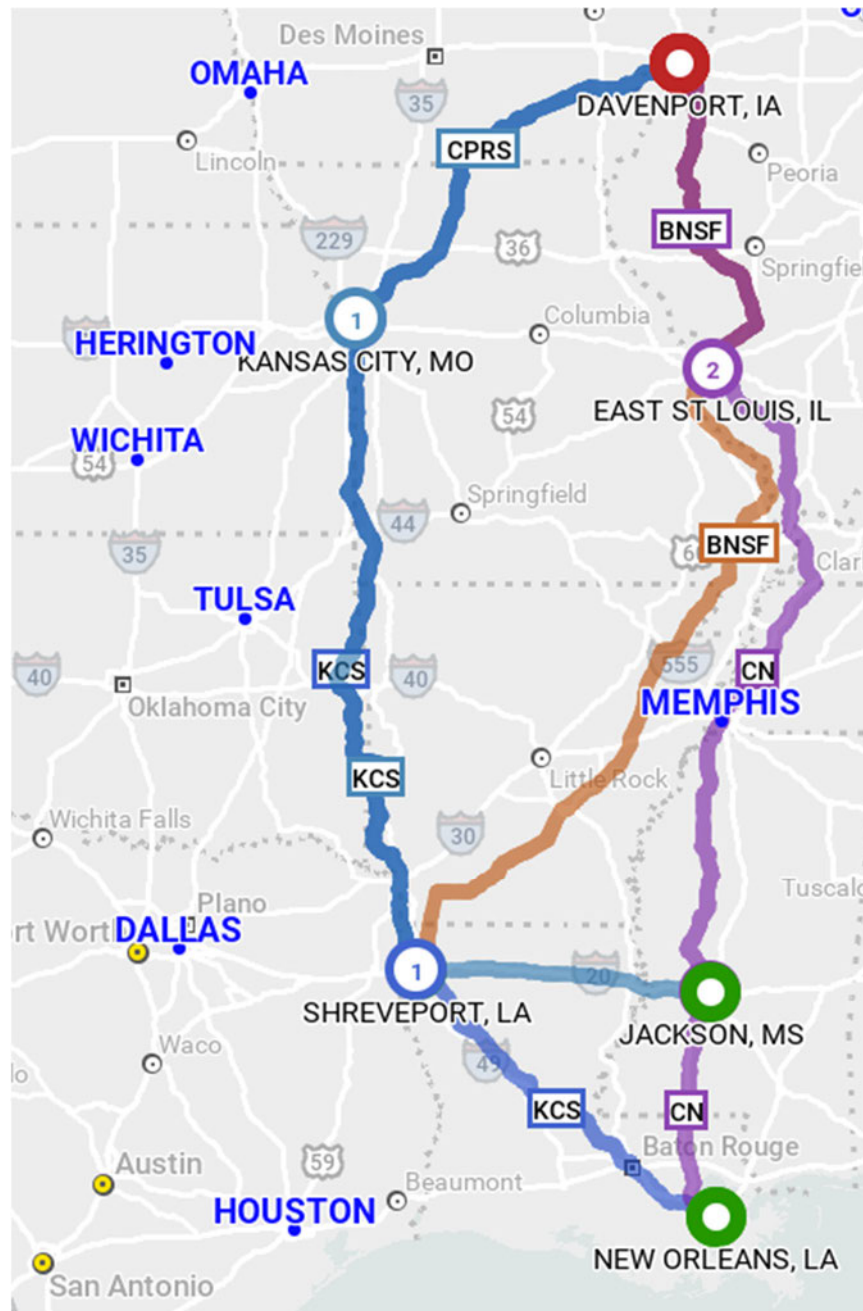
³⁹ Map from PC Miler.

Figure 16: Comparison of BNSF, UP-BNSF and CPKCS Routes Between Davenport, IA and Texas⁴⁰



⁴⁰ Map from PC Miler.

Figure 17: Comparison of CN-BNSF and CPKCS Routes Between Davenport, IA and Louisiana and Mississippi⁴¹

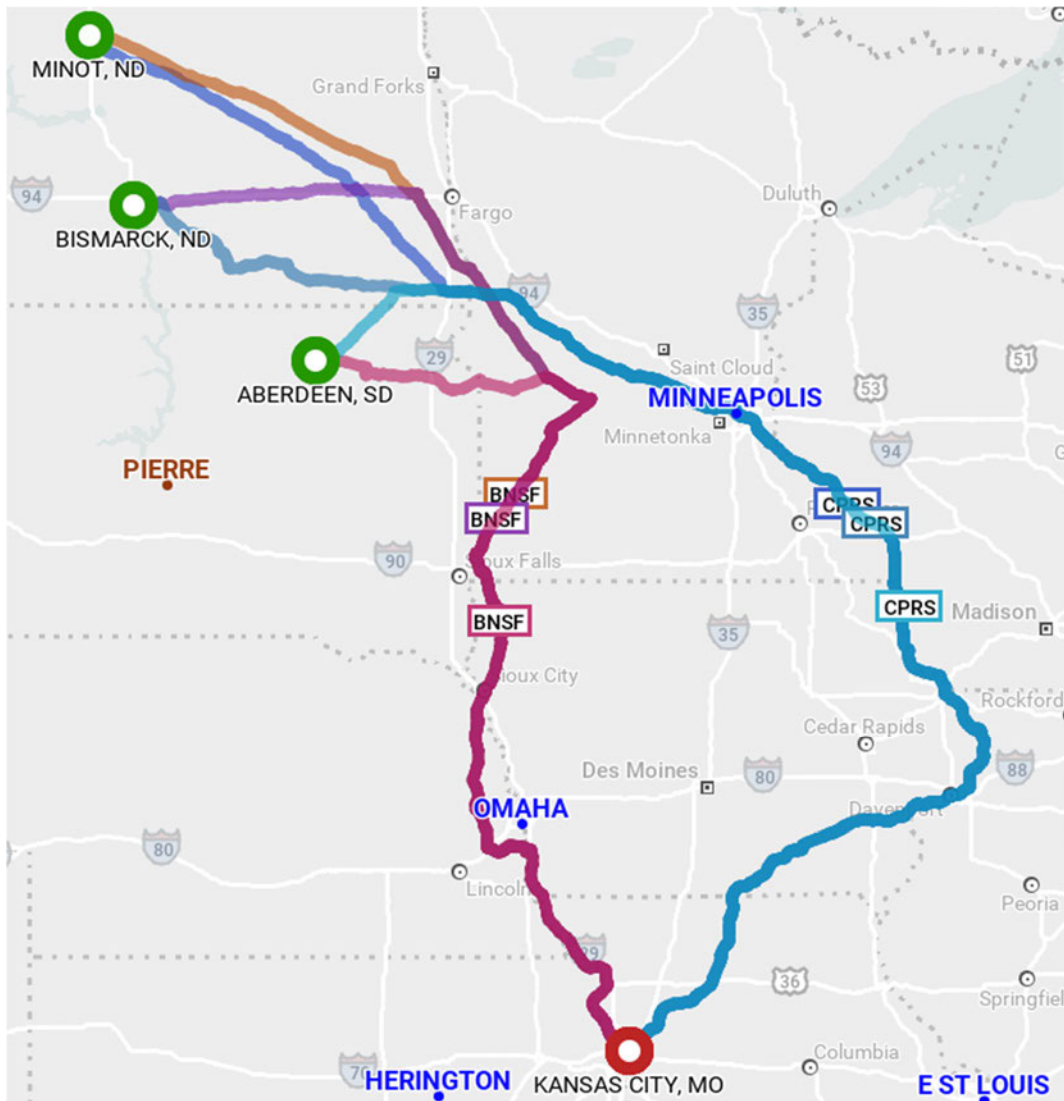


North and South Dakotas: Applicants' rail diversion in North Dakota and South Dakota will be made to traverse the CPKCS network in a longer route for traffic moving south of Kansas City,

⁴¹ Map from PC Miler.

MO. The map at Figure 18 from Minot, ND to Kansas City, MO shows the longer route with the CPKCS (blue) being 1,129 miles compared with BNSF's more direct, customary route that spans 924 miles (orange). The map at Figure 18 from Bismarck, ND to Kansas City, MO shows the longer route with the CPKCS (blue) being 1,083 miles compared with BNSF's more direct, customary route that spans 883 miles (purple). The map at Figure 18 from Aberdeen, SD to Kansas City, MO shows the longer route with the CPKCS (blue) being 960 miles compared with BNSF's more direct, customary route that spans 725 miles (red).

Figure 18: Comparison of BNSF and CPKCS Routes Between North and South Dakotas and Kansas City, MO⁴²



⁴² Map from PC Miler.

Figure 19: Mileage Table For Comparison of BNSF, UP, UP-BNSF, CN-BNSF, BNSF-WSOR and CPKCS Routes Between Northern Midwest (Minneapolis, Wisconsin, Dakotas and Iowa) and Locations South of Kansas City, MO⁴³

Origin	Destination	Interchange	CPKCS Mileage	Alternative Mileage	Alternative Carrier(s)	Ratio
[a]	[b]	[c]	[d]	[e]	[f]	[g] = [e]/[d]
Laredo, TX	Davenport, IA	Dallas, TX	1,533	1,380	UP-BNSF	90%
Houston, TX	Davenport, IA	NA	1,163	1,081	BNSF	93%
Dallas, TX	Davenport, IA	NA	1,073	915	BNSF	85%
New Orleans, LA	Davenport, IA	East St Louis, IL	1,185	1,010	CN-BNSF	85%
Shreveport, LA	Davenport, IA	NA	868	856	BNSF	99%
Jackson, MS	Davenport, IA	East St Louis, IL	1,091	826	CN-BNSF	76%
Kansas City, MO	Noyes, MN	NA	1,048	892	BNSF	85%
Kansas City, MO	Minneapolis, MN	NA	660	483	UP	73%
Kansas City, MO	Superior, WI	NA	804	626	UP	78%
Kansas City, MO	Madison, WI	Crawford, WI	648	557	BNSF-WSOR	86%
Kansas City, MO	Hartley, IA	NA	696	404	UP	58%
Kansas City, MO	Minot, ND	NA	1,129	924	BNSF	82%
Kansas City, MO	Bismarck, ND	NA	1,083	883	BNSF	82%
Kansas City, MO	Aberdeen, SD	NA	960	725	BNSF	76%

Notes/sources:

1. Mileages calculated using PC Miler
2. All CPKCS mileages assume an interchange in Kansas City, MO
3. [c] is the alternative carrier interchange location

These claimed rail diversions between the Northern Midwest and locations south of Kansas City, MO result in \${{}} million of Incremental Revenue, {{}} diverted carloads/units and \${{}} million of Incremental Profits (Incremental Revenue minus Incremental Costs).⁴⁴

D. Applicants' Mileage Disadvantaged, Existing Rail Diversions Through Jackson, MS to Eastern Canada

The Application assumes diversion carloads and revenues from traffic currently moving to Eastern Canada through Jackson, MS on CN which will be made to traverse the CPKCS network in a longer route. Maps and mileage tables at Figures 20-21 below compare CN-KCS and CPKCS route differences to Eastern Canada.

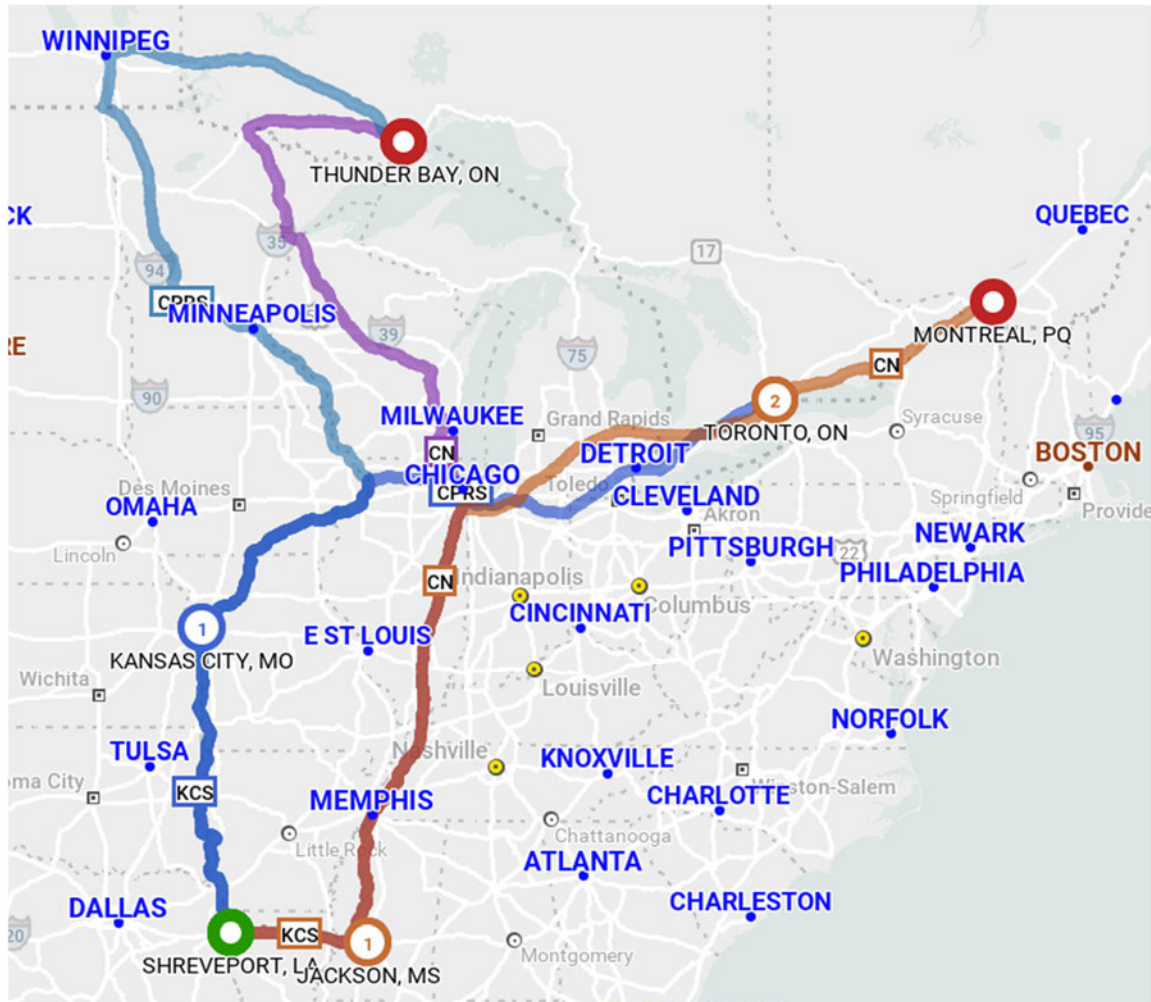
Through Jackson, MS to Eastern Canada: As shown in Figures 20 and 21, Applicants' rail diversion of traffic currently moving through Jackson, MS from Texas, Louisiana and Mississippi to Eastern Canada will be made to traverse CP's network in longer routes. The map at Figure X from Shreveport, LA to Montreal, PQ shows the longer route with the CPKCS (blue) being 1,915 miles compared with KCS-CN's more direct, customary route that spans 1,741 miles (orange). The map at Figure 20 from Shreveport, LA to Thunder Bay, ON shows the longer route with the CPKCS (blue) being 2,081 miles compared with KCS-CN's more direct, customary route that spans 1,795 miles (purple). The map at Figure 20 from Shreveport, LA to Toronto, ON shows the longer route with the CPKCS (blue) being 1,567 miles compared with KCS-CN's

⁴³ See Carey HC-WP 'HC-Summary of Corrected Claims.xlsm' at tab "Mileage Table".

⁴⁴ See Carey HC-WP 'HC-Summary of Corrected Claims.xlsm' at tab "Appendix Figures".

more direct, customary route that spans 1,407 miles (orange). These claimed rail diversions result in \${{█}} million of Incremental Revenue, {{█}} diverted carloads/units and \${{█}} million of Incremental Profits (Incremental Revenue minus Incremental Costs).⁴⁵

Figure 20: Comparison of CN-KCS Routes (Through Jackson, MS) and CPKCS Routes to Eastern Canada⁴⁶



⁴⁵ See Carey HC-WP ‘HC-Summary of Corrected Claims.xlsm’ at tab “Appendix Figures”.

⁴⁶ Map from PC Miler.

Figure 21: Mileage Table For Comparison of CN-KCS Routes (Through Jackson, MS) and CPKCS Routes to Eastern Canada⁴⁷

Origin	Destination	Interchange	CPKCS Mileage	Alternative Mileage	Alternative Carrier(s)	Ratio
[a]	[b]	[c]	[d]	[e]	[f]	[g] = [e]/[d]
Shreveport, LA	Toronto, ON	Jackson, MS	1,567	1,407	KCS-CN	90%
Shreveport, LA	Thunder Bay, ON	Jackson, MS	2,081	1,795	KCS-CN	86%
Shreveport, LA	Montreal, PQ	Jackson, MS	1,915	1,741	KCS-CN	91%

Notes/sources:

1. Mileages calculated using PC Miler
2. All CPKCS mileages assume an interchange in Kansas City, MO
3. [c] is the alternative carrier interchange location

E. Applicants' Existing Railroad Diversions That Are Achievable Without the Transaction

Applicants include rail traffic movements between Mexico and Texas or Kansas City that could be provided today solely by KCS as an independent entity. Applicants also include traffic movements between Canada and Kansas City that could be provided today solely by CP as an independent entity. This can be seen at Figure 3 in Section I above. The pink lines on the map representing KCS span from Kansas City through Texas and Mexico. The grey lines on the map representing CP span throughout Canada to Kansas City.

These claimed diversions with Kansas City, MO originations or terminations result in \${{█}} million of Incremental Revenue, {{█}} diverted carloads/units and \${{█}} million of Incremental Profits (Incremental Revenue minus Incremental Costs).⁴⁸

F. Insufficient Support for Applicants' Assumed Diversion and Limited Rate Reductions

Applicants' diversion analysis has insufficient support and analytical rigor for the quantity of rail diversions they estimate and relies heavily on assumptions and qualitative assessments.⁴⁹ Figure 22 below shows Applicants' starting point diversion assumptions.

⁴⁷ See Carey HC-WP 'HC-Summary of Corrected Claims.xlsm' at tab "Mileage Table".

⁴⁸ See Carey HC-WP 'HC-Summary of Corrected Claims.xlsm' at tab "Appendix Figures".

⁴⁹ See Brown/Zebrowski V.S. ¶ 34 -¶ 85

Figure 22: Reproduction of Table 7 in Brown/Zebrowski V.S.⁵⁰

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%

Brown/Zebrowski V.S. indicates that the rail diversions which rely on these assumptions have been used by other Applicants.⁵¹ However, no case cites are provided nor is any evidence presented regarding whether the circumstances in those cases would apply here. The Brown/Zebrowski V.S. Appendix B is claimed to substantiate the diversion percentages.

Separately, Applicants rely upon the analysis of other experts, conducted 13 years ago, to support the few instances that it believes CPKC will face single-line competition and need a rate reduction to divert the traffic⁵². Applicants do not provide a verification of this study, but apply a 5% rate reduction to the traffic based in its results.⁵³ These few instances include largely Dallas to Chicago as well as Mexico to Chicago.⁵⁴

The Applicants' regression analysis is inadequate to support the claimed diversions diverted with a 5% rate decrease. As shown at Figure 22, the Brown/Zebrowski V.S. identifies the starting point for diversion rules used by the Applicants. These rules identify single line or interline service and whether CP and KCS are involved in the move.⁵⁵ However, considering the importance Applicants place on the diversion percentages to reach the ultimate merger benefits,

⁵⁰ See Brown/Zebrowski V.S. ¶ 34

⁵¹ See Application, Vol. 1, p. 21.

⁵² See Brown/Zebrowski V.S. ¶ 95 and footnote 46

⁵³ See Brown/Zebrowski V.S. ¶ 32.

⁵⁴ See Applicants' Responses to CSXT's Second Set of Discovery and Interrogatory Requests, January 10, No. 50.

⁵⁵ See Brown/Zebrowski V.S. ¶ 34.

the analysis in that appendix is inadequate.⁵⁶ A brief and, far from exhaustive, list of deficiencies of their supporting regressions include:

- An intermodal market share analysis of only 33 data points results, which concludes relatively longer routes serve to increase traffic share compared to shorter routes for intermodal traffic.⁵⁷
- Brown/Zebrowski acknowledge that this analysis has poor predictive power and high levels of variance⁵⁸ yet 63% of existing rail traffic diversions are intermodal,⁵⁹ and
- Brown/Zebrowski describe the relationships they base the traffic diversion on as “weak”, and “does not indicate a strong influence”.⁶⁰
- Regressions estimated with data comprised of routes “moving at least 1,000 miles” despite diversions estimated from shorter routes in their final calculations⁶¹.

In addition to the lack of support for longer routes as discussed in the Verified Statement, CPKC didn’t provide supporting analysis for any competitively significant service elements or qualities that differentiate CPKC versus its competitors on any of the lanes that it claims it will divert substantial traffic, as confirmed in the Applicant’s responses to CSXT’s Discovery Requests identified in Section D below. Trade press discusses CPKC’s network and its competitor railroads and the operational advantages for competitor railroads and operational disadvantages to CPKC.

- “CP between Davenport, Iowa, and Kansas is not conducive to a high-capacity and -speed railroad, being plagued by curves, hills, and a stiff grade going east near the Des Moines River Valley. ... UP has this advantage with its Spine Line, an easier profile as it compares to CPKC. The CP route will require more locomotives and miles due to the route profile south of the Quad Cities and will be more expensive to operate compared to Union Pacific and BNSF. The Spine Line refers to UP’s track between Minneapolis and Kansas City. Kayganich anticipates similar challenges to providing timely service between Shreveport, Louisiana, and Kansas City, compared with UP’s track between Dallas and Topeka, Kansas.”⁶²

In addition, CP’s normal course of business communications recognized [REDACTED]

[REDACTED]⁶³

⁵⁶ See Brown/Zebrowski V.S., Appendix B, pp. 63-72.

⁵⁷ See Brown/Zebrowski V.S., Appendix B, ¶ 7, Figure B2.

⁵⁸ See Brown/Zebrowski V.S., Appendix B, ¶ 7.

⁵⁹ See Brown/Zebrowski V.S. ¶ 6.

⁶⁰ See Brown/Zebrowski V.S., Appendix B, ¶ 6, 9, 15.

⁶¹ See Brown/Zebrowski V.S., Appendix B, ¶ 3, 9, 13 and Brown/Zebrowski HC-WP “8-Diversions”

⁶² See JOC, “Merged CP-KCS would offer new cross-border intermodal growth ramp”, April 2021, p.3.

⁶³ {} [REDACTED]

II. TRUCK DIVERSIONS

The Application estimates there are {{[REDACTED]}} annual diverted carloads/units.⁶⁴ These units are expected to divert each year from existing routes to CPKCS as a result of the Transaction.⁶⁵ For this reason the Application refers to truck (and rail) to rail diversions as *existing* traffic diversions.⁶⁶ In total, {{[REDACTED]}} carloads estimated by Applicants face route disadvantages as compared to competitors or are achievable without the Transaction, accounting for {{[REDACTED]}} percent of the {{[REDACTED]}} truck diversions assumed in the Application. This is shown in Figure 23 below.

The Application claims \${{[REDACTED]}} million in incremental profits on those {{[REDACTED]}} annual truck diversions.⁶⁷ After accounting for disadvantaged routes and diversions that are achievable without the Transaction, corrected claims total {{[REDACTED]}} carloads/units that result in incremental profits of \${{[REDACTED]}} million, as shown in Figure 23 below. The disadvantaged diversions comprising the longer routes summarized at Figure 23 are presented in Section II.A. Section II.B presents truck diversions that are achievable without the Transaction. Section II.C identifies deficiencies in Applicants' diversion estimation methodology and Section II.D includes select interrogatory responses by the Applicants.

Figure 23: Summary of Corrected Claims from Existing Truck Traffic in Applicants' Incremental Contribution Analyses⁶⁸

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A. Applicants' Mileage Disadvantaged Truck Diversions

As described above in Sections I.B and I.C, Applicants' rail diversions reflect mileage disadvantaged routes. Criticisms of their reliance on those mileage disadvantaged routes also

⁶⁴ See Carey HC-WP 'HC-Summary of Corrected Claims.xlsm' at tab "Summary of Claimed Benefits"

⁶⁵ See Brown/Zebrowski V.S. ¶ 6.

⁶⁶ See Application, Vol. 1, p. 21.

⁶⁷ See Carey HC-WP 'HC-Summary of Corrected Claims.xlsm' at tab "Summary of Claimed Benefits".

⁶⁸ See Carey HC-WP 'HC-Summary of Corrected Claims.xlsm' at tab "Summary of Claimed Benefits".

apply to the Applicants' truck diversion traffic. Specifically, the truck diversions relating to these disadvantaged routes are:

- **Mexico (through Laredo, TX) to or from Chicago, IL:** These claimed truck diversions result in \${{█}} million of Incremental Revenue, {{█}} diverted carloads/units and \${{█}} million of Incremental Profits (Incremental Revenue minus Incremental Costs).⁶⁹
- **Texas to or from Chicago, IL:** These claimed rail diversions result in \${{█}} million of Incremental Revenue, {{█}} diverted carloads/units and \${{█}} million of Incremental Profits (Incremental Revenue minus Incremental Costs).⁷⁰
- **Northern Midwest (Minneapolis, Wisconsin, North and South Dakotas and Iowa) to or from South of Kansas City, MO:** These claimed truck diversions between the Northern Midwest and locations south of Kansas City, MO result in \${{█}} million of Incremental Revenue, {{█}} diverted carloads/units and \${{█}} million of Incremental Profits (Incremental Revenue minus Incremental Costs).⁷¹

B. Applicants' Existing Truck Diversions That Are Achievable Without the Transaction

Applicants include truck traffic movements between Mexico and Texas or Kansas City that could be provided today solely by KCS as an independent entity. Applicants also include traffic movements between Canada and Kansas City that could be provided today solely by CP as an independent entity. This can be seen at Figure 3 in Section I above. The pink lines on the map representing KCS span from Kansas City through Texas and Mexico. The grey lines on the map representing CP span throughout Canada to Kansas City.

These claimed diversions with Kansas City, MO originations and terminations result in \${{█}} million of Incremental Revenue, {{█}} diverted carloads/units and \${{█}} million of Incremental Profits (Incremental Revenue minus Incremental Costs).⁷²

C. Insufficient Support in Applicants' Diversion Analyses

Applicants' diversion analyses insufficiently support the quantity of truck diversions they claim. Applicants rely on regression analysis to predict market share and revenue for these estimated truck diversions.⁷³ Applicants' claims that the Transaction will create public benefits and be financially sustainable rely in part on these regression analyses, which estimate substantial

⁶⁹ See Carey HC-WP 'HC-Summary of Corrected Claims.xlsx' at tab "Mileage Table".

⁷⁰ See Carey HC-WP 'HC-Summary of Corrected Claims.xlsx' at tab "Appendix Figures".

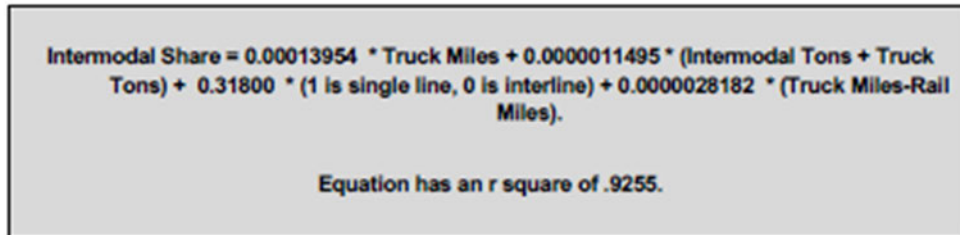
⁷¹ See Carey HC-WP 'HC-Summary of Corrected Claims.xlsx' at tab "Appendix Figures".

⁷² See Carey HC-WP 'HC-Summary of Corrected Claims.xlsx' at tab "Appendix Figures".

⁷³ See *Mutén V.S.* ¶ 46.

diversions of truck traffic to intermodal traffic because of CPKC improvements in intermodal offerings. Their diversion estimates rely upon an Intermodal Market Share Regression Equation reproduced below in Figure 24. This regression analysis began by examining the factors that influence the share of total susceptible movements that are handled in rail intermodal service by lane.⁷⁴ The regression purports to identify and quantify the effect of all factors that influence the share of total movements in these lanes handled by rail intermodal.⁷⁵

Figure 24: Reproduction of Table in Mutén V.S.⁷⁶



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

Equation has an r square of .9255.

This equation does not account for certain factors likely to be relevant to the rail intermodal share of traffic. For example, the analysis does not consider the relationship between trucking and rail costs, shipment cycle times, or the commodity of goods shipped. Applicants do not explain how other shortcomings, including those limitations the Mutén V.S. identifies, are overcome in the analysis.⁷⁷ Applicants state that the regression analysis produces “curiously high” lane shares, and then introduces an arbitrary cap on those movements.⁷⁸ While the Applicants’ specific statement regarding these overestimated lanes obscures their results, it is also clear that those specific results are relied upon in revenue estimates used later in the Application.⁷⁹ Further, Applicants do not consider what the implications of their self-described “curious” results mean for the rest of the study.⁸⁰

Dr. Mutén’s revenue estimates in turn rely upon an Intermodal Diversion Revenue Regression Equation, reproduced below in Figure 25 for reference, which purports to identify and quantify the observable characteristics that explain rate levels charged by railroads for intermodal traffic between BEAs.⁸¹ No explanation is provided why this regression equation accurately reflects the revenue to be earned on the diverted traffic. In fact, Applicants state that “[i]mportantly, 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.”⁸² However, Applicants do just that when estimating the revenue they claim results in public benefits in the Application.⁸³ Further, and

⁷⁴ See Mutén V.S. ¶ 45.

⁷⁵ See Mutén V.S. ¶ 46.

⁷⁶ See Mutén V.S. ¶ 46.

⁷⁷ See Mutén V.S. ¶ 50 and ¶ 54.

⁷⁸ See Mutén V.S. ¶ 50.

⁷⁹ See Baranowski “FD 36500 – Work Paper – HC – URCS Phase III Calculation For Growth Traffic.xlsxm” at tab “Volume and Revenue Results” and Mutén V.S. ¶ 54 and Appendix A.

⁸⁰ See Mutén V.S. ¶ 50.

⁸¹ See App Vol. 2, Mutén V.S. ¶ 53.

⁸² See App Vol. 2, Mutén V.S. ¶ 54.

⁸³ See Mutén V.S. ¶ 54 and Appendix A.

more fundamentally, the regression analysis fails to account for relevant factors like the relationship between trucking and rail costs, shipment cycle times, or the type of goods shipped.

Figure 25: Reproduction of Table in *Mutén V.S.*⁸⁴

Revenue per Loaded Unit (US \$) = .82903 * Rail Miles + 338,295/Density
Equation has an r square of .99992.
Revenue per Empty Unit (US \$) = .38387 * Rail Miles + 164,256/Density
Equation has an r square of .99967.

In addition, the operational concerns regarding CPKCS' ability to offer more attractive speeds and transit times identified above in Section I.F apply to Applicants' truck diversions as well.

D. Interrogatory Responses by the Applicants

This section includes select interrogatory responses by the Applicants that relate to both rail and truck diversions.⁸⁵

Interrogatory and Response to Interrogatory No. 21:⁸⁶

{{ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

⁸⁴ See *Mutén V.S.* ¶ 53.

⁸⁵ 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,

⁸⁶ See Applicants' Responses to CSXT's Second Set of Discovery and Interrogatory Requests, January 10, 2022, No. 21.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Revised Interrogatory and Response to Interrogatory No. 26:⁸⁷

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED];

⁸⁷ See Applicants' Responses to CSXT's Second Set of Discovery and Interrogatory Requests, February 18, 2022, No. 26.

[REDACTED]

Interrogatory and Response to Interrogatory No. 29:⁸⁸

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

⁸⁸ See Applicants' Responses to CSXT's Second Set of Discovery and Interrogatory Requests, February 18, 2022, No. 29.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Revised Interrogatory and Response to Interrogatory No. 43:⁸⁹

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

⁸⁹ See Applicants' Responses to CSXT's Second Set of Discovery and Interrogatory Requests, February 18, 2022, No. 43.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]