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PUBLIC VERSION

June 9, 2022

BNSF-10

VIA E-FILING

Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
Office of Proceedings
395 E Street, SW
Washington, DC 20423

**Re: STB Docket No. FD 36500, Canadian Pacific Railway Limited, et al.—
Control—Kansas City Southern, et al.**

Dear Ms. Brown:

Enclosed for e-filing in the above-referenced proceeding is a public version of the Amended Comments of BNSF Railway Company (BNSF-10), with appropriate redactions that the Board can place in its docket. We are concurrently filing a highly confidential version of the Comments to be filed under seal.

Respectfully submitted,

/s/ Anthony J. LaRocca

Anthony J. LaRocca
Peter W. Denton
John J. Kavanagh
Onika K. Williams
Attorneys for BNSF Railway Company

REDACTED – TO BE PLACED ON PUBLIC FILE

Cynthia T. Brown

June 9, 2022

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Enclosures

cc: Adrian L. Steel, Jr.
All parties of record

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36500

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

AMENDED COMMENTS OF BNSF RAILWAY COMPANY

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Dated: June 9, 2022

BEFORE THE
SURFACE TRANSPORTATION BOARD

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CANADIAN PACIFIC RAILWAY LIMITED, ET AL.
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AMENDED COMMENTS OF BNSF RAILWAY COMPANY

On February 28, 2022, BNSF¹ filed comments in this proceeding regarding the proposed consolidation of the railroad systems of CP and KCS (“Comments,” BNSF-9). Pursuant to *Decision No. 17* in this proceeding, BNSF has reviewed the new information in the amended Application and related workpapers filed by Applicants on May 13, 2022, and the errata filed by Applicants on May 20, 2022 (collectively, the “Amended Application”). BNSF has identified certain limited amendments, set forth here in Appendices 1 through 4, necessary to conform the Comments to the Amended Application. For ease of reference, Mr. Fisher’s Amended Verified Statement (Appendix 4) is attached in its entirety and annotated to reflect the amendments.

BNSF has determined that the new information and data presented by Applicants in the Amended Application do not mitigate BNSF’s concerns regarding the Transaction detailed in the Comments. Applicants’ assumptions regarding traffic diversions that were the foundation for BNSF’s concerns

¹ Unless otherwise defined in these Amended Comments, the acronyms and defined terms used in these comments are the same as those used in the BNSF Comments.

remain materially unchanged. Therefore, BNSF continues to ask that the Board impose the conditions that BNSF requested in its Comments on any approval of the Transaction.

As BNSF explained in its Comments, BNSF believes that the Transaction will adversely affect a broad cross-section of U.S. shippers. BNSF has two key concerns: (1) the Transaction will result in a foreclosure of BNSF and its shippers from competitive access to the increasingly important Mexico market, and (2) the Transaction will produce harmful congestion in the critical Houston complex, because Applicants lack any plan to accommodate increased CP-KCS traffic in Houston and elsewhere in Texas.

The Amended Application does not change Applicants' assumptions relating to the diversion of Mexico traffic to CP-KCS underlying BNSF's foreclosure concern. Indeed, Applicants did not include any updated traffic diversion figures or growth traffic volumes in the Amended Application. Applicants indicated that the "modest" changes in train counts and densities "do not reflect any change at all in anticipated Transaction-related impacts." Amended Operating Plan at 85, para. 196. Therefore, BNSF reiterates its request that the Board ensure that the combined CP-KCS does not use its control over transportation into and out of Mexico via the critical Laredo, Texas gateway to frustrate the Board's competitive objectives set forth in the UP/SP merger and the KCS/Tex Mex merger proceedings to foreclose access to Mexico by BNSF and its shippers.

In its Comments, BNSF requested that the Board impose more concrete and enforceable open gateway measures and remedies, including an independent and unqualified open gateway commitment for Laredo. BNSF has

identified a proportional rate mechanism and certain service commitments that would ensure that the combined CP-KCS will not foreclose BNSF and its shippers from access to Mexico – via either Robstown or Laredo – through unfair pricing or service.

The Amended Application also did not make any meaningful change to the assumptions relating to traffic increases through Houston and elsewhere in Texas that underlie BNSF's concerns over the congestion effects of the Transaction. Applicants indicated that the Transaction would result in an average of 8-11 trains per day to the KCS Texas Gulf Route segments through Houston – the same level proposed in the initial Application. *See Amended Operating Plan, App. A.* Applicants also proposed no modifications to the capacity improvements from their initial Application. Applicants thus conclude that 3,000-4,000 additional CP-KCS trains can traverse the 500 miles between Dequincy, La. and Laredo annually without adding *any* track capacity.²

Accordingly, BNSF reiterates its serious concern that, absent necessary capital improvements not yet identified by Applicants, the increased CP-KCS traffic that Applicants have projected will result from the Transaction will cause severe congestion in the critical Houston terminal complex, where KCS, UP, BNSF, and Amtrak currently share lines.

The Board should ensure that Applicants fully fund any capital improvements that would not be required but for increased CP-KCS traffic resulting from the merger on lines owned by BNSF or other railroads. In the

² Rather than provide analyses in support of their position, Applicants merely claim that the “analysis was a manual exercise drawing on the experience and expertise of the Operating Plan Team, and did not lead to the creation of a workpaper.” Amended Operating Plan at 52, n.52.

absence of a plan by Applicants to address how increased CP-KCS traffic will be handled on shared lines in Texas – and until necessary capital improvements are identified, fully funded by Applicants, and implemented – the Board should also restrict Applicants from increasing traffic above the existing KCS traffic levels on those lines if such increases would displace existing traffic or compromise fluidity on those lines.

Without binding assurances from Applicants to relieve these concerns, BNSF will continue to actively participate in this proceeding to ensure that the Transaction does not result in a lessening of competitive options to current and future U.S. shippers and does not result in harmful congestion on important rail lines in Houston and elsewhere in Texas.

Respectfully submitted,

/s/ Anthony J. LaRocca

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Counsel for BNSF Railway Company

Dated: June 9, 2022

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KANSAS CITY SOUTHERN, ET AL.

Appendix 1

Amendments to Body of BNSF Comments

Amendments to Body of BNSF Comments

- BNSF-9-62
 - Original Text: “Mr. Fisher explains that these new trains **represent more than a doubling** of KCS’s current volume on four of the five subdivisions that comprise the KCS Texas Gulf Route. (V.S. Fisher 35.)”
 - Amended Text: “Mr. Fisher explains that these new trains **would nearly double** KCS’s current volume on four of the five subdivisions that comprise the KCS Texas Gulf Route. (V.S. Fisher 35.)”
- BNSF-9-69
 - Original Text: “Applicants project that the Transaction would result in an increase of approximately **14.3** new trains per day over this segment of the CP Laredo Subdivision – for a total of approximately **18.4** trains per day, or more than *four times* the amount of trains that now operate on this segment.”
 - Amended Text: “Applicants project that the Transaction would result in an increase of approximately **14.4** new trains per day over this segment of the CP Laredo Subdivision – for a total of approximately **18.7** trains per day, or more than *four times* the amount of trains that now operate on this segment.”
- BNSF-9-71
 - Original Text: “Applicants project that the proposed CP-KCS merger will result in approximately **14.5** additional CP-KCS trains running per day over the CP Davenport Subdivision, for a total of approximately **21.6** trains per day, or tripling the current traffic on the line.”
 - Amended Text: “Applicants project that the proposed CP-KCS merger will result in approximately **14.4** additional CP-KCS trains running per day over the CP Davenport Subdivision, for a total of approximately **22.4** trains per day, or **nearly** tripling the current traffic on the line.”

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Appendix 2

Amendments to Verified Statement of Sarah Whitley Bailiff

Amendments to Verified Statement of Sarah Whitley Bailiff

- BNSF-9-395
 - Original Text: “Messrs. Gabriel and Thowe explain that Applicants project that the CP-KCS transaction will result in eight to 11 new CP-KCS trains per day on the KCS Texas Gulf Route – more than doubling current KCS rail traffic volume on most of these line segments. (Id. at 5.)”
 - Amended Text: “Messrs. Gabriel and Thowe explain that Applicants project that the CP-KCS transaction will result in eight to 11 new CP-KCS trains per day on the KCS Texas Gulf Route – more than doubling current KCS rail traffic volume on many of these line segments. (Id. at 5.)”

VERIFICATION

I, Sarah Whitley Bailiff, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this verified statement.

/s/ Sarah Whitley Bailiff

Sarah Whitley Bailiff

Executed on June 9, 2022.

**BEFORE THE
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—CONTROL—
KANSAS CITY SOUTHERN, ET AL.**

Appendix 3

**Amendments to Verified Statement of
Messrs. Jon Gabriel and Travis Thowe**

**Amendments to Verified Statement of
Messrs. Jon Gabriel and Travis Thowe**

- BNSF-9-217
 - Original Text: “Mr. Fisher explains in his Verified Statement that these new trains **represent more than a doubling of** KCS’s current volume on four of the five subdivisions that comprise the KCS Texas Gulf Route. (V.S. Fisher 35.)”
 - Amended Text: “Mr. Fisher explains in his Verified Statement that these new trains **would nearly double** KCS’s current volume on four of the five subdivisions that comprise the KCS Texas Gulf Route. (V.S. Fisher 35.)”
- BNSF-9-224
 - Original Text: “We understand that Applicants project that the proposed Transaction would result, within three years of the proposed merger, in approximately **8.3** new CPKCS trains per day operating between Beaumont and Rosenberg, via Houston.”
 - Amended Text: “We understand that Applicants project that the proposed Transaction would result, within three years of the proposed merger, in approximately **7.6** new CPKCS trains per day operating between Beaumont and Rosenberg, via Houston.”
- BNSF-9-227
 - Original Text: “We are very concerned that the additional **8.3** daily CP-KCS trains that Applicants project will run on this route through Houston within the first three years of the proposed Transaction, including longer trains, will create serious fluidity issues, absent capacity improvements.”
 - Amended Text: “We are very concerned that the additional **7.6** daily CP-KCS trains that Applicants project will run on this route through Houston within the first three years of the proposed Transaction, including longer trains, will create serious fluidity issues, absent capacity improvements.”
- BNSF-9-228
 - Original Text: “We understand that Applicants project that the proposed transaction would result in approximately **nine** new CP-KCS trains per

- day operating between Rosenberg and Laredo within the first three years after the proposed Transaction.”
- Amended Text: “We understand that Applicants project that the proposed transaction would result in approximately **eight** new CP-KCS trains per day operating between Rosenberg and Laredo within the first three years after the proposed Transaction.”
- BNSF-9-234
 - Original Text: “We understand that Applicants project that the proposed transaction would result in an increase of approximately **14.3** new trains per day over this segment – for a total of approximately **18.4** trains per day, or more than *four times* the amount of trains that would operate on this segment without the transaction.”
 - Amended Text: “We understand that Applicants project that the proposed transaction would result in an increase of approximately **14.4** new trains per day over this segment – for a total of approximately **18.7** trains per day, or more than *four times* the amount of trains that would operate on this segment without the transaction.”
- BNSF-9-236
 - Original Text: “We understand that Applicants project that the proposed CP-KCS merger will result in approximately **14.5** additional CP-KCS trains running per day over the CP Davenport Subdivision, for a total of approximately **21.6** trains per day, or **tripling** the current traffic on the line.”
 - Amended Text: “We understand that Applicants project that the proposed CP-KCS merger will result in approximately **14.4** additional CP-KCS trains running per day over the CP Davenport Subdivision, for a total of approximately **22.4** trains per day, or **nearly tripling** the current traffic on the line.”

VERIFICATION

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

/s/ Jon Gabriel

Jon Gabriel

Executed on June 9, 2022.

VERIFICATION

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

/s/ Travis Thowe

Travis Thowe

Executed on June 9, 2022.

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Appendix 4

Amended Verified Statement of Benton Fisher

Verified Statement of Benton V. Fisher

I. Introduction & Summary of Testimony

a. Introduction

My name is Benton V. Fisher. I am a Senior Managing Director in the Economic Consulting segment at FTI Consulting. My office is at 8251 Greensboro Drive in McLean, Virginia. I have been involved in the analysis of freight railroad traffic for more than 30 years. Over that time, I have focused on the economic and financial analysis of network industries, in particular, on different aspects of transportation. I have analyzed railroad traffic flows, rates, costs, and service, and the factors that affect them. I have offered expert testimony on more than 100 occasions before the Surface Transportation Board – the US regulatory agency for freight railroads – in cases examining the reasonableness of railroad rates and rulemaking proceedings regarding the establishment, evaluation, revision, and implementation of rules and regulations. I have also offered expert testimony in numerous contract disputes in federal courts and arbitrations regarding complex issues requiring the analysis of economic and operational issues and the evaluation of railroad data.¹

On October 29, 2021, Canadian Pacific Railway (“CP”), The Kansas City Southern Railway (“KCS”), and their related corporate affiliates² submitted a railroad control application in Surface Transportation Board (“STB” or “Board”) Finance Docket No. 36500 seeking Board

¹ Exhibit 1 to this statement contains my curriculum vitae.

² References to CP and KCS in this statement include their subsidiary freight railroads, including Kansas City Southern de Mexico (“KCSM”) that connects with KCS and with Union Pacific Railroad (“UP”) in Laredo, Texas.

approval for the proposed combination of their freight railroad systems (the “Transaction”).³ CP and KCS are two of the seven Class I freight railroads operating in the US,⁴ and their combination represents the first time in two decades that two Class I railroads have pursued a merger.

b. Summary of Testimony

I have been asked by BNSF Railway (“BNSF”) to describe a) the new traffic that Applicants have proposed they would handle on their combined network post-Transaction, b) the train service Applicants proposed to operate their increased traffic levels, and c) the additional infrastructure that Applicants proposed would provide adequate capacity for the new trains and traffic. My conclusions are:

1. Applicants identified 509,000 additional revenue shipments⁵ that they would handle annually post-Transaction – nearly two-thirds of which would travel to/from Mexico.
2. Applicants’ presentation indicates that the CPKC⁶ volume increases will likely exceed this 509,000 total.
3. Applicants identified they would operate significantly more trains post-Transaction in order to handle the increased traffic.
4. Applicants concluded that they could handle the considerable growth in traffic and train volumes by constructing additional running tracks in 26 locations.

³ On Friday May 13, 2022, Applicants submitted an Amended Operating Plan. This recent filing modified many of the values from their initial Operating Plan submitted in October 2021, and also included more than 230 workpaper files. This VS updates the version that I originally submitted on February 28 to incorporate the new information that Applicants provided.

⁴ “Class I” classifies the largest US freight railroads, carriers that generate more than \$900 million in annual transportation revenues. July 12, 2021 STB Decision in *Ex Parte No. 748 Indexing the Annual Operating Revenues of Railroads*.

⁵ References to “shipments” in this statement denote movements of individual intermodal containers or freight cars.

⁶ Following the abbreviation used in the Application, the merged railroad systems are referred to as “CPKC.”

5. Applicants have not proposed to add any running track capacity for 500 route miles between DeQuincy, Louisiana and Laredo, Texas – the route that CPKC would use to reach Mexico.
6. Applicants’ proposed traffic volume increases in the Houston complex will add thousands of longer trains on lines also used by Amtrak, BNSF, and UP.
7. Applicants’ proposed traffic volume increases in other locations will also impact the service that BNSF can provide to its customers.

In Section II of this statement, I describe the Transaction-related traffic diversions and growth that Applicants project to move on the combined CP-KCS network. In Section III, I present the results of the Operating Plans that Applicants designed to handle the base period traffic and volume gains. Section IV addresses Applicants’ proposed infrastructure investments to provide additional track capacity needed to transport the increased volumes. Section V focuses on Applicants’ evidence of the impacts on the Houston complex – one of the most significant terminals on the North American continent. And Section VI addresses Applicants’ volume growth in two other areas of importance to BNSF, Ottumwa, Iowa and the Quad Cities of Illinois and Iowa.

II. Traffic Gains on CP-KCS Combined Network

a. Applicants’ Estimate of Diverted and Growth Traffic

i. Summary

Applicants indicate that a core element of the proposed Transaction is the new single-line service that a combined CP-KCS would be able to provide. Many of Applicants’ witnesses refer to new services and new opportunities that would result from the merger, and quantify the new traffic volumes that CPKC would handle. In this section, I summarize the additional volumes that Applicants have identified. While the Application and the underlying workpapers include annual traffic projections for many different years, references in this statement to “Traffic

Diversions” and “Growth Traffic” reflect the new shipment volumes that Applicants assume CPKC will attract in the first three years post-Transaction. This is consistent with the presentation by Applicants’ witnesses who sponsored estimates of the diversions and growth.

Applicants claim that CPKC will handle 509,470 new revenue shipments as a result of the Transaction.⁷ This total is the sum of three groups of traffic presented by separate sets of witnesses, summarized below. After the summary, I will briefly describe the process and results for each traffic group.

1. Rail Traffic Diversions: Messrs. Richard Brown and Nathaniel Zebrowski jointly sponsor testimony that CPKC would divert 216,675 revenue shipments from other railroads.⁸
2. Truck Traffic Diversions: Mr. Bengt Mutén sponsors testimony that CPKC would divert 64,018 revenue shipments from truck movements to new rail shipments.⁹
3. Growth Initiative Traffic: Messrs. Jonathan Wahba and Michael Naatz jointly sponsor testimony that CPKC would attract an additional 228,797 new revenue shipments, above and beyond the 280,693 diversions identified in groups #1 and #2 above.¹⁰

⁷ Table 16 to the Verified Statement of Michael Baranowski (“Baranowski VS”).

⁸ Table 1 to the Verified Statement of Richard Brown and Nathaniel Zebrowski (“B/Z VS”). As Applicants disclosed many figures in the public record, I attempt to follow this approach in this statement, and note there are relatively minor differences in some places between the public Application materials and the underlying workpapers that Applicants have designated Highly Confidential.

⁹ Appendix A to the Verified Statement of Bengt Mutén (“Mutén VS”). In this statement I refer to Messrs. Brown, Zebrowski, and Mutén collectively as “the Diversion witnesses.”

¹⁰ 509,470 total minus 216,675 rail traffic diversions minus 64,018 truck traffic diversions = 228,797. The Highly Confidential workpapers present a miniscule difference with these amounts, indicating {{ [REDACTED] }}. See Baranowski WP “HC – URCS Phase III Calculation For Growth Traffic Input.xlsx,” tab “CP Growth Initiatives.”

ii. Rail Traffic Diversions (Applicants' witnesses Brown and Zebrowski)

Messrs. Brown and Zebrowski state they were “asked by CP to estimate the amount of railroad traffic that would shift from movement on other railroads to the combined CP/KCS system as a result of the new service offerings, more efficient single-line services, and other changes resulting from the Transaction.”¹¹ Most of their statement involves describing a 5-step process by which they developed this estimate and presenting their results.

Data Sources: Applicants’ process of estimating rail traffic diversions relied primarily upon 2019 traffic shipment data from their respective railroads – *i.e.*, separate datasets containing records for shipments involving CP, KCS, and KCSM – and the Board’s 2019 confidential Carload Waybill Sample (“CWS”).¹² In addition to railroad traffic records, these witnesses also utilized 2017 Freight Analysis Framework data published by the Bureau of Transportation Statistics and 2019 US Department of Trade data to estimate diversions of cereal grains (which account for 6% of Applicants’ total rail traffic diversions).¹³

Process Overview: As indicated above, Messrs. Brown and Zebrowski employed a 5-step approach to estimate the rail traffic diversions. The initial step of their screening process involved identifying movements that a combined CP/KCS system could potentially handle in single-line service. These movements could be interline movements involving either CP or KCS, for which the other would replace the non-Applicants’ portion (referred to as “extended

¹¹ B/Z VS at para. 5.

¹² B/Z VS at para. 20-21 and Appendix A.

¹³ B/Z VS at para. 41 and Table 1. To be clear, the shipment counts cited in the B/Z VS reflect only the number of revenue shipments, and do not include “empty shipments,” *i.e.*, the movements of empty intermodal containers, flatcars, and other freight cars that are required in order to reposition the equipment to the appropriate locations to serve loaded shipments.

haul” diversions), or existing single-line movements on other railroads for which the entire movement would be diverted to the CP-KCS combination. Messrs. Brown and Zebrowski identified 1,127,663 revenue shipments from the 2019 traffic files that were “Potentially Divertible to CP/KCS.”¹⁴

Messrs. Brown and Zebrowski’s second step involved “identify[ing] a smaller number of distinct groupings of traffic representing potential diversion opportunities to facilitate review.”¹⁵ Nearly one-third of the potentially divertible shipments that had been initially identified were eliminated in this very next step, and 766,194 revenue shipments were “assigned . . . for further review.”

Messrs. Brown and Zebrowski’s following step (#3) involved identifying “near-term diversion opportunities” based on feedback from Applicant personnel regarding a series of factors.¹⁶ This resulted in the exclusion of nearly 200,000 shipments. In the next step (#4), the distances of 573,421 revenue shipments were evaluated, and approximately 4,000 were deleted under Applicants’ proposed mileage filter.¹⁷ The final step involved assigning “diversion percentages” to the shipment volumes that had advanced through the first four steps of the screening process. Messrs. Brown and Zebrowski applied percentages that ranged from 25% to 75% varying based on the situation. For example, they assumed that 25% of shipments transported in existing single-line service would divert to new single-line service on the combined CP-KCS system, and that 50% of existing interline service on other carriers would

¹⁴ B/Z VS at para. 22-25.

¹⁵ B/Z VS at para. 26.

¹⁶ B/Z VS at para. 27.

¹⁷ B/Z VS at para. 28.

divert to CP-KCS single-line service post-Transaction.¹⁸ The overall result of applying these estimates of the likelihood of diversion was that 38% of the volume remaining after Step #4 volume would divert to the new CPKC, *i.e.*, 216,675 of the 569,166 shipments that met the mileage filter criteria.¹⁹ This rail traffic diversion total represents 19% of the initial set of 1.12 million potentially divertible shipments identified by the Applicants.

Before addressing the results, I describe particular aspects of Applicants' identification of rail traffic diversions. First, the vast majority of Applicants' proposed rail traffic diversions reflect a point-to-point match, in that the origin and destination of the shipment is assumed to be fixed. In other words, the new single-line service offered by the combination of CP and KCS would transport the shipments between the same origins and destinations as historically moved. Messrs. Brown and Zebrowski make exceptions to this criterion in at least two areas. The first is a "radial distance adjustment" that allows intermodal, automotive, and lumber shipments to divert to locations other than the actual destination, where there is a nearby station on the combined CP-KCS network.²⁰ The second, indicated above, involves estimating grain shipment diversions based on an assumed increase in the market share of all US grain exports to Mexico, without identification of specific origins or destinations.²¹ I note that while Messrs. Brown and Zebrowski limited the source territory to the US, Messrs. Wahba and Naatz identify

¹⁸ B/Z VS at para. 29-34.

¹⁹ B/Z VS at Table 5 and Table 1.

²⁰ Lumber shipments could be diverted to other destinations within 50 miles, and intermodal and automotive shipments to other destinations within 250 miles. B/Z VS at para. 23-24. This assumption of "flexible" destinations up to 250 miles away increases the scope of Applicants' potential diversion of intermodal and automotive shipments from BNSF.

²¹ B/Z VS at para. 40-44.

opportunities for grain diversions to single-line service on the combined CP-KCS from US and Canadian origins.²²

Results: Table 1 summarizes the rail traffic diversions estimated by Messrs. Brown and Zebrowski.²³ As indicated above, these carload and intermodal container volume figures count only revenue shipments, and do not include the movements of empty equipment necessary to provide the loaded transportation.

Table 1: CPKC Rail Traffic Diversions by Traffic Category
(Brown/Zebrowski Table 1)

Traffic Category	2019 Volume	% of Total
Intermodal	137,416	63%
Automotive	33,218	15%
Intermodal + Automotive Total	170,634	79%
Energy, Chemicals and Plastics	21,143	10%
Grain	15,768	7%
Forest Products	4,616	2%
Metals and Minerals	4,514	2%
Total Rail Traffic Diversions	216,675	

As shown in the table, Applicants’ diversions of intermodal and automotive shipments account for nearly 80% of all rail traffic diversions – and include many shipments diverted from BNSF.²⁴

Messrs. Brown and Zebrowski also estimated the incremental revenues associated with CPKC’s diversion of these shipments, and Applicants’ Witness Michael Baranowski developed

²² See, e.g., Wahba/Naatz VS at para. 15-18.

²³ This table presents the same volumes summarized in Table 1 of the B/Z VS, and identifies each traffic category’s relative proportion of the total. Exhibit 2 lists my workpaper files supporting the calculations relied upon for this statement.

²⁴ See, e.g., B/Z VS at Tables 15, 17, and 18 and para. 64, and WP “HC – 8 – Diversion Identification.xlsx,” tab “Calculations.”

an estimate of the incremental costs of CPKC's transporting these shipments.²⁵ These figures were incorporated in Applicants' Pro Forma Income Statements, which were submitted as Exhibit 17 to the Application.

iii. Truck Traffic Diversions (Applicants' witness Mutén)

In addition to rail traffic diversions, Applicants also estimated shipment volumes that would divert from truck shipment to rail transportation on the combined CP-KCS network post-Transaction. This analysis was submitted in the Verified Statement of Bengt Mutén ("Mutén VS"). Mr. Mutén relied upon 3 sources of 2019 traffic data: 1) truck flows from the IHS Markit Transearch database, 2) intermodal flows from CP and KCS waybill data, and 3) the Board's Carload Waybill Sample.²⁶ Like the rail traffic diversions estimated by Messrs. Brown and Zebrowski, the truck traffic diversions were based on 2019 volumes. Mr. Mutén estimated the likely shift of truck traffic to new single-line intermodal service on the combined CP-KCS network by evaluating certain factors such as the size of the market, the distance travelled, and the availability of single-line service.²⁷ Mr. Mutén concluded that 64,018 revenue shipments will divert from truck movement to CPKC rail transportation post-Transaction.²⁸ Mr. Mutén also estimated the revenues associated with these shipments that CPKC would collect; Mr.

²⁵ B/Z VS at 91-96 and Baranowski VS at 41-42.

²⁶ Mutén VS at para. 6.

²⁷ Mr. Mutén excluded from consideration diversions on certain lanes with pre-existing single-line intermodal rail service. Mutén VS at para. 45-51.

²⁸ Appendix A to Mutén VS. Like the rail traffic diversion volumes in the B/Z VS, this figure reflects only the revenue shipments, and does not count the additional movements of empty containers and flatcars to be repositioned to support the revenue service.

Baranowski estimated the incremental costs of CPKC's handling these shipments; and Applicants included these revenues and costs in their Pro Forma Income Statements.²⁹

iv. Growth Initiative Traffic³⁰ (Applicants' witnesses Wahba and Naatz)

In addition to the diversion of shipments historically transported by other railroads and trucks, Applicants assume CPKC would transport another 229,000 revenue shipments post-Transaction. Messrs. Jonathan Wahba and Michael Naatz³¹ present a broad discussion of a number of potential opportunities in different product and geographical markets that the combined CP-KCS could serve with new single-line rail transportation. There are two types of movements that account for most of this traffic. First, Messrs. Wahba and Naatz state "Perhaps most compelling is the opportunity to open an entirely new corridor for containerized cargo moving between Asia and points in the Eastern United States and Canada via the Port of Lázaro Cárdenas."³² Such rail shipments would be among the longest on the North American continent, as Lazaro Cardenas is 900 miles south of KCS's Laredo gateway, and 2,500 miles from the Chicago gateway to connect with eastern US railroads. Applicants project volume growth of 130,000 revenue shipments annually within the first three years of the Transaction.³³

²⁹ Mutén VS at 53-54, Baranowski VS at 41-42, and Exhibit 17 to the Application.

³⁰ References to this traffic may have slightly differing labels, such as "CP Growth Initiative." See, e.g., Baranowski WP "HC – URCS Phase III Calculation For Growth Traffic Input.xlsx," tab "CP Growth Initiatives."

³¹ Mr. Wahba is the Vice President of Commercial Integration for CP, and Mr. Naatz is the Executive Vice President and Chief Marketing Office for KCS. Wahba/Naatz VS at para. 1, 4.

³² Wahba/Naatz VS at para. 60-65.

³³ Wahba/Naatz VS at para. 64.

Second, Messrs. Wahba and Naatz identify additional transportation of crude oil from Canada to Port Arthur, Texas.³⁴ Referred to as DRUbit, these shipments are projected to exceed 50,000 carloads annually.³⁵ Table 2 summarizes the volumes associated with these examples and other revenue shipments of new growth initiative traffic that Applicants’ estimated CPKC would transport post-Transaction.³⁶ As with the rail traffic and truck traffic diversions, Mr. Baranowski estimated the incremental costs of CPKC’s handling these new shipments, and Applicants included these revenues and costs in their Pro Forma Income Statements.³⁷

Table 2: CPKC Growth Initiative Traffic by Traffic Category

Traffic Category	Volume	% of Total
Intermodal	155,000	68%
Automotive	3,000	1%
Intermodal + Automotive Total	158,000	69%
Energy, Chemicals and Plastics	54,000	24%
Grain	6,630	3%
Other Traffic Not Specified in Public Version ³⁸	10,167	4%
Total Growth Initiative Traffic	228,797	

³⁴ Wahba/Naatz VS at para. 83-94.

³⁵ DRUbit refers to “diluent recovery unit bitumen.” Wahba/Naatz VS at para. 90 and 92.

³⁶ See Wahba/Naatz VS at 27, 29, 50, 64, 74, 82, and 92. While the above compilation is limited to information included in the public version of the Application, more details for this group of projected Transaction-related shipments can be found in Baranowski WP “HC – URCS Phase III Calculation For Growth Traffic Input.xlsx,” tab “CP Growth Initiatives” and Applicants’ Response to Union Pacific’s discovery Request No. 138.

³⁷ Baranowski VS at 41-42 and Exhibit 17 to the Application.

³⁸ Applicants’ Highly Confidential workpapers identify the majority of these volumes as {{ [REDACTED] }}. See, e.g., “HC – URCS Phase III Calculation For Growth Traffic Input.xlsx,” tab “CP Growth Initiatives.”

v. Applicants' Diversions and Growth Traffic by Type

Table 3 summarizes the results of Applicants' rail diversions, truck diversions, and growth initiative volumes by traffic type. As shown below, more than two-thirds of the new CPKC revenue shipments are intermodal traffic. As another 7% are shipments of finished automobiles, over three-quarters of Applicants' diverted and growth traffic volumes are shipments of either intermodal containers or finished automobiles.

Table 3: CPKC Diversions and Growth Traffic by Traffic Category

Traffic Category	Volume	% of Total
Intermodal	356,434	70%
Automotive	33,218	7%
Intermodal + Automotive Total	389,652	76%
Energy, Chemicals and Plastics	71,143	14%
Grain	22,398	4%
Forest Products	4,616	1%
Metals and Minerals	4,514	1%
Other Traffic Not Specified in Public Version	17,167	3%
Total Diversions and Growth Traffic	509,490	

vi. Applicants' Diversions and Growth Traffic moving to/from Mexico

In addition to summarizing CPKC's diverted and growth traffic volumes by category, an estimate of the new volumes moving to/from Mexico can be developed from the public version of the Application. Table 4 summarizes this traffic, indicating that nearly two-thirds of the new CPKC revenue shipments would travel to/from Mexico. As discussed further below in Section V, all 337,000 new revenue shipments to/from Mexico – and the additional movements of empty equipment associated with these revenue shipments – will travel between Beaumont, Texas and

Laredo using CPKC’s only route between DeQuincy and Mexico – a route that involves a mix of line segments owned by KCS and other railroads.³⁹

Table 4: CPKC Diversions and Growth Traffic to/from Mexico via Laredo

	Total Volume	Mexico Shipments	Mexico %
Rail Traffic Diversions	216,675	136,523	63%
Truck Traffic Diversions	64,018	32,693	51%
Growth Initiative Traffic	228,797	168,630	74%
Total Diversions and Growth Traffic	509,490	337,846	66%

b. Applicants’ Estimated Diversions and Growth Traffic Likely Understate the Additional Volumes that will Traverse the CPKC Network

The above subsections present Applicants’ estimates that CPKC will transport more than one-half million new revenue shipments within three years of the Transaction. The Verified Statements and Highly Confidential workpapers underlying the development of these estimates suggest that even more traffic would divert to the combined CP-KCS network. The following presents five aspects of Applicants’ evidence that indicate the volume increases will likely exceed the 509,490 gain on which their Application and Operating Plan are based.

i. *361,000 “Potentially Divertible Movements” were Dropped from Applicants’ Analysis of Rail Traffic Diversions without “Further Review”*

As described above, Messrs. Brown and Zebrowski employed a multi-step process to identify potential diversions and estimate the portion that “would likely divert” from existing routings by other railroads to new single-line service on the combined CP-KCS network. In the first step of their screening process, they identified 1.1 million shipments. Then, in the very next step, they dropped 361,000 shipments – nearly one-third of what they had just identified as

³⁹ This route is referred to as the “Texas Gulf Route” in other portions of BNSF’s Comments.

potentially divertible – “to identify a smaller number of distinct groupings of traffic representing potential diversion opportunities to facilitate review in consultation with knowledgeable Applicant personnel.”⁴⁰ While their description of the rationale for not reviewing all the potentially divertible shipments alone suggests the dropped shipments included movements likely to divert, Messrs. Brown and Zebrowski confirm this: “Some portion of the remaining traffic – *i.e.*, approximately 380,000 carloads/units in over 1,800 different lanes – likely would be attracted to the new service offerings of the CP/KCS system.”⁴¹

The Board is already aware of this likely understatement of diversions, as UP put the issue front and center in its November 19, 2021 “Petition to Reject the Application as Incomplete.”⁴² In Section I of this Petition, UP identified a series of implications of excluding potentially divertible traffic from consideration, including the downstream impacts on other elements of the Application that are dependent on the future traffic, and concluded that Applicants’ second step “critically undermines their Market Analyses and Operating Plan, as well as the Board’s environmental analysis pursuant to its obligations under NEPA.”⁴³

Finally, Applicants’ Highly Confidential workpapers indicate that { [REDACTED]

[REDACTED]

[REDACTED]

⁴⁰ B/Z VS at para. 26.

⁴¹ Ibid.

⁴² <https://www.stb.gov/proceedings-actions/search-stb-records/>, 303229.pdf.

⁴³ Petition at p. 4-8.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

}}

ii. *The Diversion Witnesses Characterize Many Aspects of their Respective Traffic Analyses as “Conservative” in that They Understate the Likely Levels of Diversions*

In addition to dropping many potentially divertible shipments, Applicants make other decisions that likely understate the total traffic volume that would divert. For starters, the Diversion Witnesses frequently characterize their process and their assumptions as “conservative.” For example, Messrs. Brown and Zebrowski explicitly employ the word “conservative” or a permutation⁴⁵ 5 times. One of the particular sources of understatement of the likely level of diversions is by assuming only 25 percent of existing single-line shipments would divert to new CP-KCS single-line routes.⁴⁶ In Appendix B to their statement, Messrs. Brown and Zebrowski submit a series of analyses of the CWS data that examine the variation in market

⁴⁴ In addition to the examples of specific origin-destination lanes in Table 5, many shipments that were dropped in Step #2 may have met Applicants’ “radial distance” criteria described above, suggesting even greater volumes likely to divert.

⁴⁵ “The combination of these factors led us to err on the side of conservatism in estimating the likely lane shares that CP/KCS offerings would achieve.” B/Z VS at para. 32.

⁴⁶ B/Z VS at para. 53.

shares for origin-destination pairs with different combinations of single-line and interline service, and conclude “These data provide statistical support for higher diversion percentages than we have applied.”⁴⁷

While Mr. Muten’s statement does not contain the same number of hits on “conservative,” he offers a broad assessment blanketing his estimate of the diversions from truck shipments: “To avoid overestimating potential diversions, and **in line with the conservative nature of my analysis**, I assigned a ceiling of 70.9 percent as the rail intermodal share of traffic in any lane.”⁴⁸

iii. *In Developing Their Respective Volume Estimates, the Diversion Witnesses Relied Upon the Board’s Carload Waybill Sample, which Does Not Fully Account for Transborder Shipments*

A third source of understatement of the likely level of rail and truck traffic diversions involves the source data. The Board’s Carload Waybill Sample does not fully represent transborder shipments, especially rail traffic volumes moving to/from Mexico. The Board’s 2019 Carload Waybill Sample Reference Guide (“CWS Reference Guide”) contains a series of tables summarizing the records.⁴⁹ Table 1-14 “Waybills of Mexican Origin” indicates that the 2019 CWS includes 55,440 carloads from origins in Mexico.⁵⁰ Tables 15 and 18 to the Brown/Zebrowski statement collectively indicate more than 75,000 diversions from Mexico of intermodal and automotive shipments alone – and as diversion percentages of 50% or less were

⁴⁷ Appendix B to B/Z VS at para. 15.

⁴⁸ Muten VS at para. 50, (emphasis added).

⁴⁹ <https://www.stb.gov/wp-content/uploads/2019-STB-Waybill-Reference-Guide.pdf>

⁵⁰ CWS Reference Guide at p. 19.

applied to most of the traffic eligible for diversion,⁵¹ their analysis indicates at least 150,000 transborder shipments originating from Mexico.

The detailed records in the Carload Waybill Sample can be examined to indicate {{ [REDACTED] [REDACTED] }} of transborder shipments to/from Mexico. UP's Investor Fact Books available on its public website summarize its Mexico shipments, indicating that "Cross-border traffic with Mexico comprised approximately 11 percent of UP's total 2019 volume."⁵² 11% of UP's total 2019 volume of 8,346,000 carloads is 918,000.⁵³ The 2019 Fact Book also identifies the mix of shipments by specific gateway, indicating that UP's gateways in Texas account for 91% of all 2019 carloads to/from Mexico.⁵⁴ 91% of UP's total 2019 Mexico volume of 918,000 carloads is 835,000. For UP shipments via the Brownsville, Laredo, Eagle Pass, and El Paso gateways, the 2019 Carload Waybill Sample contains {{ [REDACTED] [REDACTED] }} than UP's actual traffic levels for Mexico shipments moving via the Texas gateways.

As Applicants rely upon the Board's Carload Waybill Sample to estimate the diversions from rail traffic and also from truck traffic, the source data for each of these analyses does not account for all potentially divertible shipments.

⁵¹ Table 26 to B/Z VS.

⁵² 2019 Investor Fact Book at page 18.
https://www.up.com/cs/groups/public/@uprr/@investor/documents/investordocuments/pdf_investor_factbook_2019.pdf

⁵³ 2019 Investor Fact Book at page 3.

⁵⁴ The "Percent of 2019 UP Carloads at Border Crossings" pie chart on page 18 of the 2019 Investor Fact Book indicates 44% for Laredo, 24% for Eagle Pass, 22% for El Paso, and 1% for Brownsville, for a total of 91%.

- iv. *Applicants’ Highly Confidential Workpapers* {{ [REDACTED]
[REDACTED]
[REDACTED] }}

The Highly Confidential workpapers include {{ [REDACTED]

[REDACTED]
[REDACTED] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
}}

- v. *Applicants’ Estimates of New CPKC Diverted and Growth Volumes Do Not Include Organic Growth that Would Occur on the Combined CP-KCS Network over the Next Three Years*

This final subsection identifies another reason the traffic volumes expected to move on the combined CP-KCS network three years post-Transaction will be higher than presented in the

⁵⁵ See, e.g., Operating Plan WP “HC – 01.1 KCS Model – Synergy Growth.xlsx,” tab “Individual Opportunities.”

⁵⁶ {{ [REDACTED] }}

Application: organic growth. Applicants explicitly excluded organic growth from the volumes identified in the diversion analyses, and also from the design of an operating plan to transport Transaction-related volumes. To be clear, this may not be inappropriate from the perspective of the Application – which sought to depict the impacts of the Transaction. The fact remains, however, that more volume than has been identified in the Application will be moving on the CP-KCS line segments post-Transaction.

Multiple witnesses confirm that organic growth has been excluded from Applicants' traffic gains and operating plan:

- Chris De Bruyn submitted a Verified Statement (“De Bruyn VS”) addressing certain financial aspects of the Transaction.⁵⁷ He described the Application’s pro forma financial statements – which include the Exhibit 17 Income Statements that reflect the Transaction-related diversions and growth traffic addressed in the section above: “These pro forma financial statements utilize 2019 standalone financial statements as a base. They do not incorporate any organic growth from CP or KCS since 2019, nor do they take into account either company’s individual anticipated ongoing economic growth from now forward. As a result the figures in the Verified Statement of Dean Vargas and the 2019 pro forma financial statements will differ slightly from those in my analysis which is based on the CP and KCS as they are today and with ongoing economic growth moving forward.”⁵⁸
- The Applicants’ Operating Plan witnesses Raymond Elphick and John Orr addressed the locomotive requirements on the combined CP-KCS system post-Transaction: “It is expected additional locomotives would be brought into service to handle organic growth on the CP/KCS system. Given organic growth would occur without the Transaction, it has not been counted as an impact of the Transaction. The combined fleet has sufficient locomotives to accommodate both organic and Transaction related growth.”⁵⁹

⁵⁷ Mr. De Bruyn is the Managing Director – Investor Relations and Treasury for CP. De Bruyn VS at para. 1.

⁵⁸ De Bruyn VS at para. 13.

⁵⁹ Amended Operating Plan at para. 189245, footnote 96.

- When asked in deposition {{ [REDACTED] }}. ⁶⁰
- The Diversion Witnesses identify that the estimates of rail traffic and truck traffic diversions were based on 2019 datasets, and do not indicate that organic traffic growth was included.

Finally, the expectation of organic growth is {{ [REDACTED] }}

[REDACTED]

[REDACTED]

[REDACTED] }}. ⁶¹

III. Applicants' Operating Plans for Handling Traffic on the CP-KCS Combined Network

In Exhibit 13, Applicants present Operating Plans for the combined CP and KCS railroad system, sponsored by Raymond Elphick and John Orr.⁶² This presentation focuses on how the systems will be integrated post-Transaction, and designs train and yard operations necessary to handle the traffic volumes. In addition to providing details on the train and yard service, Applicants' Operating Plan evidence also addresses the post-Transaction requirements for CPKC's labor force, equipment, and maintenance of way; the Transaction's impact on passenger

⁶⁰ February 18, 2022 Deposition of Messrs. Elphick and Orr (Applicants' Operating Plan witnesses) at pages 161-162.

⁶¹ See, e.g., Operating Plan workpapers "HC – 01.1 KCS Model – Organic Growth.xlsx," "HC – 01.1 KCS Model – Synergy Growth.xlsx," "HC – System Model – Methodology.pdf" at page 5, and "HC – Gross Ton Miles, Train Miles, Train Weights and MGT – Methodology.pdf" at page 2.

⁶² Mr. Elphick is the Assistant Vice President Service and Product Design for CP, and Mr. Orr is the Executive Vice President-Operations for KCS. Amended Operating Plan at para. 2, 5.

and commuter service and traffic densities by segment; and the line infrastructure and capacity, and yard and terminal capacity.⁶³ In this section I focus on the proposed train operations.

Applicants present the results for three scenarios, summarized as follows:

1. Base Plan: Messrs. Elphick and Orr identify that the Base Plan “reflects the pre-Transaction operations of CP and KCS as independent companies,” ~~i.e., the operations and volume levels as of 2019.~~⁶⁴
2. Optimized Plan: They explain that the Optimized Plan “reflects the integration and optimization of the operations of CP and KCS as a single, integrated network, but without the additional traffic that CPKC’s new capabilities are likely to attract.”⁶⁵ The operations evaluated with this plan do not incorporate any post-Transaction volume growth.
3. Growth Plan: And finally, they indicate that the Growth Plan “reflects the anticipated traffic levels that the full integration of the CP/KCS network – which will be complete within three years of the Control Date – will handle.”⁶⁶

System-Wide Results: Table 23 to the Amended Operating Plan presents the summarized results for a variety of operating statistics for each of Applicants’ scenarios. These statistics include a measure of traffic volume (“Gross Ton Miles”), as well as the train activity associated with handling that traffic (“Train Miles (Freight)”) and the number of locomotives used to power each train (“Locomotives/Train”). Table 7 compares the results of Applicants’ Optimized Plan (*i.e.*, before Transaction-related volume growth) and Growth Plan (incorporating Transaction-

⁶³ Applicants’ evidence on line infrastructure and capacity will be discussed in the following section.

⁶⁴ Amended Operating Plan at para. 11. ~~While the CP and KCS train plans may have been sourced from different points during the 2019–2021 period (see, e.g., para. 75), the While Applicants’ initial Operating Plan indicated that the Base Plan was confirms that the volumes handled reflect the 2019 levels analyzed by the Diversion Witnesses (“...based on a 2019 base year,” (para. 87), the Amended Operating Plan presents a lengthy discussion of Applicants’ reliance on various materials sourced from different points during the 2020–2021 period (para. 72–91).~~

⁶⁵ ~~Operating Plan at para. 11~~ Ibid.

⁶⁶ Ibid.

related volume growth, *i.e.*, including the 509,470 revenue shipments and the associated empty intermodal containers, flatcars, and other freight cars).

Table 7: CPKC Operating Plan Results for Optimized and Growth Scenarios
(Table 23 to Amended Operating Plan⁶⁷)

		Optimized Plan	Growth Plan	% Change
1	Gross Ton Miles (GTM), billions	385.6	462.0	+19.8%
2	Train Miles (Freight), millions	48.26	51.86	+7.4%
3	GTM / Train Miles ("Avg Train Size")	7,991	8,910	+11.5%
4	Locomotives/Trn ("Avg Consist Size")	2.71	2.72	+0.1%
5= #2x#4	Loco Unit Miles (LUM), millions	130.78	141.06	+7.9%
6= #1/#5	Average Gross Tons / Locomotive	2,948	3,275	+11.1%

Table 5 presents several key findings regarding Applicants' proposed post-Transaction service to handle the volumes that moved on the CP and KCS networks in 2019 along with the additional diverted and growth traffic volumes:

- The Transaction-related growth volumes would increase the total gross ton-miles moving on the CPKC network by 20%. (Line #1 of Table 5 above)
- Applicants propose that CPKC would handle this traffic by running ~~+17%~~ more train-miles. (Line #2)
- As a result of transporting more tons with proportionally fewer trains, each CPKC post-Transaction train would be ~~811.5%~~ larger on average, compared to the 2019 Optimized baseline.⁶⁸ (Line #3)

⁶⁷ While these statistics are sourced from Table 23 to the Amended Operating Plan, ~~certain the Locomotive Unit Mile ("LUM") figures are internally inconsistent as reported. For example, 51.86 million Train Miles multiplied by 2.72 Locomotives per Train indicates total LUM of 141 million, not 52 billion. 461.9 billion GTM divided by 53.63 million train miles indicates an average train size of 8,613, not 9,000.~~ To remove these inconsistencies, Table 75 includes re-calculated values for ~~Average Train Size (Line #3) and~~ Locomotive Unit Miles (Line #5).

⁶⁸ As Applicant's Table 2 identifies that the average train size (GTM / Train Miles) for the Optimized Plan was 3.5% higher than the average for the Base Plan, Applicants' Growth trains are more than ~~+15%~~ larger than the actual CP and KCS trains that operated in the base period.

- While Applicants’ Table 2 does not explicitly summarize train length, the significant increase in the average weight indicates that CPKC trains will be proportionally longer as well.
- While each train will transport 811.5% more tonnage on average, Applicants propose CPKC will do so with virtually the same number of 1% more locomotives (+0.1%). As a result, each locomotive will be responsible for powering 711% more tonnage. (Line #6)⁶⁹

Transaction-Related Traffic Changes by Subdivision: Appendix A to the Amended

Operating Plan summarizes the impact of the Transaction-related volume growth on the train volumes that will traverse each subdivision. This Appendix presents the average number of trains per day for the Base Plan reflecting 2019 volume levels (“Current Trains / Day Base Plan Train Count”) and separately for the Growth Plan reflecting Year 3 volume levels including diverted and growth traffic (“Future Trains / Day Growth Plan Year 3 Train Count”).⁷⁰ There are 46 segments across 2280 subdivisions for which the average number of trains per day will increase by 92.5 trains or more, *i.e.*, at least 18900 additional trains per year.⁷¹ The median increase in daily train volumes across these 80 subdivisions segments is 1026%, *i.e.*, which equates to squeezing in an additional week’s worth of trains every month. There are 17 subdivisions—covering more than { [REDACTED] } route miles—for which the number of trains in the

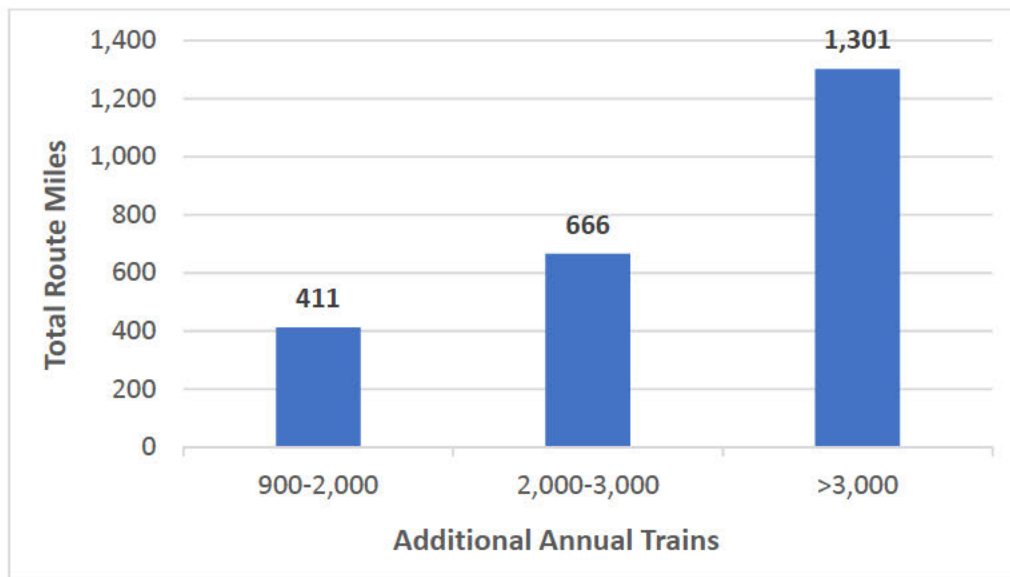
⁶⁹ As the initial Operating Plan indicated that each locomotive would be powering 7% more tonnage, updating this observation for the Amended Operating Plan reveals that Applicants in fact propose an even greater burden on each locomotive post-transaction. The Highly Confidential workpapers present { [REDACTED] }
[REDACTED]
[REDACTED] }. Operating Plan WP “HC – System Model – Methodology.pdf” at page 13.

⁷⁰ Amended Operating Plan at para. 9129.

⁷¹ See Appendix A to the Amended Operating Plan. Operating Plan WP “HC – Trains Per Day and Gross Ton Miles – Working Copy with Haz Breakdown,” tab “Summary Sheet” indicates that these 80 subdivisions account for more than { [REDACTED] } route miles.

Growth Plan is more than twice the volume that is currently moving. Figure 1 summarizes the nearly 2,400 miles on these 2280 subdivisions by the magnitude of their train volume increases, identifying that over half (421,301 route miles) will experience more than 13,000 additional trains annually – and 16 subdivisions another quarter (666 route miles) will see more than 2,000- 3,000 new trains.

Figure 1: Increases in Annual Train Volumes by Subdivision Segment Miles
(Appendix A to Amended Operating Plan)



Summary: Applicants propose that the Transaction-related traffic growth would add half a million revenue shipments annually (plus empties), increase by 20% the gross ton-miles on the combined CP-KCS network, increase train sizes system-wide by an average of 811.5% while powering them with 1% more-virtually the same number of locomotives (+0.1%), and add thousands of trains annually on scores of subdivisions across thousands of route miles, and more than double the current daily train volumes on { [REDACTED] } miles.

IV. Capacity / Infrastructure

As described in prior sections, Applicants project that CPKC will transport more than 500,000 new revenue shipments, and it will operate thousands of new trains for thousands of miles. In order to handle this additional growth and new train service, Applicants identify 29 track projects on the combined CP-KCS networks to add necessary capacity. These include 15 extensions of existing sidings, 10 new sidings, 1 instance of double-tracking, and 3 locations where Centralized Traffic Control (“CTC”) systems will be added. Applicants’ estimate they will invest \$276 million over the 2023-2025 period to accomplish these infrastructure investments.⁷²

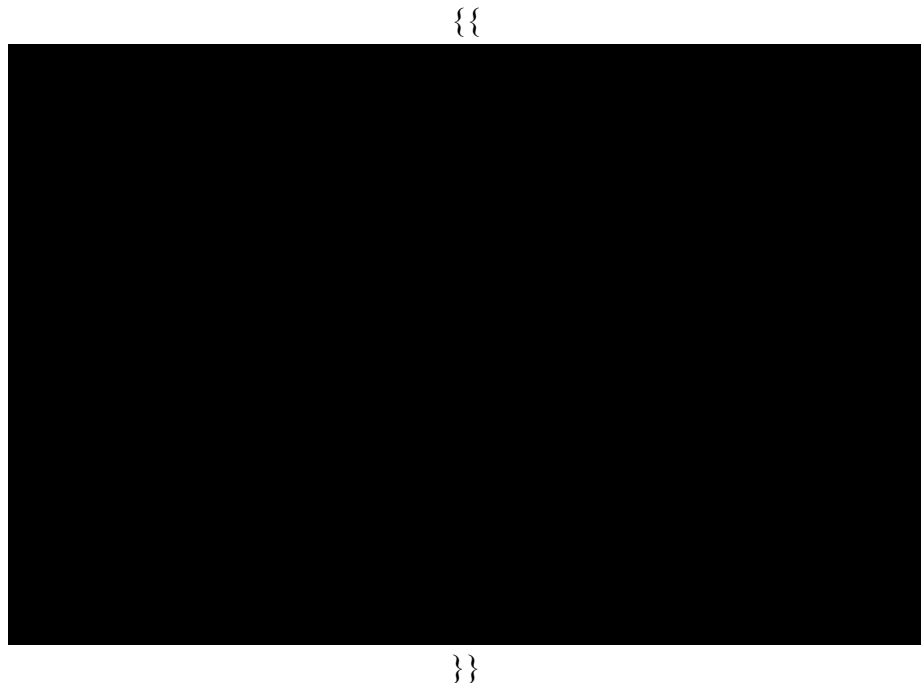
CP and KCS reported a combined total of 5,778 US system-owned route miles in Schedule 700 to their 2019 R-1 reports submitted to the STB.⁷³ Schedule 700 also identifies the running track capacities by category: in 2019, CP identified 490 route miles of second main track, passing tracks, and other running tracks, and KCS identified 363 – for a combined Applicants’ total of 853 miles. For purposes of illustration, if the 10 new sidings were each 11,000 feet, the 15 siding extensions each added 6,000 feet, and the new double-track segment

⁷² Appendix R to the Operating Plan also identifies “Line Capacity Improvement Projects.” This Appendix lists 33 projects – 4 more than are presented in either Figure 11 or Table 8 in the Operating Plan. These 4 projects are all on the CP lines, and include 39 miles of CTC on the Davenport subdivision and siding projects on the Ottumwa and Laredo (Missouri) subdivisions. The Appendix indicates capital spending of \$0.00M for each of these 4 projects. The Highly Confidential workpapers indicate {{{[REDACTED]}}}. [REDACTED]

⁷³ See Schedule 700 to the CP and KCS Annual R-1 Reports (Track Class 1, 100% Owned). This total does not include partially or jointly-owned segments, or the routes that CP and KCS each operates over via trackage rights – such as the Texas Gulf Route used by the majority of the Transaction-related traffic diversions and growth.

was 5 miles, Applicants’ total track additions would total 43 miles.⁷⁴ 43 miles of new running tracks would be an increase of 5% to the second main tracks and passing sidings on the existing CP and KCS networks. Figure 2 summarizes the actual lengths of Applicants’ proposed track additions from the Highly Confidential workpapers, indicating that these line capacity improvement projects would increase total CP-KCS second main and passing track capacity for {{[REDACTED]}}.

Figure 2: Additional Running Track Capacities



Applicants propose no track infrastructure projects on the Texas Gulf Route south of DeQuincy, Louisiana. As described previously, these lines are critical to the Applicants’ proposal, as they provide the only route by which CPKC will access Mexico – to serve two-

⁷⁴ $10 \times 11,000 + 15 \times 6,000 = 200,000$ feet, divided by 5,280 feet = 38 miles of new siding capacity, plus 5 miles of double-track = 43 total miles of new capacity. As Table 8 to the Operating Plan identifies \$12.8 million of investment for the new double-track segment, an estimate of 5 miles indicates \$2.6 million per mile, lower than most of the per-mile investments suggested for the siding projects on the KCS segments.

thirds of their diversions and growth traffic. And as also indicated above, Applicants project considerable traffic gains for the lines south of Dequincy: more than 330,000 revenue shipments, and more than 3,0002,750 trains annually will traverse the entire Texas Gulf Route, with train volumes roughly doubling on most of the route.

The Highly Confidential workpapers, however, indicate that Applicants { { [REDACTED]

[REDACTED]

[REDACTED] ■ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] } }⁷⁷

Finally, Applicants’ recent supplementation of certain capacity workpapers are addressed. On February 11, 2022 – 105 days after filing the Application – Applicants provided “more recent versions of certain” capacity-related workpapers, and also reported that “Applicants have determined that there were typographical errors in the “CP-HC-00007936” file located in folder 10.5.840 in the VDR. Applicants have uploaded a corrected version with the same file

⁷⁵ See Operating Plan WP “HC – Capacity – Methodology.pdf” at page 6.

⁷⁶ Ibid.

⁷⁷ December 14, 2021 “Joint Responses and Objections to BNSF’s Second Set of Discovery Requests,” Response to Interrogatory No. 13. Applicants’ response to Int. No. 13 also claims that { { [REDACTED]

[REDACTED] } }

name.”⁷⁸ The 00007936 file contains {{ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]⁷⁹

[REDACTED]⁸⁰

⁷⁸ The more recent workpapers were identified as updating “HC – Kansas City Corridor – Siding Spacing.pdf,” “HC – KCity Sticks With Capital.pdf,” and “HC – KCS Capacity calculations.xlsx.” The last one (KCS Capacity calculations) presents updated calculations of the {{ [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] }}.

⁷⁹ Section VI below identifies that BNSF serves local customers on CP’s Davenport subdivision via trackage rights, and that its service will potentially be impacted by three-times the volume traversing the segment between Camanche and Bettendorf.

⁸⁰ Regarding other recently-provided capacity materials, I understand that on February 15, 2022, Applicants produced more than 8,500 Highly Confidential documents identified as “CP System & Operations, RTC Simulations and Related Documents.” This tranche more than doubled the total number of documents that Applicants have provided since filing their Application, including all workpapers, discovery responses, etc. Having received these materials less than two weeks before the filing of this statement, I reserve the right to address these newly-provided items at a later date.

V. Applicants’ Proposed Traffic Gains and Train Volume Growth in Houston

a. Background

As described above, CPKC’s Texas Gulf Route to/from Mexico involves operating more than 100 miles between Beaumont and Rosenberg, Texas on lines that are jointly-owned by BNSF and UP.⁸¹ This route traverses the Houston Complex. Houston is one of the most significant terminals on the North American continent. It is a major railroad terminal as well as one of the largest port facilities in the country, and a hub for highway transportation.⁸² It is a centerpiece for north/south shipments to Mexico (including those movements to Mexico contemplated by Applicants’ proposal) and also for the shortest US transcontinental route between California, New Orleans, and the east coast.

The Board’s 2019 Carload Waybill Sample provides insights on the considerable reach of freight rail shipments to/from Houston. In 2019, there were 1.25 million shipments that originated or terminated at freight stations on the Joint Line and in the Houston Complex. These include most of the largest commodities that are transported by railroads – intermodal containers, finished automobiles, agricultural products, petroleum products, plastics, chemicals, and many others. At 1.25 million shipments, this volume represents 3.5% of all freight shipments in the country.⁸³ In other words, 1 out of every 30 carloads or intermodal containers shipped in the US originates or terminates in Houston. And that total doesn’t include thousands of shipments of

⁸¹ In this statement I refer to the line segments between Beaumont and Rosenberg as the “Joint Line” or “50/50 Line.”

⁸² <https://www.houston.org/news/port-houston-no-1-us-cargo-volume>,
https://porthouston.com/wp-content/uploads/PH_Facts_Sheet_r7_id_FINAL.pdf

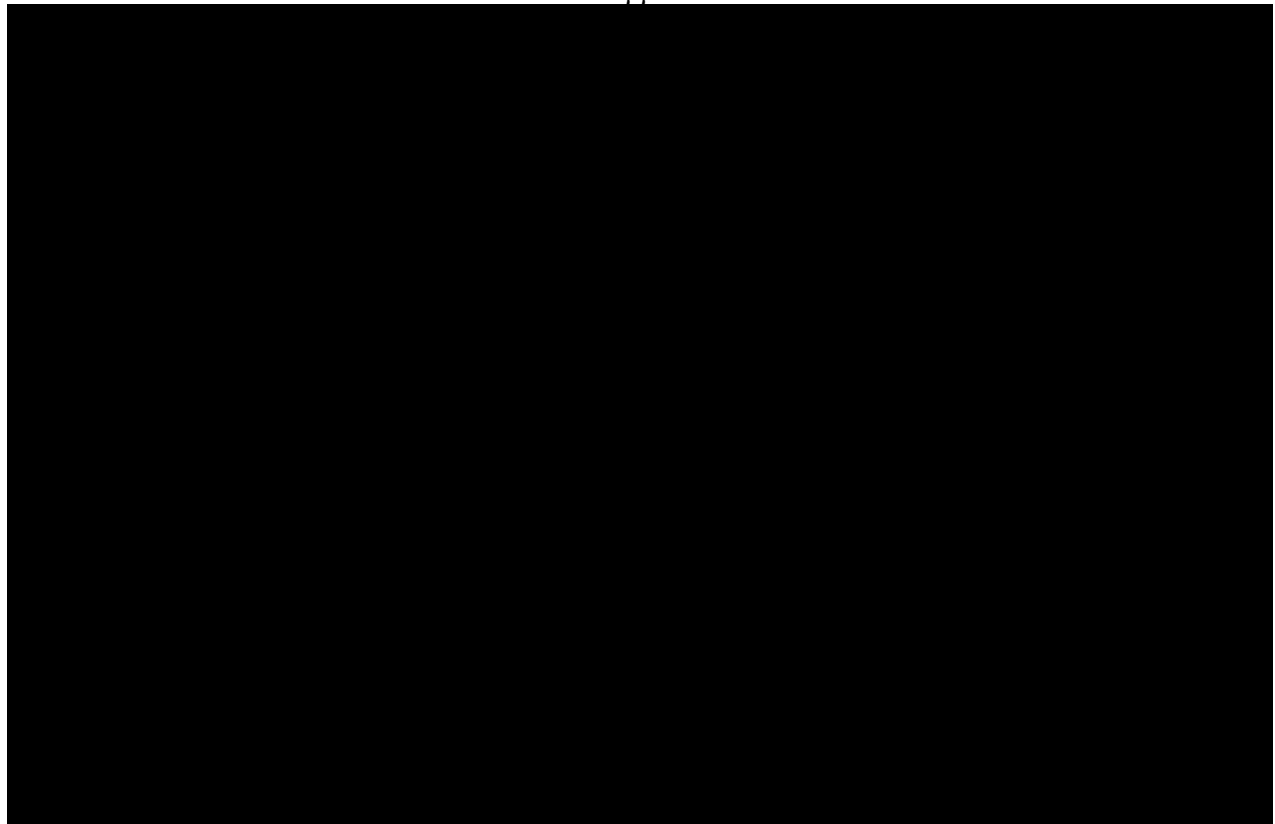
⁸³ Table 1-2 of the 2019 CWS Reference Guide identifies 35.69 million total shipments originating in the US, Canada, and Mexico. <https://www.stb.gov/wp-content/uploads/2019-STB-Waybill-Reference-Guide.pdf>

through traffic moving between California and New Orleans that traverse the route that would be used by CPKC.

All of these shipments will potentially be impacted by the additional 3,000-4,000 trains CPKC proposes to add to the Texas Gulf Route annually. To identify the potential scope of the impact, we identified the origins for shipments inbound to Houston, and the destinations for shipments outbound from Houston – *i.e.*, the “other end” of the move for the 1.25 million Houston-area originations and terminations. Shipments to/from Houston come from 1,300 different locations – representing 45 states, 8 provinces in Canada, and 40 stations in Mexico. Figure 3 plots these locations – the “other end” of the Houston moves – showing that service disruptions in Houston can affect shippers of goods throughout North America.

Figure 3: Origins and Destinations for Shipments to/from the Houston Complex
(2019 Carload Waybill Sample)

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Houston was “ground zero” for colossal service disruptions following the merger of two Class I railroads 25 years ago, UP and Southern Pacific Railroad. A 1998 *New York Times* article that presented the myriad challenges that were encountered stated “A 1996 merger with Southern Pacific to form the nation's largest railroad caused what regulators call an unprecedented breakdown in rail traffic through the heart of America that has lasted more than 10 months.”⁸⁴ The article also highlighted the particular dynamic of service disruptions on railroad networks: the impacts can extend more than 1,000 miles from their source, “But then clogged traffic at the Laredo, Tex., gateway to Mexico backed up trains all the way to Kansas.”

b. Applicants’ New Traffic Movements through the Houston Complex

i. *The Vast Majority of Applicants’ Diverted and Growth Volumes will be New Traffic to the Houston Complex*

Most of Applicants’ projected diverted and growth volumes will traverse the Texas Gulf Route through Houston. Table 4 in Section II.a.vi above summarized that 337,846 of CPKC’s new revenue shipments would move to/from Mexico, representing 66% of all diversions and growth traffic. In addition to these volumes, there are at least another 50,000 carloads of new traffic that will enter Beaumont and turn south towards Port Arthur.⁸⁵ In total, Applicants project that Transaction-related increases in excess of 387,000 new revenue shipments will cross the Neches River Bridge – along with BNSF, UP, Amtrak, and other CPKC trains.⁸⁶

⁸⁴ Myerson, Allen. “Weary Hands at the Throttle.” *The New York Times*, April 26, 1998. <https://www.nytimes.com/1998/04/26/business/earning-it-weary-hands-at-the-throttle.html>

⁸⁵ These shipments include the DRUbit crude shipments in the Growth Initiative grouping (Wahba/Naatz para. 83-94) and certain rail traffic diversions of { [REDACTED] }.

⁸⁶ See, e.g., Amended Operating Plan at para. 175-176231-232.

While many of Applicants' new shipments represent diversions from other railroads, the vast majority of the increased volume moving through the Houston Complex is truly new to the Joint Line route, and is not pre-existing volume on this line that merely shifts to CPKC from other railroads (*e.g.*, BNSF or UP). Nearly two-thirds of the 387,846 shipments have yet to move on any railroad, as they represent projections of growth initiative volumes and diverted truck movements. The Lazaro Cardenas intermodal and DRUBit crude traffic summarized in Table 2 above account for most of the Transaction-related growth opportunities that Messrs. Wahba and Naatz identified; all such traffic totals 218,630 shipments⁸⁷ that will be new to the Texas Gulf Route (56% of the Joint Line total). Similarly, the 32,693 truck traffic diversions (8% of the total) moving to/from Mexico identified in Table 4 above are also new rail shipments that will traverse the entire Beaumont-Rosenberg route for the first time.

Regarding the rail traffic diversions (the remaining 35%), to ascertain whether the shipments are new to the Texas Gulf Route or traveled via the Joint Line in 2019 requires examination of Applicants' Highly Confidential workpapers. The shipment details for the diverted traffic lanes provided in the workpapers indicate that 9% of the rail shipments that Applicants proposed to divert to CPKC's Texas Gulf Route {{ [REDACTED] }}. Thus, these shipments – which represent 3% of the 387,846 total new shipments – would also be new to the Beaumont-Rosenberg line.

Applicants' Highly Confidential workpapers also indicate that {{ [REDACTED] }} were diverted from existing movements over the Laredo gateway. Of this total, {{ [REDACTED] }}

⁸⁷ This total reflects the 168,630 growth shipments moving to/from Mexico in Table 4 above and the 50,000 DRUBit shipments that enter Beaumont to Port Arthur.

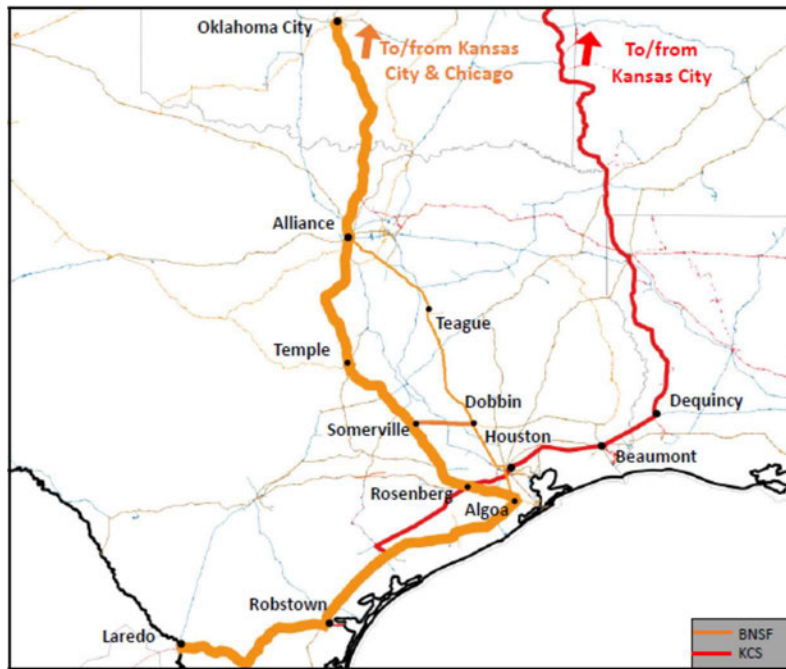
_____}}. This last group represents “Extended Haul” diversions of existing KCS interline shipments, which Applicants propose would divert to CP from another railroad on the northern end of the movement, and KCS’s routing across Texas to/from Mexico would remain unchanged.

The diversions from UP are unlikely to have traversed the Joint Line through Houston in 2019. UP has its own route to Laredo, separate from the route via Robstown, Texas that BNSF and KCS shipments use. The UP route is more direct to/from Chicago, traveling via Texarkana, Hearne, and San Antonio. While I do not have access to UP's detailed routing or movement data, UP Investor Fact Books are available on UP's public website.⁸⁸ Page 18 of the 2019 Fact Book presents a Lane Density Map for UP's Mexico shipments suggesting that most traffic to/from Laredo does not travel via the Joint Line. Thus, CPKC's diversions of existing UP-Laredo traffic – which represent {{[REDACTED]}} of the 387,846 total new shipments – would also be new to the Texas Gulf Route.

Applicants' proposed diversions from BNSF also did not traverse the Joint Line in 2019. BNSF's trains transporting north/south traffic to/from Laredo operate via Temple, Texas on line segments to the west of the Houston Complex ("the Temple route"). I examined BNSF's routing information for 2019 shipments of intermodal containers and finished automobiles moving between the Midwestern US and Laredo, and determined that {{REDACTED}} used the Temple route. Figure 4 presents the BNSF and KCS routes to/from Laredo, indicating that the route for virtually all of BNSF's traffic avoids the Joint Line and Houston Complex.

⁸⁸https://www.up.com/cs/groups/public/@uprr/@investor/documents/investordocuments/pdf_investor_factbook_2019.pdf

Figure 4: BNSF’s Laredo Shipments Do Not Traverse the Beaumont-Rosenberg Joint Line through Houston



In summary, the vast majority of CPKC’s diverted and growth volumes will be new to the Joint Line and Houston Complex. They are not pre-existing volumes that have traversed this route on other railroads’ trains. Fully 65% of the diverted and growth volumes – the growth initiative and truck traffic diversions – are projected to be rail shipments only post-Transaction. And only {{REDACTED}} of the rail traffic diversions – comprising {{REDACTED}} of all CPKC diverted and growth volumes through Houston – moved over the Joint Line or through the Houston Complex in 2019.⁸⁹

ii. CPKC Would Add more than 2,750 Trains Annually to the Houston Complex

The previous section established that the vast majority of CPKC’s diversions and growth shipments will be new traffic to the Beaumont-Rosenberg Joint Line and Houston Complex.

⁸⁹ This total includes {{REDACTED}} for BNSF shipments that analysis of the route information indicated did not traverse the Temple route and {{REDACTED}} for shipments that KCS operated over the Texas Gulf Route in 2019.

This section re-visits Applicants’ proposed train operations introduced above in Section III.a, to focus on the significant increase in train volumes that CPKC will operate over these lines.

Figure 1 above identified that there were ~~16 subdivisions~~ nearly 2,000 route miles where CPKC would increase annual volumes by more than ~~32,000~~ trains – and these ~~segments~~ 16 include all ~~five subdivisions~~ 500 route miles between ~~Beaumont-DeQuincy~~ and Laredo on the Texas Gulf Route. Table 8 presents the train volumes for ~~these five subdivisions~~ this route from Appendix A to the Amended Operating Plan, indicating that Applicants’ projections would ~~more than~~ roughly double the number of trains on all but one of the ~~subdivisions~~ segments.

Table 8: CPKC Train Volume Increases for Texas Gulf Route
(Appendix A to Amended Operating Plan)

MST Seg No.	Segment	Base Plan Train Count	Merger-Rel. Train Count Change	Growth Plan Year 3 Train Count	Annual Increase	Percent Change
147	DE QUINCY,LA - BEAUMONT,TX	8.67	+10.97	19.64	+4,004	+127%
149	BEAUMONT TO ROSENBERG	8.47	+7.57	16.04	+2,763	+89%
152	ROSENBERG,TX - KENDLETON,TX	8.39	+8.32	16.71	+3,037	+99%
153	KENDLETON,TX - VICTORIA,TX	8.70	+8.32	17.02	+3,037	+96%
154	VICTORIA,TX - PLACEDO,TX (UP)	7.94	+8.32	16.25	+3,037	+105%
155	PLACEDO,TX (UP) - ROBSTOWN,TX	7.94	+8.32	16.25	+3,037	+105%
157	ROBSTOWN,TX - LAREDO,TX	13.55	+8.03	21.58	+2,931	+59%

iii. CPKC’s Growth Trains Would Add More, Larger Trains on the Joint Line through the Houston Complex than Historically Moved

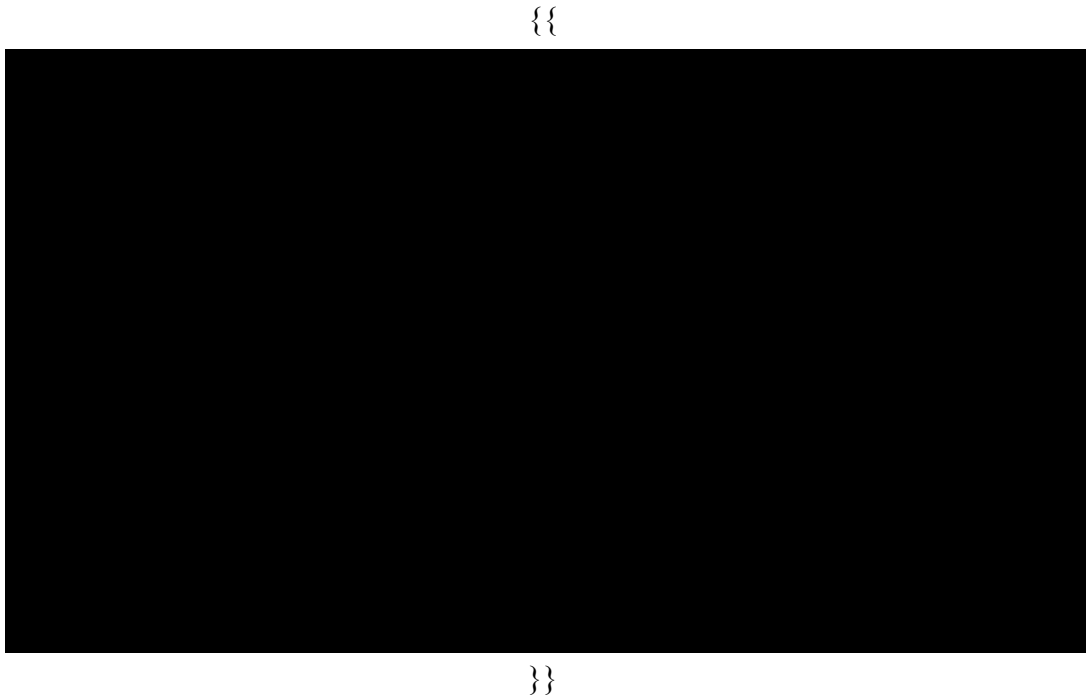
In this proceeding, Applicants produced historical Train Event files that identify the size of the KCS trains that moved through Houston.⁹⁰ Figure 5 summarizes the average train sizes for KCS’s road trains traversing the Joint Line in 2019. Those records indicate:

- KCS’s road trains historically averaged { REDACTED } feet, varying by train type.

⁹⁰ Applicants produced KCS’s 2019 Train Event records on December 13, 2021.

- {{[REDACTED]}} of KCS's road trains exceeded 8,000 feet.
- {{[REDACTED]}} of KCS's road trains exceeded 9,000 feet.

Figure 5: Average Train Length, 2019 KCS Road Trains in Houston



Applicants' ~~workpapers~~ Amended Operating Plan does not reveal the different train sizes assumed to transport the specific Transaction-related volume growth by individual segment. That said, there are four related observations pertinent to CPKC's future train sizes through Houston. First, Section III above describes Applicants' conclusion that system-wide, CPKC's trains including the Transaction-related diversions and growth traffic will be 811.5% larger than under Applicants' Optimized Plan, and 415% larger than the actual historical sizes on CP and KCS. Further, an annual, system-wide average does not reflect that trains will experience different increases in size – and some will be proportionally longer – nor does it reflect the seasonality inherent in rail traffic flows.

Second, when asked in deposition { [REDACTED]

[REDACTED]

Applicants' Operating Plan witness Mr. Elphick responded { [REDACTED]

[REDACTED] } }⁹¹

Next, Appendix H to the Amended Operating Plan identifies changes in train operations from the Base Plan scenario to the Optimized Plan scenario that propose longer CPKC trains. These changes include four specific train assignments that would traverse the Joint Line and Houston Complex every day, for which the Amended Operating Plan indicates maximum train lengths of 9,840-10,000 feet for each.⁹²

Finally, Applicants produced materials documenting a series of monthly meetings that discuss operations on the Joint Line and in the Houston Complex. Documents from the months leading up to Applicants' submitting their Application specifically examined the impact of { [REDACTED] } on operations in the complex.⁹³ As noted above, Applicants propose that many CPKC trains will be designed to be materially longer.

I understand that Jon Gabriel and Travis Thowe – BNSF's Vice President, Service Design and General Director of Network Development, respectively – are jointly sponsoring a verified statement ("Gabriel-Thowe VS") that provides a detailed description of the multi-carrier operations on the Joint Line and through the Houston Complex, and identifies the many

⁹¹ February 18, 2022 Deposition of Raymond Elphick and John Orr at p. 63. This statement is consistent with the reference in the Operating Plan to "Optimizing train lengths to 10,000 feet . . ." Amended Operating Plan at para. 29034.

⁹² Appendix H to Amended Operating Plan at pages 2-5.

⁹³ For example, page 3 of the document from the June 30, 2021 meeting states { [REDACTED]

[REDACTED] } KCSR-C-00011139.

implications of higher volumes that impact both local service and through trains in that significant railroad terminal.

iv. *Applicants Propose to Move Thousands of Larger Trains through the Houston Complex on Line Segments that are Owned by Other Railroads – without Incurring the Trackage-Rights Expense to Use These Lines*

As described above, Applicants include an estimate of the costs of handling the traffic diversions and growth volumes. KCS pays Union Pacific a trackage-rights fee to operate trains on the Joint Line through the Houston Complex. In 2019, KCS reported \$40 million in total Joint Facility expenses system-wide.⁹⁴ In describing the calculation of Applicants’ costs of handling the growth traffic, Mr. Baranowski states that certain cost items include Joint Facility expenses – and he does not identify them as costs that were “attributed to the diverted traffic shipments.”⁹⁵ Applicants’ Highly Confidential workpapers confirm that { [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] }⁹⁶ In conclusion, Applicants have not

⁹⁴ See Schedule 410 to KCS's 2019 R-1 report. <https://www.stb.gov/reports-data/economic-data/annual-report-financial-data/>

⁹⁵ Paragraph 43 of the Baranowski VS states “Running track costs include maintenance of way, maintenance of way administration, joint facility costs and other costs related to operating and maintaining the right of way.” Table 12 following that paragraph identifies that Applicants’ cost estimates included Ties, Rail & OTM, and Ballast line items – and not Joint Facility costs or other costs related to operating and maintaining the right of way. Paragraph 45 and Table 14 that follows include a similar presentation for Train Mile costs, identifying that such costs include allocations of road operations costs, and that Applicants’ analysis were limited to train inspection and train crew costs.

⁹⁶ See, e.g., Baranowski WP “HC – 2019 URCS Phase II Model for Combined CP and KCS.xlsx,” {{[REDACTED]}}.

fully accounted for the expenses CPKC would incur to operate over other carriers' lines on the Texas Gulf Route.⁹⁷

VI. Applicants' New Traffic Movements in Other Geographic Areas

a. Ottumwa, Iowa

Applicants project that train volumes will more than quadruple on CP's Ottumwa subdivision post-Transaction, from 4.32 to 18.74 trains per day.⁹⁸ This increase of 14.43 trains per day – 100 additional trains every week – is *the 4th-largest* across all subdivisions on the combined CP-KCS system, ~~and the 2nd-largest on CP's network~~. In Ottumwa, these new CPKC trains will traverse an at-grade crossing of BNSF's double-track mainline, its primary route between Colorado, Nebraska, and Wyoming to the west and Chicago and Galesburg, Illinois to the east.

In addition to the significant increase in volume – more than 5,200 trains annually – that will cross BNSF's double-track mainline at grade, Applicants' Amended Operating Plan indicates that CPKC trains will be larger, further increasing the time that BNSF's trains will be forced to wait for the crossing to clear. In this proceeding, Applicants produced historical Train Event files that identify the size of the CP trains that moved through Ottumwa.⁹⁹ Figure 6

⁹⁷ I understand that BNSF's Assistant Vice President of Contracts and Joint Facilities Sarah Bailiff is submitting a Verified Statement with BNSF's Comments that addresses the contractual arrangements between BNSF, KCS, and UP for operating on the Texas Gulf Route used by KCS, including the Joint Line. Ms. Bailiff notes the possibility that Applicants may intend to have other railroads including BNSF contribute to costs that would be incurred to build additional capacity to handle the new traffic created by the proposed merger.

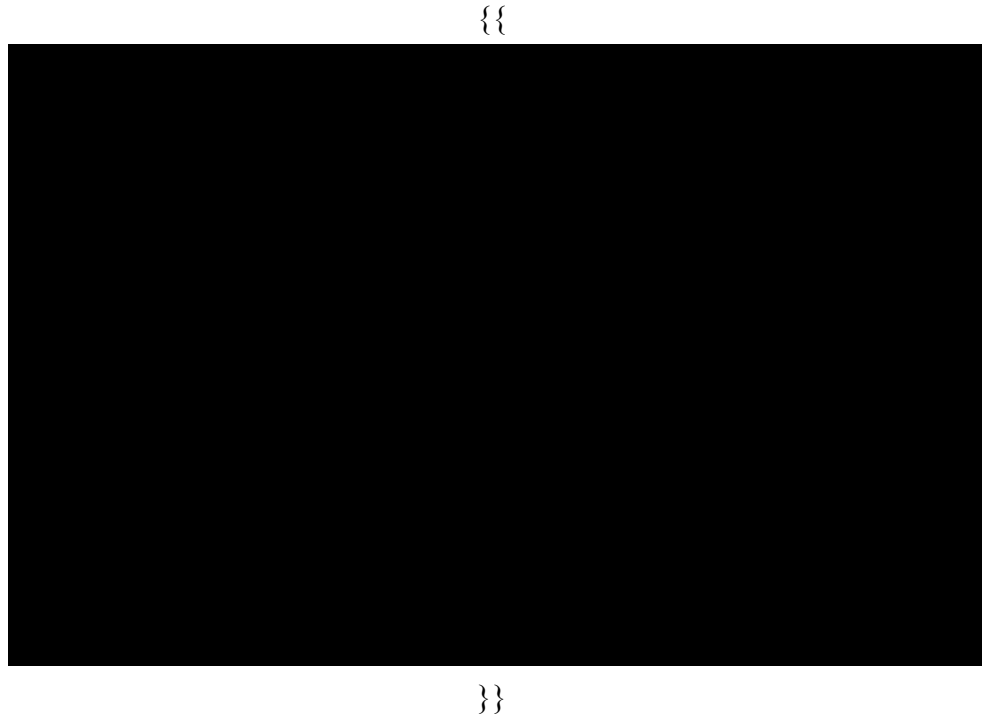
⁹⁸ Appendix A to ~~the~~ Amended Operating Plan at page 54.

⁹⁹ Applicants produced CP's 2019 Train Event records on February 4, 2022.

summarizes the average train sizes for CP's road trains in Ottumwa in 2019. Those records indicate:

- CP's road trains historically averaged {{[REDACTED]}} feet, varying by train type.
- {{[REDACTED]}} of CP's road trains exceeded 9,000 feet.
- {{[REDACTED]}} of CP's road trains exceeded 10,000 feet.

Figure 6: Average Train Length, 2019 CP Road Trains in Ottumwa



Applicants' Amended Operating Plan indicates that many CPKC trains traversing Ottumwa will be designed to longer lengths. Appendix H identifies maximum lengths of 10,000 feet for daily trains #260 and #261 operating in each direction on the St. Paul to Kansas City segment.¹⁰⁰ The forecast of more than four times as many trains – including many longer trains

¹⁰⁰ Appendix H to Amended Operating Plan at page 1. The Appendix identifies that Trains #260 and #261 run all the way to/from Shreveport, and can operate at an even greater maximum length (12,000 feet) for the segments south of Kansas City.

than today's – will impact operations of BNSF's double-track mainline route between the mountain states and Chicago. I understand that the Gabriel-Thowe VS also describes the operations at Ottumwa, and identifies the different concerns and constraints associated with that at-grade crossing of two important, high-density routes.

b. Quad Cities, Iowa and Illinois

The Quad Cities of Iowa – Bettendorf and Davenport – are on the CP subdivision with the single largest increase in train volumes: 14.~~45~~ trains per day, more than 5,200 trains annually.¹⁰¹ This increase is also the highest across all CP and KCS subdivisions. BNSF operates via trackage rights to serve local customers on CP's Davenport sub, for roughly 35 miles between Davenport and Clinton, Iowa. BNSF also connects with CP approximately 20 miles north of Clinton, at Savanna, Illinois. ~~CP's adjacent Davenport North subdivision—which covers most of the segment between Clinton and Savanna—is projected to experience a lesser increase of 10.7 trains per day, and a lower post-Transaction total train volume of 17.5 trains per day. While train volumes on CP's Davenport and Davenport North subdivisions are close to one another today (within 5%), Applicants project that post-Transaction, train volumes on the Davenport sub where BNSF serves local customers will be 23% higher than Davenport North's.~~ I understand that the Gabriel-Thowe VS also describes the operations in the Quad Cities, and identifies the challenges CPKC's considerably higher train volumes would pose for BNSF's local service to its customers.

¹⁰¹ Appendix A to the Amended Operating Plan at page 51. ~~This increase is the 3rd highest across all CP and KCS subdivisions, following 2 on KCS.~~

VERIFICATION

I, Benton V. Fisher, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this verified statement.

/s/ Benton V. Fisher

Benton V. Fisher

Executed on June 9, 2022.

Verified Statement of Benton V. Fisher

I. Introduction & Summary of Testimony

a. Introduction

My name is Benton V. Fisher. I am a Senior Managing Director in the Economic Consulting segment at FTI Consulting. My office is at 8251 Greensboro Drive in McLean, Virginia. I have been involved in the analysis of freight railroad traffic for more than 30 years. Over that time, I have focused on the economic and financial analysis of network industries, in particular, on different aspects of transportation. I have analyzed railroad traffic flows, rates, costs, and service, and the factors that affect them. I have offered expert testimony on more than 100 occasions before the Surface Transportation Board – the US regulatory agency for freight railroads – in cases examining the reasonableness of railroad rates and rulemaking proceedings regarding the establishment, evaluation, revision, and implementation of rules and regulations. I have also offered expert testimony in numerous contract disputes in federal courts and arbitrations regarding complex issues requiring the analysis of economic and operational issues and the evaluation of railroad data.¹

On October 29, 2021, Canadian Pacific Railway (“CP”), The Kansas City Southern Railway (“KCS”), and their related corporate affiliates² submitted a railroad control application in Surface Transportation Board (“STB” or “Board”) Finance Docket No. 36500 seeking Board

¹ Exhibit 1 to this statement contains my curriculum vitae.

² References to CP and KCS in this statement include their subsidiary freight railroads, including Kansas City Southern de Mexico (“KCSM”) that connects with KCS and with Union Pacific Railroad (“UP”) in Laredo, Texas.

approval for the proposed combination of their freight railroad systems (the “Transaction”).³ CP and KCS are two of the seven Class I freight railroads operating in the US,⁴ and their combination represents the first time in two decades that two Class I railroads have pursued a merger.

b. Summary of Testimony

I have been asked by BNSF Railway (“BNSF”) to describe a) the new traffic that Applicants have proposed they would handle on their combined network post-Transaction, b) the train service Applicants proposed to operate their increased traffic levels, and c) the additional infrastructure that Applicants proposed would provide adequate capacity for the new trains and traffic. My conclusions are:

1. Applicants identified 509,000 additional revenue shipments⁵ that they would handle annually post-Transaction – nearly two-thirds of which would travel to/from Mexico.
2. Applicants’ presentation indicates that the CPKC⁶ volume increases will likely exceed this 509,000 total.
3. Applicants identified they would operate significantly more trains post-Transaction in order to handle the increased traffic.
4. Applicants concluded that they could handle the considerable growth in traffic and train volumes by constructing additional running tracks in 26 locations.

³ On Friday May 13, 2022, Applicants submitted an Amended Operating Plan. This recent filing modified many of the values from their initial Operating Plan submitted in October 2021, and also included more than 230 workpaper files. This VS updates the version that I originally submitted on February 28 to incorporate the new information that Applicants provided.

⁴ “Class I” classifies the largest US freight railroads, carriers that generate more than \$900 million in annual transportation revenues. July 12, 2021 STB Decision in *Ex Parte No. 748 Indexing the Annual Operating Revenues of Railroads*.

⁵ References to “shipments” in this statement denote movements of individual intermodal containers or freight cars.

⁶ Following the abbreviation used in the Application, the merged railroad systems are referred to as “CPKC.”

5. Applicants have not proposed to add any running track capacity for 500 route miles between DeQuincy, Louisiana and Laredo, Texas – the route that CPKC would use to reach Mexico.
6. Applicants’ proposed traffic volume increases in the Houston complex will add thousands of longer trains on lines also used by Amtrak, BNSF, and UP.
7. Applicants’ proposed traffic volume increases in other locations will also impact the service that BNSF can provide to its customers.

In Section II of this statement, I describe the Transaction-related traffic diversions and growth that Applicants project to move on the combined CP-KCS network. In Section III, I present the results of the Operating Plans that Applicants designed to handle the base period traffic and volume gains. Section IV addresses Applicants’ proposed infrastructure investments to provide additional track capacity needed to transport the increased volumes. Section V focuses on Applicants’ evidence of the impacts on the Houston complex – one of the most significant terminals on the North American continent. And Section VI addresses Applicants’ volume growth in two other areas of importance to BNSF, Ottumwa, Iowa and the Quad Cities of Illinois and Iowa.

II. Traffic Gains on CP-KCS Combined Network

a. Applicants’ Estimate of Diverted and Growth Traffic

i. Summary

Applicants indicate that a core element of the proposed Transaction is the new single-line service that a combined CP-KCS would be able to provide. Many of Applicants’ witnesses refer to new services and new opportunities that would result from the merger, and quantify the new traffic volumes that CPKC would handle. In this section, I summarize the additional volumes that Applicants have identified. While the Application and the underlying workpapers include annual traffic projections for many different years, references in this statement to “Traffic

Diversions” and “Growth Traffic” reflect the new shipment volumes that Applicants assume CPKC will attract in the first three years post-Transaction. This is consistent with the presentation by Applicants’ witnesses who sponsored estimates of the diversions and growth.

Applicants claim that CPKC will handle 509,470 new revenue shipments as a result of the Transaction.⁷ This total is the sum of three groups of traffic presented by separate sets of witnesses, summarized below. After the summary, I will briefly describe the process and results for each traffic group.

1. Rail Traffic Diversions: Messrs. Richard Brown and Nathaniel Zebrowski jointly sponsor testimony that CPKC would divert 216,675 revenue shipments from other railroads.⁸
2. Truck Traffic Diversions: Mr. Bengt Mutén sponsors testimony that CPKC would divert 64,018 revenue shipments from truck movements to new rail shipments.⁹
3. Growth Initiative Traffic: Messrs. Jonathan Wahba and Michael Naatz jointly sponsor testimony that CPKC would attract an additional 228,797 new revenue shipments, above and beyond the 280,693 diversions identified in groups #1 and #2 above.¹⁰

⁷ Table 16 to the Verified Statement of Michael Baranowski (“Baranowski VS”).

⁸ Table 1 to the Verified Statement of Richard Brown and Nathaniel Zebrowski (“B/Z VS”). As Applicants disclosed many figures in the public record, I attempt to follow this approach in this statement, and note there are relatively minor differences in some places between the public Application materials and the underlying workpapers that Applicants have designated Highly Confidential.

⁹ Appendix A to the Verified Statement of Bengt Mutén (“Mutén VS”). In this statement I refer to Messrs. Brown, Zebrowski, and Mutén collectively as “the Diversion witnesses.”

¹⁰ 509,470 total minus 216,675 rail traffic diversions minus 64,018 truck traffic diversions = 228,797. The Highly Confidential workpapers present a miniscule difference with these amounts, indicating {{[REDACTED]}}. See Baranowski WP “HC – URCS Phase III Calculation For Growth Traffic Input.xlsx,” tab “CP Growth Initiatives.”

ii. Rail Traffic Diversions (Applicants’ witnesses Brown and Zebrowski)

Messrs. Brown and Zebrowski state they were “asked by CP to estimate the amount of railroad traffic that would shift from movement on other railroads to the combined CP/KCS system as a result of the new service offerings, more efficient single-line services, and other changes resulting from the Transaction.”¹¹ Most of their statement involves describing a 5-step process by which they developed this estimate and presenting their results.

Data Sources: Applicants’ process of estimating rail traffic diversions relied primarily upon 2019 traffic shipment data from their respective railroads – *i.e.*, separate datasets containing records for shipments involving CP, KCS, and KCSM – and the Board’s 2019 confidential Carload Waybill Sample (“CWS”).¹² In addition to railroad traffic records, these witnesses also utilized 2017 Freight Analysis Framework data published by the Bureau of Transportation Statistics and 2019 US Department of Trade data to estimate diversions of cereal grains (which account for 6% of Applicants’ total rail traffic diversions).¹³

Process Overview: As indicated above, Messrs. Brown and Zebrowski employed a 5-step approach to estimate the rail traffic diversions. The initial step of their screening process involved identifying movements that a combined CP/KCS system could potentially handle in single-line service. These movements could be interline movements involving either CP or KCS, for which the other would replace the non-Applicants’ portion (referred to as “extended

¹¹ B/Z VS at para. 5.

¹² B/Z VS at para. 20-21 and Appendix A.

¹³ B/Z VS at para. 41 and Table 1. To be clear, the shipment counts cited in the B/Z VS reflect only the number of revenue shipments, and do not include “empty shipments,” *i.e.*, the movements of empty intermodal containers, flatcars, and other freight cars that are required in order to reposition the equipment to the appropriate locations to serve loaded shipments.

haul” diversions), or existing single-line movements on other railroads for which the entire movement would be diverted to the CP-KCS combination. Messrs. Brown and Zebrowski identified 1,127,663 revenue shipments from the 2019 traffic files that were “Potentially Divertible to CP/KCS.”¹⁴

Messrs. Brown and Zebrowski’s second step involved “identify[ing] a smaller number of distinct groupings of traffic representing potential diversion opportunities to facilitate review.”¹⁵ Nearly one-third of the potentially divertible shipments that had been initially identified were eliminated in this very next step, and 766,194 revenue shipments were “assigned . . . for further review.”

Messrs. Brown and Zebrowski’s following step (#3) involved identifying “near-term diversion opportunities” based on feedback from Applicant personnel regarding a series of factors.¹⁶ This resulted in the exclusion of nearly 200,000 shipments. In the next step (#4), the distances of 573,421 revenue shipments were evaluated, and approximately 4,000 were deleted under Applicants’ proposed mileage filter.¹⁷ The final step involved assigning “diversion percentages” to the shipment volumes that had advanced through the first four steps of the screening process. Messrs. Brown and Zebrowski applied percentages that ranged from 25% to 75% varying based on the situation. For example, they assumed that 25% of shipments transported in existing single-line service would divert to new single-line service on the combined CP-KCS system, and that 50% of existing interline service on other carriers would

¹⁴ B/Z VS at para. 22-25.

¹⁵ B/Z VS at para. 26.

¹⁶ B/Z VS at para. 27.

¹⁷ B/Z VS at para. 28.

divert to CP-KCS single-line service post-Transaction.¹⁸ The overall result of applying these estimates of the likelihood of diversion was that 38% of the volume remaining after Step #4 volume would divert to the new CPKC, *i.e.*, 216,675 of the 569,166 shipments that met the mileage filter criteria.¹⁹ This rail traffic diversion total represents 19% of the initial set of 1.12 million potentially divertible shipments identified by the Applicants.

Before addressing the results, I describe particular aspects of Applicants' identification of rail traffic diversions. First, the vast majority of Applicants' proposed rail traffic diversions reflect a point-to-point match, in that the origin and destination of the shipment is assumed to be fixed. In other words, the new single-line service offered by the combination of CP and KCS would transport the shipments between the same origins and destinations as historically moved. Messrs. Brown and Zebrowski make exceptions to this criterion in at least two areas. The first is a "radial distance adjustment" that allows intermodal, automotive, and lumber shipments to divert to locations other than the actual destination, where there is a nearby station on the combined CP-KCS network.²⁰ The second, indicated above, involves estimating grain shipment diversions based on an assumed increase in the market share of all US grain exports to Mexico, without identification of specific origins or destinations.²¹ I note that while Messrs. Brown and Zebrowski limited the source territory to the US, Messrs. Wahba and Naatz identify

¹⁸ B/Z VS at para. 29-34.

¹⁹ B/Z VS at Table 5 and Table 1.

²⁰ Lumber shipments could be diverted to other destinations within 50 miles, and intermodal and automotive shipments to other destinations within 250 miles. B/Z VS at para. 23-24. This assumption of "flexible" destinations up to 250 miles away increases the scope of Applicants' potential diversion of intermodal and automotive shipments from BNSF.

²¹ B/Z VS at para. 40-44.

opportunities for grain diversions to single-line service on the combined CP-KCS from US and Canadian origins.²²

Results: Table 1 summarizes the rail traffic diversions estimated by Messrs. Brown and Zebrowski.²³ As indicated above, these carload and intermodal container volume figures count only revenue shipments, and do not include the movements of empty equipment necessary to provide the loaded transportation.

Table 1: CPKC Rail Traffic Diversions by Traffic Category
(Brown/Zebrowski Table 1)

Traffic Category	2019 Volume	% of Total
Intermodal	137,416	63%
Automotive	33,218	15%
Intermodal + Automotive Total	170,634	79%
Energy, Chemicals and Plastics	21,143	10%
Grain	15,768	7%
Forest Products	4,616	2%
Metals and Minerals	4,514	2%
Total Rail Traffic Diversions	216,675	

As shown in the table, Applicants’ diversions of intermodal and automotive shipments account for nearly 80% of all rail traffic diversions – and include many shipments diverted from BNSF.²⁴

Messrs. Brown and Zebrowski also estimated the incremental revenues associated with CPKC’s diversion of these shipments, and Applicants’ Witness Michael Baranowski developed

²² See, e.g., Wahba/Naatz VS at para. 15-18.

²³ This table presents the same volumes summarized in Table 1 of the B/Z VS, and identifies each traffic category’s relative proportion of the total. Exhibit 2 lists my workpaper files supporting the calculations relied upon for this statement.

²⁴ See, e.g., B/Z VS at Tables 15, 17, and 18 and para. 64, and WP “HC – 8 – Diversion Identification.xlsx,” tab “Calculations.”

an estimate of the incremental costs of CPKC's transporting these shipments.²⁵ These figures were incorporated in Applicants' Pro Forma Income Statements, which were submitted as Exhibit 17 to the Application.

iii. Truck Traffic Diversions (Applicants' witness Mutén)

In addition to rail traffic diversions, Applicants also estimated shipment volumes that would divert from truck shipment to rail transportation on the combined CP-KCS network post-Transaction. This analysis was submitted in the Verified Statement of Bengt Mutén ("Mutén VS"). Mr. Mutén relied upon 3 sources of 2019 traffic data: 1) truck flows from the IHS Markit Transearch database, 2) intermodal flows from CP and KCS waybill data, and 3) the Board's Carload Waybill Sample.²⁶ Like the rail traffic diversions estimated by Messrs. Brown and Zebrowski, the truck traffic diversions were based on 2019 volumes. Mr. Mutén estimated the likely shift of truck traffic to new single-line intermodal service on the combined CP-KCS network by evaluating certain factors such as the size of the market, the distance travelled, and the availability of single-line service.²⁷ Mr. Mutén concluded that 64,018 revenue shipments will divert from truck movement to CPKC rail transportation post-Transaction.²⁸ Mr. Mutén also estimated the revenues associated with these shipments that CPKC would collect; Mr.

²⁵ B/Z VS at 91-96 and Baranowski VS at 41-42.

²⁶ Mutén VS at para. 6.

²⁷ Mr. Mutén excluded from consideration diversions on certain lanes with pre-existing single-line intermodal rail service. Mutén VS at para. 45-51.

²⁸ Appendix A to Mutén VS. Like the rail traffic diversion volumes in the B/Z VS, this figure reflects only the revenue shipments, and does not count the additional movements of empty containers and flatcars to be repositioned to support the revenue service.

Baranowski estimated the incremental costs of CPKC's handling these shipments; and Applicants included these revenues and costs in their Pro Forma Income Statements.²⁹

iv. Growth Initiative Traffic³⁰ (Applicants' witnesses Wahba and Naatz)

In addition to the diversion of shipments historically transported by other railroads and trucks, Applicants assume CPKC would transport another 229,000 revenue shipments post-Transaction. Messrs. Jonathan Wahba and Michael Naatz³¹ present a broad discussion of a number of potential opportunities in different product and geographical markets that the combined CP-KCS could serve with new single-line rail transportation. There are two types of movements that account for most of this traffic. First, Messrs. Wahba and Naatz state "Perhaps most compelling is the opportunity to open an entirely new corridor for containerized cargo moving between Asia and points in the Eastern United States and Canada via the Port of Lázaro Cárdenas."³² Such rail shipments would be among the longest on the North American continent, as Lazaro Cardenas is 900 miles south of KCS's Laredo gateway, and 2,500 miles from the Chicago gateway to connect with eastern US railroads. Applicants project volume growth of 130,000 revenue shipments annually within the first three years of the Transaction.³³

²⁹ Mutén VS at 53-54, Baranowski VS at 41-42, and Exhibit 17 to the Application.

³⁰ References to this traffic may have slightly differing labels, such as "CP Growth Initiative." See, e.g., Baranowski WP "HC – URCS Phase III Calculation For Growth Traffic Input.xlsx," tab "CP Growth Initiatives."

³¹ Mr. Wahba is the Vice President of Commercial Integration for CP, and Mr. Naatz is the Executive Vice President and Chief Marketing Office for KCS. Wahba/Naatz VS at para. 1, 4.

³² Wahba/Naatz VS at para. 60-65.

³³ Wahba/Naatz VS at para. 64.

Second, Messrs. Wahba and Naatz identify additional transportation of crude oil from Canada to Port Arthur, Texas.³⁴ Referred to as DRUbit, these shipments are projected to exceed 50,000 carloads annually.³⁵ Table 2 summarizes the volumes associated with these examples and other revenue shipments of new growth initiative traffic that Applicants’ estimated CPKC would transport post-Transaction.³⁶ As with the rail traffic and truck traffic diversions, Mr. Baranowski estimated the incremental costs of CPKC’s handling these new shipments, and Applicants included these revenues and costs in their Pro Forma Income Statements.³⁷

Table 2: CPKC Growth Initiative Traffic by Traffic Category

Traffic Category	Volume	% of Total
Intermodal	155,000	68%
Automotive	3,000	1%
Intermodal + Automotive Total	158,000	69%
Energy, Chemicals and Plastics	54,000	24%
Grain	6,630	3%
Other Traffic Not Specified in Public Version ³⁸	10,167	4%
Total Growth Initiative Traffic	228,797	

³⁴ Wahba/Naatz VS at para. 83-94.

³⁵ DRUbit refers to “diluent recovery unit bitumen.” Wahba/Naatz VS at para. 90 and 92.

³⁶ See Wahba/Naatz VS at 27, 29, 50, 64, 74, 82, and 92. While the above compilation is limited to information included in the public version of the Application, more details for this group of projected Transaction-related shipments can be found in Baranowski WP “HC – URCS Phase III Calculation For Growth Traffic Input.xlsx,” tab “CP Growth Initiatives” and Applicants’ Response to Union Pacific’s discovery Request No. 138.

³⁷ Baranowski VS at 41-42 and Exhibit 17 to the Application.

³⁸ Applicants’ Highly Confidential workpapers identify the majority of these volumes as { [REDACTED] }. See, e.g., “HC – URCS Phase III Calculation For Growth Traffic Input.xlsx,” tab “CP Growth Initiatives.”

v. Applicants' Diversions and Growth Traffic by Type

Table 3 summarizes the results of Applicants' rail diversions, truck diversions, and growth initiative volumes by traffic type. As shown below, more than two-thirds of the new CPKC revenue shipments are intermodal traffic. As another 7% are shipments of finished automobiles, over three-quarters of Applicants' diverted and growth traffic volumes are shipments of either intermodal containers or finished automobiles.

Table 3: CPKC Diversions and Growth Traffic by Traffic Category

Traffic Category	Volume	% of Total
Intermodal	356,434	70%
Automotive	33,218	7%
Intermodal + Automotive Total	389,652	76%
Energy, Chemicals and Plastics	71,143	14%
Grain	22,398	4%
Forest Products	4,616	1%
Metals and Minerals	4,514	1%
Other Traffic Not Specified in Public Version	17,167	3%
Total Diversions and Growth Traffic	509,490	

vi. Applicants' Diversions and Growth Traffic moving to/from Mexico

In addition to summarizing CPKC's diverted and growth traffic volumes by category, an estimate of the new volumes moving to/from Mexico can be developed from the public version of the Application. Table 4 summarizes this traffic, indicating that nearly two-thirds of the new CPKC revenue shipments would travel to/from Mexico. As discussed further below in Section V, all 337,000 new revenue shipments to/from Mexico – and the additional movements of empty equipment associated with these revenue shipments – will travel between Beaumont, Texas and

Laredo using CPKC’s only route between DeQuincy and Mexico – a route that involves a mix of line segments owned by KCS and other railroads.³⁹

Table 4: CPKC Diversions and Growth Traffic to/from Mexico via Laredo

	Total Volume	Mexico Shipments	Mexico %
Rail Traffic Diversions	216,675	136,523	63%
Truck Traffic Diversions	64,018	32,693	51%
Growth Initiative Traffic	228,797	168,630	74%
Total Diversions and Growth Traffic	509,490	337,846	66%

b. Applicants’ Estimated Diversions and Growth Traffic Likely Understate the Additional Volumes that will Traverse the CPKC Network

The above subsections present Applicants’ estimates that CPKC will transport more than one-half million new revenue shipments within three years of the Transaction. The Verified Statements and Highly Confidential workpapers underlying the development of these estimates suggest that even more traffic would divert to the combined CP-KCS network. The following presents five aspects of Applicants’ evidence that indicate the volume increases will likely exceed the 509,490 gain on which their Application and Operating Plan are based.

i. *361,000 “Potentially Divertible Movements” were Dropped from Applicants’ Analysis of Rail Traffic Diversions without “Further Review”*

As described above, Messrs. Brown and Zebrowski employed a multi-step process to identify potential diversions and estimate the portion that “would likely divert” from existing routings by other railroads to new single-line service on the combined CP-KCS network. In the first step of their screening process, they identified 1.1 million shipments. Then, in the very next step, they dropped 361,000 shipments – nearly one-third of what they had just identified as

³⁹ This route is referred to as the “Texas Gulf Route” in other portions of BNSF’s Comments.

potentially divertible – “to identify a smaller number of distinct groupings of traffic representing potential diversion opportunities to facilitate review in consultation with knowledgeable Applicant personnel.”⁴⁰ While their description of the rationale for not reviewing all the potentially divertible shipments alone suggests the dropped shipments included movements likely to divert, Messrs. Brown and Zebrowski confirm this: “Some portion of the remaining traffic – *i.e.*, approximately 380,000 carloads/units in over 1,800 different lanes – likely would be attracted to the new service offerings of the CP/KCS system.”⁴¹

The Board is already aware of this likely understatement of diversions, as UP put the issue front and center in its November 19, 2021 “Petition to Reject the Application as Incomplete.”⁴² In Section I of this Petition, UP identified a series of implications of excluding potentially divertible traffic from consideration, including the downstream impacts on other elements of the Application that are dependent on the future traffic, and concluded that Applicants’ second step “critically undermines their Market Analyses and Operating Plan, as well as the Board’s environmental analysis pursuant to its obligations under NEPA.”⁴³

Finally, Applicants’ Highly Confidential workpapers indicate that {{ [REDACTED]

[REDACTED]

[REDACTED]

⁴⁰ B/Z VS at para. 26.

⁴¹ Ibid.

⁴² <https://www.stb.gov/proceedings-actions/search-stb-records/>, 303229.pdf.

⁴³ Petition at p. 4-8.

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ii. *The Diversion Witnesses Characterize Many Aspects of their Respective Traffic Analyses as “Conservative” in that They Understate the Likely Levels of Diversions*

In addition to dropping many potentially divertible shipments, Applicants make other decisions that likely understate the total traffic volume that would divert. For starters, the Diversion Witnesses frequently characterize their process and their assumptions as “conservative.” For example, Messrs. Brown and Zebrowski explicitly employ the word “conservative” or a permutation⁴⁵ 5 times. One of the particular sources of understatement of the likely level of diversions is by assuming only 25 percent of existing single-line shipments would divert to new CP-KCS single-line routes.⁴⁶ In Appendix B to their statement, Messrs. Brown and Zebrowski submit a series of analyses of the CWS data that examine the variation in market

⁴⁴ In addition to the examples of specific origin-destination lanes in Table 5, many shipments that were dropped in Step #2 may have met Applicants’ “radial distance” criteria described above, suggesting even greater volumes likely to divert.

⁴⁵ “The combination of these factors led us to err on the side of conservatism in estimating the likely lane shares that CP/KCS offerings would achieve.” B/Z VS at para. 32.

⁴⁶ B/Z VS at para. 53.

shares for origin-destination pairs with different combinations of single-line and interline service, and conclude “These data provide statistical support for higher diversion percentages than we have applied.”⁴⁷

While Mr. Muten’s statement does not contain the same number of hits on “conservative,” he offers a broad assessment blanketing his estimate of the diversions from truck shipments: “To avoid overestimating potential diversions, and **in line with the conservative nature of my analysis**, I assigned a ceiling of 70.9 percent as the rail intermodal share of traffic in any lane.”⁴⁸

iii. *In Developing Their Respective Volume Estimates, the Diversion Witnesses Relied Upon the Board’s Carload Waybill Sample, which Does Not Fully Account for Transborder Shipments*

A third source of understatement of the likely level of rail and truck traffic diversions involves the source data. The Board’s Carload Waybill Sample does not fully represent transborder shipments, especially rail traffic volumes moving to/from Mexico. The Board’s 2019 Carload Waybill Sample Reference Guide (“CWS Reference Guide”) contains a series of tables summarizing the records.⁴⁹ Table 1-14 “Waybills of Mexican Origin” indicates that the 2019 CWS includes 55,440 carloads from origins in Mexico.⁵⁰ Tables 15 and 18 to the Brown/Zebrowski statement collectively indicate more than 75,000 diversions from Mexico of intermodal and automotive shipments alone – and as diversion percentages of 50% or less were

⁴⁷ Appendix B to B/Z VS at para. 15.

⁴⁸ Muten VS at para. 50, (emphasis added).

⁴⁹ <https://www.stb.gov/wp-content/uploads/2019-STB-Waybill-Reference-Guide.pdf>

⁵⁰ CWS Reference Guide at p. 19.

applied to most of the traffic eligible for diversion,⁵¹ their analysis indicates at least 150,000 transborder shipments originating from Mexico.

The detailed records in the Carload Waybill Sample can be examined to indicate {{ [REDACTED] [REDACTED] }} of transborder shipments to/from Mexico. UP's Investor Fact Books available on its public website summarize its Mexico shipments, indicating that "Cross-border traffic with Mexico comprised approximately 11 percent of UP's total 2019 volume."⁵² 11% of UP's total 2019 volume of 8,346,000 carloads is 918,000.⁵³ The 2019 Fact Book also identifies the mix of shipments by specific gateway, indicating that UP's gateways in Texas account for 91% of all 2019 carloads to/from Mexico.⁵⁴ 91% of UP's total 2019 Mexico volume of 918,000 carloads is 835,000. For UP shipments via the Brownsville, Laredo, Eagle Pass, and El Paso gateways, the 2019 Carload Waybill Sample contains {{ [REDACTED] [REDACTED] }} than UP's actual traffic levels for Mexico shipments moving via the Texas gateways.

As Applicants rely upon the Board's Carload Waybill Sample to estimate the diversions from rail traffic and also from truck traffic, the source data for each of these analyses does not account for all potentially divertible shipments.

⁵¹ Table 26 to B/Z VS.

⁵² 2019 Investor Fact Book at page 18.

https://www.up.com/cs/groups/public/@uprr/@investor/documents/investordocuments/pdf_investor_factbook_2019.pdf

⁵³ 2019 Investor Fact Book at page 3.

⁵⁴ The "Percent of 2019 UP Carloads at Border Crossings" pie chart on page 18 of the 2019 Investor Fact Book indicates 44% for Laredo, 24% for Eagle Pass, 22% for El Paso, and 1% for Brownsville, for a total of 91%.

iv. *Applicants' Highly Confidential Workpapers* {{ [REDACTED]

The Highly Confidential workpapers include {{ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

}}

v. *Applicants' Estimates of New CPKC Diverted and Growth Volumes Do Not Include Organic Growth that Would Occur on the Combined CP-KCS Network over the Next Three Years*

This final subsection identifies another reason the traffic volumes expected to move on the combined CP-KCS network three years post-Transaction will be higher than presented in the

⁵⁵ See, e.g., Operating Plan WP “HC – 01.1 KCS Model – Synergy Growth.xlsx,” tab “Individual Opportunities.”

⁵⁶ {{ [REDACTED] }}

Application: organic growth. Applicants explicitly excluded organic growth from the volumes identified in the diversion analyses, and also from the design of an operating plan to transport Transaction-related volumes. To be clear, this may not be inappropriate from the perspective of the Application – which sought to depict the impacts of the Transaction. The fact remains, however, that more volume than has been identified in the Application will be moving on the CP-KCS line segments post-Transaction.

Multiple witnesses confirm that organic growth has been excluded from Applicants' traffic gains and operating plan:

- Chris De Bruyn submitted a Verified Statement (“De Bruyn VS”) addressing certain financial aspects of the Transaction.⁵⁷ He described the Application’s pro forma financial statements – which include the Exhibit 17 Income Statements that reflect the Transaction-related diversions and growth traffic addressed in the section above: “These pro forma financial statements utilize 2019 standalone financial statements as a base. They do not incorporate any organic growth from CP or KCS since 2019, nor do they take into account either company’s individual anticipated ongoing economic growth from now forward. As a result the figures in the Verified Statement of Dean Vargas and the 2019 pro forma financial statements will differ slightly from those in my analysis which is based on the CP and KCS as they are today and with ongoing economic growth moving forward.”⁵⁸
- The Applicants’ Operating Plan witnesses Raymond Elphick and John Orr addressed the locomotive requirements on the combined CP-KCS system post-Transaction: “It is expected additional locomotives would be brought into service to handle organic growth on the CP/KCS system. Given organic growth would occur without the Transaction, it has not been counted as an impact of the Transaction. The combined fleet has sufficient locomotives to accommodate both organic and Transaction related growth.”⁵⁹

⁵⁷ Mr. De Bruyn is the Managing Director – Investor Relations and Treasury for CP. De Bruyn VS at para. 1.

⁵⁸ De Bruyn VS at para. 13.

⁵⁹ Amended Operating Plan at para. 245, footnote 96.

- When asked in deposition {{[REDACTED]}}. ⁶⁰
- The Diversion Witnesses identify that the estimates of rail traffic and truck traffic diversions were based on 2019 datasets, and do not indicate that organic traffic growth was included.

Finally, the expectation of organic growth is {{[REDACTED]}}

[REDACTED]

[REDACTED]

[REDACTED]

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III. Applicants' Operating Plans for Handling Traffic on the CP-KCS Combined Network

In Exhibit 13, Applicants present Operating Plans for the combined CP and KCS railroad system, sponsored by Raymond Elphick and John Orr.⁶² This presentation focuses on how the systems will be integrated post-Transaction, and designs train and yard operations necessary to handle the traffic volumes. In addition to providing details on the train and yard service, Applicants' Operating Plan evidence also addresses the post-Transaction requirements for CPKC's labor force, equipment, and maintenance of way; the Transaction's impact on passenger

⁶⁰ February 18, 2022 Deposition of Messrs. Elphick and Orr (Applicants' Operating Plan witnesses) at pages 161-162.

⁶¹ See, e.g., Operating Plan workpapers "HC – 01.1 KCS Model – Organic Growth.xlsx," "HC – 01.1 KCS Model – Synergy Growth.xlsx," "HC – System Model – Methodology.pdf" at page 5, and "HC – Gross Ton Miles, Train Miles, Train Weights and MGT – Methodology.pdf" at page 2.

⁶² Mr. Elphick is the Assistant Vice President Service and Product Design for CP, and Mr. Orr is the Executive Vice President-Operations for KCS. Amended Operating Plan at para. 2, 5.

and commuter service and traffic densities by segment; and the line infrastructure and capacity, and yard and terminal capacity.⁶³ In this section I focus on the proposed train operations.

Applicants present the results for three scenarios, summarized as follows:

1. Base Plan: Messrs. Elphick and Orr identify that the Base Plan “reflects the pre-Transaction operations of CP and KCS as independent companies.”⁶⁴
2. Optimized Plan: They explain that the Optimized Plan “reflects the integration and optimization of the operations of CP and KCS as a single, integrated network, but without the additional traffic that CPKC’s new capabilities are likely to attract.”⁶⁵ The operations evaluated with this plan do not incorporate any post-Transaction volume growth.
3. Growth Plan: And finally, they indicate that the Growth Plan “reflects the anticipated traffic levels that the full integration of the CP/KCS network – which will be complete within three years of the Control Date – will handle.”⁶⁶

System-Wide Results: Table 3 to the Amended Operating Plan presents the summarized results for a variety of operating statistics for each of Applicants’ scenarios. These statistics include a measure of traffic volume (“Gross Ton Miles”), as well as the train activity associated with handling that traffic (“Train Miles (Freight)”) and the number of locomotives used to power each train (“Locomotives/Train”). Table 7 compares the results of Applicants’ Optimized Plan (*i.e.*, before Transaction-related volume growth) and Growth Plan (incorporating Transaction-related volume growth, *i.e.*, including the 509,470 revenue shipments and the associated empty intermodal containers, flatcars, and other freight cars).

⁶³ Applicants’ evidence on line infrastructure and capacity will be discussed in the following section.

⁶⁴ Amended Operating Plan at para. 11. While Applicants’ initial Operating Plan indicated that the Base Plan was “based on a 2019 base year” (para. 87), the Amended Operating Plan presents a lengthy discussion of Applicants’ reliance on various materials sourced from different points during the 2020-2021 period (para. 72-91).

⁶⁵ Ibid.

⁶⁶ Ibid.

Table 7: CPKC Operating Plan Results for Optimized and Growth Scenarios
(Table 3 to Amended Operating Plan⁶⁷)

		Optimized Plan	Growth Plan	% Change
1	Gross Ton Miles (GTM), billions	385.6	462.0	+19.8%
2	Train Miles (Freight), millions	48.26	51.86	+7.4%
3	GTM / Train Miles ("Avg Train Size")	7,991	8,910	+11.5%
4	Locomotives/Trn ("Avg Consist Size")	2.71	2.72	+0.1%
5= #2x#4	Loco Unit Miles (LUM), millions	130.78	141.06	+7.9%
6= #1/#5	Average Gross Tons / Locomotive	2,948	3,275	+11.1%

Table 5 presents several key findings regarding Applicants’ proposed post-Transaction service to handle the volumes that moved on the CP and KCS networks in 2019 along with the additional diverted and growth traffic volumes:

- The Transaction-related growth volumes would increase the total gross ton-miles moving on the CPKC network by 20%. (Line #1 of Table 5 above)
- Applicants propose that CPKC would handle this traffic by running 7% more train-miles. (Line #2)
- As a result of transporting more tons with proportionally fewer trains, each CPKC post-Transaction train would be 11.5% larger on average, compared to the 2019 Optimized baseline.⁶⁸ (Line #3)
- While Applicants’ Table 2 does not explicitly summarize train length, the significant increase in the average weight indicates that CPKC trains will be proportionally longer as well.
- While each train will transport 11.5% more tonnage on average, Applicants propose CPKC will do so with virtually the same number of locomotives (+0.1%). As a

⁶⁷ While these statistics are sourced from Table 3 to the Amended Operating Plan, the Locomotive Unit Mile (“LUM”) figures are internally inconsistent as reported. For example, 51.86 million Train Miles multiplied by 2.72 Locomotives per Train indicates total LUM of 141 million, not 52 billion. To remove these inconsistencies, Table 7 includes re-calculated values for Locomotive Unit Miles (Line #5).

⁶⁸ As Applicant’s Table 2 identifies that the average train size (GTM / Train Miles) for the Optimized Plan was 3.5% higher than the average for the Base Plan, Applicants’ Growth trains are more than 15% larger than the actual CP and KCS trains that operated in the base period.

result, each locomotive will be responsible for powering 11% more tonnage. (Line #6)⁶⁹

Transaction-Related Traffic Changes by Subdivision: Appendix A to the Amended Operating Plan summarizes the impact of the Transaction-related volume growth on the train volumes that will traverse each subdivision. This Appendix presents the average number of trains per day for the Base Plan reflecting 2019 volume levels (“Base Plan Train Count”) and separately for the Growth Plan reflecting Year 3 volume levels including diverted and growth traffic (“Growth Plan Year 3 Train Count”).⁷⁰ There are 46 segments across 22 subdivisions for which the average number of trains per day will increase by 2.5 trains or more, *i.e.*, at least 900 additional trains per year.⁷¹ The median increase in daily train volumes across these segments is 102%, *i.e.*, the number of trains in the Growth Plan is more than twice the volume that is currently moving. Figure 1 summarizes the nearly 2,400 miles on these 22 subdivisions by the magnitude of their train volume increases, identifying that over half (1,301 route miles) will experience more than 3,000 additional trains annually – and another quarter (666 route miles) will see 2,000-3,000 new trains.

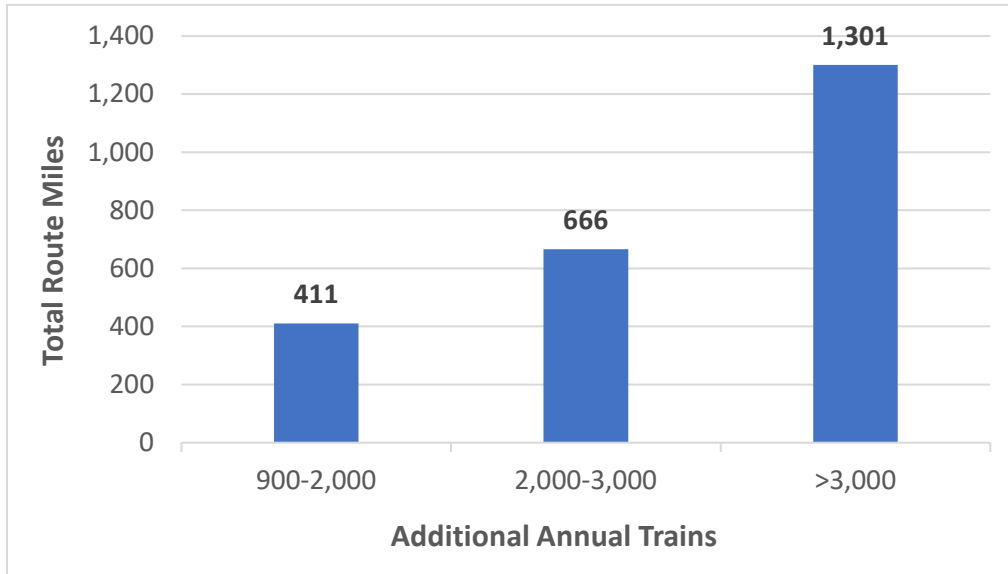
⁶⁹ As the initial Operating Plan indicated that each locomotive would be powering 7% more tonnage, updating this observation for the Amended Operating Plan reveals that Applicants in fact propose an even greater burden on each locomotive post-transaction. The Highly Confidential workpapers present {

}. Operating Plan WP “HC – System Model – Methodology.pdf” at page 13.

⁷⁰ Amended Operating Plan at para. 129.

⁷¹ See Appendix A to the Amended Operating Plan.

Figure 1: Increases in Annual Train Volumes by Segment Miles
(Appendix A to Amended Operating Plan)



Summary: Applicants propose that the Transaction-related traffic growth would add half a million revenue shipments annually (plus empties), increase by 20% the gross ton-miles on the combined CP-KCS network, increase train sizes system-wide by an average of 11.5% while powering them with virtually the same number of locomotives (+0.1%), and add thousands of trains annually across thousands of route miles.

IV. Capacity / Infrastructure

As described in prior sections, Applicants project that CPKC will transport more than 500,000 new revenue shipments, and it will operate thousands of new trains for thousands of miles. In order to handle this additional growth and new train service, Applicants identify 29 track projects on the combined CP-KCS networks to add necessary capacity. These include 15 extensions of existing sidings, 10 new sidings, 1 instance of double-tracking, and 3 locations where Centralized Traffic Control (“CTC”) systems will be added. Applicants’ estimate they

will invest \$276 million over the 2023-2025 period to accomplish these infrastructure investments.⁷²

CP and KCS reported a combined total of 5,778 US system-owned route miles in Schedule 700 to their 2019 R-1 reports submitted to the STB.⁷³ Schedule 700 also identifies the running track capacities by category: in 2019, CP identified 490 route miles of second main track, passing tracks, and other running tracks, and KCS identified 363 – for a combined Applicants’ total of 853 miles. For purposes of illustration, if the 10 new sidings were each 11,000 feet, the 15 siding extensions each added 6,000 feet, and the new double-track segment was 5 miles, Applicants’ total track additions would total 43 miles.⁷⁴ 43 miles of new running tracks would be an increase of 5% to the second main tracks and passing sidings on the existing CP and KCS networks. Figure 2 summarizes the actual lengths of Applicants’ proposed track additions from the Highly Confidential workpapers, indicating that these line capacity

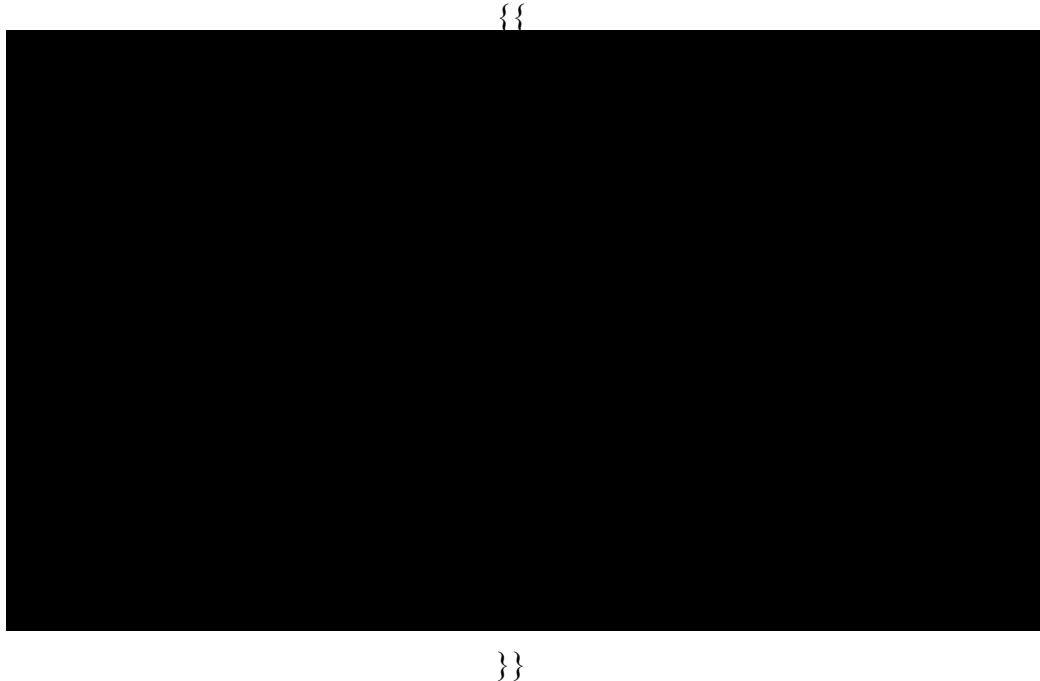
⁷² Appendix R to the Operating Plan also identifies “Line Capacity Improvement Projects.” This Appendix lists 33 projects – 4 more than are presented in either Figure 11 or Table 8 in the Operating Plan. These 4 projects are all on the CP lines, and include 39 miles of CTC on the Davenport subdivision and siding projects on the Ottumwa and Laredo (Missouri) subdivisions. The Appendix indicates capital spending of \$0.00M for each of these 4 projects. The Highly Confidential workpapers indicate {{ [REDACTED] }.

⁷³ See Schedule 700 to the CP and KCS Annual R-1 Reports (Track Class 1, 100% Owned). This total does not include partially or jointly-owned segments, or the routes that CP and KCS each operates over via trackage rights – such as the Texas Gulf Route used by the majority of the Transaction-related traffic diversions and growth.

⁷⁴ $10 \times 11,000 + 15 \times 6,000 = 200,000$ feet, divided by 5,280 feet = 38 miles of new siding capacity, plus 5 miles of double-track = 43 total miles of new capacity. As Table 8 to the Operating Plan identifies \$12.8 million of investment for the new double-track segment, an estimate of 5 miles indicates \$2.6 million per mile, lower than most of the per-mile investments suggested for the siding projects on the KCS segments.

improvement projects would increase total CP-KCS second main and passing track capacity for {{[REDACTED]}}.

Figure 2: Additional Running Track Capacities



Applicants propose no track infrastructure projects on the Texas Gulf Route south of DeQuincy, Louisiana. As described previously, these lines are critical to the Applicants’ proposal, as they provide the only route by which CPKC will access Mexico – to serve two-thirds of their diversions and growth traffic. And as also indicated above, Applicants project considerable traffic gains for the lines south of Dequincy: more than 330,000 revenue shipments, and more than 2,750 trains annually will traverse the entire Texas Gulf Route, with train volumes roughly doubling on most of the route.

The Highly Confidential workpapers, however, indicate that Applicants {{[REDACTED]}}

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]}}

Finally, Applicants' recent supplementation of certain capacity workpapers are addressed. On February 11, 2022 – 105 days after filing the Application – Applicants provided “more recent versions of certain” capacity-related workpapers, and also reported that “Applicants have determined that there were typographical errors in the “CP-HC-00007936” file located in folder 10.5.840 in the VDR. Applicants have uploaded a corrected version with the same file name.”⁷⁸ The 00007936 file contains { [REDACTED]

[REDACTED]

⁷⁵ See Operating Plan WP “HC – Capacity – Methodology.pdf” at page 6.

⁷⁶ Ibid.

⁷⁷ December 14, 2021 “Joint Responses and Objections to BNSF’s Second Set of Discovery Requests,” Response to Interrogatory No. 13. Applicants’ response to Int. No. 13 also claims that [REDACTED]

⁷⁸ The more recent workpapers were identified as updating “HC – Kansas City Corridor – Siding Spacing.pdf,” “HC – KCity Sticks With Capital.pdf,” and “HC – KCS Capacity calculations.xlsx.” The last one (KCS Capacity calculations) presents updated calculations of the { [REDACTED] }.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

} 80

⁷⁹ Section VI below identifies that BNSF serves local customers on CP’s Davenport subdivision via trackage rights, and that its service will potentially be impacted by three-times the volume traversing the segment between Camanche and Bettendorf.

⁸⁰ Regarding other recently-provided capacity materials, I understand that on February 15, 2022, Applicants produced more than 8,500 Highly Confidential documents identified as “CP System & Operations, RTC Simulations and Related Documents.” This tranche more than doubled the total number of documents that Applicants have provided since filing their Application, including all workpapers, discovery responses, etc. Having received these materials less than two weeks before the filing of this statement, I reserve the right to address these newly-provided items at a later date.

V. Applicants’ Proposed Traffic Gains and Train Volume Growth in Houston

a. Background

As described above, CPKC’s Texas Gulf Route to/from Mexico involves operating more than 100 miles between Beaumont and Rosenberg, Texas on lines that are jointly-owned by BNSF and UP.⁸¹ This route traverses the Houston Complex. Houston is one of the most significant terminals on the North American continent. It is a major railroad terminal as well as one of the largest port facilities in the country, and a hub for highway transportation.⁸² It is a centerpiece for north/south shipments to Mexico (including those movements to Mexico contemplated by Applicants’ proposal) and also for the shortest US transcontinental route between California, New Orleans, and the east coast.

The Board’s 2019 Carload Waybill Sample provides insights on the considerable reach of freight rail shipments to/from Houston. In 2019, there were 1.25 million shipments that originated or terminated at freight stations on the Joint Line and in the Houston Complex. These include most of the largest commodities that are transported by railroads – intermodal containers, finished automobiles, agricultural products, petroleum products, plastics, chemicals, and many others. At 1.25 million shipments, this volume represents 3.5% of all freight shipments in the country.⁸³ In other words, 1 out of every 30 carloads or intermodal containers shipped in the US originates or terminates in Houston. And that total doesn’t include thousands of shipments of

⁸¹ In this statement I refer to the line segments between Beaumont and Rosenberg as the “Joint Line” or “50/50 Line.”

⁸² <https://www.houston.org/news/port-houston-no-1-us-cargo-volume>,
https://porthouston.com/wp-content/uploads/PH_Facts_Sheet_r7_id_FINAL.pdf

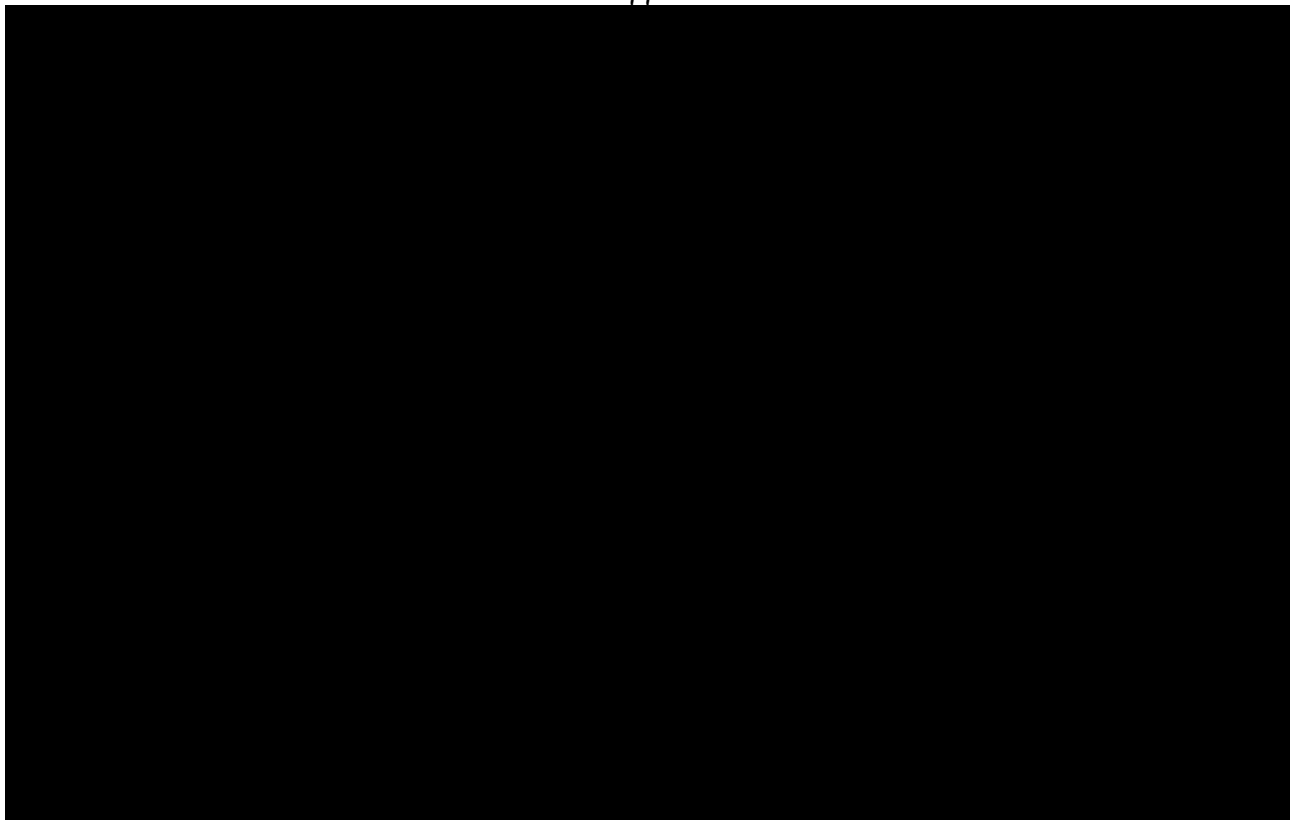
⁸³ Table 1-2 of the 2019 CWS Reference Guide identifies 35.69 million total shipments originating in the US, Canada, and Mexico. <https://www.stb.gov/wp-content/uploads/2019-STB-Waybill-Reference-Guide.pdf>

through traffic moving between California and New Orleans that traverse the route that would be used by CPKC.

All of these shipments will potentially be impacted by the additional 3,000-4,000 trains CPKC proposes to add to the Texas Gulf Route annually. To identify the potential scope of the impact, we identified the origins for shipments inbound to Houston, and the destinations for shipments outbound from Houston – *i.e.*, the “other end” of the move for the 1.25 million Houston-area originations and terminations. Shipments to/from Houston come from 1,300 different locations – representing 45 states, 8 provinces in Canada, and 40 stations in Mexico. Figure 3 plots these locations – the “other end” of the Houston moves – showing that service disruptions in Houston can affect shippers of goods throughout North America.

Figure 3: Origins and Destinations for Shipments to/from the Houston Complex
(2019 Carload Waybill Sample)

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Houston was “ground zero” for colossal service disruptions following the merger of two Class I railroads 25 years ago, UP and Southern Pacific Railroad. A 1998 *New York Times* article that presented the myriad challenges that were encountered stated “A 1996 merger with Southern Pacific to form the nation's largest railroad caused what regulators call an unprecedented breakdown in rail traffic through the heart of America that has lasted more than 10 months.”⁸⁴ The article also highlighted the particular dynamic of service disruptions on railroad networks: the impacts can extend more than 1,000 miles from their source, “But then clogged traffic at the Laredo, Tex., gateway to Mexico backed up trains all the way to Kansas.”

b. Applicants’ New Traffic Movements through the Houston Complex

i. *The Vast Majority of Applicants’ Diverted and Growth Volumes will be New Traffic to the Houston Complex*

Most of Applicants’ projected diverted and growth volumes will traverse the Texas Gulf Route through Houston. Table 4 in Section II.a.vi above summarized that 337,846 of CPKC’s new revenue shipments would move to/from Mexico, representing 66% of all diversions and growth traffic. In addition to these volumes, there are at least another 50,000 carloads of new traffic that will enter Beaumont and turn south towards Port Arthur.⁸⁵ In total, Applicants project that Transaction-related increases in excess of 387,000 new revenue shipments will cross the Neches River Bridge – along with BNSF, UP, Amtrak, and other CPKC trains.⁸⁶

⁸⁴ Myerson, Allen. “Weary Hands at the Throttle.” *The New York Times*, April 26, 1998. <https://www.nytimes.com/1998/04/26/business/earning-it-weary-hands-at-the-throttle.html>

⁸⁵ These shipments include the DRUbit crude shipments in the Growth Initiative grouping (Wahba/Naatz para. 83-94) and certain rail traffic diversions of {{[REDACTED]}}.

⁸⁶ See, e.g., Amended Operating Plan at para. 231-232.

While many of Applicants' new shipments represent diversions from other railroads, the vast majority of the increased volume moving through the Houston Complex is truly new to the Joint Line route, and is not pre-existing volume on this line that merely shifts to CPKC from other railroads (*e.g.*, BNSF or UP). Nearly two-thirds of the 387,846 shipments have yet to move on any railroad, as they represent projections of growth initiative volumes and diverted truck movements. The Lazaro Cardenas intermodal and DRUBit crude traffic summarized in Table 2 above account for most of the Transaction-related growth opportunities that Messrs. Wahba and Naatz identified; all such traffic totals 218,630 shipments⁸⁷ that will be new to the Texas Gulf Route (56% of the Joint Line total). Similarly, the 32,693 truck traffic diversions (8% of the total) moving to/from Mexico identified in Table 4 above are also new rail shipments that will traverse the entire Beaumont-Rosenberg route for the first time.

Regarding the rail traffic diversions (the remaining 35%), to ascertain whether the shipments are new to the Texas Gulf Route or traveled via the Joint Line in 2019 requires examination of Applicants' Highly Confidential workpapers. The shipment details for the diverted traffic lanes provided in the workpapers indicate that 9% of the rail shipments that Applicants proposed to divert to CPKC's Texas Gulf Route {{ [REDACTED] }}. Thus, these shipments – which represent 3% of the 387,846 total new shipments – would also be new to the Beaumont-Rosenberg line.

Applicants' Highly Confidential workpapers also indicate that {{ [REDACTED] }} were diverted from existing movements over the Laredo gateway. Of this total, {{ [REDACTED] }}

⁸⁷ This total reflects the 168,630 growth shipments moving to/from Mexico in Table 4 above and the 50,000 DRUBit shipments that enter Beaumont to Port Arthur.

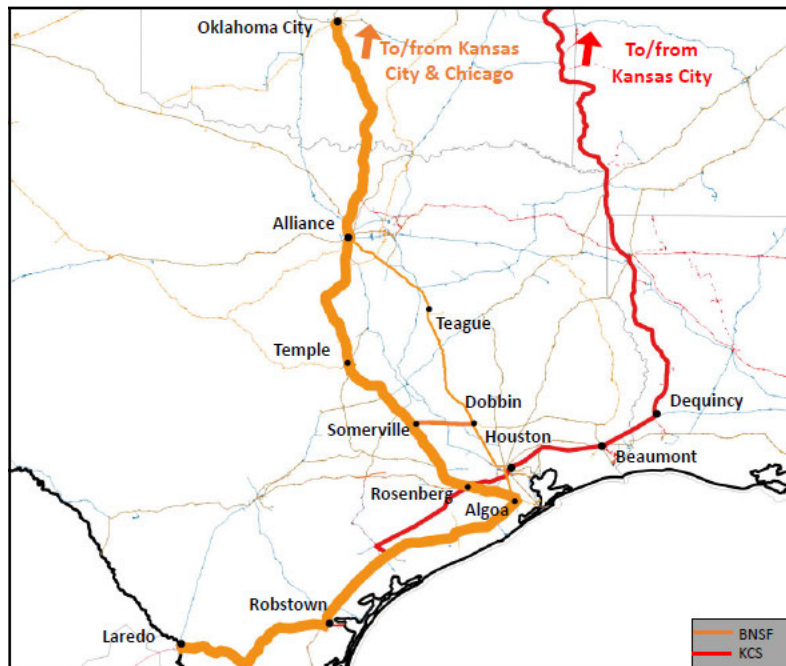
_____}}. This last group represents “Extended Haul” diversions of existing KCS interline shipments, which Applicants propose would divert to CP from another railroad on the northern end of the movement, and KCS’s routing across Texas to/from Mexico would remain unchanged.

The diversions from UP are unlikely to have traversed the Joint Line through Houston in 2019. UP has its own route to Laredo, separate from the route via Robstown, Texas that BNSF and KCS shipments use. The UP route is more direct to/from Chicago, traveling via Texarkana, Hearne, and San Antonio. While I do not have access to UP's detailed routing or movement data, UP Investor Fact Books are available on UP's public website.⁸⁸ Page 18 of the 2019 Fact Book presents a Lane Density Map for UP's Mexico shipments suggesting that most traffic to/from Laredo does not travel via the Joint Line. Thus, CPKC's diversions of existing UP-Laredo traffic – which represent {{[REDACTED]}} of the 387,846 total new shipments – would also be new to the Texas Gulf Route.

Applicants' proposed diversions from BNSF also did not traverse the Joint Line in 2019. BNSF's trains transporting north/south traffic to/from Laredo operate via Temple, Texas on line segments to the west of the Houston Complex ("the Temple route"). I examined BNSF's routing information for 2019 shipments of intermodal containers and finished automobiles moving between the Midwestern US and Laredo, and determined that {{REDACTED}} used the Temple route. Figure 4 presents the BNSF and KCS routes to/from Laredo, indicating that the route for virtually all of BNSF's traffic avoids the Joint Line and Houston Complex.

⁸⁸https://www.up.com/cs/groups/public/@uprr/@investor/documents/investordocuments/pdf_investor_factbook_2019.pdf

Figure 4: BNSF’s Laredo Shipments Do Not Traverse the Beaumont-Rosenberg Joint Line through Houston



In summary, the vast majority of CPKC’s diverted and growth volumes will be new to the Joint Line and Houston Complex. They are not pre-existing volumes that have traversed this route on other railroads’ trains. Fully 65% of the diverted and growth volumes – the growth initiative and truck traffic diversions – are projected to be rail shipments only post-Transaction. And only {{REDACTED}} of the rail traffic diversions – comprising {{REDACTED}} of all CPKC diverted and growth volumes through Houston – moved over the Joint Line or through the Houston Complex in 2019.⁸⁹

ii. CPKC Would Add more than 2,750 Trains Annually to the Houston Complex

The previous section established that the vast majority of CPKC’s diversions and growth shipments will be new traffic to the Beaumont-Rosenberg Joint Line and Houston Complex.

⁸⁹ This total includes {{REDACTED}} for BNSF shipments that analysis of the route information indicated did not traverse the Temple route and {{REDACTED}} for shipments that KCS operated over the Texas Gulf Route in 2019.

This section re-visits Applicants’ proposed train operations introduced above in Section III.a, to focus on the significant increase in train volumes that CPKC will operate over these lines.

Figure 1 above identified that there were nearly 2,000 route miles where CPKC would increase annual volumes by more than 2,000 trains – and these segments include all 500 route miles between DeQuincy and Laredo on the Texas Gulf Route. Table 8 presents the train volumes for this route from Appendix A to the Amended Operating Plan, indicating that Applicants’ projections would roughly double the number of trains on all but one of the segments.

Table 8: CPKC Train Volume Increases for Texas Gulf Route
(Appendix A to Amended Operating Plan)

MST Seg No.	Segment	Base Plan Train Count	Merger-Rel. Train Count Change	Growth Plan Year 3 Train Count	Annual Increase	Percent Change
147	DE QUINCY,LA - BEAUMONT,TX	8.67	+10.97	19.64	+4,004	+127%
149	BEAUMONT TO ROSENBERG	8.47	+7.57	16.04	+2,763	+89%
152	ROSENBERG,TX - KENDLETON,TX	8.39	+8.32	16.71	+3,037	+99%
153	KENDLETON,TX - VICTORIA,TX	8.70	+8.32	17.02	+3,037	+96%
154	VICTORIA,TX - PLACEDO,TX (UP)	7.94	+8.32	16.25	+3,037	+105%
155	PLACEDO,TX (UP) - ROBSTOWN,TX	7.94	+8.32	16.25	+3,037	+105%
157	ROBSTOWN,TX - LAREDO,TX	13.55	+8.03	21.58	+2,931	+59%

iii. CPKC’s Growth Trains Would Add More, Larger Trains on the Joint Line through the Houston Complex than Historically Moved

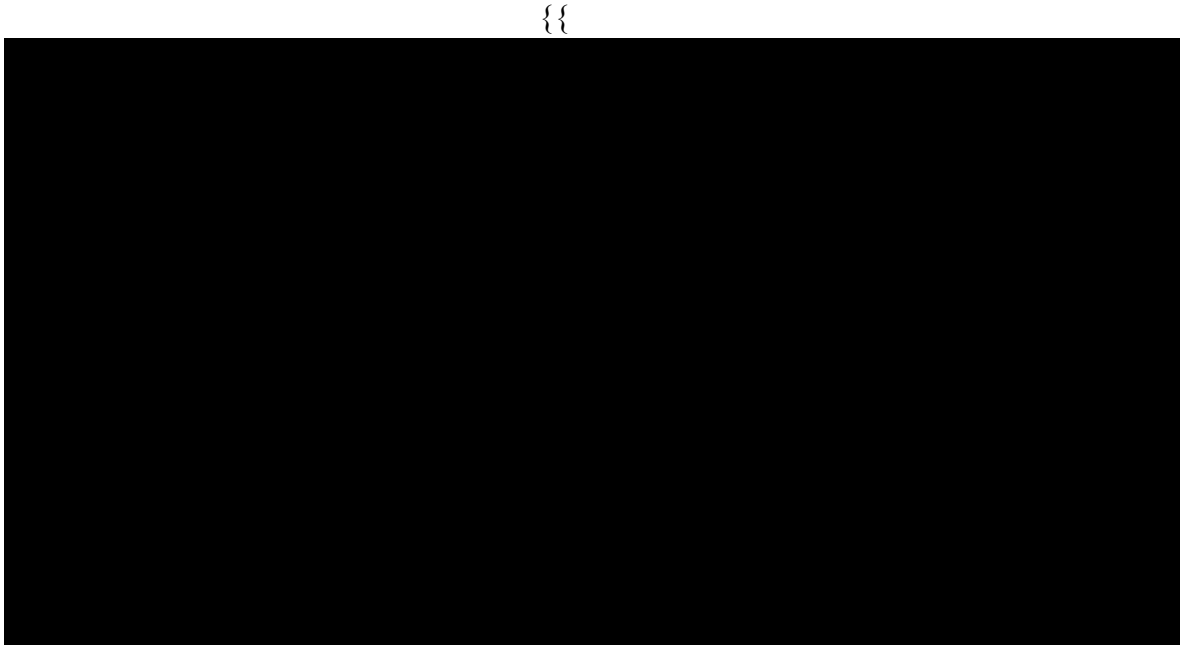
In this proceeding, Applicants produced historical Train Event files that identify the size of the KCS trains that moved through Houston.⁹⁰ Figure 5 summarizes the average train sizes for KCS’s road trains traversing the Joint Line in 2019. Those records indicate:

- KCS’s road trains historically averaged { [REDACTED] } feet, varying by train type.
- { [REDACTED] } of KCS’s road trains exceeded 8,000 feet.

⁹⁰ Applicants produced KCS’s 2019 Train Event records on December 13, 2021.

- {{[REDACTED]}} of KCS's road trains exceeded 9,000 feet.

Figure 5: Average Train Length, 2019 KCS Road Trains in Houston



}}

Applicants' Amended Operating Plan does not reveal the different train sizes assumed to transport the specific Transaction-related volume growth by individual segment. That said, there are four related observations pertinent to CPKC's future train sizes through Houston. First, Section III above describes Applicants' conclusion that system-wide, CPKC's trains including the Transaction-related diversions and growth traffic will be 11.5% larger than under Applicants' Optimized Plan, and 15% larger than the actual historical sizes on CP and KCS. Further, an annual, system-wide average does not reflect that trains will experience different increases in size – and some will be proportionally longer – nor does it reflect the seasonality inherent in rail traffic flows.

Second, when asked in deposition {{[REDACTED]}}

[REDACTED] },

Applicants' Operating Plan witness Mr. Elphick responded { [REDACTED] }⁹¹

Next, Appendix H to the Amended Operating Plan identifies changes in train operations from the Base Plan scenario to the Optimized Plan scenario that propose longer CPKC trains. These changes include four specific train assignments that would traverse the Joint Line and Houston Complex every day, for which the Amended Operating Plan indicates maximum train lengths of 9,840-10,000 feet for each.⁹²

Finally, Applicants produced materials documenting a series of monthly meetings that discuss operations on the Joint Line and in the Houston Complex. Documents from the months leading up to Applicants' submitting their Application specifically examined the impact of [REDACTED] } on operations in the complex.⁹³ As noted above, Applicants propose that many CPKC trains will be designed to be materially longer.

I understand that Jon Gabriel and Travis Thowe – BNSF's Vice President, Service Design and General Director of Network Development, respectively – are jointly sponsoring a verified statement ("Gabriel-Thowe VS") that provides a detailed description of the multi-carrier operations on the Joint Line and through the Houston Complex, and identifies the many implications of higher volumes that impact both local service and through trains in that significant railroad terminal.

⁹¹ February 18, 2022 Deposition of Raymond Elphick and John Orr at p. 63. This statement is consistent with the reference in the Operating Plan to "Optimizing train lengths to 10,000 feet . . ." Amended Operating Plan at para. 290.

⁹² Appendix H to Amended Operating Plan at pages 2-5.

⁹³ For example, page 3 of the document from the June 30, 2021 meeting states { [REDACTED]

iv. *Applicants Propose to Move Thousands of Larger Trains through the Houston Complex on Line Segments that are Owned by Other Railroads – without Incurring the Trackage-Rights Expense to Use These Lines*

As described above, Applicants include an estimate of the costs of handling the traffic diversions and growth volumes. KCS pays Union Pacific a trackage-rights fee to operate trains on the Joint Line through the Houston Complex. In 2019, KCS reported \$40 million in total Joint Facility expenses system-wide.⁹⁴ In describing the calculation of Applicants' costs of handling the growth traffic, Mr. Baranowski states that certain cost items include Joint Facility expenses – and he does not identify them as costs that were “attributed to the diverted traffic shipments.”⁹⁵ Applicants' Highly Confidential workpapers confirm that { [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] } }.⁹⁶ In conclusion, Applicants have not fully accounted for the expenses CPKC would incur to operate over other carriers' lines on the Texas Gulf Route.⁹⁷

⁹⁴ See Schedule 410 to KCS's 2019 R-1 report. <https://www.stb.gov/reports-data/economic-data/annual-report-financial-data/>

⁹⁵ Paragraph 43 of the Baranowski VS states “Running track costs include maintenance of way, maintenance of way administration, joint facility costs and other costs related to operating and maintaining the right of way.” Table 12 following that paragraph identifies that Applicants’ cost estimates included Ties, Rail & OTM, and Ballast line items – and not Joint Facility costs or other costs related to operating and maintaining the right of way. Paragraph 45 and Table 14 that follows include a similar presentation for Train Mile costs, identifying that such costs include allocations of road operations costs, and that Applicants’ analysis were limited to train inspection and train crew costs.

⁹⁶ See, e.g., Baranowski WP “HC – 2019 URCS Phase II Model for Combined CP and KCS.xlsx,” {{[REDACTED]}}.

⁹⁷ I understand that BNSF's Assistant Vice President of Contracts and Joint Facilities Sarah Bailiff is submitting a Verified Statement with BNSF's Comments that addresses the contractual arrangements between BNSF, KCS, and UP for operating on the Texas Gulf Route used by KCS.

VI. Applicants' New Traffic Movements in Other Geographic Areas

a. Ottumwa, Iowa

Applicants project that train volumes will more than quadruple on CP's Ottumwa subdivision post-Transaction, from 4.3 to 18.7 trains per day.⁹⁸ This increase of 14.4 trains per day – 100 additional trains every week – is *the largest* across all subdivisions on the combined CP-KCS system. In Ottumwa, these new CPKC trains will traverse an at-grade crossing of BNSF's double-track mainline, its primary route between Colorado, Nebraska, and Wyoming to the west and Chicago and Galesburg, Illinois to the east.

In addition to the significant increase in volume – more than 5,200 trains annually – that will cross BNSF's double-track mainline at grade, Applicants' Amended Operating Plan indicates that CPKC trains will be larger, further increasing the time that BNSF's trains will be forced to wait for the crossing to clear. In this proceeding, Applicants produced historical Train Event files that identify the size of the CP trains that moved through Ottumwa.⁹⁹ Figure 6 summarizes the average train sizes for CP's road trains in Ottumwa in 2019. Those records indicate:

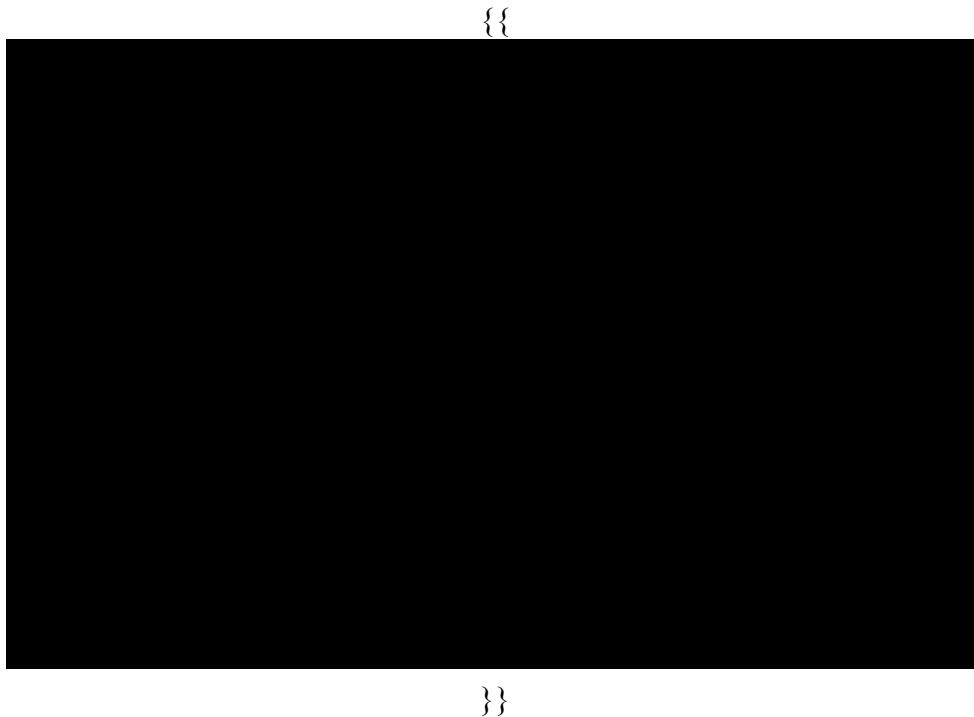
- CP's road trains historically averaged {{[REDACTED]}} feet, varying by train type.
- {{[REDACTED]}} of CP's road trains exceeded 9,000 feet.
- {{[REDACTED]}} of CP's road trains exceeded 10,000 feet.

including the Joint Line. Ms. Bailiff notes the possibility that Applicants may intend to have other railroads including BNSF contribute to costs that would be incurred to build additional capacity to handle the new traffic created by the proposed merger.

⁹⁸ Appendix A to Amended Operating Plan at page 5.

⁹⁹ Applicants produced CP's 2019 Train Event records on February 4, 2022.

Figure 6: Average Train Length, 2019 CP Road Trains in Ottumwa



Applicants' Amended Operating Plan indicates that many CPKC trains traversing Ottumwa will be designed to longer lengths. Appendix H identifies maximum lengths of 10,000 feet for daily trains #260 and #261 operating in each direction on the St. Paul to Kansas City segment.¹⁰⁰ The forecast of more than four times as many trains – including many longer trains than today's – will impact operations of BNSF's double-track mainline route between the mountain states and Chicago. I understand that the Gabriel-Howe VS also describes the operations at Ottumwa, and identifies the different concerns and constraints associated with that at-grade crossing of two important, high-density routes.

b. Quad Cities, Iowa and Illinois

¹⁰⁰ Appendix H to Amended Operating Plan at page 1. The Appendix identifies that Trains #260 and #261 run all the way to/from Shreveport, and can operate at an even greater maximum length (12,000 feet) for the segments south of Kansas City.

The Quad Cities of Iowa – Bettendorf and Davenport – are on the CP subdivision with the single largest increase in train volumes: 14.4 trains per day, more than 5,200 trains annually.¹⁰¹ This increase is also *the highest* across all CP and KCS subdivisions. BNSF operates via trackage rights to serve local customers on CP's Davenport sub, for roughly 35 miles between Davenport and Clinton, Iowa. BNSF also connects with CP approximately 20 miles north of Clinton, at Savanna, Illinois. I understand that the Gabriel-Howe VS also describes the operations in the Quad Cities, and identifies the challenges CPKC's considerably higher train volumes would pose for BNSF's local service to its customers.

¹⁰¹ Appendix A to the Amended Operating Plan at page 5.

VERIFICATION

I, Benton V. Fisher, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this verified statement.

/s/ Benton V. Fisher

Benton V. Fisher

Executed on June 9, 2022.

Benton V. Fisher

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Benton V. Fisher is a Senior Managing Director of FTI's Network Industries Strategies practice, located in McLean, Virginia. Mr. Fisher has more than 25 years of experience in providing financial, economic, and analytical consulting services to clients dealing with transportation, telecommunications, and postal subjects.

North America's largest railroads have retained FTI both to assist them in making strategic and tactical decisions and to provide expert testimony in litigation. FTI's ability to present a thorough understanding of myriad competitive and regulatory factors has given its clients the tools to implement and advance their business. Mr. Fisher has worked extensively to develop these clients' applications for mergers and acquisitions and expert testimony justifying the reasonableness of their rates before the Surface Transportation Board. In addition to analyzing extensive financial and operating data, Mr. Fisher has worked closely with people within many departments at the railroad as well as outside counsel to ensure that the railroads' presentations are accurate and defensible. Additionally, Mr. Fisher reviews the expert testimony of the railroads' opponents in these proceedings and advises counsel on the course of action to respond.

AT&T and MCI retained FTI to advance its efforts to implement the Telecommunications Act of 1996 in local exchange markets. Mr. Fisher was primarily responsible for reviewing the incumbent local exchange carriers' (ILEC) cost studies, which significantly impacted the ability of FTI's clients to access local markets. Mr. Fisher analyzed the sensitivity of multiple economic components and incorporated this information into various models being relied upon by the parties and regulators to determine the pricing of services. Mr. Fisher was also responsible for preparing testimony that critiqued alternative presentations.

Mr. Fisher assisted in reviewing the U.S. Postal Service's evidence and preparing expert testimony on behalf of interveners in Postal Rate and Fee Changes cases. He has also been retained by a large international consulting

firm to provide statistical and econometric support in their preparation of a long-range implementation plan for improving telecommunications infrastructure in a European country.

Mr. Fisher has sponsored expert testimony in rate reasonableness proceedings before the Surface Transportation Board and in contract disputes in Federal Court and arbitration proceedings.

Mr. Fisher holds a B.S. in Engineering and Management Systems from Princeton University.

Select Railroad Testimony

Surface Transportation Board

January 15, 1999	Docket No. 42022 FMC Corporation and FMC Wyoming Corporation v. Union Pacific Railroad Company, Opening Verified Statement of Christopher D. Kent and Benton V. Fisher
March 31, 1999	Docket No. 42022 FMC Corporation and FMC Wyoming Corporation v. Union Pacific Railroad Company, Reply Verified Statement of Christopher D. Kent and Benton V. Fisher
April 30, 1999	Docket No. 42022 FMC Corporation and FMC Wyoming Corporation v. Union Pacific Railroad Company, Rebuttal Verified Statement of Christopher D. Kent and Benton V. Fisher
July 15, 1999	Docket No. 42038 Minnesota Power, Inc. v. Duluth, Missabe and Iron Range Railway Company, Opening Verified Statement of Christopher D. Kent and Benton V. Fisher
August 30, 1999	Docket No. 42038 Minnesota Power, Inc. v. Duluth, Missabe and Iron Range Railway Company, Reply Verified Statement of Christopher D. Kent and Benton V. Fisher
September 28, 1999	Docket No. 42038 Minnesota Power, Inc. v. Duluth, Missabe and Iron Range Railway Company, Rebuttal Verified Statement of Christopher D. Kent and Benton V. Fisher
June 15, 2000	Docket No. 42051 Wisconsin Power and Light Company v. Union Pacific Railroad Company, Opening Verified Statement of Christopher D. Kent and Benton V. Fisher
August 14, 2000	Docket No. 42051 Wisconsin Power and Light Company v. Union Pacific Railroad Company, Reply Verified Statement of Christopher D. Kent and Benton V. Fisher
September 28, 2000	Docket No. 42051 Wisconsin Power and Light Company v. Union Pacific Railroad Company, Rebuttal Verified Statement of Christopher D. Kent and Benton V. Fisher
December 14, 2000	Docket No. 42054 PPL Montana, LLC v. The Burlington Northern Santa Fe Railway Company, Opening Verified Statement of Christopher D. Kent and Benton V. Fisher
March 13, 2001	Docket No. 42054 PPL Montana, LLC v. The Burlington Northern Santa Fe Railway Company, Reply Verified Statement of Christopher D. Kent and Benton V. Fisher

May 7, 2001	Docket No. 42054 PPL Montana, LLC v. The Burlington Northern Santa Fe Railway Company, Rebuttal Verified Statement of Christopher D. Kent and Benton V. Fisher
October 15, 2001	Docket No. 42056 Texas Municipal Power Agency v. The Burlington Northern Santa Fe Railway Company, Opening Verified Statement of Benton V. Fisher
January 15, 2002	Docket No. 42056 Texas Municipal Power Agency v. The Burlington Northern Santa Fe Railway Company, Reply Verified Statement of Benton V. Fisher
February 25, 2002	Docket No. 42056 Texas Municipal Power Agency v. The Burlington Northern Santa Fe Railway Company, Rebuttal Verified Statement of Benton V. Fisher
May 24, 2002	Docket No. 42069 Duke Energy Corporation v. Norfolk Southern Railway Company, Opening Evidence and Argument of Norfolk Southern Railway Company
June 10, 2002	Docket No. 42072 Carolina Power & Light Company v. Norfolk Southern Railway Company, Opening Evidence and Argument of Norfolk Southern Railway Company
July 19, 2002	Docket No. 42059 Northern States Power Company Minnesota v. Union Pacific Railroad Company, Union Pacific's Opening Evidence
September 30, 2002	Docket No. 42069 Duke Energy Corporation v. Norfolk Southern Railway Company, Reply Evidence and Argument of Norfolk Southern Railway Company
October 4, 2002	Northern States Power Company Minnesota v. Union Pacific Railroad Company, Union Pacific's Reply Evidence
October 11, 2002	Docket No. 42072 Carolina Power & Light Company v. Norfolk Southern Railway Company, Reply Evidence and Argument of Norfolk Southern Railway Company
November 1, 2002	Docket No. 42059 Northern States Power Company Minnesota v. Union Pacific Railroad Company, Union Pacific's Rebuttal Evidence
November 19, 2002	Docket No. 42069 Duke Energy Corporation v. Norfolk Southern Railway Company, Rebuttal Evidence and Argument of Norfolk Southern Railway Company
November 27, 2002	Docket No. 42072 Carolina Power & Light Company v. Norfolk Southern Railway Company, Rebuttal Evidence and Argument of Norfolk Southern Railway Company
January 10, 2003	Docket No. 42057 Public Service Company of Colorado D/B/A Xcel Energy v. The Burlington Northern and Santa Fe Railway Company, Opening Evidence and Argument of The Burlington Northern and Santa Fe Railway Company
February 7, 2003	Docket No. 42058 Arizona Electric Power Cooperative, Inc. v. The Burlington Northern and Santa Fe Railway Company and Union Pacific Railroad, Opening Evidence of The Burlington Northern and Santa Fe Railway Company and Union Pacific Railroad

April 4, 2003	Docket No. 42057 Public Service Company of Colorado D/B/A Xcel Energy v. The Burlington Northern and Santa Fe Railway Company, Reply Evidence and Argument of The Burlington Northern and Santa Fe Railway Company
May 19, 2003	Docket No. 42057 Public Service Company of Colorado D/B/A Xcel Energy v. The Burlington Northern and Santa Fe Railway Company, Rebuttal Evidence and Argument of The Burlington Northern and Santa Fe Railway Company
May 27, 2003	Docket No. 42058 Arizona Electric Power Cooperative, Inc. v. The Burlington Northern and Santa Fe Railway Company and Union Pacific Railroad, Joint Variable Cost Reply Evidence of The Burlington Northern and Santa Fe Railway Company and Union Pacific Railroad
May 27, 2003	Docket No. 42058 Arizona Electric Power Cooperative, Inc. v. The Burlington Northern and Santa Fe Railway Company and Union Pacific Railroad, Reply Evidence of The Burlington Northern and Santa Fe Railway Company
June 13, 2003	Docket No. 42071 Otter Tail Power Company v. The Burlington Northern and Santa Fe Railway Company, Opening Evidence of The Burlington Northern and Santa Fe Railway Company
July 3, 2003	Docket No. 42058 Arizona Electric Power Cooperative, Inc. v. The Burlington Northern and Santa Fe Railway Company and Union Pacific Railroad, Joint Variable Cost Rebuttal Evidence of The Burlington Northern and Santa Fe Railway Company and Union Pacific Railroad
October 8, 2003	Docket No. 42071 Otter Tail Power Company v. The Burlington Northern and Santa Fe Railway Company, Reply Evidence of The Burlington Northern and Santa Fe Railway Company
October 24, 2003	Docket No. 42069 Duke Energy Corporation v. Norfolk Southern Railway Company Supplemental Evidence of Norfolk Southern Railway Company
October 31, 2003	Docket No. 42069 Duke Energy Corporation v. Norfolk Southern Railway Company, Reply of Norfolk Southern Railway Company to Duke Energy Company's Supplemental Evidence
November 24, 2003	Docket No. 42072 Carolina Power & Light Company v. Norfolk Southern Railway Company, Supplemental Evidence of Norfolk Southern Railway Company
December 2, 2003	Docket No. 42072 Carolina Power & Light Company v. Norfolk Southern Railway Company, Reply of Norfolk Southern Railway Company to Carolina Power & Light Company's Supplemental Evidence
January 26, 2004	Docket No. 42058 Arizona Electric Power Cooperative, Inc. v. The Burlington Northern and Santa Fe Railway Company and Union Pacific Railroad Company, Joint Supplemental Reply Evidence and Argument of The Burlington Northern and Santa Fe Railway Company and Union Pacific Railroad Company

March 1, 2004	Docket No. 41191 (Sub-No. 1) AEP Texas North Company v. The Burlington Northern and Santa Fe Railway Company, Opening Evidence and Argument of The Burlington Northern and Santa Fe Railway Company
March 22, 2004	Docket No. 42071 Otter Tail Power Company v. The Burlington Northern and Santa Fe Railway Company, Supplemental Reply Evidence of The Burlington Northern and Santa Fe Railway Company
April 29, 2004	Docket No. 42071 Otter Tail Power Company v. The Burlington Northern and Santa Fe Railway Company, Rebuttal Evidence of The Burlington Northern and Santa Fe Railway Company
May 24, 2004	Docket No. 41191 (Sub-No. 1) AEP Texas North Company v. The Burlington Northern and Santa Fe Railway Company, Reply Evidence of The Burlington Northern and Santa Fe Railway Company
July 27, 2004	Docket No. 41191 (Sub-No. 1) AEP Texas North Company v. The Burlington Northern and Santa Fe Railway Company, Rebuttal Evidence of The Burlington Northern and Santa Fe Railway Company
March 1, 2005	Docket No. 42071 Otter Tail Power Company v. BNSF Railway Company, Supplemental Evidence of BNSF Railway Company
April 4, 2005	Docket No. 42071 Otter Tail Power Company v BNSF Railway Company, Reply of BNSF Railway Company to Supplemental Evidence
April 19, 2005	Docket No. 42088 Western Fuels Association, Inc. and Basin Electric Power Cooperative, Inc. v. BNSF Railway Company, Opening Evidence of BNSF Railway Company
July 20, 2005	Docket No. 42088 Western Fuels Association, Inc. and Basin Electric Power Cooperative, Inc. v. BNSF Railway Company, Reply Evidence of BNSF Railway Company
September 30, 2005	Docket No. 42088 Western Fuels Association, Inc. and Basin Electric Power Cooperative, Inc. v. BNSF Railway Company, Rebuttal Evidence of BNSF Railway Company
October 20, 2005	Docket No. 42088 Western Fuels Association, Inc. and Basin Electric Power Cooperative, Inc. v. BNSF Railway Company, Surrebuttal Evidence of BNSF Railway Company
June 15, 2006	Docket No. 42088 Western Fuels Association, Inc. and Basin Electric Power Cooperative, Inc. v. BNSF Railway Company, Reply Supplemental Evidence of BNSF Railway Company
June 15, 2006	Docket No. 41191 (Sub-No. 1) AEP Texas North Company v. BNSF Railway Company, Reply Supplemental Evidence of BNSF Railway Company
March 19, 2007	Docket No. 41191 (Sub-No. 1) AEP Texas North Company v. BNSF Railway Company, Reply Third Supplemental Evidence of BNSF Railway Company

March 26, 2007	Docket No. 42088 Western Fuels Association, Inc. and Basin Electric Power Cooperative, Inc. v. BNSF Railway Company, Reply Second Supplemental Evidence of BNSF Railway Company
July 30, 2007	Docket No. 42095 Kansas City Power & Light v. Union Pacific Railroad Company, Union Pacific's Opening Evidence
August 20, 2007	Docket No. 42095 Kansas City Power & Light v. Union Pacific Railroad Company, Union Pacific's Reply Evidence
February 4, 2008	Docket No. 42099 E.I. DuPont De Nemours and Company v. CSX Transportation, Inc., Opening Evidence of CSXT
February 4, 2008	Docket No. 42100 E.I. DuPont De Nemours and Company v. CSX Transportation, Inc., Opening Evidence of CSXT
February 4, 2008	Docket No. 42101 E.I. DuPont De Nemours and Company v. CSX Transportation, Inc., Opening Evidence of CSXT
March 5, 2008	Docket No. 42099 E.I. DuPont De Nemours and Company v. CSX Transportation, Inc., Reply Evidence of CSXT
March 5, 2008	Docket No. 42100 E.I. DuPont De Nemours and Company v. CSX Transportation, Inc., Reply Evidence of CSXT
March 5, 2008	Docket No. 42101 E.I. DuPont De Nemours and Company v. CSX Transportation, Inc., Reply Evidence of CSXT
April 4, 2008	Docket No. 42099 E.I. DuPont De Nemours and Company v. CSX Transportation, Inc., Rebuttal Evidence of CSXT
April 4, 2008	Docket No. 42100 E.I. DuPont De Nemours and Company v. CSX Transportation, Inc., Rebuttal Evidence of CSXT
April 4, 2008	Docket No. 42101 E.I. DuPont De Nemours and Company v. CSX Transportation, Inc., Rebuttal Evidence of CSXT
July 14, 2008	Docket No. 42088 Western Fuels Association, Inc. and Basin Electric Power Cooperative, Inc. v. BNSF Railway Company, Third Supplemental Reply Evidence of BNSF Railway Company
August 8, 2008	Docket No. 41191 (Sub-No. 1) AEP Texas North Company v. BNSF Railway Company, Fourth Supplemental Evidence of BNSF Railway Company
September 5, 2008	Docket No. 41191 (Sub-No. 1) AEP Texas North Company v. BNSF Railway Company, Fourth Supplemental Reply Evidence of BNSF Railway Company

October 17, 2008	Docket No. 42110 Seminole Electric Cooperative, Inc. v. CSX Transportation, Inc., CSX Transportation, Inc.'s Reply to Petition for Injunctive Relief, Verified Statement of Benton V. Fisher
August 24, 2009	Docket No. 42114 US Magnesium, L.L.C. v. Union Pacific Railroad Company, Opening Evidence of Union Pacific Railroad Company
September 22, 2009	Docket No. 42114 US Magnesium, L.L.C. v. Union Pacific Railroad Company, Reply Evidence of Union Pacific Railroad Company
October 22, 2009	Docket No. 42114 US Magnesium, L.L.C. v. Union Pacific Railroad Company, Rebuttal Evidence of Union Pacific Railroad Company
January 19, 2010	Docket No. 42110 Seminole Electric Cooperative, Inc. v. CSX Transportation, Inc., Reply Evidence of CSX Transportation, Inc.
May 7, 2010	Docket No. 42113 Arizona Electric Power Cooperative, Inc. v. BNSF Railway Company and Union Pacific Railroad Company, Joint Reply Evidence of BNSF Railway Company and Union Pacific Railroad Company
October 1, 2010	Docket No. 42121 Total Petrochemicals USA, Inc. v. CSX Transportation, Inc., Motion for Expedited Determination of Jurisdiction Over Challenged Rates, Verified Statement of Benton V. Fisher
November 22, 2010	Docket No. 42088 Western Fuels Association, Inc. and Basin Electric Power Cooperative, Inc. v. BNSF Railway Company, Comments of BNSF Railway Company on Remand, Joint Verified Statement of Michael R. Baranowski and Benton V. Fisher
January 6, 2011	Docket No. 42056 Texas Municipal Power Agency v. BNSF Railway Company, BNSF Reply to TMPA Petition for Enforcement of Decision, Joint Verified Statement of Michael R. Baranowski and Benton V. Fisher
July 5, 2011	Docket No. 42123 M&G Polymers USA, LLC v. CSX Transportation, Inc., Reply Market Dominance Evidence of CSX Transportation, Inc.
August 1, 2011	Docket No. 42125 E.I. DuPont De Nemours and Company v. Norfolk Southern Railway Company, Norfolk Southern Railway's Reply to Second Motion to Compel, Joint Verified Statement of Benton V. Fisher and Michael Matelis
August 5, 2011	Docket No. 42121 Total Petrochemicals USA, Inc. v. CSX Transportation, Inc. , Reply Market Dominance Evidence of CSX Transportation, Inc.
August 15, 2011	Docket No. 42124 State of Montana v. BNSF Railway Company, BNSF Railway Company's Reply Evidence and Argument, Verified Statement of Benton V. Fisher
October 24, 2011	Docket No. 42120 Cargill, Inc. v. BNSF Railway Company, BNSF Railway Company's Reply Evidence and Argument, Verified Statement of Benton V. Fisher

October 28, 2011	Docket No. FD 35506 Western Coal Traffic League - Petition for Declaratory Order, Opening Evidence of BNSF Railway Company, Joint Verified Statement of Michael R. Baranowski and Benton V. Fisher
November 10, 2011	Docket No. 42127 Intermountain Power Agency v. Union Pacific Railroad Company, Reply Evidence of Union Pacific Railroad Company
November 28, 2011	Docket No. FD 35506 Western Coal Traffic League - Petition for Declaratory Order, Reply Evidence of BNSF Railway Company, Joint Reply Verified Statement of Michael R. Baranowski and Benton V. Fisher
December 14, 2011	Docket No. 42132 Canexus Chemicals Canada L.P. v. BNSF Railway Company, BNSF Motion to Permit Consideration of 2011 TIH Movements from BNSF Traffic Data in Selecting Comparison Group, Verified Statement of Benton V. Fisher
February 13, 2012	Docket No. 42132 Canexus Chemicals Canada L.P. v. BNSF Railway Company, Opening Evidence of BNSF Railway Company, Verified Statement of Benton V. Fisher
March 13, 2012	Docket No. 42132 Canexus Chemicals Canada L.P. v. BNSF Railway Company, Reply Evidence of BNSF Railway Company
April 12, 2012	Docket No. 42132 Canexus Chemicals Canada L.P. v. BNSF Railway Company, Rebuttal Evidence of BNSF Railway Company
May 10, 2012	Docket No. 42056 Texas Municipal Power Agency v. BNSF Railway Company, BNSF Reply to TMPA Petition to Reopen and Modify Rate Prescription, Joint Verified Statement of Michael R. Baranowski and Benton V. Fisher
November 30, 2012	Docket No. 42125 E.I. DuPont De Nemours & Company v. Norfolk Southern Railway Company, Reply Evidence of Norfolk Southern Railway Company
January 7, 2013	Docket No. 42130 SunBelt Chlor Alkali Partnership v. Norfolk Southern Railway Company, Reply Evidence of Norfolk Southern Railway Company
April 12, 2013	Docket No. 42136, Intermountain Power Agency v. Union Pacific Railroad Company, Reply Evidence of Union Pacific Railroad Company
June 20, 2013	Ex Parte 431 (Sub-No. 4) Review of the General Purpose Costing System, Comments of the Association of American Railroads, Joint Verified Statement of Michael R. Baranowski and Benton V. Fisher
September 5, 2013	Ex Parte 431 (Sub-No. 4) Review of the General Purpose Costing System, Reply Comments of the Association of American Railroads, Joint Verified Statement of Michael R. Baranowski and Benton V. Fisher
September 23, 2013	Docket No. 42113 Arizona Electric Power Cooperative, Inc. v. BNSF Railway Company and Union Pacific Railroad Company. BNSF's Position on Disputed Issues Relating to Reinstating the Rate Prescription

June 26, 2014	Ex Parte 665 (Sub-No. 1) Rail Transportation of Grain, Rate Regulation Review, Joint Verified Statement of Benton V. Fisher and Kaustuv Chakrabarti Supporting BNSF Opening Filing
July 21, 2014	Docket No. 42121 Total Petrochemicals & Refining USA, Inc. v. CSX Transportation, Inc., Reply Evidence of CSX Transportation, Inc.
August 25, 2014	Ex Parte 665 (Sub-No. 1) Rail Transportation of Grain, Rate Regulation Review, Joint Verified Statement of Benton V. Fisher and Kaustuv Chakrabarti Supporting BNSF Reply Filing
September 19, 2014	Docket No. 42088 Western Fuels Association, Inc. and Basin Electric Power Cooperative, Inc. v. BNSF Railway Company, BNSF Railway Company's Reply Comments on Remand, Joint Verified Statement of Benton V. Fisher and Robert Fisher
September 4, 2015	Docket No. FD 35743 Application of the National Railroad Passenger Corporation Under 49 U.S.C. § 24308(a) - Canadian National Railway Company, Opening Evidence of Illinois Central Railroad Company and Grand Trunk Western Railroad, Joint Verified Statement of Michael Baranowski and Benton Fisher
October 7, 2015	Docket No. 42121 Total Petrochemicals & Refining USA, Inc. v. CSX Transportation, Inc., Supplemental and Compliance Evidence of CSX Transportation, Inc.
November 20, 2015	Docket No. NOR 42121 Total Petrochemicals & Refining USA, Inc. v. CSX Transportation, Inc., CSX Transportation, Inc.'s Reply to Supplemental and Compliance Evidence
March 7, 2016	Docket No. NOR 42142 Consumers Energy Company v. CSX Transportation, Inc., Reply Evidence of CSX Transportation, Inc.
July 26, 2016	Ex Parte No. 704 (Sub-No. 1) Review of Commodity, Boxcar, and TOFC/COFC Exemptions, Comments of the Association of American Railroads, Verified Statement of Michael R. Baranowski and Benton V. Fisher
August 26, 2016	Ex Parte No. 704 (Sub-No. 1) Review of Commodity, Boxcar, and TOFC/COFC Exemptions, Reply Comments of the Association of American Railroads, Verified Statement of Michael R. Baranowski and Benton V. Fisher
August 29, 2016	Ex Parte No. 733 Expediting Rate Cases, Reply Comments of the Association of American Railroads, Verified Statement of Benton V. Fisher
August 29, 2016	Ex Parte No. 733 Expediting Rate Cases, Reply Comments of CSX Transportation, Inc., Joint Verified Statement of Benton V. Fisher and Michael W. Matelis
October 11, 2016	Ex Parte No. 431 (Sub-No. 4) Review of the General Purpose Costing System, Comment of the Association of American Railroads, Verified Statement of Michael R. Baranowski and Benton V. Fisher

November 7, 2016 Ex Parte No. 431 (Sub-No. 4) Review of the General Purpose Costing System, Reply Comments of the Association of American Railroads, Verified Statement of Michael R. Baranowski and Benton V. Fisher

March 6, 2017 Docket No. NOR 42142 Consumers Energy Company v. CSX Transportation, Inc., Supplemental Reply Evidence of CSX Transportation, Inc.

January 29, 2021 Ex Parte No. 704 (Sub-No. 1) Review of Commodity, Boxcar, and TOFC/COFC Exemptions, Comments of the Association of American Railroads, Verified Statement of Michael R. Baranowski and Benton V. Fisher

U.S. District Court for the Eastern District of North Carolina

March 17, 2006 Civil Action No. 4:05-CV-55-D, PCS Phosphate Company v. Norfolk Southern Corporation and Norfolk Southern Railway Company, Report by Benton V. Fisher

U.S. District Court for the Eastern District of California

January 18, 2010 E.D. Cal. Case No. 08-CV-1086-AWI, BNSF Railway Company v. San Joaquin Valley Railroad Co., et al.

U.S. District Court for the Western District of Washington

March 15, 2021 Case No. 2:15-CV-00543-RSL, Swinomish Indian Tribal Community v. BNSF Railway Company, Rebuttal Expert Report of Benton V. Fisher.

Arbitrations and Mediations

July 10, 2009 JAMS Ref. # 1220039135; In the Matter of the Arbitration Between Pacer International, Inc., d/b/a/ Pacer Stacktrain (f/k/a APL Land Transport Services, Inc.), American President Lines, Ltd. And APL Co. Pte. Ltd. And Union Pacific Railroad Company; Rebuttal Expert Report of Benton V. Fisher

November 15, 2017 AAA No. 01-17-0001-2768, CSX Transportation, Inc. v. First Coast Railroad, Inc. etc., Expert Report of Benton V. Fisher

December 11, 2017 AAA No. 01-17-0001-2768, CSX Transportation, Inc. v. First Coast Railroad, Inc. etc., Rebuttal Expert Report of Benton V. Fisher

March 20, 2018 AAA No. 01-17-0001-2768, CSX Transportation, Inc. v. First Coast Railroad, Inc. etc., Amended Expert Report of Benton V. Fisher

July 31, 2020 British Columbia International Commercial Arbitration Centre DCA-2102, Arbitration between BNSF Railway Company and Canadian National Railway Company, Expert Report of Benton Fisher

Exhibit 2

List of Workpaper Files for Fisher V.S.

BNSF Shipment Data

BNSF Subforecast Groups (HC).xlsx
BNSF_2019_LAREDO (HC).xlsx

Diversions and Growth Traffic

Growth Traffic and Trains (HC).xlsx
Growth Traffic and Trains (PUBLIC).xlsx
Growth Traffic Route RR Source (HC).xlsx
Traffic Lane Examples (HC).xlsx

Infrastructure

Additional Running Tracks (HC).xlsx
Additional Running Tracks (PUBLIC).xlsx

Operations

2019 CP Ottumwa Train Lengths (HC).xlsx
2019 KCS Houston Train Lengths (HC).xlsx
Amended Appendix A (PUBLIC).xlsx
BNSF 2019 Houston Routings Laredo (HC).xlsx
KCS 2019 Joint Facility Expenses (PUBLIC).xlsx

STB Carload Waybill Sample

CWS_2019_UP_MX_Summary (HC).txt
CWS_2019_UP_MX_Summary (HC).xlsx
Houston_CWS_2019_Query (HC).txt
Houston_CWS_2019_Summary (HC).xlsx

CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing *Amended Comments of BNSF Railway Company* 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/ Onika K. Williams

Onika K. Williams

Attorney for BNSF Railway Company

June 9, 2022